



Memorandum of Understanding SBE Reciprocity Program

The following Memorandum of Understanding (“MOU”) is made by and between the undersigned parties (collectively, “Parties”) who are individually and collectively recipients of U.S. Department of Transportation (“US DOT” or “DOT”) funding, assistance, and grant agreements; and

Whereas, pursuant to 49 CFR 26, the Parties operate Disadvantaged Business Enterprise (DBE) programs consistent with various applicable Federal Regulations; and

Whereas, pursuant to 49 CFR 26.39(a) the Parties must include an element to structure contracting requirements to facilitate competition by small business concerns (“SBE” or “SBEs”), taking all reasonable steps to eliminate obstacles to their participation in procurements as prime contractors or subcontractors; and

Whereas, pursuant to 49 CFR 26.39(c) the Parties must actively implement program elements to foster small business participation as a requirement of good faith implementation of their DBE programs; and

Whereas, pursuant to 49 CFR 26.51(a) the Parties must meet the maximum feasible portion of their overall goal by using race-neutral means of facilitating race-neutral DBE participation; and

Whereas 49 CFR 26.81 encourages a policy of U.S. Department of Transportation (“DOT”) recipients, such as the Parties, to consider written reciprocity agreements; and

Whereas, the Parties desire to collaborate to implement a SBE certification reciprocity program, as further defined below (“Reciprocity Program”); and

Whereas, the Parties wish to expand the Reciprocity Program and encourage additional U.S. DOT recipients to become Parties to the MOU;

Whereas, the SBE Reciprocity Program will ensure that applicants for SBE certification are required to apply only once for SBE certification that will be recognized by all the Parties; and

Whereas, the primary concern with reciprocity programs is establishing and maintaining consistent certification standards by all Parties, this MOU seeks to establish a uniform standard for SBE Certification eligibility, application processing, certification eligibility audits/review, denial, removal, suspension, and debarment in accordance with 49 CFR Part 26; and

Whereas, this MOU seeks to establish uniform standards for all Parties and applicants by requiring Parties that certify SBEs to adopt the uniform standard for SBE Certification established under this MOU, along with audits, oversight, recommendations, of committees established to administer, check, and balance the good faith efforts and operation of co-equal peers, etc.

Now, Therefore, the Parties hereto, in consideration of the mutual covenants contained herein, agree as follows:

1. Incorporate Recitals

The recitals set forth above represent the Parties' intent and are incorporated into this MOU to the same extent and with the same force and effect as though restated verbatim herein. The Parties agree to work cooperatively to further these shared goals. The Parties may be identified or referenced individually as "Party" or collectively as "Parties" or "undersigned Parties."

2. SBE Reciprocity Program

a. General Requirements

1. Each of the Parties commits to provide support for the MOU through human, technological, and funding resources as necessary. Adequate resources to accomplish current needs have been committed by each Party and will be continued to support the MOU. Each Party retains the function of certification with a DBE liaison officer representing its interests.
2. Parties will follow all requirements, certification procedures, and standards of 49 CFR Part 26, and shall cooperate with oversight, review, and monitoring activities of US DOT and its operating administrators. The Parties shall implement US DOT directives and guidance concerning certification matters and will implement all components of the MOU. The Parties also commit sufficient resources and expertise to carry out the provisions of this MOU.
3. The Parties will continue to operate as separate entities but have agreed to perform their SBE certification functions using the same guidelines and procedures. Parties shall make all certification decisions on behalf of all Parties to the MOU with respect to certification in the SBE program, and certification decisions shall be binding on all Parties to the MOU.
4. All obligations of Parties with respect to the certification and non-discrimination must be carried out by the Parties.
5. The Parties shall maintain a directory(ies) of certified SBE firms which will be made available to the public electronically on the internet.

b. Policies and Procedures

1. The Parties shall designate a representative(s) to serve on a committee (the “Committee”) to collaborate to develop the policies, procedures, and general processes (“Policies and Procedures”) to meet the goals of the MOU and the SBE Reciprocity Program. These Policies and Procedures will address, but not be limited to addressing, the following areas:
 - a. applications, certification (made in compliance with 49 CFR Part 26), appeals, interviews, on-site visits, directories, no change affidavits, eligibility investigation, removal process;
 - b. information sharing;
 - c. creating any necessary committees, sub-committees, or working groups and the rules and regulations designed to govern and conduct the daily business of a committee, sub-committee, or working group, including by-laws or rules of order;
 - d. mechanisms to amend the Policies and Procedures, where such amendments do not constitute amendment of this MOU
 - e. And all other areas related to and relevant to the successful implementation of this MOU and the goals of the SBE Reciprocity Program.
2. The Committee shall ensure that the Policies and Procedures, if necessary, comply with all applicable federal, state, and local laws.
3. The Committee shall complete the initial Policies and Procedures on or before December 31, 2023. Thereafter, this Committee to create the Policies and Procedures will cease operation. Any Party to the MOU that signs the MOU after December 31, 2023 shall not have the right to designate a representative to the Committee.

c. Reciprocity

1. When a Party certifies a SBE consistent with 49 CFR 26, this MOU, and the Policies and Procedures, the other Party(ies) to this MOU shall accept and recognize the SBE certification as if the other Party(ies) certified the SBE.
2. The Parties agree at all times to use their best efforts to cooperate fully with one another in the implementation and operation of this MOU.

3. Data Sharing and Confidential Information.

Parties agree to provide access to and share all specific information necessary to advance the terms of this MOU, to extent it is developed, maintained, and shared for purposes of

this MOU. All records are subject to review by federal and state agencies and other individuals designated by the Parties and available upon request.

Any documents, data, records or other information given to or prepared by the Parties pursuant to this MOU shall be maintained in a confidential manner and shall not be made available to any individual or organization without prior written approval by the other Party(ies), except to the extent required by law. An SBE applicant must provide express written authorization for the SBE applicant's information to be shared pursuant to the terms of this MOU.

All Parties agree to safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information consistent with applicable Federal, state, and local law.

4. Force Majeure

No Party(ies) will be obligated to perform any of its obligations hereunder if prevented from doing so by reasons outside of its reasonable control, including, but not limited to, events of force majeure.

5. Authority

The undersigned Parties acknowledge they have authority to enter into this MOU pursuant to their respective state law(s). The Parties represent that their representatives whose signatures appear below have the power and authority to enter into this MOU and to obligate the Parties to the terms of this MOU. The Parties agree to provide the other Party(ies) the time necessary to obtain prior approvals from their respective boards or any necessary authority.

6. Warranties and Representations

In connection with the execution of this MOU, the Parties each warrant and represent that it is legally authorized to execute and perform or cause to be performed this MOU under the terms and conditions stated herein.

7. Non-Liability of Public Officials

No official, employee or agent of a Party will be charged personally by the other Party with any liability or expense of defense or be held personally liable under any term or provision of this MOU or because of a Party(ies) execution or attempted execution or because of any breach hereof.

8. Independent Relationship

For the purposes of this MOU, the Parties are independent entities and not employee, agent, joint venture, or partners. Nothing in this MOU, or the subject matter contained in this MOU, shall be construed as creating any other relationship between the Parties.

9. Third Parties

Nothing in this MOU is intended to create rights in any parties other than those Parties that have executed this MOU.

10. Assignment

No Party will assign, delegate or otherwise transfer all or any part of their rights or obligations under this MOU, or any part hereof, unless as approved in writing by the other Parties. The absence of written consent will void the attempted assignment, delegation or transfer and will render it of no effect.

11. Compliance with Laws

Each Party represents that in the performance of its duties hereunder, it has complied and shall comply with all federal, state and local laws, ordinances and regulations. It shall further contractually require any third-party vendor providing services in conjunction with this MOU to comply with all federal, state and local laws, ordinances and regulations.

12. Effective date

The effective date of this MOU is _____.

13. Term and Termination

This MOU shall be effective until either of the following scenarios: it is terminated in writing by all Parties; changes in law or regulations render the MOU obsolete or substantially affect one or multiple Parties' ability to carry out the terms of the MOU, in which case the Parties shall agree in writing, signed by all Parties, to terminate the MOU.

14. Withdrawal and Default.

- a. Any Party may withdraw from this MOU for any reason upon sixty (60) days written notice sent to the other Parties in accordance with Section 23.
- b. If there are only two (2) Parties to the MOU:
 - i. A Party may be found in default ("Party in Default") of its obligations under this MOU.
 - ii. The non-defaulting Party shall send a written notice to the Party in Default to the address in Section 23 of the MOU stating the reasons for default.

- iii. The Party in Default shall have sixty (60) days from the date of receipt of the notice to cure the default. The time to cure the default may be extended by agreement of the Parties.
 - iv. If the Party in Default does not cure within the sixty (60) days, or longer if by agreement, then they shall be found in default under the MOU.
 - v. The non-defaulting Party is not entitled, by right, to damages at law under this MOU under this Section 14.b. Remedies to default are limited to terminating the MOU; returning of certain confidential information; other equitable remedies related to the operation of the Program.
- c. If there are three (3) or more Parties to the MOU:
- i. A Party may be found in default (“Party in Default”) of its obligations under this MOU.
 - ii. All of the other non-defaulting Parties shall agree, in writing, to hold the Party in Default in default.
 - iii. One Party, on behalf of the other non-defaulting Parties, shall send a written notice to the Party in Default to the address in Section 23 of the MOU stating the reasons for default.
 - iv. The Party in default shall have sixty (60) days from the date of receipt of the notice to cure the default. The time to cure the default may be extended by agreement of the Party in Default and the one Party that noticed the Party in default.
 - v. If the Party in Default does not cure within the sixty (60) days, or longer if by agreement, then they shall be found in default under the MOU.
 - vi. The non-defaulting Parties are not entitled, by right, to damages at law under this MOU under this Section 14.c. Remedies to default are limited to removing the Party in Default from participation in the MOU; returning of certain confidential information; other equitable remedies related to the operation of the Program.

15. Entire Agreement

This MOU, and any exhibits attached and incorporated hereto, will constitute the entire agreement between the Parties and no other warranties, inducements, considerations, promises or interpretations, which are not expressly addressed herein, will be implied or impressed upon this MOU.

16. Amendments.

No change, amendment, modification or discharge of this MOU, or any part hereof, will be valid unless in writing, and signed by the authorized officer(s) of each individual Party or their respective successors and assigns.

If the Parties make any changes to their individual DBE or SBE certification programs that are independent of the terms or Policies and Procedures of this MOU, that individual party shall provide notice to the other Parties pursuant to Section 23.

17. Counterparts and Digital Signatures;

This MOU may be comprised of several identical counterparts, each of which may be fully executed by the Parties hereto and, once executed, will be deemed an original having identical legal effect. This MOU may be executed digitally or electronically. The Parties agree that any electronic/digital signature shall have the same force and effect as a wet or handwritten signature for purposes of validity, enforceability and admissibility.

18. Dispute Resolution.

In the event a dispute arises between any of the Parties, the Parties agree to negotiate in good faith to resolve any issues arising from or out of this MOU. In the event that there are delays caused by any Party or by events beyond any Party's control, the Parties agree to negotiate in good faith to resolve any impacts on the scope of this MOU that result from such delays.

19. Governing Law and Venue.

Reserved.

20. Liability

Each of the Parties agree each will be responsible for its own acts and omissions, be responsible for the acts and omissions of its employees, officers, and agents, and shall not be responsible for the acts or omissions of the other Party or the other Parties' employees, officers and agents. These obligations relate to any and all claims, lawsuits, actions, or special proceedings, whether judicial or administrative in nature and include any loss, liability, or expense, including reasonable attorney fees, relating to this MOU.

Since the Parties are and remain separate political subdivisions, public agencies and transit authorities, each shall be immune from and not assume liability for the actions taken by any other legal entity; including, but not limited to, the other Parties, in accordance with their respective state laws. In the event that a Party is named in any lawsuit or claim, such Party shall be responsible for any suits or claims brought by third parties or resulting from a decision that it rendered or an action that it took. Should any claim or suit require the assistance or resources of any other Party(ies), where practicable, such Party(ies) shall provide assistance in the preparation for the suit or claim. The Parties shall not assume liabilities other than those expressly stated in this MOU. Nothing in this provision shall be interpreted to waive the sovereign immunity of any Party.

21. Severability.

If any provisions of this MOU will be held or deemed to be or will in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because

it conflicts with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances will not have the effect of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this MOU will not affect the remaining portions of this MOU or any part thereof.

22. Interpretation.

Any headings of this MOU are for convenience of reference only and do not define or limit the provisions thereof. Words of any gender will be deemed and construed to include correlative words of other genders. Words importing the singular number will include the plural number and vice versa, unless the context will otherwise indicate. All references to any exhibit or document will be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms and conditions thereof. All references to any person or entity will be deemed to include any person or entity succeeding to the rights, duties and obligations of such persons or entities in accordance with the terms and conditions of this MOU.

23. Notices

Notices under this MOU will be sent by first-class prepaid mail and electronic mail to the persons and addresses indicated on the signature page of each party to the MOU.

Said notices will be deemed received five business days after mailing or upon the receiving Party's confirmation of receipt of electronic mail. Any Party may change its address for receipt of notices at any time by providing written notice to the other Party(ies) in accordance with this Section 23.

<Remainder of Page Left Intentionally Blank>

IN WITNESS WHEREOF, the Parties have caused this MOU to be lawfully executed by their duly authorized officials by, and on the date of, the Parties having provided their signatures.

<Party Signature Pages to follow>

CHICAGO TRANSIT AUTHORITY (“CTA”), is an Illinois municipal corporation created pursuant to the Metropolitan Transit Authority Act, 70 ILCS 3605/1 et seq. CTA has the power to become a Party to and enter into this MOU pursuant to the representations in Section 5.

For Section 23 Notices may be sent to:

Chicago Transit Authority
Director of Diversity Programs / DBE Liaison Officer
567 W. Lake Street
Chicago, Illinois 60661

And a copy to:

Chicago Transit Authority
General Counsel
567 W. Lake Street
6th Floor
Chicago, Illinois 60661

Chicago Transit Authority (“CTA”)

By: _____

Printed: _____

Title: _____

Date: _____

The SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY (“SEPTA”), a body corporate and politic exercising the powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof pursuant to the Metropolitan Transportation Authorities Act, 74 PACS 1701 et seq. and has the power to become a Party to and enter into this MOU pursuant to the representations in Section 5.

For Section 23 Notices may be sent to:

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
Director of DBE Program
1234 Market Street, 11th Floor
Philadelphia, PA 19107-3780

And a copy to:

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
General Counsel
1234 Market Street, 5th Floor
Philadelphia, PA 19107-3780

Southeastern Pennsylvania Transportation Authority (“SEPTA”)

By: _____

Printed: _____

Title: _____

Date: _____