

Addendum #1

May 27, 2022

NOTICE OF REQUEST FOR PROPOSALS

Flagstaff Metropolitan Planning Organization (MetroPlan)

RFP Issued: 5/18/2022



This is an addendum to the South Lone Tree Corridor Planning and Environmental Linkages (PEL) study request for proposals (RFP). Please review the following to updates before submitting a bid/proposal to MetroPlan.

Please reference the original RFP and scope of work online at: <https://www.metroplanflg.org/rfp>

Section 1 – Revision to Proposal Length

The proposal length has been changed from up to ten (10) pages to five (5) pages max. The Consultant(s) may choose to submit less than 5 pages. *(Update to page 10 of the RFP)*

Section 2 – Revision to MetroPlan Contacts

Address all question to Mandia Gonzales at mandia.gonzales@metroplanflg.org, 928-266-1293. *(Update to page 10 of the RFP)*

Section 3 – Revision to Project Timeline

The July 6, 2022, Interviews by the section committee has been moved to June 27, 2022. Additionally, MetroPlan views this meeting as a question and answer session between a prospective candidate or team and the selection committee. A formal presentation is not warranted. *(Update to page 9 of the RFP)*



METROPLAN

GREATER  FLAGSTAFF

SOUTH LONE TREE CORRIDOR PLANNING & ENVIRONMENTAL LINKAGES STUDY

NOTICE OF REQUEST FOR PROPOSALS

Flagstaff Metropolitan Planning Organization
(MetroPlan)

Issued:

5/18/2022

Submittals Due:

6/17/2022 12:00 Noon Local Time

Table of Contents

PUBLIC NOTICE.....	2
INTRODUCTION.....	3
PROJECT BACKGROUND.....	3
PROJECT TASKS AND DELIVERABLES.....	5
TASK 1. Project Initiation and Administration	5
TASK 2. Develop Corridor Base and Future Conditions	6
TASK 3. Develop Conceptual Footprint.....	6
TASK 4. Establish Purpose and Need Statement.....	7
TASK 5. Planning and Environmental Linkages Questionnaire and Checklist.....	7
ADDITIONAL MATERIALS.....	8
PROJECT TIMELINE	9
Attachments.....	15

PUBLIC NOTICE

REQUEST FOR PROPOSALS

MetroPlan

LONE TREE CORRIDOR PLANNING & ENVIRONMENTAL LINKAGES STUDY

MetroPlan Greater Flagstaff, (aka Flagstaff Metropolitan Planning Organization and herein referred to as MetroPlan) invites qualified CONTRACTORS to respond to the Request for Proposals (RFP) to provide professional services for the Lone Tree Corridor Planning and Environmental Linkages Study and Statement (herein referred to as the Study).

Response to Request for Proposals will be received until **June 17, 2022, at the MetroPlan office, 6 East Aspen Suite 200, Flagstaff Arizona 86001.**

Any proposal received after 12:00 pm local time on the above-stated date will be returned unopened.

Submittals must conform to the prepared Scope of Work within the RFP available at

www.metroplanflg.org or by request made to the MetroPlan office at rosie.wear@metroplanflg.org

The proposal envelope shall indicate the name and address of the respondent, and shall be addressed to MetroPlan, 6 East Aspen Suite 200, Flagstaff, AZ 86001. Please include on the outside of the envelope:

Request for Proposals: MetroPlan Lone Tree Corridor PEL.

Rosie Wear

Rosie Wear, Business Manager

INTRODUCTION

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified CONTRACTORS for the FY 2022 Lone Tree Corridor Planning and Environmental Linkages (PEL) Study. The purpose of this PEL project is to provide direction to MetroPlan staff and member agencies about potential environmental impacts and mitigations so to allow for timely development of the future roadway expansion along South Lone Tree Road.

MetroPlan is seeking the identification of environmental, community, and economic opportunities and challenges, and the scoping of a conceptual alternative to assure the largest potential footprint of this section of roadway can be cleared and approved through the subsequent NEPA process. The primary work products will lead to a conceptual footprint for the expansion of Lone Tree Road (from J.W. Powell Blvd. to Zuni Dr.) and a Planning and Environmental Linkages (PEL) Checklist and Questionnaire.

The goal of the PEL project is to provide preliminary identification of environmental impacts and environmental mitigation. This project will NOT provide roadway design(s) alternatives; however, it will identify and establish the largest probable footprint which will inform the future design of this section of roadway. The environmental constraints will be considered during future transportation planning and design phases, which will be led by the City of Flagstaff.

This project will also provide MetroPlan, the City of Flagstaff, ADOT, and FHWA guidance in establishing future environmental studies required to meet the National Environmental Policy Act (NEPA) of 1969.

The primary deliverable products for the PEL will include the following:

- Initial project memo identifying a project management plan, decision-making process, and public involvement plan.
- Provide weekly project updates and monthly progress reports
- Provide information and support for stakeholder and public outreach
- Corridor Base Conditions Report
- Corridor Future Conditions Report
- Develop a conceptual footprint of the corridor to inform future planning and design
- Project Purpose and Need Statement
- Provide PEL Questionnaire and Checklist

PROJECT BACKGROUND

In 2017, The MetroPlan Executive Board approved including the Lone Tree Corridor project(s) within the Regional Transportation Plan (RTP), known as Blueprint 2040 (<https://www.metroplanflg.org/rtp-blueprint2040>). The Lone Tree Corridor was identified as a regionally significant project to improve connectivity, reduce congestion, provide an alternate route to central businesses and organizations while spurring economic development, and improve multimodal transportation options. Links to additional studies and plans are provided at the end of this request for proposal. The corridor was identified as needing three distinct projects and outcomes:

Lone Tree Railroad Overpass

- Extension of Lone Tree Road from Butler Avenue to Route 66, including a bridge structure over the BNSF Railway (BNSF) railroad tracks and future US Army Corps Rio de Flag Flood Control channel
- Provides an important transportation connection over a transportation barrier (BNSF tracks)
- Improves circulation for the entire central area
- Creates a potential alternative to Milton Road
- Promotes multimodal transportation options by adding important sidewalk, bike lane, and FUTS trail links along the road and over the railroad tracks
- Grade-separated overpass connection provides improved safety from decreasing traffic at existing at-grade crossings

Currently in the design phase by the City of Flagstaff and is fully funded.

Lone Tree Road Widening

- Widens Lone Tree Road from 2 to 4 lanes between Butler Avenue and Pine Knoll Drive
- Improves circulation for the entire central area
- Creates a potential alternative to Milton Road
- Promotes multimodal transportation options by adding missing bike lanes and sidewalks to the corridor
- Completes a planned FUTS along the west side of Lone Tree Road

Currently in the planning phase by the City of Flagstaff and is fully funded.

South Lone Tree Expansion and Upgrades (PEL Study Area)

South Lone Tree is an important part of the corridor. The roadway and intersections within the study area have been identified as needing improvements to meet future demand and growth related to the future Juniper Point subdivision and planned growth in general. Additionally, the intersection at Lone Tree and J.W. Powell is integral to the future extension of J.W. Powell to the east where it will meet Fourth Street and provide a new arterial for future development.

The City of Flagstaff has applied for federal funds for roadway improvements.

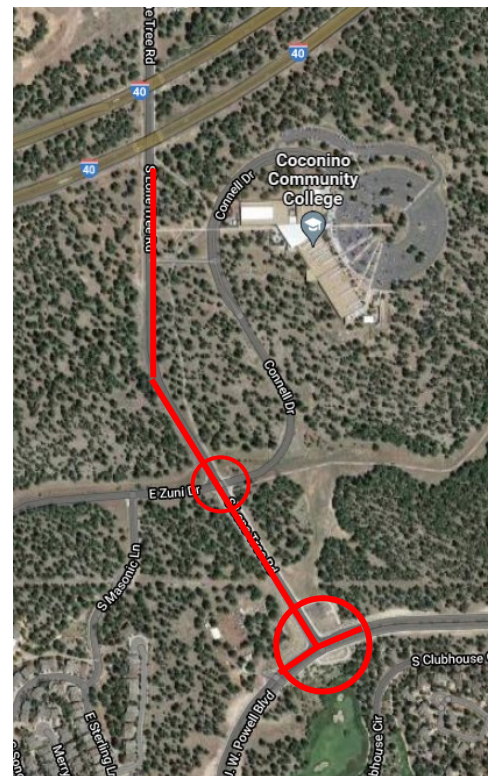


Figure 1: Lone Tree PEL Study Area

The Intended termini: S. Lone Tree Rd. from I-40 (northern terminus) to E. J.W. Powell Blvd (southern terminus), may include up to 300 feet in either direction (west and east terminus) along E. J.W. Powell Blvd.

PROJECT TASKS AND DELIVERABLES

TASKS: These are the minimum tasks required for the project

TASK 1. Project Initiation and Administration

1.1 Kick-off and Project Management Meetings

- A. Deliverable: Conduct a minimum 90-minute kick-off meeting with MetroPlan staff to review the scope, project schedule, public involvement plan, and deliverables.

1.2 Ongoing Project Management

CONTRACTOR will provide a Project Management Plan that specifies and commits to maintaining regular communication with the MetroPlan project manager, takes ownership of keeping follow-up items rolling forward, and provides a written status report and monthly invoice.

- A. Deliverable: Provide weekly meetings and/or email updates to the MetroPlan project manager of activities completed in the past week and activities projected for the coming week.
- B. Deliverable: Provide a monthly written report to MetroPlan staff team that includes tracking of deliverables to date, tracking of budget expenditures to date, monthly invoice, and a list of activities planned for the coming month.

1.3 MetroPlan Board and Committee Involvement

Schedule and conduct project meetings at the beginning and end of the project with the MetroPlan project manager and Technical Advisory Committee (TAC). MetroPlan staff will engage the Executive Board and Management board regarding the PEL. The CONTRACTOR will prepare any necessary collateral materials (memos, maps, slides, etc.) for MetroPlan Staff to update the board and committee.

- A. Deliverable: Provide an approximate 30-minute update to the TAC at the beginning and end of the project (2 meetings in total).
- B. Deliverable: Provide project materials such as maps, memos, slides, etc. for MetroPlan staff to deliver to various boards and committees.

1.4 Stakeholder Engagement

MetroPlan will identify and outline the roles and responsibilities of stakeholders, this list will include but is not limited to City and County staff, adjacent property owners, Coconino Community College, Northern Arizona University (NAU), local utility providers, local Tribes, and AZ State Fish & Wildlife.

Given that the PEL is providing guidance on future roadway design, the CONTRACTOR is not expected to provide a robust public outreach and engagement plan regarding design. However, the CONTRACTOR will provide leadership in developing content for and synthesizing information from stakeholder engagement and the public sufficient to support a Purpose and Need statement. MetroPlan will lead public and stakeholder communications through various media.

CONTRACTOR efforts must comply with MetroPlan’s adopted Title VI and Environmental Justice plan available at www.metroplanflg.org/compliance. CONTRACTOR will use IAP2 standards to recommend engagement levels for various groups, document direction provided by staff, and manage the process in a manner consistent with the direction provided.

- A. **Deliverable:** Provide content and information to stakeholders and the public by conducting (2) two outreach events. The first event will focus on the project’s purpose and seek additional input. The second event will focus on the outcomes and results.
- B. **Deliverable:** Summarize interactions with stakeholders and other environmental agencies in tabular form.

Figure 2: Stakeholder summary example

Organization	Name	Comment
North Dakota Environmental Health Section	L. David Glatt	The ND Environmental Health Section believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. Necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Take care by bodies of water and return disturbed areas back to original conditions as soon as possible after work is completed. Take caution to prevent spills of oil and grease from equipment. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Minimize noise effects by ensuring construction equipment is in good working order and construction activities are not conducted during early morning or late evening hours. The department owns no land in or adjacent to the proposed improvements, nor does it have any projects scheduled in the area. (Note: Guidelines for minimizing degradation to waterways were attached to Mr. Glatt’s letter)
Nat. Resources Conservation Service	Jerome M. Schaar	NRCS has determined this project is located in an area within city limits where FPPA does not apply; therefore, no further action is required.
Bureau of Indian Affairs	Weldon Loudermilk	The Bureau of Indian Affairs has no environmental objections to this action and finds that the listed action will not affect cultural resources on Tribal or individual landholdings.
FEMA – US Department of Homeland Security	David A. Kyner	FEMA’s major concern is if the property is located within a mapped Special Flood Hazard Area, any development in these areas requires further consideration. FEMA recommends that the local Floodplain Manager for Fargo, ND (Mr. R. Strand) is contacted to receive further guidelines regarding the impact that the project might have to the regulations and policies of the National Flood Insurance Program.

TASK 2. Develop Corridor Base and Future Conditions

Through the review of the base and future conditions of the corridor, the CONTRACTOR will define the travel study area, report on adjacent property ownership, define alternative travel modes, and identify operationally independent segments. These documents should include a preliminary review of both transportation impacts and environmental impacts. Environmental impact may include environmental justice and social impacts, water quality, air quality, climate impacts, noise, wildlife and threatened or endangered species, historical and archaeological resources, section 4(f), as applicable.

- A. **Deliverable:** Corridor Base Conditions memorandum will be developed to address as many NEPA resource priority factors as possible.
- B. **Deliverable:** Corridor Future Conditions memorandum will be developed based upon 2045 socio-economic data developed as part of MetroPlan’s current Regional Transportation Plan update, *Stride Forward* (https://www.metroplanflg.org/files/ugd/ef2502_e1a08cfc69c94ea988e9f46cae430405.pdf), and updated Traffic Model. These assessments will be a precursor for establishing purpose and need.

TASK 3. Develop Conceptual Footprint

The CONTRACTOR will identify the maximum width of the corridor for future expansion. An evaluation process consisting of performance measures and evaluation criteria will also be established. Recommendation(s) from the CONTRACTOR may include “right-sizing” of the alignment to accommodate all modes (bikes, pedestrians, and transit) and connect to the future extension of J.W. Powell Blvd. to the east while minimizing environmental impacts.

- A. **Deliverable:** The CONTRACTOR will scope a conceptual footprint to assure the largest footprint can be cleared through the subsequent NEPA process. This deliverable is expected to be submitted as a map (GIS) and/or conceptual sketches that identify environmental constraints. MetroPlan is seeking a recommendation on the largest footprint viable with minimal environmental impacts. The CONTRACTOR will deliver as a PDF and original data files.

TASK 4. Establish Purpose and Need Statement

The CONTRACTOR will prepare a purpose and need statement. This statement should provide a high-level review and understanding of the transportation problem(s) and environmental impacts along the corridor. The purpose and need statement should provide as much information and detail as possible to reduce time spent refining the purpose and need statement in the future NEPA process.

- A. Deliverable: Purpose and Need Statement

TASK 5. Planning and Environmental Linkages Questionnaire and Checklist

This project's conclusions will be a summary of findings and mitigation identification in the form of a Planning and Environmental Linkages (PEL) Questionnaire and Checklist. This questionnaire/checklist will be prepared and submitted to ADOT and/or FHWA for review, comment, and any required signatures. An example of a questionnaire/checklist can be found [here](#).

- A. Deliverable: CONTRACTOR will provide a Planning and Environmental Linkages Questionnaire and Checklist using FHWA standards. The questionnaire/checklist should be consistent with the 23 CFR 450 (Planning regulations) and other FHWA policies on Planning and Environmental Linkage (PEL) process. The questionnaire/checklist will act as a summary of the planning process and ease the transition from planning to NEPA. MetroPlan anticipates that the questionnaire will be updated in future planning and design processes.

Summary of Deliverable Products

Required products of this project are listed below. An administrative draft of each deliverable will be submitted in electronic form and when requested hard-copy format to the MetroPlan project manager for review. Comments received during the review process will be incorporated into the final drafts.

- Initial project memo identifying a project management plan, decision-making process, and public involvement plan.
- Provide weekly project updates and monthly progress reports
- Provide information and support for stakeholder and public outreach
- Corridor Base Conditions Report
- Corridor Future Conditions Report
- Develop a hypothetical footprint of the corridor to inform future planning and design
- Project Purpose and Need Statement
- Provide a PEL Questionnaire and Checklist

ADDITIONAL MATERIALS

The map below shows the study area boundaries and the larger context of future projects and developments.



Relevant Planning Documents

- [Juniper Point Specific Plan](#) (2006)
- Lone Tree Corridor Study (2006)
- [Lone Tree Corridor Specific Plan](#) (2008)
- [Flagstaff Parks and Recreation Organisational Master Plan](#) (2013)
- [Flagstaff Regional Plan 2030](#) (Ratified 2014) - *Update in progress* ([Regional Plan 2045](#))
- Juniper Point Traffic Impact Analysis (2014)
- [Blueprint 2040: Regional Transportation Plan](#) (2017) - *Update in progress* ([Stride Forward](#))
- [Management Plan for Legally-Designated Open Space Properties](#) (2020)
- [Active Transportation Master Plan](#) – DRAFT (2021)

To download all of the documents listed above, click [here](#).

PROJECT TIMELINE

The approximate start date for this project is July 14th, 2022.

May 18	RFP Released
May 24	Preproposal Meeting 10:30 am
June 17	Responses to RFP are due by 12:00 noon
June 21	Responses to RFPs reviewed and ranked
July 6 June 27	Interviews may be conducted by the selection committee Questions and Answers session by the selection committee
July 14	Notice to proceed

PROPOSAL REQUIREMENTS AND EVALUATION

Written Questions

Questions regarding this RFP must be received in writing no later than 5:00 PM local time on the date that is 10 business days after the issuance date of the RFP. Questions of significance to all respondents may require an amendment to this RFP, which may also require adjustments to the schedule. Verbal statements or instructions shall not constitute an amendment to the RFP. Inquiries may be made to:

Mandia Gonzales, MetroPlan Transportation Planner, 928-266-1293

Or via Email: mandia.gonzales@metroplanflg.org

Pre-Proposal Meeting

A virtual Pre-Proposal meeting to answer questions about this RFP will be held on **May 24th, 2022, at 10:30 AM** via ZOOM. <https://us02web.zoom.us/j/83612116988?pwd=aU95RUJvT3RJVOZWZVQ2R0FSdXd6Zz09>

Meeting ID: 836 1211 6988

Passcode: 869063

Preparation

Proposals shall consist of no more than **five (5)** double-sided 8 ½ x 11 pages including the front and back cover, using not less than type size 11 font. The proposal length does not include a table of contents, resumes, required grant provision/certification documents. To be considered, proposals must include signed certification forms (Attachments B, C, and D) and the required email confirmation of Bidders List from AZUTRACs or will be deemed non-responsive. Proposals should provide a concise description of the CONTRACTOR'S qualifications, team members, project approach, project schedule, and a detailed cost proposal, by task, to deliver the proposed work under the RFP.

All costs incurred for proposal preparation, presentation, or contract negotiations are the responsibility of the CONTRACTOR. MetroPlan will not pay for any information solicited or received.

Proposal References

Proposal shall include contact information and references for the lead staff and firm submitting the RFP.

Submittals

One (1) electronic copy (flash drive) and one (1) bound printed copies of the complete response to RFP are to be received no later than 12:00 pm local time on **June 17, 2022**. The response to the RFP should be addressed to:

MetroPlan

6 East Aspen Suite 200

Flagstaff, AZ 86001

Submitted proposals become the property of MetroPlan and will not be returned.

Late Proposals

Any proposal received after 12:00 PM local time on **June 17, 2022**, will not be considered.

Review Process

A review committee comprised of MetroPlan staff, RTP Steering Committee, and/or MetroPlan TAC members will evaluate the proposals to the RFP for this project. A description of what the proposals need to contain is in the section “preparation” above. The following evaluation criteria will be used by MetroPlan’s evaluation committee to evaluate the proposals:

Evaluation Criteria (100 Points)

1. Proposed project approach, particularly for tasks 3, 4, and 5. – 30
2. Specific experience of the CONTRACTOR in a project of this type – 20
3. Experience of the proposed project team and availability within current and anticipated workload for this project – 20
4. Cost proposal – 15
5. Overall quality of the response to RFP evidencing interest in the project – 10
6. Proposed schedule – 5

After evaluation of the responses to the RFP, a shortlist of up to three (3) CONTRACTORS will be determined based upon the ranking of the Review Committee members. A presentation/interview session with the shortlisted CONTRACTORS *may* comprise the second half of the evaluation/selection process.

If presentations/interviews are conducted, candidates will be required to demonstrate their understanding and familiarity with the scope, location, and other aspects of this project. Criteria upon which the presentation/interview of each firm will be evaluated, with weighting for each criterion, are as follows:

1. Understanding of existing conditions and project information – 25%
2. Identification of key issues – 25%
3. Appropriate approaches for the project – 25%
4. Demonstrated Experience and capabilities in the development of similar projects – 25%

The evaluation committee members will individually evaluate the presentation/interview of each of the candidate firms and rank them according to the aforementioned criteria. The evaluation committee will formulate a consensus ranking and generate a recommendation to the MetroPlan Executive Director. The MetroPlan Executive Director will consider the Committee’s recommendation and approve the initiation of contract negotiations. The MetroPlan Executive Director will meet with the top-ranked CONTRACTOR for the purposes of negotiating a contract. If negotiations are successful, the MetroPlan Executive Director will present a draft contract to the MetroPlan Board of Directors for consideration of approval, rejection, or modification. Any such contract may be reviewed with input requested from the RTP Advisory Group, the Technical Advisory Committee, and the Management Committee before it goes to the MetroPlan Executive Board. If negotiations are unsuccessful, the

MetroPlan Executive Director will terminate negotiation efforts with the top-ranked CONTRACTOR and open negotiations with the next highest-ranked CONTRACTOR, and so on. This process will continue until negotiations are successful, or until this RFP is terminated.

The MetroPlan Executive Board reserves the right to reject any and all proposals, or any part thereof; to accept any proposal or any part thereof, or to waive any informalities when it is deemed to be in MetroPlan's best interest.

Withdrawal of Proposals

Proposals may be withdrawn by written notice received at any time prior to the award.

Responsibilities/Compliance

The CONTRACTOR shall comply with all federal third-party agreements and Title VI assurances, including but not limited to, the Title VI Civil Rights Act of 1964, and Title 49, Code of Federal Regulations, Part 2, MAP-21, and FAST Act.

Additional Terms and Conditions

1. This solicitation does not commit METROPLAN to award an Agreement or to pay for costs associated with the preparation of the RFP or pre-agreement expenses.
2. METROPLAN reserves the right to make an award considered to be in the best interest of the region.
3. METROPLAN reserves the right to accept or reject any or all RFP responses received, to cancel all or part of the RFP, or to negotiate with all qualified firms.
4. METROPLAN may, at its discretion, require additional terms and conditions at the time the final Agreement is negotiated. The additional terms and conditions would be for clarification of particular language or correcting errors in the RFP including for example omissions or misstatements that are discovered.
5. No prior, current, or post-award verbal agreement(s) with any officer or employee of METROPLAN shall affect, modify, or supersede any terms or modifications of this RFP.
6. The Firm chosen may be required to submit revisions of their responses as a result of negotiations.
7. The selected Firm will be required to furnish evidence of insurance coverage to include, but not limited to Professional Liability, Workers Compensation, and automobile. Set limits will be provided at contract negotiations.
8. The selected CONTRACTOR and SUB-CONTRACTORS shall possess any necessary Arizona licenses and permits necessary to operate in the State and shall provide evidence of such to METROPLAN.
9. The selected CONTRACTOR and SUB-CONTRACTORS shall not assign or subcontract services or responsibilities without prior written approval from the METROPLAN.
10. Any changes to the response requirements will be made by a written addendum. METROPLAN reserves the right to waive any minor irregularities, informalities, or oversights in the RFP documents, or any corresponding responses that do not materially affect or alter the intent and purpose of the RFP, that is not in violation of Arizona or Federal Government rules, laws, and regulations.
11. All materials and data used for this study are the property of METROPLAN.

12. The selected CONTRACTOR shall not release any material, report, or other document related to this project without the written approval of METROPLAN. The CONTRACTOR shall not present information related to this project without the written approval of METROPLAN.
13. The selected CONTRACTOR shall at all times comply with all applicable Federal Funding Agency regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR 's failure to so comply shall constitute a material breach of this contract.
14. METROPLAN reserves the right to engage in a contract extension with the selected CONTRACTOR should additional funding become available.
15. Reaching Project Objectives: Tasks in the scope are designed to accomplish project objectives. If, after the award, critical tasks or products must be changed or be added to the approved work plan in order to reach the stated objectives, a revised work plan and a budget that clearly demonstrates the original scope, the changes needed, and a justification for the changes shall be submitted. Such a modification must be requested by the METROPLAN project manager, and appropriate budget approvals must be obtained, and a revised contract / amendment and/or purchase order must be issued prior to engaging in the work. METROPLAN reserves the right to remove or reduce any tasks during the life of the project that are deemed unnecessary or no longer necessary to reach the project objectives. In the event the CONTRACTOR has already begun working on removed or reduced tasks that were scheduled or approved by the project manager to already begin, METROPLAN will reimburse that portion of the costs sufficient to make the CONTRACTOR whole, as required in federal regulations.
16. Geographical Information Systems (GIS) Data: GIS data used during the Study will be provided in the electronic Study close-out file via Compact Disc (CD) or thumb drive. An additional copy should also be submitted to METROPLAN as applicable. Such data will be in the format of a geodatabase containing all spatial and related data used in the Study. The data will be in the coordinate system:
NAD_1983_StatePlane_Arizona_Central_FIPS_0202_Feet_Intl for all geospatial data submitted. The GIS Attributes Table will use the exact format and field names as provided by the Arizona Department of Transportation, Multimodal Planning Division, GIS Team. Please do not alter the field names, order, or format at all so Department staff can easily consolidate all proposed projects derived from all planning studies completed. Please complete an attributes table for each state highway system proposed project recommended by the study. Each attributes table should be filled out according the Attributes Table Guidance and follow ATIS Nomenclature Standards. This information may be found at:
<https://azdot.gov/planning/transportation-studies>.
17. GIS Metadata Standards: GIS metadata helps to incorporate all known characteristics of a dataset so that those that are not familiar with the data can gain from its knowledge. GIS metadata should be delivered as a XML file. The metadata should include information on, but is not limited to the following:
 - Data summary
 - Data description
 - Data credits (if from existing data what modifications were made?)
 - Data creation methods
 - Purpose for creating the data
 - Contact information for questions
 - Updates schedule
 - Data steward
 - Data extent (i.e. statewide, county wide, etc)
 - Data type (i.e. point, line, or polygon, raster, etc)
 - Limitations of the data
 - Scale range (if any)
 - Include any associated domain values
 - Tags (i.e. searchable words for this data)

Funding

MetroPlan is the designated Metropolitan Planning Organization (MPO) for the Flagstaff, Arizona Urbanized Area, and has available Surface Transportation Block Grant (STBG) funds in accordance with federal and state allocations. In support of the Project, MetroPlan has budgeted these funds for planning activities as identified in accordance with the MetroPlan Unified Planning Work Program.

The project in this solicitation is funded with federal funds through the Arizona Department of Transportation, Multimodal Planning Division. In accordance with 2 CFR 200.328, ADOT shall monitor all activities performed by its staff or by sub-recipients of FHWA and FTA funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met. The CONTRACTOR and its sub-CONTRACTOR (s) shall cooperate with such monitoring as requested.

Attachments

ATTACHMENT A – GRANT PROVISIONS

- [APPENDIX A](#)
- [APPENDIX E](#)
- [APPENDIX F](#)
- [APPENDIX G](#)

ATTACHMENT B – CONSULTANT CERTIFICATION FORM

ATTACHMENT C – DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL ASSURANCE

ATTACHMENT D – LOBBYING CERTIFICATION

ATTACHMENT E – SAMPLE CONTRACT

Federal Third-Party Agreements & Title VI Provisions

Grant Agency: Federal Highway Administration (FHWA) through the Arizona Department of Transportation (ADOT), Surface Transportation Block Grant (STBG), Assistance Listing Number 20.205

Project Name: South Lone Tree Rd. Planning & Environmental Linkages Study

Project Number: MPDG218177-500

FEDERAL THIRD-PARTY AGREEMENTS

APPLICABLE LAWS AND REGULATIONS:

The following terms are required for federally funded projects. These terms may be waived for non- federal funded projects upon written request from the CONSULTANT. The CONSULTANT agrees to include these requirements in each applicable subcontract issued for services under this contract.

Because the solicitation is funded by a Federal agency of the US Department of Transportation (USDOT), the more restrictive of Federal or State Regulations applies.

Where any conflict with Federal laws occurs concerning the programs and functions of the Arizona Department of Transportation (ADOT) as established by the law of this State, such Federal law shall control. For purposes of this section, “Federal law” means any statute passed by the Congress of the United States, any final regulations adopted by any administrative agency of the United States government and published in the Code of Federal Regulations (CFR) or the Federal Register or any final decision of the Federal judiciary.

PROCUREMENT AND CONTRACT PROVISIONS REQUIREMENTS:

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.36 Contract provisions. All other non-Federal entities, including sub recipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

Procurement of recovered materials: Pursuant to 2 CFR Part 200, Subpart F, Appendix II (J) and 2 CFR 200.323, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Telecommunications and Video Surveillance Services or Equipment: Pursuant to 2 CFR Part 200, Subpart F, Appendix II (K) and 2 CFR 200.216 the Contractor shall not procure or obtain, or extend or renew a contract to procure or obtain, or procure or obtain equipment, services, or systems that uses covered telecommunication equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) as described in Public Law 115-232, section 889.

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Domestic Preference: Pursuant to 2 CFR Part 200, Subpart F, Appendix II (L) and 2 CFR 200.32, as appropriate and to the extent consistent with law, the CONSULTANT and its sub-contractors should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber."

OTHER CONTRACT REQUIREMENTS

To the extent not inconsistent with the foregoing Federal requirements, this CONTRACT shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

COMPLIANCE WITH FEDERAL REQUIREMENTS – INCORPORATION OF FUNDING FEDERAL AGENCY TERMS:

Pursuant to ARS 41.2637, if procurement involves the expenditure of Federal assistance or contract monies, METROPLAN shall comply with Federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this chapter.

The Federal Terms and Conditions include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in these CONTRACT provisions. All contractual provisions required by the USDOT are hereby incorporated by reference. Anything to the contrary herein notwithstanding, as authorized by Common Law (49 CFR Part 18) the most restrictive of State or Federally-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this CONTRACT. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any funding Federal agency requests which would cause METROPLAN to be in violation of the Federal terms and conditions. All applicable clauses shown in the funding Federal Agency Grant Agreement with METROPLAN apply to this CONTRACT.

Federal Highways Administration: The Stewardship and Oversight Agreement for Arizona in effect at this time this solicitation was advertised is located at: [Stewardship and Oversight Agreement for Arizona](#)

Federal Transit Administration: The FTA Master Agreement in effect at the time this solicitation was advertised is located at: [FTA Master Agreement FY 2019](#)

NO FEDERAL GOVERNMENT OBLIGATIONS:

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

The CONSULTANT agrees to include the above clause in each subconsultant agreement. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS:

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

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

The CONSULTANT agrees to include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO THIRD PARTY CONTRACT RECORDS:

Representatives of the State and the funding Federal agency, the Secretary of Transportation, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers, and record of the CONSULTANT which are directly pertinent to this CONTRACT for the purposes of making audits, examinations, excerpts, and transcriptions and are authorized to review and inspect the CONTRACT and procurement activities and facilities during normal business hours. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The right of access must not be limited to the required retention period but shall last as long as the records are retained.

Therefore, pursuant to 2 CFR 200.415, A.R.S. § 35-214, and the State of Arizona Accounting Manual, sections 0045 and 7035, the CONSULTANT and is subconsultant(s) shall keep and maintain all books, papers, records, accounting records, files, accounts, expenditure records, reports, costs proposals with backup data and all other such materials related to the CONTRACT and other related project(s). The CONSULTANT shall make all such materials related to the project(s) available at any reasonable time and place during the term of the CONTRACT and for five (5) years after final payment. All documents shall be retained for auditing inspection and copying upon METROPLAN, ADOT or FHWA's request, or any other authorized representative of the Federal Government.

CHANGES TO FEDERAL REQUIREMENTS:

The CONSULTANT shall at all times comply with all applicable Federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference between METROPLAN and the Federal agency providing funding for this CONTRACT, as they may be amended or promulgated from time to time during the term of this CONTRACT. CONSULTANT's failure to so comply shall constitute a material breach of this CONTRACT.

Changes to CONTRACT Scope: Federal legislation and implementing regulations allow for change orders within the Scope of Work covered by the CONTRACT. In the event of changed conditions, an adjustment of CONTRACT Scope is permissible if the altered character of the work does not differ materially from that of the original CONTRACT as long as the work is approved by METROPLAN with the requirement that the change must involve the work covered by the CONTRACT. Changes that materially differ from the Scope of Work are considered Cardinal Changes and are not permissible. All work changes must be reviewed by METROPLAN, ADOT Contracts Program Manager, and/or ADOT Procurement Officer in advance of proceeding to ensure the change is permissible under State and Federal requirements and regulations. Work cannot proceed until appropriate financial and administrative processing has occurred and any federal approvals are received when and where necessary and a modified CONTRACT is issued.

INCORPORATION OF FEDERAL PROVISIONS: All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. All applicable clauses shown in the FTA Master Agreement between the State and FTA apply to each Project funded by the Arizona Department of Transportation using FTA funds. Any requirements of the Stewardship Agreement between the State and FHWA apply to each Project funded by the Arizona Department of Transportation using FHWA funds. This provision shall be incorporated in any sub-contractor/consultant, or lower-tier agreement for which funds from this contract shall be used for payment.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). The preceding provisions include, in part, certain Standard Terms & Conditions required by US DOT, whether or not expressly stated in the preceding CONTRACT provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

FTA FUNDING; CERTIFICATIONS AND ASSURANCES: In the event there is FTA funding for work under this Contract, on an annual basis, the CONSULTANT must agree to comply with all categories of the FTA Certifications and Assurances applicable to the Contract. The FTA Certifications and Assurances will be provided to the CONSULTANT under separate packet as they are released by FTA. Continuation of this Agreement shall be contingent on completion and submission of that packet within the deadline expressed at time of distribution. The FTA Certifications and Assurances, as modified and accepted each year shall be considered incorporated into this Agreement by reference.

The Parties understand and agree that not every provision of the Certifications and Assurances will apply to every Project. The type of Project will determine which Certifications and Assurances apply.

The CONSULTANT also understands and agrees that these Certifications and Assurances are pre-award requirements, generally required by Federal law or regulation, and do not include all Federal requirements that may apply.

The CONSULTANT is ultimately responsible for compliance with the Certifications and Assurances that apply to itself or its Project, even if a Sub-contractor or other Third Party Participant may be involved in your Project, except as FTA determines otherwise in writing. For this reason, we require the CONSULTANT to take the appropriate measures, including, but not limited to, obtaining sufficient documentation from each Sub-contractor and other Third Party Participant to assure the validity of applicable Certifications and Assurances.

Completion and Signing of an FTA Certification and Assurances document is a requirement and a condition to receive FTA funding for any project and does not relieve the CONSULTANT of any obligation of other certifications or assurances required in any contracting process, and should be treated as an addition to such certifications and assurances.

FTA Certification and Assurances are incorporated herein by reference. They may be obtained at <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>.

CHANGES TO FEDERAL REQUIREMENTS:

The CONSULTANT shall at all times comply with all applicable Federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference between METROPLAN and the Federal agency providing funding for this CONTRACT, as they may be amended or promulgated from time to time during the term of this CONTRACT. CONSULTANT's failure to so comply shall constitute a material breach of this CONTRACT.

Changes to CONTRACT Scope: Federal legislation and implementing regulations allow for change orders within the Scope of Work covered by the CONTRACT. In the event of changed conditions, an adjustment of CONTRACT Scope is permissible if the altered character of the work does not differ materially from that of the original CONTRACT as long as the work is approved by METROPLAN with the requirement that the change must involve the work covered by the CONTRACT. Changes that materially differ from the Scope of Work are considered Cardinal Changes and are not permissible. All work changes must be reviewed by METROPLAN, ADOT Contracts Program Manager, and/or ADOT Procurement Officer in advance of proceeding to ensure the change is permissible under State and Federal requirements and regulations. Work cannot proceed until appropriate financial and administrative processing has occurred and any federal approvals are received when and where necessary and a modified CONTRACT is issued.

TERMINATION FOR CAUSE OR CONVENIENCE:

Pursuant to 2 CFR 200, Subpart F, Appendix II, the issuer of this CONTRACT reserves the right to terminate the CONTRACT, in whole or in part at any time, when in the best interests of the issuer without penalty or recourse. Upon receipt of written notice, the CONSULTANT shall stop all work, as directed in the notice, notify all sub-recipients of the effective date of the termination and minimize all further costs to the issuer of this CONTRACT. In the event of termination under this paragraph, all documents, data, and reports prepared by the CONSULTANT and its sub-contractors under this CONTRACT shall become the property of and be delivered to the issuer of this CONTRACT upon request. The CONSULTANT and its sub-contractors shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials/deliverables accepted before the effective date of the termination. The CONSULTANT and its sub-contractors shall continue to perform in accordance with the requirements of the CONTRACT, up to the date of termination, as directed in the termination notice.

The issuer of this Contract shall reimburse the CONSULTANT for those eligible expenses incurred during the Contract period which are directly attributable to the completed portion of the work covered by this Contract, provided that the work has been completed in a manner satisfactory and acceptable to the issuer. The CONSULTANT shall reimburse its sub-contractor in a similar fashion. The CONSULTANT and its sub-contractors shall not incur new obligations for the terminated portion after the effective date of the termination.

In addition to the rights reserved in the Contract, the issuer may terminate the Contract in whole or in part due to the failure of the CONSULTANT or its sub-contractors to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract.

This Contract may be terminated by either party provided that a termination shall not be effective until 30 days after a Party has served written notice upon the other Party. This Contract may be terminated by mutual consent of all Parties or unilaterally by either Party without cause.

DEBARMENT AND SUSPENSION CERTIFICATION

Each participant of Federal funding must certify on Attachment B *“that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency, and that they have not been convicted or had civil judgement rendered within the past three years for certain types of offenses.”*

Therefore, pursuant to 2 CFR 200, Subpart F, Appendix II and 23 CFR 121 (J), the CONSULTANT shall not award a Sub-contract to any parties listed on the government-wide exclusions list in the System for Award Management (SAM).

ANTI-LOBBYING

Pursuant to 2 CFR 200, Subpart F, Appendix II (I), for any contract exceeding \$100,000, the CONSULTANT and its sub-contractors shall file the required certification in Attachment D. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

ENVIRONMENTAL PROTECTION

Pursuant to 2 CFR 200, Subpart F, Appendix II, for contracts in excess of \$150,000, the CONSULTANT herein agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the contracting agency and to ADOT, who will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

ENERGY CONSERVATION

The is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency, which is contained in the State Energy Conservation Plan issued by the ADOT in compliance with the Energy Policy Conservation Act (Public Law. 94-163).

ENVIRONMENTAL PROTECTIONS

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

IMMIGRATION AND EVERIFY: To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its sub-contractors/consultants warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties' or its subcontractors' employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.

DRUG-FREE WORK PLACE

The CONSULTANT agrees to comply with the laws governing a drug and alcohol-free workplace in compliance with the Federal Drug-Free Workplace Act of 1988 and 23 CFR 630.112(c)(3) when and where relevant.

TRAVEL

All travel for the CONSULTANT must comply with the State of Arizona (State) policies for Travel. Only actual expenses are reimbursable, within maximum reimbursement limits as described and established by the rates for travel: A.R.S. 38-621 through 38-627, Reimbursement for Expenses; State of Arizona Accounting Manual (SAAM), Section 50.65, Vendor Travel, Section 50.95 Reimbursement Rates available at <https://gao.az.gov/publications/saam>. In the event the MPO chooses to reimburse CONSULTANTS at rates higher than those authorized in the State travel policies, when submitting travel reimbursement requests, each receipt must indicate the amount that exceeds the State rate. The CONSULTANT shall also comply with the policies governing individually operated motor vehicles in Section 50.15 of the SAAM. Travel costs paid to CONSULTANTS must always be supported by appropriate documentation and in the case of rental vehicles, the ADOT approved justification form.

FLY AMERICA REQUIREMENTS

The CONSULTANT agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients of Federal funds and their CONSULTANTS are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONSULTANT agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

PROMPT PAYMENT

The funding in this Contract includes reimbursement to the Issuer of expenditures necessary to accomplish the Project. Payment by the Issuer may not rely on receipt of funds from the Arizona Department of Transportation before paying CONSULTANTS.

Pursuant to 49 CFR 26.29 CONSULTANTS must pay Subcontractors for satisfactory performance (i.e., all the tasks called for in the subcontract for the invoicing period have been accomplished and documented as required by the Issuer and any deliverables are approved by the relevant approver no later than 7 days from receipt of each payment the Issuer makes to the CONSULTANT. The prompt payment provision applies to Subcontractors at all tiers. This applies to all Subcontractors, not just DBEs.

In the event the CONSULTANT fails to invoice the Issuer according to its scheduled invoicing activities, and in any case where a CONSULTANT's invoice has been rejected through no fault of the sub-contractor's performance, the CONSULTANT shall pay each Subcontractor for satisfactory work completed in no more than 30 calendar days from receipt of invoice for CONSULTANT-accepted work.

RETAINAGE

CONSULTANTS are herein notified they are prohibited from holding retainage from Subcontractors, nor are CONSULTANTS subject to retainage withholding by the Contracting Agency for this Project pursuant to 49 CFR 26.29.b(1).

CERTIFICATION OF ELIGIBILITY OF COSTS

Pursuant to 2 CFR 200.402 - .414, 2 CFR 200.420 - .475, and 2 CFR 200.415, the CONSULTANT shall assure that costs invoiced are consistent and eligible for federally funded projects.

To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment must include a certification, signed by an official who is authorized to legally bind the CONSULTANT which reads as follows:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY

The CONSULTANT shall ensure that all funds under awarded in this Project shall be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

NON-DISCRIMINATION

The CONSULTANT is required to comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 26 through Appendix H and Title 23, CFR 710.405 (b) are made applicable by reference and are hereinafter considered a part of this CONTRACT. The CONSULTANT is required to comply with the provisions of Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41-CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this CONTRACT.

DISADVANTAGE BUSINESS ENTERPRISE (DBE)

The CONSULTANT and subconsultant(s) are required to comply with all Disadvantaged Business Enterprise (DBE) requirements as part of the Arizona Department of Transportation Disadvantage Business Enterprise Plan. Appendix F outlines DBE provisions for the CONTRACT.

PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, the CONSULTANT shall comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

AMERICANS WITH DISABILITIES ACT: The CONSULTANT assures that it will comply with applicable provisions of the Americans with Disabilities Act (ADA), (Public Law No. 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including 28 CFR parts 35-36, and applicable provisions of 49 CFR Parts 27, 37 and 38: Transportation for Individuals with Disabilities; Final Rule. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding “No—Discrimination”.

ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000(d) 1 note, and with the provisions of USDOT Notice “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries,” 70 Fed. Reg. 74087, December 14, 2005.

ENVIRONMENTAL JUSTICE

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42

U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

GEOGRAPHIC INFORMATION AND RELATED SPATIAL DATA

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

GEOGRAPHIC PREFERENCE

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

ORGANIZATIONAL CONFLICTS OF INTEREST

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:

- (1) **When it Occurs.** An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:
 - a. To that Third Party Participant or another Third Party Participant performing the Project work, and
 - b. That impairs that Third Party Participant's objectivity in performing the Project work, or
- (2) **Other.** An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,
- (3) **Disclosure Requirements.** The Recipient must disclose to MetroPlan, and each of its Subrecipients must disclose to the Recipient:
 - a. Any instances of organizational conflict of interest, or
 - b. Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and
- (4) **Failure to Disclose.** Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension, as described in 2 CFR 200.339.

CONSULTANTS will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the contracting agency, the Arizona Department of Transportation or the Federal funding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent, any member of his immediate family, His or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in

the firm selected for award. Department officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from CONSULTANTS, potential contractors, or parties to subagreements.

Conflict of Interest:

Pursuant to 2 CFR 200.112 and 2 CFR 1201.112, the CONSULTANT shall disclose in writing any potential conflict of interest to the federal funding agency, the contracting agency, or the Arizona Department of Transportation.

FEDERAL SINGLE AUDIT REQUIREMENTS FOR STATE ADMINISTRATION FEDERALLY AID FUNDED PROJECTS ONLY

Non Federal entities that expend \$750,000 or more in a year in Federal Awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215(a) of OMB Circular A-133 Subpart B—Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232.

Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

VETERANS PREFERENCE

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

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. Chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, and individual with a disability, or a former employee.

SAFE OPERATION OF MOTOR VEHICLES

The CONSULTANT agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and
- (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving.

The CONSULTANT agrees to comply with:

- (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
- (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and
- (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

- (a) Safety. The CONSULTANT agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,
- (b) Contractor Size. The CONSULTANT agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and
- (c) Extension of Provision. The CONSULTANT agrees to include the preceding section in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

TRIBAL CONSULTATION:

In the event that this project is located within tribal land or includes tribal involvement as a stakeholder, the Contracting Agency and the CONSULTANT must exercise tribal consultation and coordination protocol when providing related services. The purpose for this provision is to ensure compliance with "ADOT's Tribal Consultation Policy" and Arizona Revised Statute Section 41-2051, Subsection C - Responsibilities of State Agencies: <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/02051.htm>.

An ADOT Tribal Transportation Consultation Online Training Course and Handbook are available to the CONSULTANT and shall be reviewed upon selection. For an understanding of what that protocol entails, refer to Module 4 of the Course which is located on the Arizona Tribal Transportation website at: <http://www.aztribaltransportation.org>.

REPORT DISCLAIMER:

Pursuant to 23 CFR 420.117(e), all reports and other project-related documents shall contain the following disclaimer statement:

"This report was funded in part through grant[s] from the Federal Highway Administration and/or Federal Transit Administration, U.S. Department of Transportation. The contents of this report reflect the views and opinions of the author(s) who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily state or reflect the official views or policies of the U.S. Department of Transportation, the Arizona Department of Transportation, or any other State or Federal Agency. This report does not constitute a standard, specification or regulation" Trade or manufacturers' names that may appear herein are cited only because they are considered essential to the objectives of the report. The U.S. government and the State of Arizona do not endorse products or manufacturers..

DISCOVERY OR ADMISSION INTO EVIDENCE:

The CONSULTANT is herein notified of 23 USC §409. The CONSULTANT shall include the notice in each Subcontractor agreement wherein the scope includes relative completion or submission of reports, surveys, schedules, lists, or data compilation or collection.

Pursuant to 23 USC §409: Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of

potential accident sites, hazardous roadway conditions, or rail-way-highway crossings, pursuant to sections 130, 144, and 148 [152] of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

TITLE VI ASSURANCES

RECIPIENT (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through ***Federal Highway Administration and Arizona Department of Transportation***, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation--Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- 23 C.F.R. Part 200 Subchapter C-Civil Rights (Title VI program implementation and related statutes)

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda and/or guidance, the Recipient hereby gives assurances that it will promptly take any measures necessary to ensure that:

*"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the **Federal Highway Administration**.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its *Federal Aid Highway Program*.

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all *Federal Aid Highway Program* and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. **"RECIPIENT"**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
4. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

5. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
6. That where the Recipient receives Federal financial assistance to a construct a facility or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
7. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
8. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project or program.
9. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
10. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
11. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Federal Highway Administration or the Arizona Department of Transportation*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the *Federal Highway Administration or Arizona Department of Transportation* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration or Arizona Department of Transportation*, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 *et seq.*).

APPENDIX F

PROFESSIONAL SERVICE CONTRACTS – WITH NO DBE GOAL DISADVANTAGED BUSINESS ENTERPRISES:

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantage Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program; and
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined in Subsection 3.0, in USDOT-assisted contracts. The Department encourages consultants to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

Local Public Agencies (LPA) and or Subrecipients of Federal financial assistance will administer and manage the contracts from advertising, consultant selection, negotiation, contract execution, processing payment reports and contract modifications, audits, DBE compliance (e.g., reporting and monitoring) through contract closeout.

2.0 Assurances of Non-Discrimination:

The consultant, subrecipient, or subconsultant shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant 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 LPA/Subrecipient with the Department's concurrence deems appropriate, which may include, but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages;
4. Disqualifying the consultant from submitting SOQs, or any other forms of proposals, as non- responsible;
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

The consultant, subrecipient, or subconsultant shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

- (A) Commercially Useful Function (CUF):** Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.
- (B) Disadvantaged Business Enterprise (DBE):** A for-profit small business concern which meets both of the following requirements:
- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (C) NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
- (D) Non-DBE:** Any firm that is not a DBE.
- (E) Race-Conscious (RC):** A measure or program focused specifically on assisting only DBEs, including women-owned DBEs.
- (F) Race-Neutral (RN):** A measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- (G) Small Business Concern (SBC):** A small business that meets all the following conditions:
- (1) Operates as a for-profit business registered to do business in Arizona;
 - (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
 - (3) Is independently owned and operated;
 - (4) Is not dominant in its field on a national basis; and
 - (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.
- (H) Socially and Economically Disadvantaged Individuals:** Any individual who is citizen (or lawfully admitted permanent resident) of the United States and who is:
- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
 - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. **“Black Americans”** – which includes persons having origins in any of the Black racial groups of Africa;

- ii. **“Hispanic Americans”** – which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- iii. **“Native Americans”** – which includes persons who are enrolled members of federal or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
- iv. **“Asian-Pacific Americans”** – which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- v. **“Subcontinent Asian Americans”** – which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- vi. **“Women;”**
- vii. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All proposers should contact the Department’s Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction industry. BECO contact information is as follows:

Arizona Department of Transportation Business Engagement and Compliance Office

1801 W. Jefferson St., Suite 101, Mail Drop 154A Phoenix, AZ 85007

Phone: (602) 712-7761

FAX: (602) 712-8429

Email: ContractorCompliance@azdot.gov Website: www.azdot.gov/bec

4.01 Mentor-Protégé Program:

The Department has established a Mentor-Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime consultants to provide certain types of assistance to certified DBE subconsultants. ADOT encourages consultants and certified DBE subconsultants to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling requirements of 49 CFR Part 23. For guidance regarding this program refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities and is not intended to diminish nor circumvent existing DBE rules or regulations.

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the consultant uses a percentage of DBEs, as defined herein, to meet the contract-specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all

small businesses. The regulation, 49 CFR 26, defines race neutral as when 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.

The DBE provisions are applicable to all consultants including DBE consultants.

6.0 Certification and Registration:

6.01 DBE Certification:

Certification as a DBE shall be predicated on:

- (1) The completion and execution of an application for certification as a “Disadvantaged Business Enterprise.”
- (2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
- (3) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm’s eligibility to participate in the DBE program.
- (4) The information obtained during the on-site visits to the offices of the firm and to active job- sites.

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at <http://www.azutracs.com>.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the A Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at <http://www.azutracs.com>. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department’s certification of DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for DBE certification as outlined in 49 CFR Part 26. The consultant bears all risks of ensuring that DBE firms selected by the consultant are able to perform the work.

6.02 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT’s DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for- profit businesses authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization of goals on projects, ADOT and the LPA/Subrecipient strongly encourages consultants to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The consultant may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward the DBE participation.

SBCs can register online at the AZ UTRACS website.

The Department's registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part

26. The consultant bears all risks of ensuring that the SBC firms selected by the consultant are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime consultants to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward the DBE participation.

The Department and the LPA/Subrecipient encourages prime consultants to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, Federal or State holiday. In circumstances where the LPA/Subrecipient Procurement Office is closed for all or part of the last day, the period extends to the next day on which the LPA/Subrecipient Procurement Office is open.

10.0 Consultant and Subconsultant Requirements:

10.01 General:

The consultant shall establish a DBE program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreement between the proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other proposers are prohibited.

10.02 DBE Liaison:

The consultant shall designate a DBE Liaison responsible for the administration of the consultant's DBE program. The name of the designated DBE Liaison shall be included on the DBE Intended Participation Affidavit Summary.

11.0 DBE Goal:

The Department has not established contract goals for DBE participation in this contract. Consultants are still encouraged to employ reasonable means to obtain DBE participation. Consultants must retain records in accordance with these DBE specifications. The consultant is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all consultants and subconsultants who seek to work on federally-assisted contracts in order to set overall and contract

DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at <http://www.azutracs.com/> a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime consultants and all subconsultants, including DBEs listed in the SOQ must be registered in AZ UTRACS. Proposers may verify that their firm and each subconsultant is registered using the AZ UTRACS website. Proposers may obtain additional information at the AZ UTRACS website or by contacting the LPA/Subrecipient.

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subconsultants, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer's intentions to use those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Cost Proposal submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Cost Proposal.

FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST CONFIRMATION EMAIL WITH THE COST PROPOSAL BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED AND AS OUTLINED IN THE RFP SHALL BE CAUSE FOR THE PROPOSER'S COST PROPOSAL TO BE REJECTED.

13.0 Payment Reporting:

The consultant shall report on a monthly basis indicating the amounts paid to all subconsultants, of all tiers, working on the project. Reporting shall be in accordance with Prompt Pay and Payment Reporting requirements of the contract specifications once developed.

14.0 Crediting DBE Participation:

14.01 General Requirements:

To count toward DBE participation, the DBE firms must be certified at the time of Cost Proposal submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

Credit towards the consultant's DBE participation is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subconsultant purchase or leases from the prime consultant or its affiliate will not be credited toward DBE participation.

The consultant bears the responsibility to determine whether the DBE possesses the proper consultant's license(s) to perform the work and, if DBE credit is requested, that the DBE subconsultant is certified for the requested type of work.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The consultant bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime consultant, subconsultant, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The consultant may credit second-tier subcontracts issued to DBEs by non-DBE subconsultants. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

A prime consultant may credit the entire amount of that portion of a contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as the cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime consultant or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE participation only if the DBE's subconsultant is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE participation.

A prime consultant may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

14.02 Effect of Loss of DBE Eligibility

If a DBE is deemed ineligible (decertified) or suspended in accordance with 49 CFR 26.87 and 26.88, the DBE may not be considered to count toward DBE participation on a new contract, but may be considered to count toward DBE participation under a subcontract that was executed before the DBE suspension or decertification is effective.

When a DBE firm or a DBE prime consultant loses its DBE eligibility and a subcontract or contract has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward DBE participation.

When a subcontract is executed with the DBE firm before the Department notified the firm of its ineligibility, the consultant may continue to use the firm on the contract and may continue to receive DBE participation credit for the firm's work.

14.03 Notifying the Consultant of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subconsultant or supplier that is either decertified or certified during the term of the contract to immediately notify the consultant and all parties to the DBE contract in writing, with the date of decertification or certification. The consultant shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.04 Police Officers:

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

14.05 Commercially Useful Function:

A prime consultant can credit expenditures to a DBE subconsultant toward DBE participation only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE

must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the LPA/Subrecipient will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the LPA/Subrecipient will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, LPA/Subrecipient will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The LPA/Subrecipient will notify the consultant, in writing, if it determines that the consultant's DBE subconsultant is not performing a CUF. The consultant will be notified within seven calendar days of the LPA/Subrecipient's decision.

Decisions on CUF may be appealed to the ADOT BECO. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the ADOT BECO. The appeal must be received by ADOT BECO no later than seven calendar days after the LPA/Subrecipient's decision.

LPA/Subrecipient's decision remains in place unless and until the ADOT BECO reverses or modifies the LPA/Subrecipient's decision. ADOT BECO will promptly consider any appeals under this subsection and notify the consultant of the ADOT BECO finding and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The LPA/Subrecipient may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The consultant shall cooperate during the site visits and the LPA/Subrecipient staff will make every effort not to disrupt work on the project.

15.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subconsultant Compliance Assurances available from the LPA/Subrecipient and all of the Uniform Terms and Conditions set forth in other sections of this contract.

Consultants executing agreements with subconsultants, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the LPA/Subrecipient and ADOT deem appropriate as outlined in DBE Subsection 2.0.

The LPA/Subrecipient reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The consultant shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The consultant shall provide electronic copies of signed subcontract agreements for all DBE Subconsultants listed on the DBE Intended Participation Affidavit Summary by uploading them within 15 calendar days of an approved contract to the LPA DBE System.

16.0 Certification of Final DBE Payments:

DBE participation on the contract is measured by actual payments made to the DBEs. The consultant shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract. This form shall be signed by the consultant and the relevant DBE, and submitted to the LPA/Subrecipient no later than 30 days after the DBE completes its work.

The LPA/Subrecipient and ADOT will use this certification and other information available to determine applicable DBE credit allowed to date by the Prime Consultant and the extent to which the DBE firms were fully paid for that work. By the act of filing the forms, the consultant acknowledges that the information is supplied in order to justify the payment of state and federal funds to the consultant.

The consultant will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the LPA/Subrecipient.

17.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

APPENDIX G

PROMPT PAY AND PAYMENT REPORTING PROVISIONS MEASUREMENTS AND PAYMENTS:

Partial Payments:

If satisfactory progress is being made, the contractor will receive a payment based on the amount of work completed. Progress payments may be made by the LPA/Subrecipient Procurement Office to the contractor on the basis of an approved estimate of the work performed during a preceding period of time. The progress payments shall be paid on or before 14 days after the estimate of the work is approved. The estimate of the work shall be deemed received by the LPA/Subrecipient Procurement Office on submission to the persons designated by the LPA/Subrecipient Procurement Office on submission to the person designated by the LPA/Subrecipient Procurement Office for the submission, review or approval of the estimate of the work. The LPA/Subrecipient Procurement Office by mutual agreement may make progress payments on contracts of less than 90 days and shall make monthly progress payments on all other contracts. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under the contract may include payment for material and equipment.

An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the LPA/Subrecipient Procurement Office or Designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The contractor shall work with the LPA/Subrecipient or the LPA/Subrecipient Designee to finalize monthly estimate. The progress payments shall be paid on or before 14 days after the estimate of the work is certified and approved in accordance with Arizona Revised Statutes Section 34-221.

The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment the respective amounts allowed the contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest, except that no contract for construction services may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment.

A subcontractor may notify the LPA/Subrecipient Procurement Office in writing requesting that the subcontractor be notified by the Subrecipient Procurement Office in writing within five days from payment of each progress payment made to the contractor.

Subcontractor Payments:

(1) Retention

If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the LPA/Subrecipient may retain under the prime contract.

(2) No Set-offs Arising from Other Contracts:

If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

(3) Partial Payment:

The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the LPA/Subrecipient Procurement Office. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(4) Final Payment:

The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(5) Payment Reporting:

For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the LPA DBE System which can be accessed at AZ UTRACS on the Arizona Transportation Business Portal at www.azutracs.com. No later than fifteen calendar days after the preconstruction conference, the contractor shall log into the system and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter the subcontractor information in the LPA DBE System. Reportable contracts information shall be entered into the system no later than five calendar days after approval by the LPA/Subrecipient Procurement Office.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the last day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the LPA DBE System.

In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract within 15 days of receipt of electronic payment notification and the contractor shall actively monitor the system to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the system between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract payment activity is in the LPA DBE System. This includes all lower-tier Reportable Contracts.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the system.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

a) Sanctions of Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

(6) Completion of Work:

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the LPA/Subrecipient Procurement Office.

(7) Disputes:

If there is a discrepancy between what is reported by the contractor in the LPA DBE System and what the subcontractor indicates, an alert email will automatically be sent to the contractor. The email will be sent to the email address provided by the contractor in the LPA DBE System. It is the contractor's responsibility to ensure that the email address in the system is kept current.

The contractor shall provide a verifiable explanation of the discrepancy in the LPA DBE System as early as practicable but in no case later than seven days after the date of the alert email.

The LPA/Subrecipient will determine whether the contractor has acted in good faith concerning any such explanations. The LPA/Subrecipient and ADOT BECO reserve the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether prompt payment requirements are met.

The contractor shall implement and use the dispute resolution process outlined in the subcontract or by following the LPA/Subrecipient escalation process, to resolve payment disputes.

(8) Non-Compliance

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established above, will result in remedies, as the LPA/Subrecipient Procurement Office deems appropriate, which may include but are not limited to:

a) Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

- i. The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.
- ii. If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
- iii. If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as liquidated damages.

b) Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:

- i. Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the liquidated damages described in paragraph (a) above,
- ii. **Terminate the contract for default,**

iii. Disqualify the contractor from future bidding, temporarily or permanently, depending on the number and severity of violations, if applicable.

In determining whether liquidated damages will be assessed, the extent of the liquidated damages, or additional remedies assessed, the LPA/Subrecipient will consider whether there have been other violations on this or other federal-aid contracts, whether the failure to make prompt payment was due to circumstances beyond the contractor's control, and other circumstances. The contractor may, within 15 calendar days of receipt of the decision of the LPA/Subrecipient, escalate the decision according to the contract's escalation process.

ATTACHMENT B -

CONSULTANT CERTIFICATION FORM

Please read the statements below. Responders to this RFP are **required to sign and return with their response the "Request for Proposal Certification Form"** that are included herein on the next page.

Failure to sign and submit the certification form specified in this RFP, with the RFP, will result in the RFP being rejected.

Request for Proposal Certification Form

Contract #:	Consultant Name:
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Please read the statements below. The statements are to ensure Consultants are aware and in agreement with Federal, and State guidelines related to the award of this contract. Consultants shall submit this Certification Form attached to each Proposal for each RFP advertised, as revisions to the form may occur from time to time. Failure to sign and submit the certification form specified in this RFP with the Proposal will result in the Proposal being rejected.

Submission of the Proposal by the Consultant certifies that to the best of its knowledge:

1.	The Consultant and its sub-consultants have not engaged in collusion with respect to the contract under consideration.
2.	The Consultant, its principals and sub-consultants have not been suspended or debarred from doing business with any government entity. 2 CFR 200, Subpart F, Appendix II and 23 CFR 121 (J)
3.	The Consultant shall have the proper Arizona license(s) and registration(s) for services to be performed under this contract. Furthermore, the Consultant shall ensure that all Sub- consultants have the proper Arizona license(s) and registration(s) for services to be performed under this contract. Key members of the Project Team, including sub-consultants, are currently licensed to provide the required services as requested in the RFP package.
4.	The Consultant's signature on any RFP or contract constitutes an authorization to METROPLAN to ascertain the eligibility of the Consultant, its principals and subconsultants to enter into contract with METROPLAN and with any other governmental agency.
5.	The Consultant's Project Team members are employed or sub-contracted by the Consultant on the date of submittal.
6.	All information and statements written in the proposal are true and accurate and that METROPLAN reserves the right to investigate, as deemed appropriate, to verify information contained in proposals.
7.	Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in conjunction with, the performance of the work hereunder by the Consultant, its agents representatives or employees. Insurance requirements can be found as Exhibit C in the sample contract.
8.	No Federally appropriated funds have been paid or shall be paid, by or on behalf of the Consultant for the purpose of lobbying. 2 CFR 200, Subpart F, Appendix II (I)

9.	If project is funded with Federal Aid funds, the Consultant affirmatively ensures that in any subcontract entered into pursuant to this advertisement, minority business enterprises shall be afforded full opportunity to submit proposals/bids in response to this invitation and shall not be discriminated against on the grounds of race, color, or national origin, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation.
10.	The Consultant will utilize all Project Team members, sub-consultants and DBE firms, if applicable, submitted in the RFP, and will not add other Project Team members or sub-consultants, unless the Consultant has received prior written approval from METROPLAN.
11.	The Consultant shall meet its DBE goal commitment and any other DBE commitments as stated in its RFP proposal or Cost Proposal; and shall report on a timely basis its DBE utilization as detailed in the contract.
12.	If selected, the Consultant is committed to satisfactorily carry out the Consultant's commitments as detailed in the contract and its RFP proposal.
13.	The Consultant is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. 1368).
14.	The Consultant is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency.
15.	The Consultant agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, subtitle D; U.S.C. § 701 et seq.) and maintain a drug and alcohol-free work place.
16.	MetroPlan, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
17.	In Compliance with 49 CFR Part 26.11, the Consultant is required to register with the AZ UTRACS web portal and complete the Online Bidder's List. Please Note: any firm being awarded work as a prime or sub-consultant on a federally funded project must be AZ UTRACS registered. Failure to submit the corresponding Bidder's List email confirmation as part of the Proposal will result in rejection of the proposal. MPDG218177-500
18.	The Consultant agrees to comply with all Federal and State requirements listed in the section titled "Federal Third Part Agreement: Applicable Laws and Regulations."

I hereby certify that I have read and agree to adhere to the statements above and that the statements are true to the best of my knowledge as a condition of award of this contract.

Print Name _____ Print Title _____

Signature _____ Date _____

Print Proposing Consultant Firm Name _____



**PROFESSIONAL SERVICES
PROJECT SPECIFIC CONTRACT**

**Disadvantaged Business Enterprise (DBE)
Goal Assurance**

ADOT TRACS No.: _____ Agency Project/Contract No.: _____

Project Name: _____

Prime: _____ AZ UTRACS Vendor #: _____

The undersigned, fully cognizant of the requirements and of the goal established, hereby certifies that in the preparation of the proposal for the above stated federal aid project,

- ☐ the Proposer will meet the established DBE goal or will make good faith efforts to meet the goal for the contract and that arrangements with certified DBEs have been made prior to the SOQ and/or cost proposal submission.

THIS CERTIFICATE MAY NOT BE REVISED OR CORRECTED AFTER SUBMISSION OF THE PROPOSAL.

FAILURE TO AFFIRMATIVELY MAKE THIS DECLARATION/CERTIFICATION IN THE MANNER OUTLINED IN THE REQUEST FOR QUALIFICATIONS (RFQ) FURNISHED BY THE LPA/SUBRECIPIENT WILL CAUSE A PROPOSER'S SOQ TO BE CONSIDERED NON-RESPONSIVE.

(Name of Authorized Officer)

(Title)

(Authorized Officer Signature)

(Date)

Attachment D -
Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements
Pursuant to 49 CFR 20, Subpart F, Appendix A

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SIGNATURE

DATE

TITLE

Please indicate here if you are required to submit Standard Form LLL as required in item (2) above: ☐ Yes ☐ No

Attachment E

SAMPLE CONTRACT FOR PROFESSIONAL SERVICES

Contract No. _____

This Contract is entered into this _____ day of _____, 2021 by and between the Flagstaff Metropolitan Planning Organization dba MetroPlan ("MetroPlan"), and _____ [corporate status] ("Contractor"). MetroPlan and Contractor may be referred to collectively herein as the "Parties" or individually as a "Party".

WHEREAS MetroPlan desires to receive and Contractor is able to provide professional services; and

NOW THEREFORE, in consideration for the mutual promises contained herein, the Parties agree as follows:

SERVICES

1. Scope of Work: Contractor shall provide the professional services generally described as follows:

FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION (FMPO) S. Lone Tree Rd. Planning & Environmental Linkages Study

and as more specifically described in the scope of work attached hereto as Exhibit A.

2. Compensation: In consideration for the Contractor's satisfactory performance, MetroPlan shall pay Contractor _____. Any price adjustment must be approved by mutual written consent of the parties. The MetroPlan Executive Director or his/her designee may approve an adjustment if the annual Contract price is less than \$50,000; otherwise MetroPlan board approval is required.
3. Standard Terms and Conditions: MetroPlan Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated into this Contract by reference, except to the extent modified in Exhibit A.
4. Legal Remedies for Breach of contract Pursuant to 2 CFR 200, Subpart F, Appendix II; 41 USC 1908, for contracts in excess of the simplified acquisition threshold in 41 USC 134 (currently \$250,000), failure by the Contractor to carry out the requirements of the Contract, especially in compliance with the Federal terms and conditions and programmatic requirements, represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Issuer, with the funding agency's concurrence, deems appropriate, which may include, but is not limited to:
 - Withholding payments;
 - Assessing sanctions;
 - Liquidated damages; and/or
 - Disqualifying the contractor from future bidding on the grounds of being non-responsible.
5. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the Issuer may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

To the extent not inconsistent with the foregoing Federal requirements, this CONTRACT shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

METROPLAN RESPONSIBILITIES

1. MetroPlan Representative: The MetroPlan Representative is Jeff Meilbeck, Executive Director or his/her designee. All communications to MetroPlan shall be through the MetroPlan Representative. If other than the Executive Director, the MetroPlan Representative is responsible for bringing any request for a contract amendment or price adjustment to the attention of the Executive Director.
2. MetroPlan Cooperation: MetroPlan will cooperate with Contractor by placing at its disposal all available information concerning MetroPlan, MetroPlan property, or the project as is reasonably necessary for Contractor's performance of this Contract.

CONTRACT TERM

3. Contract Term: The Contract term is for a period of [INSERT YEARS/MONTHS] unless terminated pursuant to the Standard Terms and Conditions. This Contract shall be effective as of the date signed by both Parties. Performance shall commence within ten (10) days from MetroPlan's issuance of the Notice to Proceed, and shall be completed on or before _____, 20__ consistent with the Schedule of Services.
4. Renewal: This Contract may be renewed or extended for up to ____ additional _____ [INSERT YEAR/MONTH] terms by mutual written consent of the Parties. The MetroPlan Executive Director or his designee shall have authority to approve renewal on behalf of MetroPlan.

DATA AND RECORDS

5. MetroPlan Ownership of Document and Data: Any original documents prepared or collected by Contractor in performance of this Contract such as models, samples, reports, test plans, survey results, graphics, tables, charts, plans, maps, specifications, surveys, computations and other data shall be the property of MetroPlan ("MetroPlan's work product"), unless otherwise agreed by the Parties in writing. Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and hereby assigns to MetroPlan all rights and interests Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material.
6. Re-Use: MetroPlan may use MetroPlan's work product without further compensation to Contractor; provided, however, MetroPlan's reuse without written verification or adaption by Contractor for purposes other than contemplated herein is at MetroPlan's sole risk and without liability to Contractor. Contractor shall not engage in any conflict of interest nor appropriate any portion of MetroPlan's work product for the benefit of Contractor or any third parties without MetroPlan's prior written consent.
7. Delivery of Document and Data: Upon termination of this Contract in whole or part, or upon expiration if not previously terminated, Contractor shall immediately deliver to MetroPlan copies all of MetroPlan's work product and any other documents and data accumulated by Contractor in performance of this Contract, whether complete or in process.

INSURANCE

8. Insurance: Contractor shall meet insurance requirements of MetroPlan, set forth in Exhibit C.

MISCELLANEOUS

9. Notice: Any notice concerning this Contract shall be in writing and sent by certified mail and e-mail

as follows:

To MetroPlan:

MetroPlan

Attn: Jeff Meilbeck

6 E Aspen Ave, Suite 200

Flagstaff, AZ 86001

Jeff.meilbeck@metroplanflg.org

Phone:

To Contractor:

With a copy to:

Mangum Wall Stoops & Warden, PLLC

Attn: Brandon J. Kavanagh

112 N. Elden Street

Flagstaff, AZ 86001

bkavanagh@mwsowlaw.com

Phone: 928-779-6951

With a copy to:

10. Incorporation of RFP. Each Party agrees that all terms and conditions of the [Name of Project] Request for Proposals dated _____, 202_, are incorporated by reference as if fully set forth herein.
11. Authority. Each Party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.
12. INCORPORATION OF FEDERAL PROVISIONS: All contractual provisions required by the U.S. Department of Transportation or other Federal entity are hereby incorporated by reference. All applicable clauses shown in the FTA Master Agreement between the State and FTA apply to each Project funded by the Arizona Department of Transportation using FTA funds. Any requirements of the Stewardship Agreement between the State and FHWA apply to each Project funded by the Arizona Department of Transportation using FHWA funds. This provision shall be incorporated in any sub-contractor/consultant, or lower-tier agreement for which funds from this contract shall be used for payment.

CONSULTANT

Print name: _____

Title: _____

Date: _____

FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION dba MetroPlan

Print name:_____

Title:_____

Date:_____

Approved as to form:

Mangum, Wall, Stoops & Warden, PLLC
MetroPlan legal counsel

Notice to Proceed issued:_____, 20____

EXHIBIT A

SCOPE OF WORK

[The final Scope of Work under the S. Lone Tree Rd. Planning & Environmental Linkages Study is yet to be determined.]

EXHIBIT B

STANDARD TERMS AND CONDITIONS

IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after MetroPlan has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor at its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to MetroPlan upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive and MetroPlan reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to MetroPlan by the Contractor and relied upon by MetroPlan as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to MetroPlan shall be of the same quality and conformity.

MATERIALS

6. **QUALITY:** Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. MetroPlan's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
7. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by MetroPlan. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
8. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to MetroPlan upon MetroPlan's acceptance of the materials.
9. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, MetroPlan, 6 E. Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by MetroPlan. C.O.D. shipments will not be accepted.
10. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to MetroPlan until MetroPlan actually receives the material at the point of delivery, and MetroPlan has completed inspection and has accepted the material, unless MetroPlan has expressly provided otherwise in the Contract.

11. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of MetroPlan, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.
12. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
13. **LIENS:** All materials and other deliverables supplied to MetroPlan shall be free of all liens other than the security interest held by Contractor until payment in full is made by MetroPlan. Upon request of MetroPlan, Contractor shall provide a formal release of all liens.
14. **CHANGES IN ORDERS:** MetroPlan reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the MetroPlan Executive Director prior to the institution of the change.

PAYMENT

15. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by MetroPlan.
16. **LATE INVOICES:** MetroPlan may deduct up to 10% of the payment price for late invoices. MetroPlan operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, MetroPlan will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
17. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: MetroPlan will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by MetroPlan as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

18. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by MetroPlan.
19. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed

from the later date of the following: (a) when correct invoice is received by MetroPlan; or (b) when acceptable materials and/or materials were received by MetroPlan.

- 20. **AMOUNTS DUE TO METROPLAN:** Contractor must be current and remain current in all obligations due to MetroPlan during performance. Payments to Contractor may be offset by any delinquent amounts due to MetroPlan or fees and charges owed to MetroPlan under this Contract.
- 21. **OFAC:** No MetroPlan payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

SERVICES

- 22. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
- 23. **CONTROL:** Contractor shall be responsible for the control of the work.
- 24. **WORK SITE:** Contractor shall inspect the work site and notify MetroPlan in writing of any deficiencies or needs prior to commencing work.
- 25. **SAFEGUARDING PROPERTY:** Contractor shall be responsible for any damage to real property of MetroPlan or adjacent property in performance of the work and safeguard the worksite.
- 26. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
- 27. **ACCEPTANCE:** If work is rejected by MetroPlan due to noncompliance with the Contract, MetroPlan, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.
- 28. **WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by MetroPlan. Upon receipt of written notice from MetroPlan, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from MetroPlan, MetroPlan may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

- 29. **RECORDS:** MetroPlan shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.
- 30. **RIGHT TO INSPECT BUSINESS:** MetroPlan shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
- 31. **PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor

has clearly marked its proprietary information as “confidential”, MetroPlan will endeavor to notify Contractor prior to release of such information.

INDEMNIFICATION.INSURANCE

- 32. GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless MetroPlan, its boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney’s fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of MetroPlan, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in MetroPlan’s Specific Terms and Conditions.
- 33. INDEMNIFICATION:** The Contractor shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Contractor’s contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.
- 34. INSURANCE:** Contractor shall maintain all insurance coverage required by MetroPlan, including public liability and worker’s compensation
- 35. INTELLECTUAL PROPERTY RIGHTS AND PROTECTIONS** Contractor shall indemnify and hold harmless MetroPlan against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by MetroPlan of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against MetroPlan and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the MetroPlan against any and all expenses, losses, royalties, profits and damages, attorneys’ fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

To the extent permitted by A.R.S. §§ 41-621 and 35-154, the Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of this Contract’s performance or use by the State of materials

furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

Pursuant to 23 CFR 420.121 (i), patents and inventions developed in the course of the Project are subject to federal standard patent rights at 37 CFR 401.14. The Contractor shall include the clauses from 37 CFR 401.14, suitably modified to identify the parties, in all sub-contracts, regardless of tier. The clauses shall be retrieved in their entirety from <https://www.ecfr.gov/current/title-37/chapter-IV/part-401/section-401.14>, or as the link may be updated from time to time, and shall be adjusted only to the extent to identify the parties.

Federally funded Projects: Pursuant to 23 CFR 420.121, the Arizona Department of Transportation may copyright any books, publications, or other copyrightable materials developed in the course of the Project. The funding Federal agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes. The Contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the contract, obtain rights in the Contractor's subject inventions. However, the State shall be granted an immediate, irrevocable right to use, without royalty or fee, the subject invention for its purposes related to this project.

CONTRACT CHANGES

36. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
37. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
38. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
39. **SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.
40. **NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
41. **ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of MetroPlan, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to MetroPlan. The Executive Director shall have authority to consent to an assignment on behalf of MetroPlan.
42. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

- 43. SUBCONTRACTING:** Contractor may subcontract work in whole or in part with MetroPlan's advance written consent. MetroPlan reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
- 44. NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment.
- 45. DRUG FREE WORKPLACE:** Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
- 46. IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to MetroPlan that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of MetroPlan. MetroPlan retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist MetroPlan in regard to any such inspections. MetroPlan may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist MetroPlan in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).
- 55. Applicable Terms and Conditions:** Pursuant to 2 CFR 200.326, the Contractor's contracts with its sub-contractors shall include all the terms and conditions of this Contract. Each sub-contractor must agree to comply with all the terms and conditions to be awarded. The Contractor certifies that it shall communicate contractual requirements to contractors and sub-contractors and ensure all the requirements of this Contract are incorporated by means of a contract or other legally binding documents stipulating the contractor and/or sub-contractor's responsibility to comply with this Contract.

DEFAULT AND TERMINATION

- 56. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies

available at law in addition to Contract remedies provided for herein.

- 57. METROPLAN REMEDIES:** In the event of Contractor's default, MetroPlan may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to MetroPlan to pay for the costs of such substitute service. MetroPlan may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
- 58. CONTRACTOR REMEDIES:** In the event of MetroPlan's default, Contractor may pursue all remedies available at law, except as provided for herein. Notwithstanding anything contained herein, any claim against MetroPlan must satisfy requirements for claims against a public entity.
- 59. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 60. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** MetroPlan may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
- 61. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by MetroPlan for convenience upon thirty (30) day's written notice, without further penalty or liability to Contractor. If this Contract is terminated, MetroPlan shall be liable only for payment for satisfactory materials and/or services received and accepted by MetroPlan before the effective date of termination.
- 62. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide MetroPlan with a written notice thereof. MetroPlan may terminate this Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
- 63. PAYMENT UPON TERMINATION:** Upon termination of this Contract, MetroPlan will pay Contractor for satisfactory performance up until the effective date of termination. MetroPlan shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
- 64. CANCELLATION FOR GRATUITIES:** MetroPlan may cancel this Contract at any time, without penalty or further liability to Contractor, if MetroPlan determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant ("Gratuities") in connection with award or performance of the Contract.
- 65. ANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** MetroPlan may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor, pursuant to the terms of the statute.

MISCELLANEOUS

- 66. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract

with MetroPlan, without the prior written consent of the MetroPlan.

67. **NO BOYCOTT OF ISRAEL:** State Legislation has been enacted to prohibit a public entity from contracting with a value of \$100,000 or more with a company currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, the Contractor warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.
68. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent Notice may be sent by email as a secondary form of notice.
69. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the Parties. Nothing herein is intended to create any rights or responsibilities to third parties.
70. **GOVERNING LAW:** This Contract is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in the funding Agreement between the State of Arizona and are incorporated by reference as a part of this Contract.
71. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona
72. **KEY PERSONNEL DESIGNATION:** Contractor's shall provide the contact information for Key Personnel and Subcontractors (if any). Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The MetroPlan Representative for this contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

EXHIBIT C

INSURANCE REQUIREMENTS

1. **In General.** Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.

Requirement to Procure and Maintain.

The Contractor(s) shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under the Agreement, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees and/or subcontractors. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.

1. **Minimum Scope and Limits of Insurance.** The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. MetroPlan does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

1. The policy shall be endorsed, as required by written agreement, to include "Flagstaff Metropolitan Planning Organization, dba MetroPlan" and "The State of Arizona, ADOT, and its officers, officials, agents, and employees" shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONTRACTOR.
2. The policy shall contain a waiver of subrogation endorsement in favor of "Flagstaff Metropolitan Planning Organization, dba MetroPlan", the Department and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONTRACTOR.

Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Agreement.

- Combined Single Limit (CSL) \$1,000,000

1. The policy shall be endorsed, as required by written agreement, to include the "Flagstaff Metropolitan Planning Organization, dba MetroPlan" and "The State of Arizona, ADOT, and its officers, officials, agents, and employees" to be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONTRACTOR involving automobiles owned, leased, hired or borrowed by the CONTRACTOR.

2. The policy shall contain a waiver of subrogation endorsement in favor of "Flagstaff Metropolitan Planning Organization, dba MetroPlan," its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONTRACTOR.

Workers' Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
▪ Each Accident	\$1,000,000
▪ Disease – Each Employee	\$1,000,000
▪ Disease – Policy Limit	\$1,000,000

1. The policy shall contain a waiver of subrogation endorsement in favor of "Flagstaff Metropolitan Planning Organization, dba MetroPlan," its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONTRACTOR.

Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to MetroPlan. Within two (2) business days of receipt, contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission.

Acceptability of Insurers

The Contractor's insurance, if purchased rather than self-insurance, shall be placed with insurance companies duly licensed in the State of Arizona or which hold approved non-admitted status on the Arizona Department of Insurance's List of Qualified

Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or be duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

Verification of Coverage

1. The Contractor shall furnish MetroPlan with certificates of insurance (ACORD form or equivalent) as required by this Agreement. The certificates for each insurance policy are to be signed by an authorized representative.
2. All insurance certificates and endorsements are to be received and approved by MetroPlan before work commences under the Agreement.
3. Insurance coverage must be in effect at or prior to commencement of work under the Agreement and must remain in effect for its duration. Failure to maintain the required insurance coverages or provide timely evidence of coverage renewal is a material breach of the Agreement.

Subcontractors

Contractor's Certificate(s) shall include all subcontractors as insured under its policies or Contractor shall be responsible for ensuring and/or verifying that all contractors/subcontractors have valid and collectable insurance as evidenced by the Certificates of Insurance and endorsements for each subcontractor. All coverage for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

Approval

Any modification or variation from the insurance requirements in this Agreement shall be made in consultation with MetroPlan. Such action will not require a formal amendment to this Agreement, but may be made by administrative action.

2. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to MetroPlan. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: Executive Director
Contract No. _____
MetroPlan
6 E. Aspen Avenue
Flagstaff, Arizona 86001

3. Acceptability of Insurers. Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A- : VII. MetroPlan does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
4. Certificates of Insurance. The Contractor shall furnish MetroPlan with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. MetroPlan project/contract number and project description shall be noted on the certificates of insurance. MetroPlan must receive and approve all certificates of insurance and endorsements before the Contractor commences work.
5. Policies. MetroPlan reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. MetroPlan shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. MetroPlan's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, MetroPlan's right to insist on strict fulfillment of Contractor's obligations under this Contract.
6. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of MetroPlan's legal counsel in consultation with the Executive Director, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.

EXHIBIT D

DBE Assurances

1. A vendor/contractor/consultant/subcontractor/subconsultant (herein after referred to as “contractor”) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Grantee, with the Department’s concurrence, deems appropriate, which may include, but is not limited to:
 - Withholding payments;
 - Assessing sanctions;
 - Liquidated damages; and/or
 - Disqualifying the contractor from future bidding on the grounds of being non-responsible.
2. Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.
3. Each contractor shall designate a full time employee who shall be responsible for the administration of the contractor’s DBE program.
4. Each contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.
5. Subcontract Payment Reporting in the DBE system:
 - a. The Arizona Department of Transportation (the Department) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to FHWA and FTA on Federal-aid projects. The contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).
 - b. The contractor shall respond to Subrecipient payment audits reported each month electronically through the Department’s web-based payment tracking system (<https://adot.dbesystem.com>), reporting its payments to all DBEs and non-DBE subcontractors working on the project. In addition, the contractor shall require that all DBE and non-DBE subcontractors shall also respond to its audits and report lower-tier subcontractor payments in the same manner.
 - c. If, by the DBE system audit deadline, the contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the Project Manager will work with the ADOT MPD Program Manager to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the contract.
6. The contractor shall include these provisions in all of its subcontracts and ensure that its subcontractors include these provisions in any lower-tier subcontracts.
7. Any language provided in this Agreement DBE Section supersedes language provided by Procurement Pro for FTA-funded contracting requirements.