

LEASE AGREEMENT
AND TEMPORARY CONSTRUCTION EASEMENT
BETWEEN THE CITY OF COLUMBIA, MISSOURI,
AND
WENDLING DEVELOPMENT, L.L.C.
FOR
CONSTRUCTION, OPERATION AND MAINTENANCE
OF PUBLIC TRANSIT SHELTER AND PAD

This lease agreement and temporary construction easement (hereinafter “Agreement”), by and between the City of Columbia, Missouri, a municipal corporation (hereinafter “City” or “Lessee”) and Wendling Development, LLC, a limited liability company organized in the State of Missouri (hereinafter called “Lessor”), is made and entered into on the date of the last signatory noted below (hereinafter “Effective Date”). City and Lessor are each individually referred to herein as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, City desires to locate a public transit shelter as described more fully in Attachment A at the location specified in this Agreement and Attachment A; and

WHEREAS, Lessor agrees that it is in the mutual interests of Lessor and City for City to construct the pad and shelter at the location specified in Attachment A, which is referenced herein as “the Premises”; and

WHEREAS, City shall construct and operate a public transit shelter and concrete pad on property owned by Lessor pursuant to the terms of this Agreement; and

WHEREAS, the transit shelter location shall be open to the general public and shall be used by the residents of Columbia and visitors to the City and to Lessor’s property.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. Leased Area and location of shelter.

Lessor grants to City the right to construct, operate and maintain a pad and public transit shelter as a passenger waiting area for City's transit system on Lessor's property located on:

Legal Description:

A four (4) sided parcel of land being part of a tract described in a General Warranty Deed recorded in Book 3557 Page 123; also being part of Lot 1A of Providence South Plaza Plat 3, an Administrative Plat of Lot 1 Providence South Plaza Plat 1, recorded in Book 4381 Page 48, in the Southwest Quarter (SW1/4) of the Northeast Quarter (NE1/4) of Section Twenty-Five (25), Township Forty-Eight (48) North, Range Thirteen (13) West, in the City of Columbia, Boone County, Missouri; said parcel being described as follows:

COMMENCING at the southernmost point of said Lot 1A and the East right-of-way of Carter Lane; thence following said east right-of-way along a curve to the left having a radius of 84.50 feet, a distance of 10.32 feet (the chord of said curve having bearing and distance of N.29°16'20"W., 10.31 feet); thence along a tangent curve to the right left having a radius of 158.50, a distance of 61.22 feet (the chord of said curve having bearing and distance of N.21°50'15"W., 60.84 feet); thence S.86°00'00"W., 9.45 feet; thence along a non-tangent curve to the left having a radius of 283.00 feet, a distance of 231.27 feet (the chord of said curve having bearing and distance of N.28°15'30"W., 224.89 feet) to the POINT OF BEGINNING; thence continuing along said curve to the left having radius 283.00 feet, a distance 22.01 feet (the chord of said curve having bearing and distance of N.53°53'50"W., 22.00 feet); thence leaving the said right-of-way line N.36°02'25"E., 9.89 feet; thence S.53°53'10"E., 22.00 feet; thence S.36°02'25"W., 9.89 feet to the POINT OF BEGINNING and containing 214 square feet inclusive of a 10 foot utility easement recorded in Plat Book 44 Page 6.

, on Carter Lane as shown in Attachment A.

- a. Lessor grants to City as a temporary construction easement the temporary right to enter upon, grade, operate equipment and store material on the property described in the above legal description as a temporary construction easement subject to the condition that the City shall repair at no cost to the Lessor any damage to Lessor's property located in and around the designated construction area.
- b. City shall be solely responsible for the costs of the installation of the transit shelter and pad as well as any repair or restoration to Lessor's property caused by the construction.
- c. The City shall be responsible for providing any utilities to the Premises, including installing and maintaining any necessary equipment for operation of the transit shelter. City shall be responsible for the cost of all electric service or other utility associated with the use of the transit shelter on the Premises.
- d. The Parties agree that the City may use federal or state grant funds for the installation of the transit shelter and pad.
- e. Provided there is a competitive process as required by the Federal Transit Administration, City may use the transit shelter for the placement of advertisements in accordance with the City of Columbia's Transit Advertising Policy. Should the City allow advertisements on the site, the City shall be entitled

to keep all revenue generated from the advertisements. City agrees to remove any such signage or advertising within 10 days of written notice from Lessor requesting such removal unless prohibited by law, including the state or federal constitution.

2. Access and Relocation. Lessor authorizes City to access the shelter, and the surrounding area via driveways, improved surfaces and landscaped areas surrounding the shelter and pad location. City shall repair any damage to the area caused by accessing the shelter and pad and will restore the area to as good a condition, less reasonable wear and tear, as existed prior to accessing the shelter and pad when said damage is caused by City accessing the shelter and pad location. Lessor reserves the right to require City to relocate the bus shelter.
3. Repair, Maintenance and Cleaning. City agrees to maintain the Premises, and keep it and the surrounding property free of accumulation of trash. City shall be responsible for the maintenance of the shelter site and area as defined in Attachment A. City shall be solely responsible for the costs of any future repairs, maintenance or replacement of the transit shelters. If at any time construction, repair, modification or relocation of the bus shelter is required or if any utility now existing on the site would require relocation of the bus shelter, City shall relocate the bus shelter at its sole expense. Lessor shall not be responsible for any loss or damage to the bus shelter or other property or equipment of the City on the Premises, with the sole exception being any intentional acts of Lessor causing damage or harm to the City's equipment or property.
4. Term. The "Term" of this Agreement shall commence on the Effective Date and shall continue until the date that is twenty (20) years following the Effective Date, unless the Agreement is terminated pursuant to the provisions of this Agreement.
5. Termination Provisions.
 - a. By Mutual Agreement. This Agreement may be terminated at any time during its Term upon mutual agreement of the Parties.
 - b. By Convenience. With one hundred eighty (180) days written notice, either Party may terminate this Agreement for convenience.
 - c. By Abandonment. If the City abandons its use of the location as a bus stop and removes the transit shelter and pad, all rights granted herein shall cease and terminate. City shall have no further right or interest therein or thereto.
6. City's Obligations upon Termination. Upon termination of this Agreement, City will discontinue its use of the site. City will remove the shelter and pad and repair any damage to the site caused by the removal. City will restore the site to as good a condition, less normal wear and tear, as existed on the Effective Date of this Agreement. The Parties agree that the photographs contained in Attachment B reflect the condition of the site upon the Effective Date of this Agreement.
7. Rent. The Parties agree that no rent shall be charged for the City's use of the site and operation of the transit shelter and pad at the site.
8. Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. The City shall not assign this

Agreement or any of its rights or obligations hereunder without the prior written consent of Lessor. Lessor may assign this Agreement or any of its rights or obligations hereunder.

9. Insurance. City agrees to include the described transit shelter and pad site within the City's self-insured general liability program.
10. General Laws. The Parties shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
11. Governing Law and Venue. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
12. Use of Federal Funds. The Parties acknowledge that the City uses federal funds for its public transit system. Lessor shall comply with all of the conditions and requirements for the City's use of the federal funds, including but not limited to those set forth herein and in attachment C. The provisions in this Agreement include certain standard terms and conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth. Anything to the contrary herein notwithstanding, all Federal Transit Administration mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement.
13. No Waiver of Immunities and Indemnity. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws. Notwithstanding the foregoing, either Party may sue the other to enforce the obligations and responsibilities of this Agreement, and in such case, the prevailing party shall be entitled to its costs and attorneys' fees incurred in enforcing this Agreement. To the extent allowed by law, and without waiving sovereign immunity, City will defend, indemnify, and hold Lessor harmless of any claims arising from City's use of the Premises, including claims related to the operation, location or condition of the transit shelter.
14. No Third-Party Beneficiary. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.
15. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

16. Taxes. Lessor shall be responsible for any real estate taxes assessed on the Premises. During the term of the Lease, the City shall be responsible for any other taxes, fees, or other assessments that are assessed on the bus shelter or the City's property or equipment or use of the Premises.
17. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia
Public Works Department
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Director of Public Works

If to Lessor:

Wendling Development, LLC
3210 S. Providence Road
Columbia, MO 65203
ATTN: Steve Wendling

With a copy to:

John W. Rogers
813 E. Walnut St., Suite B
Columbia, MO 65201

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail with postage prepaid.

18. Contract Documents. This Agreement includes the following exhibits or attachments, which are incorporated herein by reference:
- A Diagram of leased area, shelter location, and temporary construction easement
 - B Photographs of the Site as of the Effective Date
 - C Applicable Federal Requirements

In the event of a conflict between the terms of an exhibit/attachment and the terms of this Agreement, the terms of this Agreement control.

19. Authority to Bind. Lessor covenants that it is the sole owner of the above-described real estate and that it has the right and authority to make and execute this agreement. The Parties signing the agreement below represent and covenant that they are an authorized

representative of the entity on whose behalf they are signing and that they are authorized to enter into this agreement on its behalf.

20. Breach. Any breach of this Agreement, must be cured within ten (10) days written notice. If a breach of this Agreement is not cured within ten (10) days, the non-breaching party may terminate this Agreement.

21. Entire Agreement. This Agreement represents the entire and integrated Agreement between Lessor and City relative to the use of the site for the transit shelter. All previous or contemporaneous agreements, representations, promises and conditions relating thereto are superseded.

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement in triplicate the day and the year of the last signatory noted below.

LESSOR

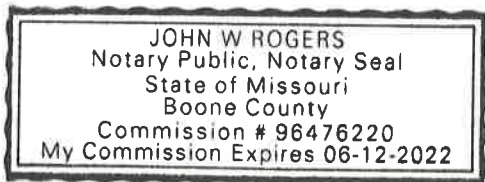
WENDLING DEVELOPMENT LLC



By: STEVE WENDLING

Title: MEMBER

Date: 5/24/17



(seal)

ATTEST:



By: John W Rogers

Title: Attorney

Date: 5-24-19

CITY OF COLUMBIA, MISSOURI

By: _____

John Glascock, Interim City Manager



Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor 

CERTIFICATION: I certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account No. 55316188-60490 and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

PT063

Janet Frazier, Acting Director of Finance

Attachment A
Diagram of Leased Area, Shelter Location, and Temporary Construction Easement



 City of Columbia, Missouri
Department of Public Works

**CARTER LANE
BUS SHELTER**

Scale: 1"=40' | Dwn: C.N.S. | Date: 06/12/18

Boone County Internet Parcel Map

Prepared by the Boone County Assessor's Office, (573) 886-4262



Owner: WENDLING DEVELOPMENT LLC
Address: 3210 S PROVIDENCE RD
Parcel Number: 1690800100010001

Boone County Assessor's Office

ATTENTION!!

DISCLAIMER: READ CAREFULLY. These maps were prepared for the inventory of real property based on the utilization of deeds, plans, and/or supportive data. In addition, map files are frequently changed to reflect changes in boundaries, lot lines and other geographic features resulting from changes in ownership, development and other causes. The existence, dimension, and location of features, as well as other information, should not be relied upon for any purpose without actual field verification. The County of Boone makes no warranty of any kind concerning the completeness or accuracy of information contained on these maps and assumes no liability or responsibility for the use or reuse of these maps by persons not affiliated with Boone County. Use of these maps by any person not affiliated with Boone County constitutes agreement by the user to assume full liability and responsibility for the verification of the accuracy of information shown on these maps.

© 2015
 Map Generated: April 1, 2019 10:06 PM

Attachment B
Photographs of the Site as of the Effective Date

EXHIBIT B



Attachment C
Applicable Federal Requirements

REQUIRED FEDERAL TRANSIT ADMINISTRATION (FTA)

CONTRACT CLAUSES

1. ENERGY CONSERVATION REQUIREMENTS

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.

2. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA 24 dated October 2017) between City 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.

3. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) City 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 City, 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.

4. 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 CFR Part 31, apply to its actions pertaining to this contract. 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.

5. TERMINATION

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

(2) 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, City 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 City 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, City, 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.

(4) Opportunity to Cure (General Provision): City 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 City' satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from City setting forth the nature of said breach or default,

City 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 City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

6. CIVIL RIGHTS REQUIREMENTS

(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 American 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

(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 (US DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 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.

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

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

(a) Policy – It is the policy of the Department of Transportation and City that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of Contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26, apply to this Contract. It is also the policy of City to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs; and
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all

necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

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

(b) DBE obligation – The Contractor and its subcontractors agree to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, City may declare the contractor noncompliant and in breach of contract. Guidance concerning good faith efforts may be found in the bid documents and are also listed in City' Disadvantaged Business Enterprise Program document.

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

(2) Prime Contractors are encouraged to use the services of DBE banks.

(3) DBE Program Definitions:

(a) Disadvantaged business enterprise or DBE means a for-profit small business concern --

- i. That is at least 51 percent owned by one or individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or such individuals; and
- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration

regulations implementing it (12 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

(c) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

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

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

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

iv. "Asian-Pacific American", which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of Pacific Islands (Republic of Palua), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

v. "Subcontinent Asian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

vi. Women;

vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

8. ACCESS TO RECORDS AND REPORTS

(1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to

this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.

(3) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. (If applicable)

(4) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection. (If applicable)

(5) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(6) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

(7) FTA does require the inclusion of these requirements in subcontracts.

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

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 City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to City, 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.

Contractors and subcontractors are also subject to a continuing duty of disclosure. Contractors and subcontractors must provide immediate written notice to City of Columbia if it learns that a person involved in a covered transaction has been excluded. City of Columbia must then provide written notice to the Federal Transit Administration.

10. RIGHT OF PROTEST

1. General: A protest may be made by any actual or prospective bidder, offeror, contractor or citizen who is aggrieved in connection with the solicitation or award within five (5) working days after the aggrieved person knows or reasonably should have known of the facts giving rise to the protest. The protest procedure time limit may be extended upon mutual agreement. Contractor agrees to the following protest procedures.

a. FTA will only review protests regarding the alleged failure of the City to have a written protest procedure or an alleged failure of the City to follow the procedure.

b. The time for filing a protest with FTA is not later than five (5) days after a final decision is rendered under the City's protest procedure.

c. The City shall not award a contract for five (5) days following its decision on a bid protest involving a contract funded by FTA. After the five (5) days, the City shall confirm with FTA that FTA has not received a protest on the contract in question.

2. Subject of Protest: Protesters may file a protest on any phase of solicitation, bid, proposal, or award, including but not limited to procedure, specification, award, or disclosure of information marked confidential in the bid offer.

3. Form: The written protest shall include, at a minimum, the following:

- a. The name and address of the protester,
- b. Appropriate identification of the procurement,
- c. A statement of the reasons for the protest, and
- d. Any available exhibits, evidence or documents substantiating the protest.

4. Form to FTA: Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to the City. The protest filed with FTA shall:

- a. Include the name and address of the protester,
- b. Identify the Grantee (City of Columbia), project number, and the number of the contract solicitation,
- c. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible, and
- d. Include a copy of the local protest filed with the City and a copy of the City's decision, if any.

5. Decision: The Purchasing Agent shall provide a written determination to the protester within five (5) working days after receiving all relevant requested information. In the event that such written response sustains the prior position of the City, the protester may resubmit the protest to the Finance Director within five (5) working days after receipt of the written ruling by the Purchasing Agent. Both response and appeal procedure time limits may be extended upon mutual agreement.

6. Stay of Purchase During Protest: In the event of a protest in accordance with this section, the Purchasing Agent shall not proceed further with solicitation or award of contract until all administrative remedies have been exhausted or until written determination is made that award is in the interests of the City.

An additional five (5) days following the City's decision on a protest is required by FTA. A complete copy of the FTA's "Bid Protest" procedures is available by contacting:

City of Columbia
Purchasing Division
P. O. Box 6015

Columbia, MO 65205-6015

7. Other Remedies: Contractors may seek remedy in Missouri state courts if they desire to do so.

11. 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, dated November 1, 2008 – including current revisions, 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 City requests which would cause City to be in violation of the FTA terms and conditions.

12. COMPLIANCE WITH FEDERALLY REQUIRED CLAUSES AND REQUIREMENTS

Contractor (bidder) is responsible for ensuring its compliance with all applicable Federal Transit Administration (FTA) requirements. Additionally, Contractor is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable FTA requirements.

Upon request of City or FTA, Contractor shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

13. AMERICANS WITH DISABILITIES ACT (ADA)

Americans with Disabilities Act (ADA). The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and U.S. Department of Transportation regulations,

“Americans with Disabilities Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Contractor also agrees to comply with any implementing requirements FTA may issue.

Contractor understands that it is required to include this Article in all subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

14. SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

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

Distracted Driving

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

15. VETERANS PREFERENCE

Veterans Preference. As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not 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.

16. PROHIBITED INTERESTS

No, member, officer, or employee of a local public body, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

17. EMPLOYEE PROTECTION

In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, Contractor shall assure that, for the project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor agrees that determinations pertaining to these requirements will be made in accordance with the applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

18. PRIVACY ACT REQUIREMENTS

A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by the FTA.