



## MASTER CONTRACT FOR PROFESSIONAL SERVICES

Contract No.                     

**Select Contract Type:**

- ☐ ADOT MPD With Goal (Exhibit C ADOT named as Additional Insured)
- ☐ ADOT MPD Without Goal (Exhibit D 25. & 26. Do Not Apply; Exhibit C ADOT Named as Additional Insured)
- ☐ FHWA Direct With Goal (Exhibit C ADOT is not named Additional Insured)
- ☐ FHWA Direct Without Goal (Exhibit D 25. & 26. Do Not Apply; Exhibit C ADOT is not named Additional Insured)
- ☐ No Real Property (Exhibit D Appendices B through D Do Not Apply)

This Contract is entered into this (date) by and between the Flagstaff Metropolitan Planning Organization dba MetroPlan ("MetroPlan"), and                      ("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 can provide professional services required by MetroPlan;

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

CONTRACT DOCUMENTS

The Contract between MetroPlan and Contractor for any project shall consist of the following Contract Documents:

- This Master Contract;
- Scope of Work and Project Task Order attached as Exhibit A;
- Standard Terms and Conditions attached as Exhibit B;
- Insurance Requirements attached as Exhibit C;
- Federal and State Compliance attached as Exhibit D;
- Anti-Lobbying Certification attached as Exhibit E;
- The Statement of Qualifications or Proposal submitted by Contractor dated                     , attached as Exhibit F.

1. Master Contract: This is a Master Contract providing the basis by which MetroPlan may issue, and Contractor may accept an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between MetroPlan and Contractor, unless expressly excluded, in writing, in such contract or agreement.

a. Authorization by MetroPlan to perform Services and agreement by Contractor to perform specific Services shall be made by separate "Project Task Order", as set forth in the attached Exhibit A. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Contractor and shall be: applicable for any and all Services performed by Contractor for MetroPlan and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Contractor and MetroPlan. This Master Contract does not obligate or require MetroPlan to offer any Project Task Order to Contractor, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by MetroPlan and Contractor.

b. Agreement to the terms set forth herein is a material and necessary precondition and inducement to MetroPlan entering into this Master Contract, and each Project Task Order, with Contractor.

2. Issuance of Project Task Orders: MetroPlan may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit A, to Contractor to perform the Services specified in the Project Task Order. Upon acceptance by the Contractor, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

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. Services: Contractor shall perform the Services required by, and in accordance with this Master Contract and as outlined in the applicable Project Task Order to the satisfaction of the Project Manager and in full compliance with Exhibit B Standard Terms and Conditions. In addition, Contractor shall provide all of the Services set forth in each specific Project Task Order and appropriate for the Project encompassed by the Project Task Order.

5. Deliverables:

a. Deliverables as part of the Services.

Contractor shall provide all of the Deliverables required under the Project Task Order in the time specified, manner and format required by and to the satisfaction of MetroPlan.

b. Contractor's Pre-Contract and Pre-Service Deliverables.

i. Contractor shall timely provide the Deliverables in accordance with the Master Contract.

ii. Contractor shall also timely provide to MetroPlan all the Deliverables necessary to fully complete all of the Services under each Project Task Order.

iii. Additional items, if any, which Contractor must deliver to MetroPlan prior to commencing the Services on a Project shall be set forth in the Project Task Order.

6. Contract Price: The Contract Price to be paid by MetroPlan to Contractor in exchange for the full, timely and acceptable performance of the Services under the Project Task Order shall be set in each Project Task Order and shall be subject to Exhibit B Standard Terms and Conditions.

#### METROPLAN RESPONSIBILITIES

7. MetroPlan Representative: The MetroPlan Representative is Kate Morley, 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.
8. MetroPlan Cooperation: MetroPlan will cooperate with the 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

9. Contract Term: The Contract term is for a period of (term) 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 (date, year) consistent with the Schedule of Services.
10. Renewal: This Contract may be renewed or extended for up to (number) terms by mutual written consent of the Parties. The MetroPlan Executive Director or his designee shall have the authority to approve renewal on behalf of MetroPlan.

#### DATA AND RECORDS

11. 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.
12. 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.
13. 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

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

#### MISCELLANEOUS

15. Notice: Any notice concerning this Contract shall be in writing and sent by certified mail and email as follows:

To MetroPlan:

To:

MetroPlan  
Attn: Kate Morley  
216 W. Phoenix Avenue  
Flagstaff, AZ 86001  
[kate.morley@metroplanflg.org](mailto:kate.morley@metroplanflg.org)  
Phone: 928-266-1293

With a copy to:

With a copy to:

Mangum Wall Stoops & Warden, PLLC  
Attn: Brandon J. Kavanagh  
112 N. Elden Street  
Flagstaff, AZ 86001  
[bkavanagh@mwsowlaw.com](mailto:bkavanagh@mwsowlaw.com)  
Phone: 928-779-6951

16. Authority. Each Party warrants that it has authority to enter this Contract and perform its obligations hereunder and that it has taken all actions necessary to enter into this Contract.

#### **CONTRACTOR:**

\_\_\_\_\_, a(n) \_\_\_\_\_

Signature: \_\_\_\_\_

Print name:

Title:

Date: \_\_\_\_\_

**FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION dba MetroPlan**

Signature: \_\_\_\_\_

Print name:

Title:

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Mangum, Wall, Stoops & Warden, PLLC  
MetroPlan Legal Counsel

## EXHIBIT A | SCOPE OF WORK AND PROJECT TASK ORDER

(INSERT GENERIC SCOPE OF WORK)



## PROFESSIONAL PROJECT TASK ORDER

Project Task Order No. [REDACTED]

Contract No. [REDACTED]

**THIS PROJECT TASK ORDER** is made and entered into on Date, by and between MetroPlan and the Contractor designated below. This Project Task Order is entered into pursuant to and incorporates herein the terms and provisions of the Professional Contract No. [REDACTED], dated [REDACTED], between MetroPlan and Contractor. Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein ("Services").

MetroPlan and Contractor agree as follows:

**MetroPlan**  
**216 W. Phoenix Avenue**  
**Flagstaff, AZ 86001**  
**Project Manager:**  
**Telephone:**  
**E-mail:**

**Contractor**  
**TITLE:** [REDACTED]  
[REDACTED]  
[REDACTED]  
**Federal Tax ID No.:** [REDACTED]  
**Professional Representative:**  
**Telephone:**  
**E-mail:**

**PROJECT DESCRIPTION:** This Project Task Order # [redacted] is for [redacted].  
The Project is scheduled to commence on [redacted], and be completed no later than [redacted].

**PROJECT SITE ADDRESS/LOCATION:** This Project Task Order # 1 is located in Flagstaff, Arizona.

**ESTIMATED PROJECT TASK ORDER PRICE (Time and Materials Not to Exceed):** \$ [redacted]

1. **Fixed Price:** All-inclusive in the above Project Task Order Price; or

2. **Fee:** The Project Order Task Fee is in the amount of \$ [redacted] to be paid in installments based upon monthly progress reports and detailed invoices submitted by Contractor in such form as approved by MetroPlan, to be paid subject to the following limitations:

**a. Documentation of Monthly Progress**

i. Prior to approval of the preliminary documentation (or [redacted] % of plans), the billed amount shall not exceed [redacted] % of the total Contract Amount.

ii. Prior to approval of the final documentation (or [redacted] % of plans) deliverable, the billed amount shall not exceed [redacted] % of the total Contract Amount.

iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed [redacted] % of the total Contract Amount prior to submittal of the final report deliverables.

**b. Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)

i. The Project Task Order Reimbursable Cost is in the amount of \$ [redacted] to be paid based upon monthly progress reports and detailed invoices submitted by [redacted] in such form as approved by MetroPlan.

**c. Other:**

i. Subcontractor Mark Up will be paid in the following manner: [redacted].

ii. Unique Insurance and/or Bond Requirements: [redacted].

iii. Unique Compliance with Government Provisions: [redacted].

**SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION:**

Attachment 1.

**UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY) :**

Attachment 2.

**PROJECT SPECIFIC CONDITIONS (IF ANY):**

Attachment 3.

IN WITNESS, WHEREOF, the parties hereto have executed this Project Order through their duly authorized representatives and bind their respective entities as of the effective date.



**“MetroPlan”**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**“Contractor”**

\_\_\_\_\_, a(n) \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

## **ATTACHMENT 1 – SCOPE OF WORK AND PROJECT SCHEDULE**

*(To be completed by MetroPlan)*

### **PROJECT DESCRIPTION:**

See Exhibit A

### **PROJECT SCHEDULE:**

See Exhibit A

### **PROJECT DELIVERABLES:**

See Exhibit A

PROJECT TASK ORDER #     

**ATTACHMENT 2 - UNIQUE INSURANCE REQUIREMENTS (IF ANY)**

PROJECT TASK ORDER #

**ATTACHMENT 3 - PROJECT SPECIFIC COMPLIANCE**

☐ Design professional license(s) required

## 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, 216 W. Phoenix Avenue, Flagstaff, AZ 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 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 non-conforming 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 of goods. For services, Contractor may submit an invoice on a monthly basis for services rendered and costs incurred in the previous month. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped, or work performed. MetroPlan shall remit payment within thirty (30) days of MetroPlan's receipt of the Contractor's invoice. Payment will only be made for materials received and/or services performed in accordance with this Contract.
- 16. 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 July 14 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 the 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 the 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 performed in accordance that degree of care, skill, and diligence ordinarily exercised by professionals providing similar services in the same or similar locale and under similar circumstances to that of Contractor under this Contract
- 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:** We request the header of this Section 29 be changed from "Warranty" to "Defective Work" and the following changes be made to Section 29: receipt of written notice from MetroPlan, Contractor at its own expense shall promptly correct defective work or work 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.

## **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 the release of such information.

## **INDEMNIFICATION**

- 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.

## **CONTRACT CHANGES**

- 33. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 34. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
- 35. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.
- 36. **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.
- 37. **NO WAIVER:** Each party has the right to 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.
- 38. **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 the authority to consent to an assignment on behalf of MetroPlan.
- 39. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

## **EMPLOYEES AND SUBCONTRACTORS**

- 40. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with MetroPlan's advance written consent. MetroPlan reserves the right to withhold consent if the subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractors are responsible for Contract performance whether or not subcontractors are used.
- 41. **APPLICABLE TERMS AND CONDITIONS:** Pursuant to 2 CFR 200.326, the Contractor's contracts with its subcontractors shall include all the terms and conditions of this Contract. Each subcontractor 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 subcontractors 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 subcontractor's responsibility to comply with this Contract.

## **DEFAULT AND TERMINATION**

- 42. **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 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.

43. **METROPLAN REMEDIES:** In the event of a 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.
44. **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.
45. **SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
46. **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.
47. **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.
48. **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.
49. **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.
50. **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.
51. **CANCELLATION 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**

- 52. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with MetroPlan, without the prior written consent of MetroPlan. However, notwithstanding the foregoing, Contractor is authorized to reference MetroPlan and the scope of work performed by Contractor for MetroPlan in its future marketing and promotion, including, but not limited to, proposals without MetroPlan's prior consent."
- 53. NOTICES:** All notices given pursuant to this Contract shall be delivered to 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.
- 54. 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.
- 55. FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona
- 56. KEY PERSONEL 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 the 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.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. 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.
3. 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	\$2,000,000
Each Occurrence	\$1,000,000
- b. Umbrella Coverage \$2,000,000
- c. Automobile Liability –  
Any Automobile or Owned, Hired and Non-owned Vehicles  
Combined Single Limit Per Accident  
for Bodily Injury & Property Damage \$1,000,000
- d. Workers' Compensation and Employer's Liability  
  
Workers' Compensation Statutory Employer's Liability:  
Each Accident \$1,000,000  
Disease - Each Employee \$1,000,000  
Disease - Policy Limit \$1,000,000
- e. Professional Liability \$2,000,000

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by MetroPlan. If not approved, MetroPlan may require that the insurer reduce or eliminate such self-insured retentions with respect to MetroPlan, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. MetroPlan at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:
- Additional Insured. In Commercial General Liability and Automobile Liability Coverages, ADOT, MetroPlan, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
  - Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
  - Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to MetroPlan, its officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by MetroPlan, its officers, officials, agents, and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
  - Each Insured. The Contractor's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability.
  - Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
  - Waiver of Subrogation. The policies shall contain a waiver of subrogation against MetroPlan, its officers, officials, agents, and employees for losses arising from work performed by Contractor for MetroPlan.
6. 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  
216 W. Phoenix Avenue  
Flagstaff, Arizona 86001
7. 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.
8. 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.
9. 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.

10. 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 | FEDERAL AND STATE COMPLIANCE

**Federal Funding Source:** Federal Highway Administration (FHWA) through Arizona Department of Transportation (ADOT), Surface Transportation Block Grant (STBG) grants, Assistance Listing Number 20.205

**Project Name:** Title of Project \_\_\_\_\_

**Project Number/MPD #** \_\_\_\_\_

*“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.”*

- 1. Monitoring Activities:** Pursuant to 2 CFR 200.329, the project/work in this solicitation/contract is funded with federal funds through the Arizona Department of Transportation, Multimodal Planning Division (ADOT). In accordance with 2 CFR 200.329, ADOT shall monitor all activities performed by its staff or by subrecipients of U.S. Department of Transportation funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met. The Contractor and its subcontractors shall fully cooperate with such monitoring as requested.
- 2. 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.
- 3. Compliance with Funding Agency Requirements:** Pursuant to 2 CFR 200.337 and 2 CFR 200.339, upon request, the Contractor shall provide information or reports to assist in adherence to relevant requirements from the agreements between ADOT, its subrecipient, and the agencies of the US Department of Transportation. If ADOT, or the federal funding agency finds that the work performed fails to comply with any requirement (e.g., work elements or tasks are not conducted in accordance with approved scope, or work elements or tasks are found to be inconsistent with federal or state regulations or guidelines, or products/services were incorrectly procured), ADOT, or the federal funding agency may use the enforcement actions contained in 2 CFR 200.208 and then in 2 CFR 200.339 to remedy the situation and any other appropriate remedies available at law.
- 4. Certification of Eligibility of Costs:** Pursuant to 2 CFR 200.402 - .414, 2 CFR 200.420 - .475, and 2 CFR 200.415, the Contractor shall assure that the 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 Contractor 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).”

5. **Record Retention:** Pursuant to A.R.S. 35-214 and the State of Arizona Accounting Manual, sections 0045 and 7035, CONTRACTORS and SUBCONTRACTORS shall retain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents, and shall be maintained for at least 5 years after final payment.
6. **Applicable Terms and Conditions:** Pursuant to 2 CFR 200.327, the Contractor's contracts with its subcontractors shall include all the terms and conditions of 2 CFR 200 Appendix II, and additionally, those of this Contract. Each subcontractor 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 subcontractors 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 subcontractor's responsibility to comply with this Contract.
7. **Administrative, contractual, or legal remedies for violation or breach of contract terms:** 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 MetroPlan, 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.

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, MetroPlan 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.

8. **Termination for cause or convenience:** Pursuant to 2 CFR 200, Subpart F, Appendix II, MetroPlan reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of MetroPlan

without penalty or recourse. Upon receipt of written notice, the Contractor shall stop all work, as directed in the notice, notify all subrecipients of the effective date of the termination, and minimize all further costs to MetroPlan. In the event of termination under this paragraph, all documents, data, and reports prepared by the Contractor and its subcontractors under this Contract shall become the property of and be delivered to MetroPlan upon request. The Contractor and its subcontractors 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 Contractor and its subcontractors shall continue to perform in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice. MetroPlan shall reimburse the Contractor 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 MetroPlan. The Contractor shall reimburse its subcontractor in a similar fashion. The Contractor and its subcontractors 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, MetroPlan may terminate the Contract in whole or in part due to the failure of the Contractor or its subcontractors 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.

- 9. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended:** Pursuant to 2 CFR 200, Subpart F, Appendix II, for contracts in excess of \$150,000, the Contractor 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).
- 10. Debarment and Suspension / Excluded Parties List:** Pursuant to 2 CFR 200, Subpart F, Appendix II and 23 CFR 121 (J), the Contractor shall not be listed on the excluded parties list, and the Contractor shall not award a Subcontract to any parties listed on the governmentwide exclusions list in the System for Award Management (SAM).
- 11. Anti-Lobbying Certification:** Pursuant to 2 CFR 200, Subpart F, Appendix II (I), for any contract exceeding \$100,000, the Contractor and its subcontractors shall file the required certification. 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.



- 12. 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.
- 13. 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.
- 14. 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 Contractor and its subcontractors 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."
- 15. Patents:** 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 at a minimum cite the applicability of the Standard Patent Rights of 37 CFR 401.14 except for 401.14(g) or may include all the clauses, suitably modified to identify the parties, in all subcontracts, regardless of tier. The clauses may 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.

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.

- 16. Rights to Inventions Made by Nonprofits and Small Business Firms:** Pursuant to 2 CFR 200 Appendix II (F) Rights to Inventions Made Under a Contract or Agreement. The funding provided for this Contract meets the definition of "funding agreement" under 37 CFR §401.2 (a) MetroPlan must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- 17. Conflict of Interest:** Pursuant to 2 CFR 200.112 and 2 CFR 1201.112, the Contractor shall disclose in writing any potential conflict of interest to the federal funding agency, the contracting agency, or the Arizona Department of Transportation.
- 18. Employment of Federal Personnel:** Contractors 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 contractors, potential contractors, or parties to sub-agreements.
- 19. Equipment Use, Management, and Disposal:** Pursuant to 2 CFR 1201.313 the Contractor shall follow State of Arizona rules with respect to the use, management and disposal of equipment acquired under this contract.
- 20. Retainage:** Contractors are herein notified they are prohibited from holding retainage from Subcontractors, nor are Contractors subject to retainage withholding by the Contracting Agency for this Project pursuant to 49 CFR 26.29.b(1).
- 21. Travel:** All travel for the Contractor 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 Contractors/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 Contractor shall also comply with the policies governing individually operated motor vehicles in Section 50.15 of the SAAM. Travel costs

paid to Contractors/Consultants must always be supported by appropriate documentation and in the case of rental vehicles, the ADOT approved justification form.

- 22. 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 Contractor 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 Contractor 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>.

- 23. Report Disclaimer:** Pursuant to 23 CFR 420.117(e), all reports and other project-related documents shall contain the following disclaimer Request for:
- "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".

- 24. Safe Operation of Motor Vehicles:** The contractor 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 Contractor agrees to comply with:

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);

U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and

The following U.S. DOT Special Provision pertaining to Distracted Driving:

- (a) Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle 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 Contractor 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 Contractor 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 sub agreement at each tier supported with federal assistance.

**25. Disadvantaged Business Enterprise:** The contracting Agency is receiving US DOT-assisted transportation funds for this Contract through the Arizona Department of Transportation and has adopted and implemented ADOT's DBE Program Plan, ADOT's DBE policy, DBE contract specifications and forms as a condition of receiving federal funds. ADOT Subrecipients/Subgrantees of federal funds must comply with ADOT DBE Plan and may not have a plan independent from ADOT.

The ADOT DBE Program Plan and LPA/SUBRECIPIENT DBE Guidelines are located online at <https://azdot.gov/business/business-engagement-and-compliance/dbe-contract-compliance> and are herein incorporated by reference.

#### Non-Discrimination

The contracting Agency, its Contractors and Subcontractors will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

In compliance with the ADOT DBE Program Plan, the contracting Agency, its Contractors and Subcontractors shall not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program. The Contractor will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

The Contractor shall take all necessary actions required under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

By executing this Agreement, the Contractor agrees to perform the following minimum DBE Program Compliance Required Activities and include the following assurance with each contract with a contractor or consultant and each subcontract a prime signs with a subcontractor:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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 contracting Agency, with ADOT'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.

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

The Contractor shall designate a full-time employee who shall be responsible for the administration of the contractor's DBE program.

The Contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.

**26. Subcontract Payment Reporting in the DBE System:** The Arizona Department of Transportation (ADOT) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to funding agencies of the USDOT 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).

The Contractor shall respond to payment audits reported each month electronically through ADOT's web-based payment tracking system (<https://arizonalpa.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.

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 contracting Agency will work with ADOT MPD Contracts Group 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.

The Contractor shall include these provisions in all of its subcontracts and ensure that its subcontractors include these provisions in any lower-tier subcontracts.

**27. Title VI/Non-Discrimination Assurances:** The CONTRACTOR HEREBY ACKNOWLEDGES that MetroPlan, as a condition to receiving any Federal financial assistance through the Arizona Department of Transportation and provided by the U.S. Department of Transportation, must GIVE ASSURANCE THAT it shall comply with Title VI of the Civil Rights Act of 1964, as amended, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), the Civil Rights Restoration Act of 1987 (Public Law 100.259) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the U.S. Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, 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 the U.S. Department of Transportation, including the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations. The Contractor shall also incorporate and comply with the terms and conditions established in Exhibit D, Appendices A through E.

Title VI/Non-Discrimination Assurances: This Contract is subject to the provisions of Title VI of the Civil Rights Act and the Contractor is herein notified of such. Additionally, the Contractor shall include the following information in each of its subcontracts associated with the project:

*The Arizona Department of Transportation, 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.*

**28. Non-Discrimination:** Pursuant to 49 CFR Part 26, The Contractor and its subcontractor/subconsultant 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 MetroPlan, 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.

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

The Contractor shall designate a full-time employee who shall be responsible for the administration of the contractor's DBE program.

The Contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.

**29. Excluded Parties:** The federal funding in this Agreement is considered a covered transaction under 2 CFR 1200.220 for purposes of debarment and suspension considerations. Thus, agreements for contractors/consultants and their subcontractors/consultants are subject to this requirement. The Contractor and its Subcontractors are prohibited from making any award or permitting any award at any tier to any party which has not established and maintained its entity registration on the federal System for Award Management or one that is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs pursuant to 2 CFR 200.212. The Contractor agrees to comply and assures the compliance of each third-party contractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension Non-

procurement)," and 2 CFR 200.212. The Contractor agrees to and assures that its third-party contractors will review the Excluded Parties Listing System and assure that its subcontractors establish and maintain entity registration on the System for Award Management before entering into any contracts.

**31. Conflict of Interest:** The Contractor and their subcontractors shall not enter into any contract, subcontract, or arrangement in connection with the project, in which a member, officer, or employee, during tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquired or had acquired prior to the beginning of his or her tenure any such interest, and if such interest is immediately disclosed to MetroPlan, who must further report this to its funding agency, and may waive the prohibition contained in this paragraph, provided, that any such present member, officer, or employee shall not participate in any action by the Contractor or the locality relating to such contract, subcontract, or arrangement. The Contractor must disclose any such interest to MetroPlan within five business days of receipt of disclosure.

The contractor shall insert in all contracts entered into in connection with the project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer, or employee of the firm either during tenure or for one year thereafter shall have any interests, direct or indirect, in this contract or the proceeds thereof."

Pursuant to 2 CFR 1201.112, the Contractor shall disclose in writing any potential conflict of interest to MetroPlan; this requirement is passed to the Contractor's subcontractors. MetroPlan shall inform the funding agency who shall inform the Federal awarding agency in accordance with applicable Federal awarding agency policy.

**32. 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 "Indemnitee") 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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, 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.

**33. Copyright:** Pursuant to 23 CFR 420.121 (b), the State and their subrecipients may copyright any books, publications, or other copyrightable materials developed during a U.S. DOT funded project. The U.S. DOT funding 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.

- 34. Energy Conservation:** The Contractor is required to comply with mandatory standards and policies, as applicable relating to energy efficiency which are contained in the State Energy Conservation Plan issued by the State of Arizona in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
- 35. Drug Free Workplace:** The Contractor 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.
- 36. FTA Funding; Certifications and Assurances:** In the event there is FTA funding for work under this Contract, on an annual basis, the Contractor 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 Contractor 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 Contractor 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 Contractor is ultimately responsible for compliance with the Certifications and Assurances that apply to itself or its Project, even if a Subcontractor or other Third-Party Participant may be involved in your Project, except as FTA determines otherwise in writing. For this reason, we require the Contractor to take the appropriate measures, including, but not limited to, obtaining sufficient documentation from each Subcontractor 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 contractor 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>.

- 37. Incorporation of Federal Provisions:** All contractual provisions of 2 CFR 200 et seq and those 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 subcontractor/consultant, or lower-tier agreement for which funds from this contract shall be used for payment.

- 38. Immigration and E-Verify:** To the extent applicable under Arizona Revised Statutes Section 41-4401, each



Party and its subcontractors/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.

- 39. Americans with Disabilities Act:** The Contractor 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 "Non-Discrimination".
- 40. Fly America:** The Contractor 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 contractors 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 Contractor 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 Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
- 41. Israel Boycott Not Permitted:** 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.
- 42. Forced Labor of Ethnic Uyghurs Ban:** Pursuant to Arizona Revised Statutes § 35-394, the Contractor warrants and by signing this Contract and so certifies that it does not currently, and agrees for the duration of the contract that it will not use the forced labor of ethnic Uyghurs in the People's Republic of China, any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, or any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware during the term of this Agreement that the Contractor is not in compliance with this certification, the Contractor shall notify the Agency within five business days after becoming aware of the noncompliance, and within 180 calendar days after notice, provide written certification that the Contractor has remedied the noncompliance. This item does not apply to not-for-profit organizations or organizations with fewer than ten (10) full-time employees.
- 43. Prohibition on certain telecommunications and video surveillance services or equipment:** Pursuant to 2 CFR 200.216, the Contracting Agency and Contractors and Subcontractors are prohibited from procuring, obtaining, or renewing a contract to procure or obtain video surveillance and telecommunications equipment, equipment, services, or systems produced by Huawei Technologies Company or ZTE Corporation, Hytera

Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or any subsidiary or affiliate of such entities; or from companies reasonably believed by the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- 44. Promoting Free Speech and Religious Liberty:** The Contractor 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.
- 45. Mandatory Disclosures:** Pursuant to 2 CFR 200.113, The Contractor shall disclose, in a timely manner, in writing to the Department, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the contract. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339.
- 46. Contracts for construction, acquisition of goods, or rolling stock valued at more than \$150,000 - Buy America:** The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in US DOT funded projects are produced in the United States, unless a waiver has been granted by the funding USDOT agency, or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in USDOT-funded projects are produced in the United States, unless a waiver has been granted by the funding USDOT agency, or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 65% domestic content for FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on USDOT-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as non-responsive. This requirement does not apply to lower-tier subcontractors.

- 47. Construction Contracts - Equal Employment Opportunity:** Pursuant to 2 CFR 200 Appendix II (C) Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- 48. Construction Contracts - Davis-Bacon Act:** Pursuant to 2 CFR 200 Appendix II (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-

Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 49. Work Employing Mechanics or Laborers:** Pursuant to 2 CFR 200 Appendix II (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 50. Insurance:** In addition to the insurance requirements in Exhibit C, MetroPlan shall insert the insurance requirements from their Grant Agreement as the minimum requirements to be met by the Prime and any Subcontractors.
- 51. DELIVERABLES / DISCLAIMER:** To meet the requirements of 23 CFR 420.117(e), the Contractor and its Subcontractors shall include the following disclaimer in each deliverable.

*This report was funded in part through grants from the Federal Highway Administration, U.S. Department of Transportation. The contents of this report reflect the views of the authors, who are responsible for the facts and the accuracy of the data, and for the use or adaptation of previously published material, presented herein. The contents do not necessarily reflect the official views or policies of the Arizona Department of Transportation or the Federal Highway, U.S. Department of Transportation. 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.*

**52. 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 the Local Public Agency (LPA) or Tribal Government representative 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>.

**53. 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 an 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)

**54. Contractor Responsibility:**

Any contract awarded to accomplish this project establishes a Contractor relationship, as defined by 2 CFR §200.331, with the Department, and shall not establish a Subrecipient relationship and the disbursement of Federal program funds casts the party receiving the funds in the role of a Contractor.

This project is funded under {INSERT CORRECT NUMBER AND PROGRAM TITLE, FUNDING FEDERAL AGENCY, AND PERCENTAGE OF FEDERAL PARTICIPATION. FOR EXAMPLE: Assistance Listing Number 20.205 Highway Planning and Construction, FHWA 80%}. All terms and conditions required for Contractors / Subcontractors of federal recipients under this funding source and according to 2 CFR §200 et seq. shall apply.

**55. 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.

This contract does not establish a subrecipient relationship. Any awarded contract establishes a Contractor relationship. A Contractor shall not be entitled to any copyright for anything created for, though, or as a result of this project.

The Contractor shall not release any material, report, or other document related to this project without the written approval of the contracting agency. The Contractor shall not present information related to this project without the written approval of the contracting agency.

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, incorporated herein by reference. 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.

In the event a DBE goal is required, all Contractors and Sub-contractors must be registered in the ADOT DBE System. For DBE Subcontractor/Contractor removals from an active Project, a Termination / Substitution / Reduction Request Form (Form 108C) is required, followed by approval from the ADOT Business Engagement and Compliance Office (BECO). If a replacement DBE subcontractor shall be added to the project and/or the same goal committed to on the approved DBE forms will be met, no additional forms are needed. If this is not the case, then the Good Faith Effort (GFE) is also required. All forms are available at <https://azdot.gov/business/procurement/federal-forms-and-provisions>.

If removal of a DBE Subcontractor/Contractor is requested, submit the required form for DBE removal to the ADOT Business Engagement and Compliance Office (BECO). The Contractor must copy on the form submission and make sure the response from BECO is forwarded to: the Procurement Officer, the project manager, and [MPDContracts@azdot.gov](mailto:MPDContracts@azdot.gov).

Modifying subcontractors will require submission of revised DBE forms and approval from BECO and Department's Procurement Office if the modifications alter the DBE commitment on the project.

- 56. Prompt Payment:** The funding in this Contract includes reimbursement to MetroPlan of expenditures necessary to accomplish the Project. Payment by MetroPlan may not rely on receipt of funds from the Arizona Department of Transportation before paying Contractors.

Pursuant to 49 CFR 26.29 prime Contractors 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 MetroPlan and any deliverables are approved by MetroPlan) of their contracts no later than 7 days from receipt of each payment MetroPlan makes to the prime Contractor. The prompt payment provision applies to Subcontractors at all tiers. This applies to all Subcontractors, not just DBEs.

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

In the event this project is federally funded, or if there is voluntary DBE participation in a State-funded project, the project will be entered as a contract or task order in the Arizona DBE & OJT System (DOORS for ADOT-Procured Projects, "LPA DBE System" for Subrecipient-Procured Projects). Payment audits are required. For training on completing payment audits, please see the video:

<https://www.youtube.com/watch?v=QFZJlYmN1I>.

- 57. Discovery or Admission into Evidence:** The Contractor is herein notified of 23 USC §409. The Contractor 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.

- 58. Bidder's / Proposer's List Confirmation:** All proposers/bidders must complete an on-line bidders/proposers list in the AZUTRACS web portal (<http://www.azutracs.com/>) and submit the corresponding Bidder's List email confirmation notice with their proposal/bid. The AZUTRACS Project Number: \_\_\_\_\_ and Project Title: \_\_\_\_\_.

- 59. Limited Contact:** No direct contact with agency staff is permitted during the solicitation period except when contact is initiated as part of the evaluation or negotiation processes. Direct contact with other agency staff shall be made only after award.

- 60. 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 agency's 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. The agency 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 PM to already begin, the agency will reimburse that portion of the costs sufficient to make the Contractor whole, as required in federal regulations.

## EXHIBIT D, 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, 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.
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 or the Federal Highway Administration 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 or the Federal Highway Administration, 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, 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, or the Federal Highway Administration 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.

## EXHIBIT D APPENDIX B: CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds affecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4.

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that MetroPlan will accept title to the lands and maintain the project constructed thereon in accordance with Title 23, United States Code the Regulations for the Administration of Federal Aid for Highways, and the policies and procedures prescribed by the Arizona Department of Transportation, Federal Highway Administration and the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252;42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the MetroPlan all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE) TO HAVE AND TO HOLD said lands and interests therein unto MetroPlan and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the MetroPlan, its successors and assigns.

MetroPlan, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will 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 with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [...] and]\* (2) that the MetroPlan will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended, [and (3) that in the event of breach of any of the above mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.



EXHIBIT D APPENDIX C: CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the MetroPlan pursuant to the provisions of Assurance

7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, MetroPlan will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

C. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, MetroPlan will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of MetroPlan and its assigns\*.

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.

## EXHIBIT D, 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, subrecipients 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)

**EXHIBIT E, RFP/RFQ ATTACHMENT A | 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. [SF-LLL 9707V01.pdf](#)

(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.

**X**

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S i g n a t u r e / T i t l e

D a t e

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