CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **Economic and International Development**

AGENDA DATE: **Consent: December 11, 2018**

CONTACT PERSON: **Jessica L. Herrera, (915) 212-1624**
HerreraJL@elpasotexas.gov

DISTRICT(S) AFFECTED: **8**

SUBJECT:
A resolution that the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a lease with the Government of the Country of El Salvador for the lease of 400 W. San Antonio, Suite B, El Paso, Texas 79902, for a two-year term, at a rental amount of five hundred dollars ($500.00) per month, with one two-year term extension option subject to a five percent (5%) increase in rent.

BACKGROUND/DISCUSSION:
This is a two-year lease with the Country of El Salvador for the lease of 400 W. San Antonio, Suite B, El Paso, Texas 79902. The purpose of the lease is to allow for the establishment of a Consulate for the Government of El Salvador in the City of El Paso. The rental amount of five hundred dollars ($500.00) per month with one two-year term extension option subject to a five percent (5%) increase in rent. The rental rate is below market-rate, however, authorized through the determination by the City that the lease benefits the City by serving the public purpose of providing consulate services to the residents of the City; fostering the City of El Paso's relationship with the Government of El Salvador; and growing the City of El Paso's international visibility.

PRIOR COUNCIL ACTION:
N/A

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD/COMMISSION ACTION:
The United States Department of Transportation, through the Federal Transit Administration funded 80% of the cost of construction of the premises through a grant. As a result, it is required that the FTA review and approve the lease. The FTA has reviewed the lease, provided its requirements in Exhibit A, and approved the lease. Additionally, the Mass Transit will consider this lease on Tuesday, December 11, 2018.

********REQUIRED AUTHORIZATION********

DEPARTMENT HEAD: _____

for: Jessica Herrera, Director
Economic & International Development

RESOLUTION

WHEREAS, the City of El Paso ("Lessor" or "City") owns the premises and improvements located at 400 W. San Antonio, Suite B, El Paso, Texas, 79902 ("Premises").

WHEREAS, eighty percent (80%) of the cost of construction of the Premises was paid through a grant from the United States Department of Transportation, through the Federal Transit Administration.

WHEREAS, the Government of the Country of El Salvador ("Lessee") desires to enter into a lease agreement with Lessor for use of the Premises as the location of the El Salvadoran Consulate.

WHEREAS, Lessor has determined that use of the Premises by Lessee would benefit the City of El Paso by serving the public purpose of providing consulate services to the residents of the City; fostering the City of El Paso's relationship with the Government of El Salvador; and growing the City of El Paso's international visibility;

WHEREAS, the lease agreement between Lessor and Lessee limits the use of the Premises by Lessee solely as the Consulate for the Government of El Salvador;

WHEREAS, Lessee has indicated a willingness and ability to use the property solely to provide consulate services in accordance with the terms of this Lease;

WHEREAS, the Federal Transit Administration has reviewed the proposed lease between the City and the Lessee and has approved the terms of said lease.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager is hereby authorized to sign, on behalf of the City of El Paso, a lease with the Government of the Country of El Salvador for the lease of 400 W. San Antonio, Suite B, El Paso, Texas 79902, for a two-year term, at a rental amount of five hundred dollars ($500.00) per month, with one two-year term extension option subject to a five percent (5%) increase in rent.

APPROVED this _____ day of _____, 2018.

CITY OF EL PASO

_____
Dee Margo
Mayor

ATTEST:

_____
Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:

for: Jessica Herrera, Director
Economic & International Development

THE STATE OF TEXAS §
§ **LEASE AGREEMENT**
COUNTY OF EL PASO §

This Lease Agreement ("Agreement") is made this the _____ day of _____, 2018, between the **CITY OF EL PASO, TEXAS**, a home rule municipal corporation ("City"), and **THE GOVERNMENT OF THE COUNTRY OF EL SALVADOR** ("Lessee").

WHEREAS, the City is the owner of the premises and improvements, including the parking lot above the building, located at 400 W. San Antonio Avenue, Suite B, El Paso, Texas (the "Premises"); and

WHEREAS, Lessee desires to enter into a lease agreement with the City for the use of the Premises; and

WHEREAS, Lessee intends to use the Premises as office space for the El Salvadoran Consulate; and

WHEREAS, the City believes that the activities identified by Lessee would serve a public purpose of providing consulate services to the citizens of El Paso; foster the City's relationship with the Government of El Salvador; and would generally benefit the citizens of El Paso;

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration, the City hereby grants a non-assignable right to the Lessee to lease the Premises.

1.0 TERM AND RENT

1.1 Term of Agreement. The term of this Agreement shall commence on December 19, 2018 and shall terminate on December 19, 2020, for a term of two (2) years.

1.2 Extension Period. In the event Lessee is not in default of any terms of this Agreement, this Agreement may be extended for one (1) additional two (2) year term upon the mutual agreement of the parties. The Agreement may be extended for the extension period ("Extension Period") by Lessee notifying Lessor in writing of Lessee's election at least one hundred and twenty (120) days prior to the expiration of the previous term and Lessor's consent to such extension. In the event the election is so exercised, the Agreement shall be extended for two (2) years on the same terms and conditions, except that the consideration established in Section 1.3 shall increase by five percent (5%).

1.3 Rent. As monetary consideration for this Agreement, Lessee will deliver to the City the sum of **FIVE HUNDRED AND NO/100 DOLLARS ($500.00)** per month in advance on or before the first day of each month during the primary term of this Agreement.

1.4 Rent Commencement Date. Lessee's obligation to pay the Rent, as established in Section 1.3, shall commence on the Rent Commencement Date. The Rent Commencement Date

shall be December 19, 2018. If necessary, the monthly Rent for the first month shall be prorated based on the number of days that Lessee is in possession of the Premises beginning on the Rent Commencement Date until, and including, the last day of the same month. Rent for this first month is due in advance on or before the Rent Commencement Date.

1.5 Place of Rent Payment. All rental payments provided for herein shall be paid to Lessor at the following address:

City of El Paso
Attn: Sun Metro
P.O. Box 2037
El Paso, TX 79950-2037

1.6 Diplomatic Cancelation/ Termination. In the event that the Government of El Salvador decides to close or withdraw its diplomatic mission for whatever reason, it shall be entitled to rescind this contract without any legal or financial consequences, provided that Lessee provides thirty (30) day notice of cancelation of the lease to Lessor.

2.0 USE OF PREMISES

2.1 Premises. During the lease term of this Agreement, the Premises shall be used by Lessee as office space for the El Salvadoran Consulate. Lessee expressly agrees to use the Premises only for stated use and agrees to not use the Premises for any other purpose without first obtaining the City's prior written consent in writing.

2.2 Parking. During the lease term of this Agreement, Lessee shall have access to and the use of five parking spaces in the parking area above the Premises, one of which shall be reserved for the exclusive use of the Government of El Salvador at no additional cost. The remaining four spaces shall be leased to Lessee at a cost of **THIRTY-ONE AND 50/100 DOLLARS ($31.50)** per month per space due at the time of the rent payment as described in Sections 1.3 and 1.4 of this Agreement.

2.3 Non-discrimination. Lessee, its officers, agents, servants, employees, volunteers and third parties shall not discriminate on account of race, color, religion, sex or national origin, nor permit or allow any discrimination. Admission to a public function held on the Premises and thus, covered by this Agreement, shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

2.4 Repairs. Lessee shall keep the facilities, improvements, without limitation fixtures, equipment and property on the Premises in good condition and repair during the lease term of this Agreement, as stated in Section 1.1 above. Lessee shall be solely responsible for any repairs needed during the lease term. Lessee shall at all times during the term of this Agreement keep the Premises clean, orderly and in an attractive condition.

2.5 Delivery, Acceptance and Surrender of Premises. Lessee shall submit a detailed listing of any and all defects to the interior or exterior of the Premises within ten (10) days of the start of the lease term, and any extensions. Should Premises not be in substantially the same

condition as same were at the beginning of the term of this Agreement, Lessee shall make any necessary repairs to restore Premises to its pre-lease condition, and the interior of the Premises shall be cleaned prior to vacating the Premises. At the conclusion of the Agreement, and at the discretion of the City's Real Estate Manager, a payment in the amount of such repairs, in an amount determined appropriate by the sole discretion of the City's Real Estate Manager may be accepted in lieu of completion of said repairs, cleaning, or painting.

2.6 AS-IS. Lessee acknowledges that the Premises, including the parking lot above the building at the Premises, are leased "AS-IS." Lessee shall not request and the City shall not be responsible for completion of any improvements, modifications, corrections, repairs or the like believed helpful or necessary to the Lessee's stated purpose, agenda or mission or believed necessary for the continuance of the Premises. This AS-IS condition shall specifically include, but shall not be limited to structural walls, foundation, roof, plumbing, electrical, carpentry, compliance with the Americans with Disabilities Act, and heating, ventilation, and air conditioning problems that may or may not exist, as well as any problems with the parking lot adjacent to the building located on the Premises. **Lessee has been and is herein placed on notice that the City neither has knowledge of, nor can it warrant against the existence of asbestos, either of which may or may not exist on the Premises. Should Lessee determine that asbestos exists, it may rescind Agreement without further obligation.**

2.7 Improvements. Lessee shall not, without first obtaining the written consent of the City's Real Estate Manager, make any alterations, additions or improvements in, to or about the Premises. All such alterations shall be made at Lessee's expense and may, at the City's option, become the property of the City at the end of the lease term without any payment by the City to Lessee.

2.8 Fixtures. The City at its option, at the termination of this Agreement, may retain any fixtures placed by Lessee upon the Premises; or may require that such fixtures be removed by the Lessee or its agents as soon as possible upon termination of this Agreement. Lessee shall bear all reasonable costs for repair to the Premises that may be required due to removal of such fixtures.

2.9 Signs. Lessee agrees to remove all identifying signs or symbols placed on the Premises by it before redelivery of the Premises to the City and to restore the portion of the Premises on which they were placed to the same condition as before their placement. Further, at the option of the City, Lessee will be required to remove any flagpole it has installed pursuant to Section 8.6 and restore the portion of the Premises on which it was placed to the same condition as before its placement.

2.10 Garbage and Trash. Lessee shall provide a complete and proper arrangement for the adequate and proper handling and disposal, away from the Premises, including the parking lot adjacent to the building at the Premises, of all trash, garbage and other refuse caused by the Lessee's operations of the Premises.

2.11 Receptacles. Lessee shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse throughout the Premises. Piling of boxes, cartons, trash or similar items on the Premises, including the building, facilities, improvements and parking lot

adjacent to the building, shall not be permitted at any time. Additionally, the placement of trash receptacles shall be at locations approved by the City's Real Estate Manager.

2.12 Earth Work. No moving of earth at the Premises shall be performed unless such work is as authorized by the City's Real Estate Manager and necessary permits have been requested and authorized by the City.

2.13 Utilities. Lessee shall be responsible for the payment of utilities at a rate of **ONE-HUNDRED AND NO/100 DOLLARS ($100.00)** per month due at the time of the rent payment as described in Sections 1.3 and 1.4 of this Agreement.

2.14 Improper Use. Lessee shall not permit on the Premises any entertainment, amusement or other activity that violates any federal, state and local laws and regulations.

3.0 CONTRACTUAL RELATIONSHIP

3.1 Lessee is an independent contractor and is otherwise a tenant in a landlord-tenant relationship with the City. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.

3.2 As an independent contractor, Lessee understands and agrees that it will be responsible for its respective acts or omissions, and the City shall in no way be responsible as an employer to the Lessee's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Agreement.

3.3 Lessee shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of Lessee.

3.4 Lessee shall not receive any compensation or benefits from the City other than those described herein.

4.0 INSURANCE

4.1 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall throughout the term of this Agreement, keep or cause to be kept all improvements now or hereafter located upon the Premises insured for the mutual benefit of the City and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief, in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (hereinafter called "Full Insurable Value"). In the event a dispute arises as to the Full Insurable Value which cannot be resolved by agreement, an appraisal of the Premises and improvements thereon shall be made by an appraiser selected by Lessee and reasonably acceptable to Lessor to determine the Full Insurable Value, as defined in this Section, and the resulting determination shall be conclusive between the parties for the purpose of this

Section. Should the appraiser Lessee selects be unsatisfactory to the City, the carrier of the insurance then in force shall be requested to determine the Full Insurable Value as defined in this Section. The expense of this appraisal shall be borne by Lessee.

4.2 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of the City and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars ($1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars ($1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars ($1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

4.3 Workers Compensation. In addition, Lessee, at its sole cost and expense, throughout the Initial Term of this Agreement and any extensions thereto, shall obtain and maintain Workers' Compensation and Employers Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employer's liability of $1,000,000 bodily injury each accident, $1,000,000 bodily injury by disease policy limit and $1,000,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:

A. A Waiver of Subrogation in favor of the City; and

B. A thirty (30) day Notice of Cancellation/Material Change in favor of the City.

The City agrees that Lessee may self-insure against the risks described in this Section 4.3 to the extent permitted by state law, providing that Lessee shall provide evidence of such compliance with state law. Lessee hereby waives its right of recovery against the City and its officers, employees or agents of any amounts paid by Lessee or on Lessee's behalf to satisfy applicable worker's compensation laws.

4.4 Payment and Performance Bonds. In the event of any construction on the Premises, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to the City two (2) separate bonds, as follows:

A. Prior to the date of commencement of any construction, a contract surety bond in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee the City against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely the work described as herein provided.

B. Prior to the date of commencement of any construction, a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of

the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the City will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus. In lieu of the payment and performance bonds described in Paragraph A and B, above, Lessee may, at Lessee's option, provide the City with an irrevocable letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon presentment accompanied by an affidavit by an authorized representative of the City indicating that the proceeds to be paid will be used by the City to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvement contemplated Lessee by the construction contract.

4.5 Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by the City, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to the City at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain:

A. A statement of the coverage provided by the policy;

B. A statement certifying the City to be listed as an additional insured in the policy;

C. A statement of the period during which the policy is in effect;

D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and

E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least fifteen (15) days prior written notice to the City.

4.6 Waiver of Liability. The City shall not be responsible for any damage to any personal property placed on the Premises by Lessee, including but not limited to, kitchen equipment, office equipment, vehicles, inventory, etc.

5.0 DESTRUCTION OF IMPROVEMENTS BY FIRE OR OTHER CASUALTY

5.1 Obligations of Lessee. During the term hereof, except as provided in Section 5.3 below, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Lessee shall give prompt notice thereof to the City, and Lessee shall repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character of the buildings and improvements existing immediately prior to such time. Such repairs, replacements or rebuilding shall be made by Lessee.

5.2 Insurance Proceeds. Upon receipt by Lessee of the proceeds of the insurance policy or policies, Lessee shall deposit same in an escrow account to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed by Lessee during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Lessee shall pay any additional sums required, and if the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Lessee.

5.3 Cancellation of Lease Agreement. Should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty during the last year of the initial term or last year of any renewal term of this Agreement, Lessee shall be relieved of the obligation to repair, replace and rebuild the same and shall have the right to cancel this Agreement by giving the City written notice of such election within thirty (30) days after the date of any such damage or destruction. In such event, this Agreement shall terminate as of the date of such destruction and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by the City. All rents payable under this Agreement shall be prorated and paid to the date of such cancellation. The receipt of insurance proceeds by the City will relieve Lessee from any responsibility to restore the Premises to their former condition.

6.0 CLAIMS

6.1 Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Lessee every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein.

6.2 In addition, Lessee shall promptly advise the City in writing of any claim or demand against the City or Lessee known to Lessee related to or arising out of the Lessee's activities and use of the Premises.

6.3 Lessee understands and agrees that it will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Lessee may deem expedient.

7.0 TERMINATION. This Agreement may be terminated as provided herein.

7.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

7.2 Termination by Either Party. It is further understood and agreed by Lessee and the City that either party may terminate this Agreement without cause by providing the other party with ninety (90) days written notice.

7.3 Termination by City. If Lessee ceases to use or occupy the Premises for the purposes herein contemplated for a time period of more than three (3) continuous months, or if Lessee defaults in any of its obligations under this Agreement and fails to correct such default within thirty (30) days written notice, the City may terminate this Agreement by written notice and take possession of the Premises. In such an event, all rights of Lessee in the Premises, including buildings, facilities and improvements, including the parking lot adjacent to the building on the Premises, shall then terminate.

7.4 Force Majeure. Neither party to this Agreement will be liable for failure to comply with any term of this Agreement when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Agreement unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing.

7.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

Upon termination of this Agreement for any reason, ownership of all improvements done by Lessee on the Premises shall revert to the City.

7.6 Effective Federal or State Eminent Domain Proceedings. State or federal eminent domain proceedings resulting in condemnation of the Premises or any part thereof shall result in termination of this Agreement. All compensation awarded shall be the City's and Lessee hereby assigns and transfers to the City any claim it may have to compensation for damages as a result of such condemnation except reasonable moving expenses.

8.0 GENERAL PROVISIONS

8.1 Approval By FTA. This Agreement, and all terms and conditions hereof, including the Effective Date, Term, and Rent amounts, shall be subject to the prior approval of the Federal Transit Administration ("**FTA**"). Lessee shall abide by the FTA Requirements attached as Exhibit "A" ("**FTA Requirements**"). The Lessee shall ensure that any third party contractors abide by the requirements of this Agreement and FTA Requirements. Failure by the Lessee to abide by the applicable terms of the FTA Requirements constitutes a material breach of this Agreement.

8.2 Assignments and Subletting. Lessee shall not assign this Agreement nor sublet the Premises or any part thereof without the prior written consent of the City.

8.3 Inspections. The City shall have the right to enter the Premises at all reasonable times, on reasonable notice to Lessee (except that no notice need be given in case of an emergency) for the purpose of inspecting the same and determining compliance with the terms of this Agreement. Lessee shall have no claim or cause of action against the City by reason thereof.

8.4 Signs and Flagpoles. All signs on the Premises, including building, facilities and improvements, shall comply with the El Paso Building Code, El Paso Zoning Code, and other relevant ordinances of the City. The size, design and location of all signs shall additionally be subject to the approval of the City's Real Estate Manager prior to installation. Lessee may install a flagpole outside the Premises but must pay for any and all costs of installation. Prior to installation, Lessee shall contact the City's Real Estate Manager who will assist Lessee with obtaining the proper City approvals for placement, installation, and any maintenance.

8.5 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within ten (10) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

8.6 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions herein.

8.7 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the City and Lessee. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Any waiver by the City of any breach of any of Lessee's obligations shall not be deemed a continuing waiver and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of Lessee.

8.8 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

8.9 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of

competent jurisdiction, the parties intend that all other terms and provisions of this should be valid and binding and have full force and effect as if the invalid portion had not been included.

8.10 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

8.11 No Limitation on City's Governmental Functions. The Parties acknowledge that the City is a Governmental Authority in addition to being the owner of the Premises, and that no representation, warranty, Approval or agreement in this Agreement by the City shall be binding upon, constitute a waiver by or estop the City from exercising any of its rights, powers, or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities granted to the City when performing its Governmental Functions, which are provided under Applicable Law. Nothing in this Agreement constitutes a waiver of the City's legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case arising out of the performance of City's Governmental Functions.

8.12 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY: City of El Paso
Attention: Economic Development Director
123 W. Mills Ave. – Suite 111
El Paso, Texas 79901

LESSEE: Consul Vanessa Sanchez
400 W. San Antonio – Suite B
El Paso, TX 79901

8.13 Warranty of Capacity to Execute Agreement. Each person signing below represents that he or she has read this Agreement, and all attachments, in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

Signatures Begin on Next Page.

LESSOR:

CITY OF EL PASO

_____
Tomás González
City Manager

APPROVED AS TO FORM:

Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:

Jessica Herrera, Director
Economic and International Development

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2018, by Tomás González as **City Manager** of the **City of El Paso**, Texas.

_____
Notary Public, State of Texas
Printed Name: _____

My Commission Expires:

_____

Signatures Continued on Next Page.

LESSEE:

THE GOVERNMENT OF THE COUNTRY OF EL SALVADOR

By: _____
Name: Elsy V. Sanchez de Cañas
Title: Consul El Salvador El Paso Tx.

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this day 5th of December, 2018, by Elsy V Sanchez de Cana (name), Consul El Salvador (title) of the Lessee.

_____
Notary Public, State of Texas
Printed Name: Mary Katz

My Commission Expires:
06-04-2022

MARY KATZ
ID#12780112-5
NOTARY PUBLIC
In and for the State of Texas
My commission expires
06-04-2022

Exhibit "A" FTA Requirements

Exhibit "A" FTA Requirements

Civil Rights Requirements

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

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

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

Americans with Disabilities:

The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

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1. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. Section 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

2. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq*., prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

3. DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27, DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. In addition, the solicitation should also comply with: "DOT's ADA Standards for Transportation Facilities (2206)" and the DOT ADA Final Rule 10/19/2011.

Examples of requirements include, but are not limited to, the following:

1. Design and Construction. Accessibility requirements for the design and construction of new transportation facilities.
2. Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
3. Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

No Government Obligation to Third Parties

No Obligation by the Federal Government.

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

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements And Related Acts

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

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1F

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

Federal Changes

49 CFR Part 18

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

Government-Wide Debarment and Suspension

Suspension and Debarment

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

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

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

The certification in this clause is a material representation of fact relied upon by **Sun Metro**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Sun Metro**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder

or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Lobbying

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

(Certification on following page, must be signed)

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding $100,000)
The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]
The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Termination
49 U.S.C. Part 18

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

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

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions
If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

THE FOLLOWING CLAUSES ARE ONLY APPLICABLE IF LESSEE WERE TO PERFORM CITY APPROVED CONSTRUCTION, REHAB OR REMODELING.

Disadvantaged Business Enterprise (DBE)
49 CFR Part 26

Disadvantaged Business Enterprises
a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 4.00%.
b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

Veterans Employment:

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Energy Conservation Requirements
42 U.S.C. 6321 et seq.
49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Clean Water Requirements

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

Clean Air

42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Cargo Preference

46 U.S.C. 1241
46 CFR Part 381

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

Seismic Safety Requirements

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

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

Davis-Bacon and Copeland Anti-Kickback Acts

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when

the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable

standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

(2) The classification is utilized in the area by the construction industry; and

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(2) Withholding - The [insert name of grantee] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage

requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert name of grantee] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert name of grantee] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and

complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work

actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Work Hours and Safety Standard Act

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
(3) **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Buy America
49 U.S.C. 5323(j)
49 CFR Part 661

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.
Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Requirements
The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.
Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____