SERVICES CONTRACT

Contract No. [########]

This Services Contract (this "**Contract**") is between the City of Bend, Oregon (the "**City**") and [Contractor Legal Name] (the "**Contractor**") for general services.

RECITALS

A The City desires to enter into this Contract for condemnation-related legal services for the Reed Market Bridge Project.

B The Contractor has the training, ability, knowledge, and experience to provide the services desired by the City.

C The Contractor was selected through formal request for proposals number 27-3217 issued [Month DD, YYYY].

TERMS OF AGREEMENT

1 **Effective Date; Duration**

This Contract shall become effective when signed by both parties and approved by the City's legal counsel. Unless sooner terminated, this Contract shall expire on December 31, 2028. Termination or expiration shall not extinguish or prejudice the City's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

2 **Services**

The Contractor shall provide condemnation-related legal services for the Reed Market Bridge Project including legal advice regarding acquisition strategy and pre-condemnation activities, as well as condemnation litigation, including preparation and prosecution of condemnation actions as needed. The services are described in more detail in the statement of work attached as Exhibit A (the "**Work**"). The Contractor shall perform the Work in accordance with Exhibit A.

3 **Consideration**

(a) The City shall pay the Contractor as set out in attached Exhibit B, but the total payment under this Contract, which includes allowable expenses for reimbursement as per attached Exhibit D, shall not exceed [$##,###] (the "**Contract Price**"). The Contract Price may be exceeded only upon prior written increase in the Work,

accompanied by written authorization for an increase in fee from the City Manager. If there is no change in the Work, the Contractor shall complete all of the Work identified within the Contract Price. Any known additional or optional tasks are listed in Exhibit B.

(b) The Contractor shall send the City an invoice each month setting forth the fee due for that month and include a detailed summary of the work performed during the pay period. The City will review all submitted invoices promptly and shall pay all undisputed amounts within 30 days of the City's receipt of the invoice.

(c) The Contractor shall submit invoices to the City of Bend, Attention: Accounts Payable, P.O. Box 1458, Bend, Oregon 97709 or via email to **ap@bendoregon.gov**. If an invoice is delivered on a non-business day, the invoice is considered received on the next business day.

(d) The Contractor shall reference the Contract Number and the Project Number on each invoice as appropriate.

(e) If Contractor intends to increase its rates and/or fees for a renewal term, it must give written notice of an increase in its rates and/or fees to the City at least 60 days prior to the expiration date of this Contract. Any price increase for a renewal term is limited to the lesser of (1) the increase in Contractor's published rates and/or fees charged to all clients for services similar to those described in this Contract, or (2) the increase in the Consumer Price Index (CPI) (All Urban Customers), West – Size Class B/C over the one year period preceding the date Contractor provides its notice of rate and/or fee increase.

4 Standard of Care

The Contractor shall provide services with the degree of skill and diligence normally employed by contractors performing the same or similar services at the time the services are performed. The Contractor shall, at all times during the term of this Contract, be duly licensed to perform the Work, and if there is no licensing requirement for the Work, be duly qualified and competent.

5 Termination

The parties may terminate this Contract as follows:

(a) This Contract may be terminated at any time by mutual consent of both parties.

(b) The City may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days' notice to the Contractor, in writing and delivery by certified mail or in person.

(c) The City may terminate this Contract, effective upon delivery of written notice to the Contractor, or at a later date established by the City under any of the following conditions:

(1) City funding is not obtained and continued at levels sufficient to pay for the Contractor's Work. This Contract may be modified to accommodate a reduction in funds. In determining the availability of funds, the City may use the biennial budget adopted or modified by the City Council.

(2) If federal, state, or City regulations or guidelines are modified, changed, or interpreted in such a way that the Work is no longer allowable or appropriate for purchase under this Contract or no longer eligible for the funding proposed for payments authorized by this Contract.

(3) If any license or certificate required by law or regulation to be held by the Contractor to provide perform the Work required by this Contract is for any reason denied, revoked, or not renewed.

(d) Any termination of this Contract is without prejudice to any obligations or liabilities of either party already accrued prior to the termination.

(e) The City by written notice of default (including breach of contract) to the Contractor may terminate the whole or any part of this Contract:

(1) If the Contractor fails to provide services called for by this Contract within the time specified or any extension of the Contract, or

(2) If the Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from the City, fails to correct the failures within ten days or such longer period as the City may authorize.

(f) The Contractor may terminate this Contract upon 30 days' written notice to the City if the City fails to pay the Contractor pursuant to the terms of this Contract and the City fails to cure within 30 business days after receipt of the Contractor's notice, or such longer period of cure as the Contractor may specify in the notice.

6 Access to Records – Files; Confidential Information

The Contractor shall maintain all books, documents, papers, and records relating to this Contract for at least seven years following completion of the project. The Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Contractor's performance. The City, state, and federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to this specific Contract for the purpose of making audit, examination, excerpts, and transcript. The Contractor agrees that all files or other documents generated or in the possession of the Contractor related to the Contractor's delivery of services are the property of the City and the Contractor shall make them available to the City upon the City's request. The Contractor understands the nature of the project(s) means that the Contractor may be privy to information that is confidential, proprietary, or sensitive in nature, which information

must not be disclosed to any third person or entity without the consent of the City or at the City's direction, either during the term of this Contract or after its termination. Likewise, any analysis or commentary provided by the Contractor of a confidential or sensitive nature must not be released or disclosed to any person without the consent or direction of the City.

7 Independent Contractor; Responsibility for Taxes and Withholdings

(a) The Work to be rendered under this Contract is that of an independent contractor. The Contractor is not an officer, employee, or agent of the State or Department as those terms are used in Oregon Revised Statutes ("**ORS**") 30.265 of the Oregon Tort Claims Act, and the Contractor is not to be considered an officer, employee, or agent of the City for any purpose. The Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. The Contractor is an independent contractor for purposes of the Oregon Workers' Compensation Law (ORS Chapter 656) and is solely liable for workers' compensation coverage under this Contract. The City does not have the right of direction or control of the manner in which the Contractor delivers the Work under this Contract or exercise any control over the activities of the Contractor.

(b) No Agency, Partnership, or Joint Venture/Independent contractor – Neither the City or the Contractor, by virtue of this Contract, is a partner or joint venture with the other party in connection with the activities carried out under this Contract.

(c) This Contract is not intended to entitle the Contractor nor any of its agents to any benefits generally granted to City employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, social security, workers' compensation, unemployment compensation or retirement. The Contractor shall be responsible for all federal and state taxes applicable to compensation or payment paid to Contractor under this Contract.

8 Ownership of Work Product

All work product of Contractor under this Contract shall be the exclusive property of the City. The Contractor waives and releases all rights relating to the use of the work under this Contract, including any rights arising under 17 U.S.C. §106A. Reuse of work product by the City or others for purposes outside the scope of work is without liability to Contractor.

9 Protection of Property and Responsibility for Damage

(a) The Contractor shall exercise due care to avoid injury to property and infrastructure, including but not limited to, existing travel lanes, medians, curbs, legally parked vehicles, signs, and adjacent property. The Contractor shall notify the City's Project

Manager as soon as practical but within 24 hours of any incidents, accidents or damage resulting from the Work under this Contract.

(b) The Contractor shall repair all damage resulting from the Work under this Contract. The Contractor shall complete repair work within a two-week period after written notification by the City's Project Manager or designee. An extension of time may be approved by the City's Project Manager or designee in excess of the two-week period if requested in writing by Contractor. The Contractor's request shall state the reasons and period of time for the request. Any repair work not completed by the Contractor within the designated time period may be completed by the City and the cost deducted from monies due to the Contractor.

(c) This section 9 is not to be construed as to relieve the Contractor of responsibility for damage to private facilities.

10 Indemnification

(a) **Indemnification for General Liability Claims.** To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Contractor shall defend, indemnify, and hold the City, its officers, agents, employees, and volunteers harmless against all liability, claims, losses, demands, suits, fees, and judgements (collectively known as "**Claims**") that may be based on, or arise out of, damage or injury (including death) to persons or property caused by or resulting from any act or omission sustained in connection with the performance of this Contract or by conditions created thereby or based upon violation of any statute, ordinance, or regulation. This indemnification required shall not apply to Claims caused by the sole negligence or willful misconduct of the City, its officers, agents, employees, and volunteers. The Contractor agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

(b) **Indemnification for Professional Liability Claims.** The Contractor shall defend, indemnify, and hold the City, its officers, agents, employees, and volunteers harmless against all liability, claims, losses, demands, suits, fees, and judgements that may be based on, or arise out of damages caused by or resulting from professional negligence in connection with the performance of this Contract by conditions created thereby or based upon violation of any statute, ordinance, or regulation (collectively known as "**Professional Negligence Claims**"). This indemnification required shall not apply to Professional Negligence Claims caused by the sole negligence or willful misconduct of the City, its officers, agents, employees, and volunteers. The Contractor agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

11 Insurance

(a) The Contractor shall purchase and maintain at their own expense the insurance noted below subject to review and acceptance by the City. All insurance shall apply

on a primary, non-contributory basis and remain in effect for the duration of the Contract term. Any policy written on a 'claims made' basis may only be done so with the written approval and authorization of the City and coverage written in this manner shall extend for 24 months past completion and acceptance of the Contractor's work or services. Insurance certificates and insurance questions shall be emailed to the City's insurance email at: **insurance@bendoregon.gov**.

(b) Commercial general liability insurance with minimum coverage in effect of $2,000,000 per incident, claim, or occurrence and $2,000,000 in aggregate. The policy shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations, employer's practices liability, and contractual damages. The Contractor shall remain fully responsible and liable for any claims resulting from the negligence or intentional misconduct of the Contractor, its subcontractors, and their officials, agents, and employees in performance of this Contract, even if not covered by, or in excess of insurance limits.

(1) Commercial general liability coverage shall name, by certificate and endorsement the City of Bend, its officers, agents, employees, and volunteers as additional insureds with respect to the Contractor's Services provided under this Contract.

(c) Commercial automobile (fleet) liability insurance with minimum combined single limit of $2,000,000 covering all owned, non-owned, and hired vehicles. This coverage shall be written in combination with the commercial general liability insurance with separate limits for commercial automobile liability and commercial general liability.

(d) Workers' compensation insurance as required by ORS Chapter 656 and meeting the minimum requirements therein. The Contractor shall ensure that each subcontractor obtains and maintains workers' compensation insurance and that the carrier notifies the State of Oregon or files a guaranty contract with the State of Oregon Workers' Compensation Division before performing work.

(e) The Contractor shall maintain in full force and effect professional liability insurance with a combined single limit of not less than $2,000,000 for each claim, incident, or occurrence, $2,000,000 aggregate. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this Contract. The Contractor shall remain fully liable for any deductible required under its professional liability errors and omissions policy if found to be negligent related to the professional services to be provided under this Contract. Coverage must be in effect prior to the commencement of the performance of this Contract. The Contractor shall provide proof of continuous "tail" coverage for 24 months after Contract completion.

(f) The Contractor shall provide proof of required coverages by acceptable certificate of insurance and signed endorsement from the carrier(s). The certificate and endorsement shall provide that there will be no cancellation, termination, material change, or reduction in limits of the insurance coverage without a minimum 30-day

written notice to the City. The certificate and endorsement shall also state the deductible or self-insured retention level.

12 Subrogation

The Contractor grants waiver of subrogation to the City, its officers, agents, employees, and volunteers for any claims arising out of the Contractor's work or service. Further, the Contractor agrees that in the event of a loss due to any of the risks for which it has agreed to provide insurance, recovery by the Contractor shall be solely with their insurance carrier. The Contractor also grants to the City on behalf of any insurer providing coverage to either the Contractor or the City with respect to the work or services of the Contractor a waiver of any right to subrogation which any insurer or the Contractor may acquire against the City by virtue of the payment of any loss under such insurance coverage.

13 Nondiscrimination – ADA Compliance

The Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. The Contractor also shall comply with the Americans with Disabilities Act ("**ADA**") of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub No. 101-336), ORS 659A, and all regulations and administrative rules established pursuant to those laws. The Contractor agrees to comply with ADA in its employment and nondiscrimination practices, and that it shall perform its contractual obligations consistent with ADA federal requirements/regulations, state disability and accessibility law and requirements, and applicable regulations and administrative rules established pursuant to those laws.

14 Successors and Assigns

The City and the Contractor each binds itself, its successors, assigns, and legal representatives to the other party to this Contract and to the successors, assigns, and legal representatives of such other party with respect to all covenants of this Contract. The Contractor shall not assign or transfer its interests in this Contract without written consent of the City, which consent may be withheld in the City's sole, subjective discretion. The rights under this Contract may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this Contract if transferred or assigned by operation of law, change of control or merger, or without the prior written consent of the City.

15 Force Majeure

The Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God, and war which is beyond the Contractor's reasonable control. The Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay

or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

16 No Third-Party Beneficiaries

The City and the Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

17 Waiver

The City's failure to enforce a provision of this Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of the City's right to performance in the future, and shall not operate as a waiver of the City's right to enforce any other provision of this Contract.

18 Limitation on Authority

The City retains its authority to execute all applications, agreements, and other documents relating to this Contract. The Contractor has no right or authority, express or implied, to commit or otherwise obligate the City or any of its partners, except as permitted by the express terms of this Contract, or as authorized in writing.

19 Attorney Fees & Governing Law

In the event an action, suit of proceeding, including appeals, is brought for failure to observe any of the terms of this Contract, each party shall be responsible for that party's own attorney fees, expenses, costs, and disbursements for any action, suit, proceeding or appeal. The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any claim, action, suit, or proceeding between the City and the Contractor arising from or relating to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. The Contractor hereby consents to *in personam* jurisdiction of said courts.

20 ORS 279A.125 Preference for Recycled Materials

The Contractor will use where applicable, recycled materials if (a) the recycled product is available, (b) the recycled product meets applicable standards, (c) the recycled product can be substituted for a comparable non-recycled product, and (d) the recycled product's costs do not exceed the costs of non-recycled products by more than five percent.

21 Compliance with Law

The Contractor shall comply with applicable federal, state, and local laws and ordinances applicable to the Work under this Contract. This Contract incorporates the provisions required to be in a contract of this type by ORS 279B.200 through 279B.235 as further set forth in attached Exhibit C.

22 Merger Clause

This Contract and attached exhibits constitute the entire agreement between the parties. No waiver, consent, modification, or change of term of this Contract shall bind either party unless in writing and signed by both parties. The waiver, consent, modification, or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. The Contractor by signature of its authorized representative hereby acknowledges that he/she has read this Contract, understands it, and agrees to be bound by its terms and conditions.

23 Key Personnel

Contractor acknowledges and agrees that the City selected Contractor for award of this Contract because of special qualifications of Contractor's key personnel. The Contractor shall not reassign or transfer key personnel to other duties or positions such that they are no longer available to provide the City with the expertise, judgment, and personal attention at the level proposed without first obtaining the City's prior written consent to such reassignment or transfer. The City shall have the right to interview, review the qualifications of, and approve or disapprove any proposed change in key personnel.

24 Notices

Project correspondence shall be directed to the City's Project Manager. Insurance certificates and insurance questions shall be emailed to the City's insurance email at: **insurance@bendoregon.gov**. All notices and demands of a legal nature that either party may be required or may desire to serve upon the other party shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, E-Mail followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

[Contractor Legal Name]
Attn: [First and Last Name *or* Department/Division]
[Street Address]
[City, State, Zip]
Phone [###-###-####]
Email: [email address]

City of Bend
Attn: Eric King, City Manager
710 NW Wall Street
Bend, Oregon 97703
Phone: 541-388-5505 Fax: 541-385-6676
Email: **eking@bendoregon.gov**

With a copy to:
City of Bend
Attn: City Attorney
710 NW Wall Street
Bend, Oregon 97703
Phone: 541-388-5505 Fax: 541-385-6676
Email: **legalnotice@bendoregon.gov**

Service by mail shall be deemed complete on the date of actual delivery or three business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served upon receipt of the facsimile or E-Mail, followed by mail delivery.

25 Severability

If any provision of this Contract is held illegal or unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions will not be impaired unless the illegal or unenforceable provisions affects a significant right or responsibility, and if negotiations fail, may terminate the Contract.

26 Counterparts

This Contract may be executed in several counterparts, all of which taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

27 Amendments

The parties may amend this Contract by a written amendment properly executed by both parties. Contract amendments shall be effective only if in compliance with Bend Code 1.55.050 Sections C and D.

28 Pay Equity

(a) As required by ORS 279B.235, the Contractor shall comply with ORS 652.220 and shall not discriminate against any of the Contractor's employees in the payment of wages or other compensation for work of comparable character, the performance of

which requires comparable skills, or pay any employee at a rate less than another comparable work, based on an employee's membership in a protected class.

(b) The Contractor must comply with ORS 652.220 as amended and shall not unlawfully discriminate against any of the Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. The Contractor's compliance with this section constitutes a breach that entitles the City to terminate this Contract for cause.

(c) The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. The Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

29 Compliance with Tax Laws

(a) The Contractor represents and warrants that the Contractor has complied with the tax laws of this state and political subdivisions of this state including but not limited to ORS 305.620 and ORS chapters 315, 317, and 318.

(b) The Contractor agrees to continue to comply with the tax laws of this state and political subdivisions of this state during the term of this Contract. Failure of the Contractor to comply with the tax laws of this state or a political subdivision of this state before the Contractor executes this Contract or during the term of this Contract, shall be considered a default for which the City may terminate this Contract and seek damages and other relief available under this Contract or under applicable law.

30 Additional Federal Requirements

The Contractor shall comply with all applicable requirements of the Railroad Crossing Elimination Program Grant Agreement between the City and the Federal Railroad Administration (the "**Grant Agreement**"), which is, in part, the funding source for the Work under this Contract. The additional provisions for contractors included in attached Exhibit E – Federal Clauses and Exhibit F – Specific Agency/Grant Agreement Requirements are incorporated as part of this Contract.

[*(signatures on following page) / (signatures to immediately follow)*]

Approved and authorized for signature by City Council acting as the Local Contract Review Board on [Month DD, YYYY].

Each party is signing this contract on the date stated opposite that party's signature.

CITY OF BEND, OREGON

By: _____ _____

[First and Last Name], [Title] Date

APPROVED AS TO FORM:

By: _____

[CONTRACTOR LEGAL NAME]

By: _____ _____

Date

Its:

City Contracting and Funding Authorizations

By: _____ _____

[First and Last Name], [Title *(Director)*]
City of Bend, Oregon

Date

By: _____ _____

[First and Last Name], [Title *(Funding Manager)*]
City of Bend, Oregon

Date

By: _____ _____

[First and Last Name], [Title *(Project Manager)*]
(the "**Project Manager**")
City of Bend, Oregon

Date

By: _____ _____

[First and Last Name], [Title *(Procurement)*]
City of Bend, Oregon

Date

EXHIBIT A - STATEMENT OF WORK

1 **[Insert Statement of Work]**

[Insert Statement of Work].

EXHIBIT B - COMPENSATION

[*insert compensation details*]

EXHIBIT C – RELEVANT PROVISIONS OF ORS CHAPTER 279B

1 **279B.220 Conditions Concerning Payment, Contributions, Liens, and Withholding**

The Contractor shall:

(1) make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the Work provided for in this Contract;

(2) pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of this Contract;

(3) not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and

(4) pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

2 **279B.225 Condition Concerning Salvaging, Recycling, Composting or Mulching Yard Waste Material**

If this Contract includes lawn or landscape maintenance, the Contractor shall salvage, recycle, compost or mulch yard waste material at an approved site, when feasible and cost effective.

3 **279B.230 Condition Concerning Payment for Medical Care and Providing Workers' Compensation**

(a) The Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(b) The Contractor acknowledges and agrees that all subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

4 279B.235 Provisions Concerning Hours of Labor

(a) The Contractor may not employ an employee for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, the Contractor shall pay the employee at least time and a half pay for:

(1) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(2) All overtime in excess of ten hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(3) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020.

(b) The Contractor shall comply with the prohibition set forth in ORS 652.220, compliance is a material element of this Contract and failure to comply is a breach that entitles the City to terminate this Contract for cause.

(c) The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(d) The Contractor shall give notice in writing to employees who work under this Contract, either at the time of hire or before work begins on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the Contractor may require the employees to work.

(e) The Contractor shall pay employees at least time and a half pay for work the employees perform under this Contract on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time the employee works in excess of ten hours in any one day or in excess of 40 hours in any one week, whichever is greater.

EXHIBIT D - ALLOWABLE EXPENSES

1 Allowable Expenses Generally

(a) The City will reimburse the Contractor only for reasonable, necessary, and allowable expenses incurred in performing the Work, subject to the limitations in this Exhibit. The Contractor must obtain the City's prior written approval before incurring any travel expense that is either outside the ordinary course of the Work or reasonably expected to exceed the applicable limits in this Exhibit.

(b) The City reserves the right to reject any invoice for costs which, in the City's sole judgment, are determined to be unreasonable.

(c) To request reimbursement of allowable expenses, the Contractor must submit itemized documentation sufficient to establish the date, location, business purpose, traveler, amount, and nature of each expense. For lodging and meals, the documentation must include an itemized receipt or detailed statement of charges. Credit-card statements, canceled checks, and similar payment records alone are not sufficient.

2 Expense Limitations

(a) Airfare or other common-carrier transportation must be for economy or coach accommodations unless the City approves another class in writing before booking. The City will not reimburse airfare or other transportation costs attributable to personal travel or upgrades selected for personal convenience.

(b) The use of a personal or company-owned vehicle will be reimbursed at the applicable Internal Revenue Service (IRS) standard mileage rate in effect on the date of travel. The City will not separately reimburse fuel, maintenance, repair, depreciation, or other vehicle-related costs for the use of a personal or company-owned vehicle. Necessary and reasonable parking, tolls, and similar travel charges may be reimbursed if documented.

(c) A rental vehicle may be reimbursed when necessary to perform the Work. The Contractor must select the lowest available rental rate for a compact or midsize vehicle and may not select optional upgrades or enhanced services. Reimbursable costs are limited to the rental charge, fuel purchased during the rental period, required taxes and fees, and tolls and parking incurred while performing the Work.

(d) The City's reimbursement for lodging is limited to 125 percent of the applicable daily lodging rate established by the United States General Services Administration ("**GSA**") for the location and date of travel. Lodging above this limit requires the City's prior written approval. Taxes and mandatory fees charged by the lodging provider may be reimbursed separately if otherwise allowable and documented.

(e) The City's reimbursement for meals and incidental expenses is limited to the applicable per-diem rate established by GSA for the location and date of travel. Reimbursement will be reduced for meals provided by the City or another source at no cost to the Contractor. Incidental expenses are included within the per-diem limit.

3 Prohibited Expenses

The City will not reimburse expenses that are personal, unreasonable, inadequately documented, incurred for family members or companions, or excluded by the Contract or this Exhibit. Examples of non-reimbursable expenses that shall not be paid for by the City include:

(1) Alcoholic beverages or cannabis;

(2) Personal entertainment or other personal purchases;

(3) Rental-car or personal vehicle insurance for risks normally covered by the vehicle owner or rental agreement;

(4) Traffic citations, parking citations, or other fines and penalties; and

(5) Costs resulting from optional upgrades or personal travel preferences.

EXHIBIT E - FEDERAL CLAUSES

1. Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

1.1 The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

1.2 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

1.3 The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

1.4 The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

1.5 To the extent EO 11246 is in effect at the time of this contract, the contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

1.6 In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1.7 The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Clean Air Act and the Federal Water Pollution Control Act

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq*.

The contractor agrees to report each violation to the City of Bend and understands and agrees that the City of Bend will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by the Federal Railroad Administration.

"Federal Water Pollution Control Act"

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq*.

The contractor agrees to report each violation to the City of Bend and understands and agrees that the City of Bend will, in turn, report each violation as required to assure notification to the Oregon Department of Environmental Quality and the appropriate Federal Railroad Administration Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance.

4. Debarment and Suspension

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City of Bend If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of Bend

the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5. Byrd Anti--Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

By signing this contract, the contractor certifies, to the best of his or her knowledge and belief, that:

Contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency

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

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

complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

5.4. 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 section 1352, title 31, U.S. Code. 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.

6. Procurement of Recovered Materials

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

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

7. Prohibition on Contracting for Covered Telecommunications Equipment or Services Equipment

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) *Prohibitions.*

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are *not used* as a substantial or essential component of any system; *and*

ii. Are *not used* as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement*.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code

(if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

8. Domestic Preference for Procurements

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. The requirements of this section must be included in all subawards, contracts, and purchase orders

For purposes of this clause:
Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

9. Rights to Inventions

[Only required if we are contracting for "the performance of experimental, developmental, or research work funded in whole or in part by the Federal government". If we are, refer back to https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/appendix-Appendix%20II%20to%20Part%20200 for guidance]

10. Remedies

These General Conditions impose duties and obligations on the Contract parties and provide for rights and remedies. The rights and remedies available to each party are in addition to, and shall not limit, actions allowed by Law or other parts of this Contract. All representations, warranties, and guaranties made in this Contract shall survive final payment and/or termination (whether for cause or convenience) and/or completion of this Contract. The content of this paragraph shall apply as if repeated specifically in this Contract in connection with each duty, obligation, right, and remedy.

11. Suspension or Termination of the Work

Termination

a. Default - City may terminate this Contact for default on 10 calendar days' written notice if Contractor:
    i. Fails to comply with the requirements for records
    ii. Violates any material provision of the Contract;
    iii. Disregards applicable laws and regulations or the Engineer's instructions;
    iv. Refuses or fails to supply enough Materials, Equipment or skilled workers for the prosecution of the Work in compliance with the Contract;
    v. Fails to make prompt payment to Subcontractors;
    vi. Makes an unauthorized general assignment for the benefit of the Contractor's creditors;
    vii. Has a receiver appointed because of the Contractor's insolvency;
    viii. Is adjudged bankrupt and the court consents to the Contract termination;
    ix. Otherwise fails or refuses to perform the Contract according to its terms and conditions; or
    x. Has liquidated and delinquent debt owed to the City

Contractor may avoid termination by remedying the default within the 10-day notice period.

b. The City may extend the 10-day period if it is satisfied that Contractor is making satisfactory progress towards remedying the default.

c. If the Contract is terminated by the City, upon demand the Contractor and the Contractor's Surety shall provide City with immediate and peaceful possession of the Project Site, and of all Materials and Equipment to be incorporated into the Work, whether located on or off the Project Site, for which the Contractor received progress payments.

   If the Contract is terminated for default, neither the Contractor nor its Surety shall be:

   i. Relieved of liability for damages or losses suffered by the City because of the Contractor's breach of Contract; or

   ii. Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made according to the City's payment terms, except that City shall be entitled to withhold sufficient funds to cover costs incurred by the City as a result of the termination. Final payment to the Contractor shall be made according to the City's payment terms.

d. If a termination for default is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

e. Termination for Public Convenience - City may terminate the Contract in whole or in part whenever the City determines that termination of the Contract is in the best interest of the public.

   i. Notice:
   The City shall provide the Contractor and the Contractor's Surety seven calendar days' written notice of termination for public convenience. On the termination date stated in the notice, Contractor and Contractor's Surety shall provide the City with immediate and peaceful possession of the Project Site, and of Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Contractor received progress payments

   ii. Compensation:

If the Contract is terminated for public convenience, compensation shall be per Part 00195.70.

f. On termination, City may:

i. Take possession of the Project Site;

ii. Take possession of Materials on the Project Site;

iii. Take possession of Materials not on the Project Site, for which the Contractor received progress payments;

iv. Take possession of Equipment on the Project Site that is to be incorporated into the Work;

v. Take Possession of Equipment not on the Project Site that is to be incorporated into the Work, and for which the Contractor received progress payments; and

vi. Finish the Work by whatever method the City deems expedient. Payment on termination shall be per Part 00195.70.

EXHIBIT F - SPECIFIC AGENCY/GRANT AGREEMENT REQUIREMENTS

1. Contractor agrees to comply with all applicable Federal Railroad Administration Terms and Conditions in effect at the time of this agreement, including those set forth in Attachment 1: General Terms and Conditions, Attachment 2: Project-Specific Terms and Conditions, and all accompanying exhibits.

2. The Contractor will comply, and will ensure that any subcontractors and subconsultants will comply, with the obligations on non-federal entities under 2 C.F.R. parts 200 and 1201, regardless of whether the Contractor or its subcontractors or subconsultants is a Non-Federal entity as described in 2 C.F.R. § 200.1, except that subpart F of part 200 does not apply if the Contractor or its subcontractors or subconsultants are a for-profit entity.

3. The Contractor and its subcontractors and subconsultants will retain and provide access to records relevant to the award during the course of the Project and for three years after closeout or longer, as required under 2 CFR § 200.334. The Contractor and its subcontractors and subconsultants will adhere to the recording and recordkeeping requirements set forth in 2 CFR §§ 200.334–200.338. Project Closeout does not alter these requirements. The Contractor and its subcontractors and subconsultants compliance with these record-retention requirements include those requirements set forth in Section 11.2 (Financial Records and Audits) of the FRA's Attachment 1: General Terms and Conditions.

4. Contractor and its subcontractors and subconsultants will follow the policies and procedures allowed by the State of Oregon when procuring property and services under this award consistent with 2 CFR § 1201.317, notwithstanding 2 CFR § 200.317.

5. Contractor and its subcontractors and subconsultants will comply with the property standards of 2 CFR §§ 200.310–200.316.

6. Contractor and its subcontractors and subconsultants will comply with the land acquisition policies and relocation requirements in 42 U.S.C. § 4601 et seq. and 49 CFR part

24, subparts A–F, as applicable, and as set forth in in Section 14.2 (Relocation and Real Property Acquisition) of the FRA's Attachment 1: General Terms and Conditions.

7. Contractor and its subcontractors and subconsultants will ensure that property and equipment funded under the City's Agreement with the FRA is used for the originally authorized purpose. Contractor and its subcontractors and subconsultants will ensure that any property, improvements to property, and any equipment funded under the City's Agreement with the FRA are maintained in good working order and in accordance with 2 CFR §§ 200.310–200.316, 1201.313 and with FRA regulations, guidelines, and directives.

8. Equipment disposition is governed by 2 CFR §§ 200.313 and 1201.313, and Section 14.6 (Equipment Disposition) of the FRA's Attachment 1: General Terms and Conditions.

9. The Contractor and its subcontractors and subconsultants will not create an obligation, such as a transfer of title, lease, lien, mortgage, or encumbrance, that would dispose of or encumber the City's title or other interest in property, improvements to property, equipment or supplies funded under the City's Agreement with the FRA without prior written approval from the City and FRA. The Contractor and its subcontractors and subconsultants will not take any action that would adversely affect FRA's interest or impair the City's continuing control over the use of the property, improvements to property, equipment, or supplies funded under the City's Agreement with the FRA without prior written approval from the City and FRA.

10. **Anti-Discrimination.** Appendix A to 40 CFR Part 33

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. 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 other legally available remedies.

11. **Debarment and Suspension.** Contractor shall comply with Subpart C of 2 C.F.R. 180 and Subpart C of 2 C.F.R. 1532 in any subcontract at any tier that is expected to equal or exceed $25,000.

12. **Small and Disadvantaged Business Requirements.** The Contractor shall expend funds under this Contract in compliance with the requirements at 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), and to the extent available, 49 C.F.R. part 26 (Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs).

13. Pursuant to Section 889 of Pub. L. No. 115-232 and 2 CFR § 200.216, the Contractor and its subcontractors and subconsultants are prohibited from procuring or obtaining certain telecommunications and video surveillance equipment or services under the City's Agreement with the FRA.

14. 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:

a. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Railroad Administration (FRA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
b. **Non-discrimination:** 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.
c. **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 Non-discrimination on the grounds of race, color, or national origin.
d. **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 City of Bend or FRA 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 City of Bend or FRA, as appropriate, and will set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the City of Bend will impose such contract sanctions as it or FRA may determine to be appropriate, including, but not limited to:
   i. withholding payments to the Contractor under the contract until the Contractor complies; and/or
   ii. cancelling, terminating, or suspending a contract, in whole or in part.
f. **Incorporation of Provisions:** The Contractor will include the provisions of section 8.a. – e. 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 City of Bend or FRA 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 City of Bend to enter into any litigation to protect the interests of the City of Bend. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

15. 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 non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination 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. § 471, Section 47123), 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, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 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;
- The Federal Aviation Administration's Non-discrimination 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 nondiscrimination 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).

Certification Regarding Delinquent Tax Liability or a Felony Conviction Under any Federal Law

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a

contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

(1) Has 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, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Contractor therefore certifies that it does not have a Tax Delinquency or a Felony Conviction, as those terms are defined herein.

Definitions. For the purposes of this exhibit, the following definitions apply:

"**Covered Transaction**" means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

"**Felony Conviction**" means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

"**Participant**" means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

"**Tax Delinquency**" means an 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.

As part of its agreement with the FRA, the City has agreed to the following. Pursuant to Section 6 below, these requirements apply to all Covered Transactions for all tiers of

subcontracts and subawards. Accordingly, by signing this Contract, the Contractor agrees to comply with the terms set forth below.

1. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the "**SAM**") at http://www.sam.gov/ for an entry describing that entity.
2. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:
   (1) Certify whether the entity has a Tax Delinquency; and
   (2) Certify whether the entity has a Felony Conviction.
3. **Prohibition.** If
   (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
   (2) an entity provides an affirmative response to either certification in section 3; or
   (3) an entity's certification under section 3 was inaccurate when made or became inaccurate after being made

   then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.
4. **Mandatory Notice to the USDOT.**
   (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
   (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
   (c) If the Recipient knows that a Participant's certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.
5. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:
   (1) require the SAM check in section 2;
   (2) require the certifications in section 3;
   (3) include the prohibition in section 4; and
   (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

16. **Recipient Policy to Ban Text Messaging While Driving.**

a. *Definitions*. The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.4, "**Motor Vehicles**" means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, "**Driving**" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, "**Text messaging**" means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell
phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the
device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the "**Government**" includes the United States Government and State, local, and tribal governments at all levels.

b. Workplace Safety. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

(1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c. Subawards and Contracts. To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

17. **Labor Protective Arrangements.**

(1) Notwithstanding 49 U.S.C. § 22905(e)(1), and in accordance with 49 U.S.C. § 22909(j)(3), any employee covered by the Railway Labor Act (45 U.S.C. § 151 et seq.) and the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.) who is adversely affected by actions taken in connection with this contract shall be covered by employee protective arrangements required to be established under 49 U.S.C. § 22905(c)(2)(B), the City will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404, as such protective arrangements are described in the final Federal Railroad Administration guidance titled Equivalent Protections for Railroad Employees and effective December 28, 2022, included below under the heading Exhibit B.5: Equivalent Labor Protections Under 49 U.S.C. 22905(c)(2)(B). Acceptance by the Contractor of the terms set forth below in Exhibit B.5: Equivalent Labor Protections Under 49 U.S.C. 22905(c)(2)(B) is a condition of this contract.

(2) In accordance with 49 U.S.C. § 22909(j)(3), the City, and any successors, assigns, the Contractor, and the Contractor's subcontractors and subconsultants:
   i. Shall be bound by the employee protective arrangements required under subparagraph (1); and
   ii. Shall be responsible for the implementation of such arrangements and for the obligations under such arrangements, but may arrange for another entity to take initial responsibility for compliance with the conditions of such arrangement.

(3) Labor protections required pursuant to this section shall be documented consistent with Executive Order 14025, "Worker Organizing and Empowerment" (Apr. 26, 2021), and Executive Order 14052, "Implementation of the Infrastructure Investment and Jobs Act" (Nov. 15, 2021) (IIJA), the City will document its consideration of job quality and labor rights, standards, and protections related to this project.

EXHIBIT B.5: EQUIVALENT LABOR PROTECTIONS UNDER 49 U.S.C. 22905(c)(2)(B)

This Exhibit provides guidance on the protective arrangements equivalent to the protective arrangements established under Section 504 of the Railroad Revitalization Reform Act of 1976, with respect to employees affected by actions taken in connection with a Project financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B). Fluctuations and changes in volume or character of employment brought about solely by other causes are not within the scope of this Exhibit.

1. **Definitions.** Whenever used in this Exhibit, capitalized terms shall have the meanings below:

(a) "Average Monthly Compensation" means the total compensation received by a Displaced Employee or a Dismissed Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement or dismissal, divided by twelve (12). The Average Monthly Compensation shall be adjusted to reflect subsequent general wage increases.

(b) "Average Monthly Time" means the total number of hours worked by a Displaced Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement, divided by twelve (12).

(c) "Day" means one 24-hour calendar day (including holidays and weekends) for purposes of calculating deadlines and other timeframes in this Exhibit.

(d) "Displaced Employee" means a Protected Employee who remains employed by a Railroad but, as a result of a Project, is placed in a worse position with respect to compensation and rules governing working conditions. A Protected Employee's status as a Displaced Employee begins on the date said employee is harmed.

(e) "Dismissed Employee" means a Protected Employee who: (1) as a result of a Project, is deprived of employment with the Railroad because (i) the Railroad eliminates the Protected Employee's position, or (ii) the Railroad eliminates another employee's position (and that employee's exercise of seniority rights results in the Protected Employee's inability to secure another position by the exercise of the Protected Employee's seniority rights); and (2) is unable to secure another position by exercise of their seniority rights A Protected Employee's status as a Dismissed Employee begins on the date said employee is deprived of employment.

(f) "Project" means any action financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B).

(g) "Protected Employee" means an employee of a Railroad who is affected by actions taken pursuant to a Project, whether the Project is initiated by a Railroad or a Recipient. If a Railroad rearranges or adjusts its forces in anticipation of a Project with the purpose or effect of depriving an employee of benefits to which they otherwise would have become entitled under this Exhibit, then that employee is a Protected Employee under this Exhibit. An employee's status as a Protected Employee shall continue for the duration of the applicable Protective Period. An employee who solely benefitted as a result of a Project shall not be a Protected Employee under this Exhibit.

(h) "Protective Period" means that period during which a Displaced Employee or a Dismissed Employee is provided the protections described in this Exhibit. The Protective Period begins on the date an employee of a Railroad is displaced or dismissed and ends after six (6) years. However, the Protective Period for any particular employee shall not continue longer than the period of time the Railroad employed the employee prior to the date of their displacement or dismissal. For purposes of this Exhibit, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936, as amended.

(i) "Recipient" means any person or entity receiving financial assistance subject to the requirements of 49 U.S.C. § 22905(c), including grantees, subrecipients,

contractors, and subcontractors.

(j) "Railroad" means (1) a railroad carrier as defined in 49 U.S.C. § 20102(3), or (2) any person deemed a rail carrier pursuant to 49 U.S.C. § 22905(b).

2. Flow Down.

(a) In accepting financial assistance for a Project, the Recipient is responsible for ensuring the compliance with the protections provided in this Exhibit. The Recipient shall make the acceptance of this Exhibit a condition of any new contract (or incorporate its terms into any existing contract by amendment) that uses funds subject to the requirements of 49 U.S.C. § 22905(c). These conditions shall apply to a Recipient, any Railroad and any contractor of any tier with which the Recipient contracts using funds subject to the requirements of 49 U.S.C. § 22905(c).

(b) The Recipient shall require in an agreement (either in a new agreement or as an amendment to an existing agreement) with a Railroad owning the right-of-way to be improved by a Project that the Railroad notify its employees (or their representatives) of the Project being funded with financial assistance subject to 49 U.S.C. § 22905(c) and the applicability of these protections.

(c) Any Railroad employee (or their representatives) may notify a Recipient of a dispute or controversy relating to the requirements of this Exhibit to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

3. Collective Bargaining Agreements.

(a) **Existing Agreements**. The rates of pay, rules, working conditions, and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a Railroad's employees under applicable laws, regulations, and/or existing collective bargaining agreements shall be preserved and remain applicable unless changed by future collective bargaining agreements or applicable statutes or regulations. As applied to the regulation of subcontracting by the Railroads of a Project, the provisions of this section shall mean that a determination of whether or not such work validly may be subcontracted by a Railroad shall not be affected by the fact that the work is being financed by funds subject to the requirements of 49 U.S.C. § 22905(c)(2)(B). Nothing in this Exhibit shall be construed as depriving any Railroad employee of any rights or benefits or eliminating any obligations that such employee may have under any existing contractual or statutory arrangement, including job security agreements, protective conditions, or

arrangements.

(b) **Election by Protected Employee**. Where a Protected Employee is eligible for protections under both this Exhibit and another contractual or statutory arrangement, the Protected Employee shall elect between the protection under this Exhibit and protection under such other arrangement. After such an election, the Protected Employee shall be protected only by the arrangement that they elect. The Protected Employee shall not be entitled to any protection or benefit (regardless of whether such benefit is duplicative) under the arrangement that they do not elect. However, if the elected protection expires pursuant to the terms of the arrangement that governs the elected protection, the Protected Employee is entitled to protection under the arrangement not originally elected for the remainder, if any, of the Protective Period.

4. Change in Operations, Services, Facilities, or Equipment.

(a) **Notice**. When a Railroad contemplates a change or changes in its operations, services, facilities, or equipment as a result of a Project, which may cause the dismissal or displacement of Protected Employees or rearrangement of forces involving such employees, it shall give at least sixty (60) days' written notice of such intended changes to both Protected Employees and their duly authorized representatives (if applicable). Such notice shall contain a full and adequate description of the proposed changes, including an estimate of the number of Protected Employees of each class affected by the intended changes.

(b) **Negotiations**.

(i) Initiation of Negotiation. Within sixty (60) days after the Railroad issues a notice under Section 4(a) of this Exhibit, the Railroad or the Protected Employees (or their representatives) may, by written notice to the other party, request a meeting and opportunity to negotiate an agreement with respect to the application of the terms and conditions of this Exhibit. These negotiations shall commence within fourteen (14) days from the receipt of such request.

(ii) Subject of Negotiations. Each change to rail operations, services, facilities, infrastructure, or equipment (including rights-of-way, track, and signal and crossing systems) that may result in dismissal or displacement of Protected Employees or rearrangement of forces involving such employees shall be subject to review and negotiation by the parties, but only to the extent necessary to ensure compliance with this Exhibit. For any contemplated rearrangement of rail forces, the Railroad and the representative(s) of the Protected Employees shall

agree on the method of selection of employees to be moved, and the assignment of those employees to new roles.

(c) **Arbitration**. If the Railroad and the representative(s) of the Protected Employees fail to agree within forty-five (45) days from the initial meeting and opportunity to negotiate, either party may submit the dispute for arbitration in accordance with the following procedures:

(i) Notice & Selection of Arbitrator. Within ten (10) days after either party has notified the other in writing of their desire to submit the dispute for arbitration, the parties shall select a neutral arbitrator. If the parties cannot agree upon the selection of said arbitrator, then the parties shall submit a request to the National Mediation Board to appoint an arbitrator. In either case, a hearing shall be scheduled no later than thirty (30) days after an arbitrator has been appointed.

(ii) Binding Decision. The decision of the arbitrator shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the date of the commencement of the hearing of the dispute.

(iii) Expenses. The salary and expenses of the arbitrator shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(d) **Implementation**. If a notice is issued under Section 4(a), the Railroad shall not implement such a change or changes until: (i) sixty (60) days after the notice in accordance with Section 4(a), if no party requests a meeting and opportunity to negotiate; (ii) the parties reach agreement pursuant to Section 4(b), if a party requests a meeting and opportunity to negotiate; or (iii) a referee has rendered a decision pursuant to Section 4(c).

5. Protections for Displaced Employees

(a) **Displacement Allowances**.

(i) In General. If a Displaced Employee is unable, in the normal exercise of such employee's seniority rights under existing agreements, rules and practices, to obtain a position that is compensated equal to or exceeding the compensation the Displaced Employee received in the position from which such employee was displaced, then the Displaced Employee shall, during the Protective Period, be paid a monthly displacement allowance equal to the

difference between the monthly compensation received by the Displaced Employee in the position in which such employee is retained and the Average Monthly Compensation received by the Displaced Employee in the position from which such employee was displaced (the "Displacement Allowance").

(ii) Application of Displacement Allowance. If a Displaced Employee's compensation in that employee's retained position is less in any month in which such employee performs work than the Average Monthly Compensation, then the Displaced Employee shall be paid the difference between the current compensation and the Average Monthly Compensation. However, the Displacement Allowance shall be reduced by the Displaced Employee's time lost as a result of voluntary absences, to the extent that the Displaced Employee is not available for service equivalent to the Displaced Employee's Average Monthly Time. If, on the other hand, the Displaced Employee, in such employee's retained position, works in excess of the Average Monthly Time in any given month, then the Displaced Employee shall be additionally compensated for such excess time at the rate of pay of the employee's retained position. If a Displaced Employee fails to exercise their seniority rights to secure another position available to the employee which does not require a change in such employee's place of residence, to which the employee is entitled under the working agreement, and which carries a rate of pay and compensation exceeding those of the position that the employee elects to retain, then the Displaced Employee shall thereafter be treated for the purposes of this section as occupying the position such employee elects to decline.

(iii) Early Expiration. The Displacement Allowance shall cease prior to the expiration of the Protective Period in the event of the Displaced Employee's resignation, death, retirement, or dismissal for justifiable cause.

(b) **Moving Expenses**. Any Protected Employee retained in the service of a Railroad, or who is later restored to service after being entitled to receive a Dismissal Allowance, and is required to change the point of such employee's employment as a result of the Project, and within the employee's Protective Period is required to move the employee's place of residence, shall be reimbursed for all expenses of moving the employee's household and other personal effects, including travel expenses, temporary living expenses, and any actual wage loss during the time necessary to make the move, and for a reasonable time thereafter, not to exceed five (5) days.

(i) Prior Agreement. The exact extent of the responsibility of a Railroad under this Section and the ways and means of transportation shall be

agreed upon in advance by the Railroad and the Protected Employee or their representatives.

(ii) Exception. Changes in residence that are not a result of a Project, which are made after the initial change and that grow out of the normal exercise of seniority rights, are not within the purview of this Section.

(iii) Furloughed Employees. The Railroad shall, to the same extent provided above, assume the moving expenses outlined in Section 5(b) for an employee furloughed within three (3) years after changing such employee's point of employment as a result of a Project, who elects to move their place of residence back to their original point of employment.

(iv) Reimbursement. A claim for reimbursement shall be paid under the provisions of this Section within sixty (60) days after it is submitted, unless disputed by the Railroad, but no claim shall be paid if presented to the Railroad more than ninety (90) days after the date on which the expenses were incurred.

(c) **Losses from Home Sale or Contract Termination**. Any Displaced Employee who is retained in the service of a Railroad (or who is later restored to service after being entitled to receive a dismissal allowance), and who is required to change the point of such employee's employment during the Protective Period as a result of a Project, is entitled to the following:

(i) Home Sale for Less Than Fair Market Value. If the Displaced Employee owns their place of residence in the locality from which such employee is required to move, then at the Displaced Employee's option, the Railroad shall reimburse the Displaced Employee for the difference between the actual sale price and the fair market value of the employee's place of residence. The Railroad shall pay such difference within sixty (60) days after the Displaced Employee has filed a claim for such loss in accordance with Section 5(c)(vi), unless a controversy arises as to which Section 5(c)(vii) applies. In each case, the fair market value of the home in question shall be determined without consideration of the Project. The Railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the Displaced Employee to any other person.

(ii) Election to Receive Closing Costs. The Displaced Employee may elect to waive the provisions of Section 5(c)(i) and to receive, in lieu thereof, an

amount equal to the closing costs that are customarily paid for and assumed by a seller of real estate in the jurisdiction in which the employee's residence is located. Such costs shall include customary fees paid to a licensed realtor (not to exceed six percent (6%) of the final sale price) and any prepayment penalty required by any mortgagor or beneficiary of a deed of trust. Such costs shall not include the payment of any mortgage discount points or similar interest discount fees by the Displaced Employee.

(iii) Pending Contract to Purchase. If a Displaced Employee has entered into a contract to purchase a place of residence, but due to a Project must cancel that contract, the Railroad shall indemnify the Displaced Employee against any losses due to such cancellation, and shall relieve the Displaced Employee from any further obligation under the contract.

(iv) Unexpired Lease. If the Displaced Employee holds an unexpired lease of a dwelling as the employee's primary place of residence, and the Displaced Employee must cancel the lease due to a Project, the Railroad shall indemnify the Displaced Employee from all costs and liability arising from said cancellation.

(v) Exclusions. Any change in residence that is not due to or caused by a Project, or that resulted from the normal exercise of a Protected Employee's seniority rights, shall not be within the purview of this Section.

(vi) Notification of Claims. A Displaced Employee shall notify, in writing, the Railroad of such employee's claim arising from this Section 5(c) within one (1) year of the date the Displaced Employee's claim accrues.

(vii) Home Value Disagreements. In the event of disagreement between a Railroad and a Displaced Employee as to the value of a Displaced Employee's claim, either party (or their representatives) may request, in writing, a joint conference to resolve the disagreement.

A. Real Estate Appraisers. If the parties are unable to resolve the disagreement, either party may refer the disagreement to two licensed real estate appraisers, one of whom shall be selected by the Displaced Employee (or such employee's representatives), and one of whom shall be selected by the Railroad. If the two selected real estate appraisers are unable to agree on a valuation within thirty (30) days, the selected real estate appraisers shall designate (or agree to a

method by which to select) a third licensed real estate appraiser within ten (10) days. If unable to agree on a selection, either party may request the National Mediation Board to designate within twenty (20) days a third licensed real estate appraiser. A decision by two of the three licensed real estate appraisers shall be required to determine the value in dispute. Said decision shall be final and conclusive.

B. Payment of Expenses. The salary and expenses of the third or neutral appraiser shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) **Failure to Exercise Seniority Rights**. If a Displaced Employee is able but does not exercise such employee's seniority rights to secure another position that does not require a change in the employee's primary place of residence, the Displaced Employee shall not be entitled to moving expenses or protections due to the sale of a home outlined in Sections 5(b)&(c).

6. Protections for Dismissed Employees.

(a) **Dismissal Allowance**. A Dismissed Employee shall be paid a monthly dismissal allowance from the date they are deprived of employment through the Protective Period.

(i) Monthly Dismissal Allowance Calculation. The monthly dismissal allowance shall be equivalent to the Average Monthly Compensation received by the Dismissed Employee in the last twelve (12) months of employment prior to the employee's dismissal.

(ii) Submission of Claim. A claim for the initial month of a dismissal allowance shall be paid within ninety (90) days and a claim for a subsequent month shall be paid within sixty
(60) days after the claim is filed by the Dismissed Employee, unless the claim is disputed by the Railroad pursuant to Section 8 of this Exhibit.

(iii) Reduction or Suspension of Dismissal Allowance. If a Dismissed Employee accepts new employment (or reemployment by the dismissing Railroad) during the Protective Period, the dismissal allowance shall be reduced such that the accepted monthly compensation at the then-current position (including any unemployment insurance compensation received) plus the

dismissal allowance is equivalent to the Dismissed Employee's Average Monthly Compensation. If the compensation of the Dismissed Employee's then-current employment is greater than the dismissal allowance, the dismissal allowance shall be suspended. Such reduction or suspension shall continue for the duration of the Protective Period, unless and until the Dismissed Employee's then-current compensation is reduced or eliminated. Prior to dismissal, such Dismissed Employee (or their representative) and the dismissing Railroad shall agree upon a procedure by which such Railroad shall be informed of the earnings and benefits of such Dismissed Employee in their new position of employment.

(iv) Early Termination. The dismissal allowance shall cease prior to the expiration of the Protective Period in the event of the Dismissed Employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure without good cause to return to service after being notified in accordance with an applicable working agreement, or failure without good cause to accept a comparable position that does not require a change of residence, for which the Dismissed Employee is qualified and eligible with the Railroad from which such employee was dismissed after being notified, if the employee's return does not infringe upon employment rights of other employees under a working agreement.

(b) **Separation Allowance**. A Dismissed Employee may, at such employee's option, within seven (7) days of dismissal or an arbitration award establishing the employee's status as a Dismissed Employee, resign and (in lieu of all other benefits and protections provided in this Exhibit) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936, as amended.

(c) **Priority of Employment or Re-Employment**. Any Protected Employee whose employment is terminated or who is furloughed as a result of a Project shall, if they so request, be granted priority of employment or re-employment to fill a position comparable to that which they held on the Railroad (even if in a different craft or class), so long as they are qualified, or by training or retraining can become physically and mentally qualified, for the position. However, such priority of

employment or re-employment must not be in contravention of any relevant collective bargaining agreements.

(i) **Training or Re-Training**. In the event such training or retraining is requested by a Protected Employee pursuant to Section 6(c), the Railroad shall provide such training or retraining at no cost to the Protected Employee.

(ii) **Waiver of Protections**. If a Protected Employee who has made a request under Section 6(c) fails without good cause within ten (10) days to accept an offer of a comparable position for which such employee has satisfactorily completed such training, the Protected Employee shall, upon the expiration of such ten (10) day period, forfeit all rights and benefits under this Exhibit.

7. Fringe Benefits. No Protected Employee shall be deprived during the Protective Period of any (non-salary) rights, privileges, or benefits attached to such employee's previous employment under the terms and conditions of an existing employment agreement (including, but not limited to, free transportation, hospitalization, pensions, insurance, or vacation benefits), so long as such rights, privileges, or benefits continue to be accorded to other employees of the Railroad, in active service or on furlough as the case may be, to the extent that such rights, privileges, or benefits can be so maintained under present authority of law, corporate action, or through future authorization.

8. Arbitration of Disputes.

(a) **Scope**. Any dispute under these conditions not settled by the relevant parties will be resolved in arbitration as provided herein. In the event a Railroad and the Protected Employee(s) (or their representatives) cannot settle a dispute or controversy with respect to the interpretation, application, or enforcement of any provision of this Exhibit (other than those Sections of this Exhibit that provide for another means of dispute resolution) within thirty (30) days after the dispute arises, either party may refer the dispute to an arbitration committee. The affected Protected Employee(s) (or their representatives) may notify a Recipient of a dispute or controversy under this Section 8 to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

(b) **Notice**. The party referring the dispute to an arbitration committee shall notify the other party in writing of its intent to refer a dispute or controversy to an arbitration committee.

(c) **Selection of Members**. Within ten (10) days of receipt of the written notice, each party to the arbitration shall select one (1) member of the committee, and the members thus chosen shall select an additional, neutral member to serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or a senior officer designated by the Railroad or the Recipient, as the case may be, shall be deemed the selected member. Should the members be unable to agree upon the appointment of the neutral member within ten (10) days, the parties shall then within an additional ten (10) days agree to a method by which a neutral member shall be appointed; failing such agreement, either party may request the National Mediation Board to designate within twenty (20) days the neutral member whose designation will be binding upon the parties.

(d) **Multiple Representatives**. In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the Railroad or Recipient may appoint additional representatives equivalent to the number of labor organization representatives; provided, however, that the decision in such case shall be made by the neutral member.

(e) **Decisions Binding**. The decision, by majority vote except as provided otherwise in paragraph (d) of this Section, of the arbitration committee shall be final, binding, conclusive, and rendered within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed.

(f) **Expenses**. The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding, and all other expenses shall be paid by the party incurring them.

9. Classification of a Protected Employee. In the event an employee (or their representatives) cannot settle a dispute or controversy with the Railroad or the Recipient as to whether or not a particular employee would be affected by a Project, either party may refer the dispute to an arbitration committee within thirty (30) days after the dispute arises pursuant to the arbitration procedures in Section 8. For any such dispute, the employee of a Railroad shall have the burden to identify, with reasonable specificity, the Project that allegedly affected them, and to specify the pertinent facts of that Project, including the change or changes resulting from the Project that allegedly affected them. The burden shall then shift to the Railroad or Recipient to show that factors other than a change resulting from the Project affected the employee. The employee shall prevail on this issue if it is established

that the Project had an effect upon the employee, even if other factors also may have affected the employee.

10. **Resolution of Disputes for Non-Bargaining Unit Protected Employees.** Any Protected Employee who is not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under this Exhibit. In the event any dispute arises between a Railroad and an employee not represented by a labor organization with respect to the interpretation, application, or enforcement of any provision of this Exhibit that cannot be settled by the parties within thirty (30) days after the dispute arises, either party may, as an alternative to the dispute resolution procedures outlined in this Exhibit, refer the dispute within ninety (90) days after the dispute arises to the Secretary of Labor for determination. The determination of the Secretary of Labor, or their designated representative, shall be final and binding on the parties.

11. **Severability.** In the event any provision of this Exhibit is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this Exhibit shall not be affected