CITY OF CRETE, NEBRASKA

RESOLUTION NO. 2025-26
(Disadvantaged Business Enterprise (DBE) Program)

A RESOLUTION OF THE CITY OF CRETE, NEBRASKA ADOPTING A DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FEDERAL FISCAL YEARS 2025, 2026, AND 2027 IN ACCORDANCE WITH THE REGULATIONS OF THE U.S. DEPARTMENT OF TRANSPORTATION.

WHEREAS, the City of Crete, Nebraska (the "City"), as Sponsor of the Crete Municipal Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the U.S. Department of Transportation ("DOT"), 49 CFR Part 26; and

WHEREAS, because the City has received federal financial assistance from the DOT, the City is required to adopt a DBE Program to assure that it will comply with 49 CFR Part 26, which ensures that DBEs have an equal opportunity to receive and participate in DOT-assisted contracts; and

WHEREAS, the City has prepared a DBE Program for federal fiscal years 2025, 2026, and 2027, a copy of which is attached hereto as Exhibit "A" and incorporated by this reference (the "DBE Program").

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRETE, NEBRASKA:

Section 1. That the Mayor and City Council for the City of Crete, Nebraska hereby adopt the DBE Program, including the approval of the Policy Statement and the established DBE participation goal of 0.50%.

Section 2. That all resolutions or parts thereof in conflict with the provisions of this Resolution or to the extent of such conflicts, are hereby repealed.

PASSED AND APPROVED THIS 21ST DAY OF OCTOBER, 2025.

CITY OF CRETE, NEBRASKA

By: _____
David Bauer, Mayor

ATTEST: _____
Nancy Tellez, City Clerk

EXHIBIT "A"

Disadvantaged Business Enterprise (DBE) Program
for
FAA Fiscal Years 2025, 2026 & 2027

[Attached]

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

PROGRAM

FOR FAA FISCAL YEARS 2025, 2026 & 2027

Crete Municipal Airport

Crete, Nebraska

December 2024

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Crete Municipal Airport
Crete, Nebraska

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The **City of Crete,** Nebraska, Sponsor of Crete Municipal Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (U.S. DOT), 49 CFR Part 26. The **City of Crete** has received Federal financial assistance from the U.S. Department of Transportation, and as a condition of receiving this assistance, the **City of Crete** has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the **City of Crete** to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in U.S. DOT–assisted contracts. It is also the **City of Crete's** policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of U.S. DOT- assisted contracts.
2. Create a level playing field on which DBEs can compete fairly for U.S. DOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove barriers to the participation of DBEs in U.S. DOT assisted contracts;
6. Promote the use of DBEs in all types of federally assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Tom Ourada, City Administrator, City of Crete, has been delegated as the DBE Liaison Officer. In that capacity, **Tom Ourada, City Administrator,** is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the **City of Crete** in its financial assistance agreements with the Department of Transportation.

The **City of Crete** has disseminated this policy statement to the **City of Crete's governing officials** and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on **City of Crete** U.S. DOT-assisted contracts. The distribution was accomplished by **inclusion in bid specifications**.

Mayor: _____ Date: _____

GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are elaborated in the policy statement on the first page of this program.

Section 26.3 Applicability

The **City of Crete** is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The **City of Crete** will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The **City of Crete** will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the **City of Crete** will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Data Collection and Record Keeping Requirements

Reporting to NDOT

The **City of Crete** will provide data about its DBE Program to the Department as directed by U.S. DOT operating administrations.

DBE participation will be reported to Nebraska Department of Transportation - Division of Aeronautics (NDOT-A) as follows:

> The **City of Crete** will transmit to **NDOT-A** annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. The **City of Crete** will similarly report the required information about participating DBE firms. All reporting will be done through the **NDOT-A** official reporting system, or another format acceptable to **NDOT-A** as instructed thereby.

Bidders List

The **Nebraska Department of Transportation – Division of Aeronautics (NDOT-A),** acting as agent for the **City of Crete**, will collect bidders list information as described in § 26.11(c)(2) using

forms included in **Attachment 3** and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

The **City of Crete** will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than $1 million; $1-3 million; $3-6 million; $6-10 million, etc) rather than requesting an exact figure from the firm.

The **City of Crete** will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

The **City of Crete** will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the **City of Crete** will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The **Nebraska Department of Transportation** for the **Nebraska** Unified Certification Program (UCP) established pursuant to § 26.81 must report to DOT's Departmental Office of Civil Rights each year, the following information:

- The number and percentage of instate and out-of-state DBE certifications by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);
- The number of DBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible
- The number of decertified firms:
    - Total in-state and out-of-state firms decertified
    - Names of in-state and out-of-state firms decertified because Socially and Economically Disadvantaged Owner (SEDO) exceeded the personal net worth cap

  - Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.
- The number of in-state and out-of-state firms summarily suspended
- The number of in-state and out-of-state applications received for an individualized determination of social and economic disadvantaged status
- The number of in-state and out-of-state firms certified whose owner(s) made an individualized showing of social and economic disadvantaged status

Records retention and reporting:

The **City of Crete** will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the **City of Crete** will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the **City of Crete** financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Assurances Recipients and Contractors Must Make

The **City of Crete** has signed the following assurances, applicable to all U.S. DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the **City of Crete** signs with a NDOT operating administration (or a primary recipient) will include the following assurance:

> The **City of Crete** shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The **City of Crete** shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The **City of Crete's** DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the **City of Crete** of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: The **City of Crete** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure

by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1) Withholding monthly progress payments;
2) Assessing sanctions;
3) Liquidated damages; and/or
4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Crete is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds $250,000 in FAA funds in a federal fiscal year.

The City of Crete is not eligible to receive U.S. DOT financial assistance unless U.S. DOT has approved this DBE program and the City of Crete is in compliance with it and Part 26. The City of Crete will continue to carry out this program until all funds from U.S. DOT financial assistance have been expended. The City of Crete does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for U.S. DOT approval.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the **City of Crete**:

Name:	Tom Ourada, City Administrator
Address:	P.O. Box 86
City:	Crete, Nebraska 68333-0086
Telephone:	402-826-4408
Email:	tom.ourada@crete.ne.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the **City of Crete** complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the **Mayor of the City of Crete** concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in **Attachment 2** to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. However, the **City of Crete** does not have a dedicated civil rights department. The **City of Crete** uses staff from NDOT-A and the **Nebraska Department of Transportation (NDOT)** Civil Rights Office for guidance on matters concerning the DBE program and to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by U.S. DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the **City of Crete's** progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. ~~Chairs the DBE Advisory Committee.~~
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. ~~Plans and participates in DBE training seminars.~~
13. ~~Acts as liaison to the Uniform Certification Process.~~
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. ~~Maintains the agency's updated directory on certified DBEs.~~

NOTES*

Item 9: Given the very small size of the Sponsor organization, there is no defined DBE Advisory Committee. The DBELO does, however, advise the entire organization on DBE matters and achievements, per Item 8.

Item 12: Given the very small size of the Sponsor organization, the organization does not have the resources to plan and participate in DBE training seminars. For this duty or responsibility, the organization relies on the resources of the NDOT and their Civil Rights Office to provide appropriate training opportunities.

Item 13: Per Section 26.31 below, the Sponsor is a non-certifying member of the Nebraska Unified Certification Program (UCP). As a non-certifying, or Signatory, member, the Sponsor agrees to

designate the NDOT Highway Civil Rights Office (HCRO) as the sole certifying agency of the NUCP.

Item 15: Per Sections 26.31, the **City of Crete** is a non-certifying member of the Nebraska Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. This is the directory used by the Sponsor.

Section 26.27 DBE Financial Institutions

It is the policy of the **City of Crete** to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on U.S. DOT-assisted contracts to make use of these institutions. Availability of such institutions wll be investigated on an annual basis.

Utilizing a list of Nebraska banks provided by the Nebraska Department of Banking and Finance, we determined that there are four (4) banks in Crete as of June 14, 2024: Pinnacle Bank, First Interstate Bank, Union Bank and Trust Company, and City Bank & Trust Company. Following the process used by the Nebraska Department of Transportation, the **City of Crete** investigated the availability of socially and economically disadvantaged financial institutions in Nebraska, including the 4 institutions noted above, using the following reports\lists:

- Federal Deposit Insurance Corporation Report to Congress for 2022, "Preservation and Promotion of Minority Depository Institutions" (https://www.fdic.gov/regulations/resources/minority/congress/index.html)
- Federal Deposit Insurance Corporation Minority Depository Institutions List (https://www.fdic.gov/regulations/resources/minority/mdi.html)
- Federal Deposit Insurance Corporation Minority Depository Institutions MDI and CDFI Ban Locator (https://fdic-gis.maps.arcgis.com/apps/webappviewer/index.html?id=76c05acdf50f4e3db35cd042103e998e)
- Office of the Comptroller of the Currency Minority and Women-Owned Depository List (https://www.occ.treas.gov/topics/consumers-and-communities/minority-outreach/locations-list-view-minority.html?category=ho&type=people)

From this review, only one depository institution in the state, The First National Bank of Gordon, is noted on the Office of the Comptroller of the Currency's Minority and Women-Owned Depository list, as a Women Owned business. No other lists included the First National Bank of Gordon, or any other socially or economically disadvantaged financial institutions. None of the 4 local institutions noted above were listed on any minority list.

According to Part 26.27, the **City of Crete** is required to "thoroughly investigate ... financial institutions ... in your community." Anywhere is a city with a population of less than 7,500. It is located in an area with no suburbs. The **City of Crete** constitutes the **City of Crete's** community. The **City of Crete** has investigated all financial institutions within their community and thus met the requirements of Part 26.27.

The **City of Crete's** community under 26.27 and the **City of Crete's** market area under 26.45 are not the same areas. Due to the area's low population density, contractors typically travel hundreds of miles to participate on U.S. DOT-assisted contracts. Therefore, the **City of Crete's** market area that was used to establish their overall DBE goal is discussed in **Attachment 5**. It would be impractical, infeasible, and unreasonable for the **City of Crete** to use a financial institution outside of their community.

Section 26.29 Prompt Payment Mechanisms

The **City of Crete** requires that all subcontractors performing work on U.S. DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR §26.29, the **City of Crete** established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the **City of Crete**.

The **City of Crete** ensures prompt and full payment of retainage from the prime contractor to the subcontractor within no later than 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the **City of Crete** has selected the following method to comply with this requirement:

(1) The **City of Crete** will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the **City of Crete's** payment to the prime contractor.

To implement this measure, the **City of Crete** includes the following clause from FAA Advisory Circular 150/5370-10 in each U.S. DOT-assisted prime construction contract:

(a) The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance no later than 30 days from receipt of payment from the **City of Crete**. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur

only for good cause following written approval of the **City of Crete**. This clause applies to both DBE and non-DBE subcontractors.

(b) In the event of noncompliance with this provision, the **City of Crete** may impose appropriate penalties in accordance with terms and conditions of this contract.

(c) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor has paid for work performed by such subcontractors in accordance with this provision and contract terms.

Section 26.31 Directory of Certified Firms

The **City of Crete** is a non-certifying member of the Nebraska Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The directory is available from:

Minority Business Coordinator
Nebraska Department of Transportation
P.O. Box 94759
Lincoln, NE 68509
402-479-3728
https://dot.nebraska.gov/business-center/civil-rights/

The directory lists firms that have passed NDOT's certification process. The listing includes the firm's name, address, phone number and the type of work the firm has been certified to perform as a DBE. NDOT updates the directory at least quarterly.

Section 26.33 Over-concentration

The **City of Crete** has not identified that over-concentration exists the types of work that DBEs perform and has not implemented a Business Development Program

Section 26.35 Business Development and Mentor-Protégé Programs

The **City of Crete** has not established a Business Development Program or Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

The **City of Crete** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the **City of Crete's** DBE program.

The **City of Crete** actively monitors participation by maintaining a running tally of actual DBE attainments (*e.g.,* payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

The **City of Crete** undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Entering into an agreement for construction observation services, which will include reviewing compliance with Labor and Civil Rights provisions in accordance with FAA AIP Sponsor Guide No. 1070.
- Keeping a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The **City of Crete** requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the **City of Crete's** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the **City of Crete** or U.S. DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The **City of Crete** proactively reviews contract payments every quarter to subcontractors including DBEs. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the **City of Crete** by the prime contractor.

Prompt Payment Dispute Resolution

The **City of Crete** will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

In the event of a dispute as to whether work has been satisfactorily completed or not, the DBELO shall schedule and attend a meeting between the **City of Crete, Engineering Consultant, the project prime contractor and the DBE subcontractor.** Attendees for the prime contractor and DBE subcontractor shall have an appropriate authority to enter into decisions obligating their respective company.

The **City of Crete** has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

(1) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed:

(a) The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance no later than 30 days from receipt of payment from the Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

(b) In the event of noncompliance with this provision, the Sponsor may impose appropriate penalties in accordance with terms and conditions of this contract.

(c) Subject to the approval of the Sponsor, the prime contractor shall use appropriate alternative dispute resolution mechanisms to resolve any payment disputes that may arise.

(d) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor has paid for work performed by such subcontractors in accordance with this provision and contract terms.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.

- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the **City of Crete** to resolve prompt payment disputes, affected subcontractor may contact the responsible NDOT-A contact.

- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

The **City of Crete** will provide appropriate means to enforce the requirements of §26.29. These means include:

In the event of non-compliance with the DBE regulation by a participant in our procurement activities, the **City of Crete** has available several remedies to enforce the DBE requirements contained in its contract, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract.
- Breach of contract action, pursuant to Nebraska Statute

- 3-504 City Airport Authority
- 3-116, 3-120, 3-125 NDA
- Other sections of Nebraska Statues that may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provisions of Nebraska Statue 48-601 to 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes 48-1101 through 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes 48-1201 through 48-1277.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26.
- Enforcement action pursuant to 49 CFR Part 31.
- Prosecution pursuant to 18 USC 1001.

The **City of Crete** will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The **City of Crete** reviews contracting records and has engaged with a professional consultant to assist in actively monitoring work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.,* as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the professional consultant. Contracting records are maintained by the professional consultant and reviewed by Tom Ourada, City Administrator. The **City of Crete** will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering small business participation

The **City of Crete** has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as **Attachment 10** to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for the City of Crete to be considered by U.S. DOT as implementing this DBE program in good faith.**

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The **City of Crete** does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The City of Crete will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding U.S. DOT -funded prime contracts the cumulative total value of which exceeds $250,000 in U.S. DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the City of Crete will submit its Overall Three-year DBE Goal to the FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of NDOT.

NDOT:

https://dot.nebraska.gov/business-center/civil-rights/

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the **City of Crete** does not anticipate awarding prime contracts the cumulative total value of which exceeds $250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the **City of Crete** will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Method: The following is a summary of the method we used to calculate this goal:
We consulted with NDOT-A to establish the geographical area from which we could reasonably expect ready, willing, and able prime contractors and subcontractors to be obtained. After identifying the geographical area, we search the US Census Bureau's data base to obtain the total number of businesses that correspond to the NAICS code related to the prime scope of work for the project. We review the NDOT data base to identify the number of certified DBE's in the geographical area with work codes similar to the NAICS codes.

Step 1: The first step is to determine a base figure for the relative availability of DBEs in the market area. The **City of Crete** will use a Bidders List, the goal of another NDOT recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45 as a method to determine the base figure. The base figure was determined by dividing the number of DBE firms on this list by the total number of firms. See **Attachment 5**: "Step 1: Goal Setting Process for details". The **City of Crete** understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2: The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, and/or information about barriers to entry to past competitiveness of DBEs on contracts. The **City of Crete** will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

We have been unable to find evidence of past discrimination and have not identified any barriers in our local market area research. In addition, NDOT-A is not aware of past discrimination and has not identified any barriers in our local market area research to adjust their base figure for over utilization or under-utilization to warrant adjustments to their base figure. Therefore, we have not adjusted our base figure due to discrimination.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the **City of Crete's** market.

Process: Before establishing the overall goal each year, the **City of Crete** will consult with NDOT-A to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **City of Crete's** efforts to establish a level playing field for the participation of DBEs. The **City of Crete** may also consult with United Minority Contractors Association of Nebraska and the Urban League of Nebraska to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **City of Crete's** efforts to establish a level playing field for the participation of DBEs.

Following this consultation, NDOT-A, as agent for the **City of Crete**, will post the airport DBE program and is overall goal on the NDOT website and notify agencies and organizations, indicating that the **City of Crete** is interested in obtaining relevant information regarding goal setting and goal methodology. The link to the airport's program and its overall goal online and the list of agencies and organizations selected are available in **Attachment 5**, under Public Participation. Each notice will contain an explicit invitation to meet with the NDOT-A face-to-face or via conference call (i.e., a "scheduled, direct, interactive exchange") to discuss any questions or comments on DBE participation goal setting.

In establishing the overall goal, the **City of Crete** will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the **City of Crete** to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the **City of Crete** is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document

the consultation process in which the **City of Crete** engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the **City of Crete** will publish a notice announcing the proposed overall goal before submission to the FAA. The notice will be published in the local newspaper, posted on NDOT's official internet web site, and may be directly mailed to other local interested agencies. The list of potential agencies interested can be found in **Attachment 5**, under "Public Participation". If the proposed goal changes following review by FAA, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the **Crete City Hall, 243 East 13th Street, Crete, Nebraska 68333-0086**. The link to the proposed goal is found below:

https://dot.nebraska.gov/business-center/civil-rights/airport-dbe/

This notice will provide that the **City of Crete** will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) and the location(s) where the proposal may be reviewed.

The Overall Three-Year DBE Goal submission to FAA will include a summary of information and comments received, if any, during this public participation process and the **City of Crete's** responses.

The **City of Crete** will establish its overall goal based on one or more projects. Our overall goal will be submitted to FAA at least 30 days prior to the first solicitation for a U.S. DOT-assisted contract for a project that contains a goal, including professional services, construction, or other contracts. Unless we have received other instructions from U.S. DOT, we will establish a goal on a project basis and begin using our overall goal by the time of the first solicitation for a contract that contains a goal.

The **City of Crete** will begin using the overall goal on October 1 of the relevant period, unless other instructions from U.S. DOT have been received.

Project Goals

If permitted or required by the U.S. DOT Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal

pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a U.S. DOT-assisted contract for the project.

Prior Operating Administration Concurrence

The **City of Crete** understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the **City of Crete** for calculating goals is inadequate, FAA may, after consulting with the **City of Crete**, adjust the overall goal or require that the goal be adjusted by the **City of Crete**. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 5** to this program.

Section 26.47 Failure to meet overall goals

The City of Crete cannot be penalized or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the City of Crete fails to administer its DBE program in good faith.

The City of Crete understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The **City of Crete** understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year.

(2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met.

(3) The **City of Crete** will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

Section 26.49 How are overall goals established for transit vehicle manufacturers?

The **City of Crete** will require transit vehicle manufacturers (TVM), as a condition of being authorized to bid or propose on any FTA-assisted transit vehicle procurements, to certify that they have complied with the requirements of §26.49.

(1) The **City of Crete** affirms that only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

(2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout Part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

(3) The **City of Crete** is aware that failure to comply with the requirements set forth in Part 26, §26.49(a) may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

(4) **The City of Crete** will submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The **City of Crete** will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).

(3) Providing technical assistance and other services.

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on

prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 5** to this program.

The **City of Crete** will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those U.S. DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).
Contract goals will be expressed as a percentage of the Federal share of a U.S. DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or

documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The DBE Liaison Officer is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The **City of Crete** will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for U.S. DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

(1) Award of the contract will be conditioned on meeting the requirements of this section.

(2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
   a. The names and addresses of DBE firms that will participate in the contract.
   b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
   c. The dollar amount of the participation of each DBE firm participating.
   d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
   e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
   f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

(3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:

(4) Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the City of Crete. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor the **City of Crete** will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue.

The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, the **City of Crete** will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which the **City of Crete** solicits proposals to design and build a project with minimal project details at time of letting, the **City of Crete** may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the **City of Crete** will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The **City of Crete** and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

The **City of Crete** will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, the **City of Crete** will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within three days of being informed by the **City of Crete** that it is **not responsive** because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Anna Burge, Attorney
City of Crete
P.O. Box 86
Crete, Nebraska
68333-0086
anna.burge@crete.ne.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate

good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met, or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation/award)

The **City of Crete** will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that the **City of Crete** deems appropriate if the prime contractor fails to comply with the requirements of this section.

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

The awarded contractor will be required to not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless the **City of Crete** causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The **City of Crete** will include in each prime contract a provision stating that:

(1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the **City of Crete** written consent as provided in § 26.53(f); and
(2) Unless the **City of Crete** consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The **City of Crete** may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), good cause includes the following circumstances:

(1) The listed DBE subcontractor fails or refuses to execute a written contract;

(2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.

(4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(6) The **City of Crete** determined that the listed DBE subcontractor is not a responsible contractor;

(7) The listed DBE subcontractor voluntarily withdraws from the project and provides the **City of Crete** written notice of its withdrawal;

(8) The listed DBE is ineligible to receive DBE credit for the type of work required;

(9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(10) Other documented good cause that the **City of Crete** has determined compels the termination of the DBE subcontractor.

Before transmitting to the **City of Crete,** a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the **City of Crete,** sent concurrently, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising the **City of Crete** and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract or portion thereof and why the **City of Crete** should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), the **City of Crete** may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If the **City of Crete** requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if

necessary, at the request of the contractor. The **City of Crete** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The **City of Crete** is a non-certifying member of the Nebraska Unified Certification Program (UCP). Nebraska UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in NDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Nebraska UCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Nebraska Department of Transportation
Minority Business Coordinator
P.O. Box 94759
Lincoln, NE 68509-4759.

The Uniform Certification Application form and documentation requirements are found in **Attachment 8** to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The **City of Crete** accepts the certification procedures adopted by the NUCP for DBE contractors. The NUCP uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in NDOT-assisted contracts. If a contractor is certified on NUCP's current list, that contractor will be acceptable to the **City of Crete**.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of Crete

The **City of Crete** understands that if it fails to comply with any requirement of this part, the **City of Crete** may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

The **City of Crete** understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY** paragraph (2) of this section is also applicable in FAA programs.

(1) ***Noncompliance complaints.*** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(2) ***Compliance reviews.*** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(3) ***Reasonable cause notice.*** If it appears, from the investigation of a complaint or the results of a compliance review, that the ***Recipient*** is in noncompliance with part 26, the appropriate DOT office will promptly send the ***Recipient***, return receipt requested, a written notice advising that there is reasonable cause to find the ***Recipient*** in noncompliance. The notice states the reasons for this finding and directs the ***Recipient*** to reply within 30 days concerning whether you wish to begin conciliation.

(4) ***Conciliation.***

a. If the ***Recipient*** requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

b. If the ***Recipient*** and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and the ***Recipient*** is regarded as complying. The conciliation agreement sets forth the measures the ***Recipient*** has taken or will take to ensure compliance. While a conciliation agreement is in effect, the ***Recipient*** remains eligible for FHWA or FTA financial assistance.

c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If the ***Recipient*** fail to carry out the terms of a conciliation agreement, the ***Recipient*** is in noncompliance.

d. If the ***Recipient*** does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.

(5) ***Enforcement actions.***

a. Enforcement actions are taken as provided in this subpart.

b. Applicable findings in enforcement proceedings are binding on all DOT offices.

Section 26.105 Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a U.S. DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty,

the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to U.S. DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with U.S. DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a

complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The **City of Crete**, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The **City of Crete** understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

Attachment 1	Regulations: Link to 49 CFR Part 26 (eCFR)
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	DBE Directory or link to DBE Directory
Attachment 5	Overall Goal Calculations
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	DBE Certification Application Form
Attachment 9	State's UCP Agreement
Attachment 10	Small Business Element Program

Attachment 1

Regulations: 49 CFR Part 26

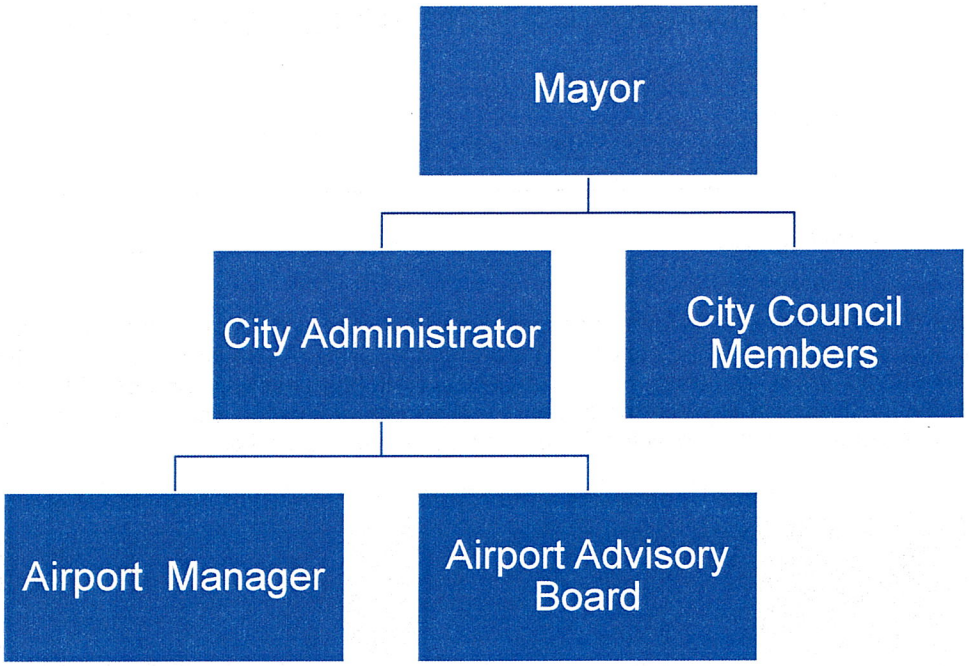
Regulations: 49 CFR Part 26,

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

https://www.ecfr.gov/current/title-49/subtitle-A/part-26

Attachment 2

Organizational Chart



Mr. Tom Ourada, City Administrator, City of Crete, is the designated Liaison Officer. Thus, Mr. Ourada, has frequent contact, and direct, independent access to with the Mayor, Airport Manager, and Airport Adivsory Board.

Attachment 3

Bidder's List Collection Form

The following form is to be completed at the time of bid submittal.

AIP Project: _____

Airport: _____

Location: _____

Note: § 26.11(c) requires Airport Sponsors to collect bidders list information from all bidders at the time of bid submittal, and to enter it into USDOT's designated system. **The data must be collected for all firms who bid as prime contractors or subcontractors (successfully or not)**. The form below is NOT mandatory. If you use an electronic system to collect this information, you may instead provide a screenshot or other example showing how the system collects all the required data.

Prime Contractors and/or Subcontractors Bidding on the Project

Firm Name	Firm Address (including ZIP code)	DBE or Non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race/Gender of Majority Owner	Age of Firm	Annual Gross Receipts
				☐ Black American ☐ Hispanic American ☐ Asian-Pacific American ☐ Subcontinent Asian American ☐ Native American ☐ Non-minority Woman ☐ Other	☐ Less than 1 year ☐ 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $1 million ☐ $1-3 million ☐ $3-6 million ☐ $6-10 million ☐ Over $10 million
				☐ Black American ☐ Hispanic American ☐ Asian-Pacific American ☐ Subcontinent Asian American ☐ Native American ☐ Non-minority Woman ☐ Other	☐ Less than 1 year ☐ 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $1 million ☐ $1-3 million ☐ $3-6 million ☐ $6-10 million ☐ Over $10 million

Attachment 4

State of Nebraska DBE Directory.

State of Nebraska DBE Directory,
A directory of Nebraska DBE's is available at the following website:

https://dot.nebraska.gov/business-center/civil-rights/

Attachment 5

Overall DBE Three-Year Goal Methodology
For FY 2025, 2026, 2027

DBE Goal Summary

Airport: Crete Municipal Airport, Crete, Nebraska
Sponsor: City of Crete

Goal Period: Fiscal Years 2025, 2026, 2027; October 1, 2024, through September 30, 2027

Anticipated U.S. DOT-Assisted Contracts:

Contract	Contract Amount	Project Name	Type of Work
FY 2025:	$332,838	2-Bay Box Hangar (Phase 1)	Engineering Services
Subtotal FY 2025	**$332,838**		
FY 2026:	$1,331,350	2-Bay Box Hangar (Phase 2)	Construction
Subtotal FY 2026	**$1,331,350**		
FY 2026:	$214,800	Partial Parallel Taxiway	Engineering Services
	$767,145	Partial Parralel Taxiway	Construction
Subtotal FY 2026	**$981,945**		
Total:	**$2,646,133**		

The Sponsor's overall 3-year DBE goal is: 0.50%

On U.S. DOT assisted contracts, the goal is to expend 0.50% of the Federal financial assistance on DBE's. It is anticipated that our overall DBE goal will be achieved through 0% race-neutral participation and 0.50% being achieved through race-conscious participation.

Total amount to be expended on DBE's: $13,231
The following is a summary of our DBE expenditures for each fiscal year by contract:

Fiscal Year	Contract Type	Contract Amount	DBE Amount	Total DBE Participation	Race Neutral	Race Conscious
2025	Consultant/Engineering Services – 2-Bay Box Hangar (Phase 1)	$332,838	$0	0%	0%	0%
2026	Construction – 2-Bay Box Hangar (Phase 2)	$1,331,350	$8,321	0.63%	0%	0.63%
2027	Consultant/Engineering Services – Partial Parallel Taxiway	$214,800	$0	0%	0%	0%
2027	Construction – Partial Parallel Taxiway	$767,145	$4,910	0.64%	0%	0.64%
	FY25, 26 & 27 TOTALS	**$2,646,133**	**$13,231**	**0.50%**	**0%**	**0.50%**

Step 1: Goal Setting Process (26.45 c)

The goal was calculated using the method described in our DBE program. We selected the following geographical areas (counties) that will be used to seek contractors for the projects during the various years. The specific geographical areas were selected based on information from Nebraska Department of Transportation - Division of Aeronautics. Specifically, we selected those contractors within the following Counties for the projects for the various years:

Crete Municipal Airport
Crete, Nebraska
DBE Program FY25-26-27
December 2024

FY 2025	FY 2026	FY 2027
Engineering Contract Only (No contractors needed)	Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Clay, Colfax, Cumming, Dakota, Dixon, Dodge, Douglas, Fillmore, Franklin, Gage, Garfield, Greeley, Hall, Hamilton, Harlan, Howard, Jefferson, Johnson, Kearney, Lancaster, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, Wheeler, York	Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Clay, Colfax, Cumming, Dakota, Dixon, Dodge, Douglas, Fillmore, Franklin, Gage, Garfield, Greeley, Hall, Hamilton, Harlan, Howard, Jefferson, Johnson, Kearney, Lancaster, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, Wheeler, York

In addition to construction contracts, we anticipate contracts for consulting/engineering services. In establishing DBE participation by DBE consulting/engineering firms, we were unable to locate certified DBE's that provide consulting/engineering services. Based on our past experience and information from the Nebraska Department of Transportation - Division of Aeronautics, we anticipate 4 to 6 consulting/engineering firms submitting statements of qualification for providing services at our airport. It should be noted that our engineering selection will be a qualification-based selection and we do not anticipate DBE consulting/engineering firms submitting qualifications during the selection process. Therefore, during this 3-year period, we anticipate no DBE participation on consulting/engineering services contracts. We will continually review/evaluate DBE participation by consulting/engineering firms and update as necessary.

FY2025

We anticipate one contract for consulting/engineering services for Phase 1 of the 2-Bay Box Hangar Project and we anticipate no DBE participation on consulting/engineering services contracts, as previously discussed. The DBE participation for consulting/engineering service contracts is calculated as follows:

FY2025 Engineering Services Goal – 2-Bay Box Hangar (Phase1)
(0 DBE Firms/ 6 total firms) = 0% DBE Participation for Consulting/Engineering Services
0% x $332,838 Contract Amount = $0 DBE Participation for Consulting/Engineering Services

Based on the above discussions, our overall FY2025 DBE goal is as follows:

FY2025 Overall DBE Goal
$0 Total DBE Participation / $332,838 Total Contract Amount = 0% DBE Participation for FY2025

FY2026

We anticipate a prime contract for the hangar construction itself. We identified 1,361 firms in our selected geographical area from the US Census Bureau that included NAICS codes 2362-Nonresidential Building Construction and 2381-Foundation, Structure, and Building Exterior Construction. In addition, we identified 5 certified DBE in our selected geographical area with NDOT category D8A-Building Construction. The DBE participation for this contract is calculated as follows:

FY2026 Construction Contract Goal - 2-Bay Box Hangar (Phase2)
(5 DBE Firms/ 1,361 total firms) = 0.37% DBE Participation for Construction Contract
0.37% x $1,331,350 Contract Amount = $4,926 DBE Participation for Construction Contract

Based on the above discussions, our overall FY2026 DBE goal is as follows:

FY2026 Overall DBE Goal
$4,926 Total DBE Participation / $1,331,350 Total Contract Amount = 0.37% DBE Participation for FY2026

FY2027

We anticipate one contract for consulting/engineering services in the total amount of $214,800 and we anticipate no DBE participation on consulting/engineering services contracts, as previously discussed. The DBE participation for consulting/engineering service contracts is calculated as follows:

FY2027 Engineering Services Goal – Partial Parallel Taxiway
(0 DBE Firms/ 6 total firms) = 0% DBE Participation for Consulting/Engineering Services
0% x $214,800 Contract Amount = $0 DBE Participation for Consulting/Engineering Services

We anticipate a prime contract for the taxiway construction itself. We identified 68 firms in our selected geographical area from the US Census Bureau that included NAICS codes 237310-Highway, Street, and Bridge Construction, and 237990-Other Heavy and Civil Engineer Construction. In addition, we identified 1 certified DBE in our selected geographical area with NDOT category D9-Mainline Paving. The DBE participation for this contract is calculated as follows:

FY2027 Construction Contract Goal - Partial Parallel Taxiway
(1 DBE Firms/ 68 total firms) = 1.47% DBE Participation for Construction Contract
1.47% x $767,145 Contract Amount = $11,277 DBE Participation for Construction Contract

Based on the above discussions, our overall FY2027 DBE goal is as follows:

FY2027 Overall DBE Goal
$11,277 Total DBE Participation / $981,945 Total Contract Amount = 1.15% DBE Participation for FY2027

The following is summary of our anticipated work with DBE participation by fiscal year:

Summary of FY2025, 2026 and 2027 DBE Participation

The following is a summary of our anticipated work with DBE participation by fiscal year:

Fiscal Year	Contract Type	Contract Amount	DBE Amount
2025	Consultant/Engineering Services – 2-Bay Box Hangar (Phase 1)	$332,838	$0
2026	Construction – 2-Bay Box Hangar (Phase 2)	$1,331,350	$4,926
2027	Consultant/Engineering Services – Partial Parallel Taxiway	$214,800	$0
2027	Construction – Partial Parallel Taxiway	$767,145	$11,277
	FY25, 26 & 27 TOTALS	**$2,646,133**	**$16,203**

The calculation for our 3-year base figure is as follows:

($16,203 Total DBE Contract Amount)/ ($2,646,133 Total Contract Amount) = 0.61%

Step 2: Adjustments to Base Figure (26.45(d))

Our historical data is summarized as follows:

			CONTRACT GOAL		CONTRACT ACHIEVE		GOAL	ACHIEVE	
FY	AIP Project	Description of Work	Race Neutral	Race Consc.	Race Neutral	Race Consc.	Overall Goal	Overall Achieve	Over/Under Achievement
86	01	Runway Lighting	0%	0%	0%	0%	0%	0%	0%
90	02	RWY & TWY Grading	0%	10%	***	***	10%	***	***
96	03	Apron & TWY Paving	0%	10%	1.9%	10%	10%	11.9%	+1.9%
03	04	Airport Layout Plan Update	*	*	0%	0%	*	0%	0%

05	05	SRE Building	*	*	0%	0%	*	0%	0%
06	06	Land Acquisition	0%	0%	0%	0%	0%	0%	0%
08	07	Taxiway; Tree Removal	0%	6.6%	0.1%	6.6%	6.6%	6.7%	+0.1%
09	08/09	Electrical - MIRL, REIL, PAPI	0%	6.6%	0%	8.3%	6.6%	8.3%	+1.7%
13	10	Pavement Maintenance	0.6%	5.0%	0.0%	4.62%	5.6%	4.62%	-0.98%
13	11	Snow Removal Equipment	0%	0%	0%	0%	0%	0%	0%
17	12	Hangar	0%	2.98%	0%	1.81%	2.98%	1.81%	-1.17%
20	13	No Project (CARES) ▲	▲	▲	▲	▲	▲	▲	▲
21	14	Fuel System	0%	2.90%	0%	0.39%	2.90%	0.39%	-2.51%
21	15	No Project (CRSSA) ▲	▲	▲	▲	▲	▲	▲	▲
22	16	No Project (ARPA) ▲	▲	▲	▲	▲	▲	▲	▲

* Project costs < $250,000; therefore, no goal
** DBE not applicable
*** No data available
▲ COVID Relief Grant

Using the data from the above table for completed years, the Step 1 figure was adjusted. An average of the Step 1 figure (0.61%) and the median of past participation (0.39%) was calculated. This defined our Step 1 base figure, adjusted for past participation, as **0.50%.**

Taking 0.50% as the final goal value, adjusted for past participation, and applying it to the original dollar amount of the contracted work ($2,646,134), yields a final DBE participation goal of **$13,231**.

Step 3: Breakout of Estimated Race-Neutral and Race-Conscious Participation (26.51 a-c)

Referring again to the table above, the median "Over/Under Achievement" is **0.00%.** This is the amount of participation we would expect in a race-neutral goal.

Ultimately, our Step 2 adjustments have left us with a **0.50%** adjusted goal, with a **0.0%** race-neutral component.

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, the Sponsor, and the Nebraska Department of Transportation – Division of Aeronautics (NDOT-A), as agent for the Sponsor, will provide consultation/outreach services and publication. The consultation/outreach services included posting the airport's DBE program and its overall goal on the NDOT website at:

https://dot.nebraska.gov/business-center/civil-rights/airport-dbe/

Besides that, NDOT-A would notify the following agencies and organizations indicating that the Sponsor is interested in obtaining relevant information regarding goal setting and goal methodology. These organizations include minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor efforts to establish a level playing field for the participation of DBEs.

South Omaha Business Association
Associated General Contractors of America, Nebraska Chapter
Nebraska Center for Rural Affairs
Nebraska Hispanic Chamber of Commerce
Greater Omaha Economic Development Partnership
Nebraska Business Development Center
Nebraska Concrete Paving Association
City of Omaha – Department of Human Rights and Relations
City of Lincoln – Commission on Human Rights
Urban League of Nebraska
Metro Omaha Women's Business Center
Omaha Opportunities Industrialization Center

These agencies and organizations were selected because of the likelihood that they could provide information concerning the availability of disadvantaged and non-disadvantaged businesses; the effects of discrimination on opportunities for DBEs; and efforts to establish a level playing field for the participation of DBEs. Each notification will contain an explicit invitation to meet with the NDOT-A face-to-face or via conference call (i.e., a "scheduled, direct, interactive exchange") to discuss any questions or comments on DBE participation goal-setting.

If the proposed goal changes following review by FAA Civil Rights, the revised goal will be updated, and a revised Public Notice will be issued.

Notwithstanding paragraph (f)(4) of §26.45, Sponsor's proposed goals will not be implemented until this requirement has been met.

PUBLIC NOTICE

Below is the public notice which the **City of Crete** will publish in the local newspapers and will be posted on the Nebraska Department of Transportation (NDOT) webpage:

Public Notice
DBE Program

The **City of Crete** hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of **0.50%** for Federal Aviation Administration (FAA) funded contracts/agreements. The proposed goal pertains to federal fiscal years 2025 through 2027.

The DBE goal and methodology is available for inspection until 30 days following the date of the notice. These items may be seen at the Crete City Hall, 243 East 13th Street, Crete, Nebraska 68333-0086, during regular office hours.

A meeting could be arranged with the Nebraska Department of Transportation - Division of Aeronautics (NDOT-A) office for the purpose of obtaining information relevant to the goal-setting process through the phone number (402-471-2371). Comments will be accepted until 30 days following the date of the notice and can be sent to the followings:

Tom Ourada, DBELO
City of Crete
PO Box 86
Crete, Nebraska 68333

OR

Compliance Specialist
Disadvantaged Business Enterprise Program
FAA Office of Civil Rights
777 S. Aviation Blvd, Suite #150
El Segundo, CA 90245

Attachment 6

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: Disadvantaged Business Enterprise (DBE) Utilization

UTILIZATION STATEMENT
Disadvantaged Business Enterprise

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner. (*Please mark the appropriate box*)

- ❑ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.
- ❑ The bidder/offeror, while unable to meet the DBE goal of _____%, hereby commits to a minimum of _____% DBE utilization on this contract and also submits documentation, as an attachment demonstrating good faith efforts (GFE).

The undersigned hereby further assures that the information included herein is true and correct, and that the DBE firm(s) listed herein have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this statement may be made without prior approval from the Civil Right Staff of the Federal Aviation Administration.

_____
Bidder's/Offeror's Firm Name

_____ _____
Signature Date

DBE UTILIZATION SUMMARY

Percentage	Contract Amount		DBE Amount	Contract
DBE Prime Contractor	$ _____	x 1.00 =	$ _____	_____ %
DBE Subcontractor	$ _____	x 1.00 =	$ _____	_____ %
DBE Supplier	$ _____	x 0.60 =	$ _____	_____ %
DBE Manufacturer	$ _____	x 1.00 =	$ _____	_____ %
Total Amount DBE			$ _____	_____ %
DBE Goal			$ _____	_____ %

If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26.

END FORM 1

FORM 2: Disadvantaged Business Enterprise (DBE) Letter of Intent

LETTER OF INTENT
Disadvantaged Business Enterprise

Bidder/Offer

Name of Firm: _____

Firm Address: _____

Contact person: Name:_____ Phone: (____) _____

DBE Firm

Name of DBE Firm: _____

DBE Firm Address: _____

DBE contact person: Name:_____ Phone: (____) _____

DBE certification Agency:_____Expiration Date:_____
Each DBE Firm shall submit evidence (such as a photocopy) of their certification status.

Classification: ☐ Prime Contractor ☐ Subcontractor ☐ Joint Venture ☐ Manufacturer ☐ Supplier

Category of DBE: ☐ Native American ☐ Hispanic ☐ Asian Pacific ☐ Black ☐ Non-Minority Woman ☐ Other

Work items to be performed by DBE	Description	Quantity	Total

The bidder/offer is committed to utilizing the above-named firm for the work described above. The estimated participation is as follows:

DBE contract amount: $_____ Percent of total contract:_____%

AFFIRMATION

The above-named firm affirms that it will perform that portion of the contract for the estimated dollar value as stated herein above.

BY: _____
(Signature) (Title)

In the event the bidder/offer does not receive the award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

Attachment 7

DBE Monitoring and Enforcement Mechanisms

The City of Crete has the following remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract.
- Breach of contract action, pursuant to Nebraska Statute
- 3-504 City Airport Authority
- 3-116, 3-120, 3-125 NDA
- Other sections of Nebraska Statues that may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provisions of Nebraska Statue 48-601 to 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes 48-1101 through 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes 48-1201 through 48-1277.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26
- Enforcement action pursuant to 49 CGR Part 31
- Prosecution pursuant to 18 USC 101.

Attachment 8

DBE Certification Application Form

State of Nebraska DBE Certification Application
The DBE Certification Application is available at the following website.

https://dot.nebraska.gov/media/5821/c-users-royleach-desktop-it-umbraco-docs-dbe-cert-application.pdf

Attachment 9

State's UCP Agreement

State of Nebraska DBE Unified Certification Program
The DBE Unified Certification Program is available at the following website:

https://dot.nebraska.gov/media/113234/nebraska_ucp.pdf

Attachment 10

Small Business Element

A. Objective (49 CFR Part 26.39)

Recognizing that the DBE Program goals are met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses; the Airport Sponsor seeks to implement a small business element into its current DBE policy. The Airport Sponsor is including this element to facilitate competition by and expand opportunities for small businesses. The City of Crete is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. If necessary, the City of Crete will meet its objectives using a combination of the following methods and strategies:

1. Set asides: Where feasible, the City of Crete will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on FAA-assisted contracts. A "set-aside" is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the City of Crete and its prime contractors/ consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner's gender, race, or geographic location. The project manager and DBELO will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. In the event that a set-aside is not established on an FAA-assisted contract, the project manager and small business officer will document why a small business set-aside is inappropriate.
2. Unbundling: The City of Crete, where feasible, may "unbundle" projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The City of Crete will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be "unbundled" or bid separately. Similarly, the City of Crete will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.

However, based on data from the Nebraska Department of Transportation (NDOT), current procedures utilized to structure contracting requirements not only facilitate competition by small business concerns, but have enabled small business concerns to be very successful in securing work both as prime contractors and subcontractors. Because of the high level of success small businesses have had in competing for and performing prime contracts, the sponsor does not feel it is necessary at this time to alter or restructure its contracting requirements in order to foster small business participation.

It has been determined that contractors (primes and sub) doing airport projects in Nebraska are included in NDOT contractor lists. The Nebraska Department of Transportation – Division of Aeronautics (NDOT-A) and airport sponsors will continue to monitor DBE and small business participation.

The City of Crete, NDOT and NDOT-A will continue to ensure that prime contracts are available for small businesses. The assessment will be conducted by personnel from the NDOT-A. If an assessment shows

that the level of participation by small businesses has decreased significantly, the City of Crete and NDOT-A will promptly take all reasonable steps to increase the level of participation.

NDOT currently requires all firms (prime and subcontractors) that participate on NDOT projects to provide average annual gross receipts information. The NDOT requires firms to indicate if their average annual gross receipts exceed $22.41 million to better verify that only eligible firms are identified as small businesses.

The City of Crete will continue to actively conduct outreach with organizations in accordance with procedures of the DBE program.

B. Definitions

1. Small Business:
   A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

C. Implementation Schedule

The small business element was last reviewed on June 14, 2024, and will be reviewed concurrently to regular program updates.

D. Assurances

The City of Crete makes the following assurances:

1. The DBE Program, including its small business element is not prohibited by state law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;
3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the DBE Program is open to small businesses regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program, and;
5. Outreach to those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.