



## **NOTICE OF REQUEST FOR PROPOSALS**

**For  
Flagstaff Metropolitan Planning Organization (MetroPlan)**

### **2045 REGIONAL TRANSPORTATION PLAN**

**Issued: 3/22/21**

**Submittals Due: 5/3/21 12:00 Noon Local Time**

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**REQUEST FOR PROPOSALS**  
**MetroPlan**  
**2045 REGIONAL TRANSPORTATION**  
**PLAN**

The Flagstaff Metropolitan Planning Organization (herein referred to as MetroPlan) invites qualified consultants to respond to the Request for Proposals (RFP) to provide professional services for the 2045 Regional Transportation Plan (herein referred to as the Plan).

**Response to Request for Proposals will be received until May 3, 2021, at the MetroPlan office, 6 East Aspen Suite 200, Flagstaff Arizona 86001.**

Any proposal received after 12:00 pm local time on the above stated date will be returned unopened. Submittals must conform to the prepared Scope of Work within the RFP available at [www.metroplanflg.org](http://www.metroplanflg.org) or by request made to the MetroPlan office at [rosie.wear@metroplanflg.org](mailto:rosie.wear@metroplanflg.org)

The proposal envelope shall indicate the name and address of respondent, and shall be addressed to MetroPlan, 6 East Aspen Suite 200, Flagstaff, AZ 86001. Please include on the outside of the envelope: **Request for Proposals: MetroPlan 2045 Regional Transportation Plan Update.**

*Rosie Wear*      3/22/21

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Rosie Wear, Business Manager

## **SCOPE OF WORK**

### **INTRODUCTION**

MetroPlan, the Flagstaff metropolitan planning organization, is seeking consulting services to produce a mandated update to the Regional Transportation Plan (RTP). The consultant will assist the MPO in preparing background data and analysis, crafting performance metrics, developing and evaluating alternatives, engaging the public and producing the policies and programs for the new RTP. The last update was adopted in 2017 and can be found on our website here: <https://www.metroplanflg.org/rtp-blueprint2040>

**The primary deliverable products for the RTP Update shall include the following:**

- Project Administration
- Public Engagement
- Plan Preparation
- Final Plan

**Success on the RTP will be measured as followed:**

- Excellent Project Administration
- Documentation of Current Socioeconomic and Transportation Conditions
- Validation and Update of Regional Travel Demand Model using 2019 Data
- Completing Equity and Accessibility Analysis
- Project 2045 Metrics based on two different design models:
  - Current land use plan assumptions.
  - Sustainable model emphasizing Transportation Demand Management (TDM) land use and transportation facility and system design including bike, pedestrian and transit modes and a focus on trip reduction.
- Providing a robust public engagement experience that is compelling, well-attended, educational, delivers actionable information, and “reports out”.

### **BACKGROUND**

The 2017 Update to the RTP identified \$250 Million in projects and resulted in 3 ballot initiatives being sent to voters: Prop 419 for general transportation, Prop 420 for a Lone Tree railroad overpass, and Prop 421 for transit service improvements. Two of those initiatives passed, but the transit funding was not approved by voters. As a result of these 2018 ballot box decisions, the 2022 RTP update may be more about “how” than “what”. In other words, the region is clear on the projects that need to be completed and has a commitment to voters to deliver. However, the design, relative modal emphasis of the projects, and program schedule need further exploration in light of recent policy developments

In addition to the passage of funding propositions in 2018, the City of Flagstaff recently declared a climate emergency and seeks to achieve carbon neutrality by 2030. MetroPlan is positioned to support this effort through our RTP. One way MetroPlan can provide support is to clearly communicate to decision makers and the public the effectiveness of

various transportation design strategies in meeting mobility, accessibility and climate action goals.

**TASKS: These are the minimum tasks required for the project.**

## **Task 1. Project Administration**

### **1.1 Kick-off and Project Management Meetings**

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

### **1.2 Ongoing Project Management**

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

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

### **1.3 MetroPlan Committee Involvement**

Schedule and conduct weekly project meetings with the MetroPlan project manager, and consistent meetings with the Advisory Group, Technical Advisory Committee (TAC) and Management Committee (MC). MetroPlan staff will engage the Executive Board regarding the RTP.

- A. Deliverable: Facilitate up to six (6) 90 minute meetings with the Regional Transportation Plan Advisory Group to engage their input in the project.
- B. Deliverable: Provide an approximate 30 minute update to the TAC and MC at each monthly meeting.
- C. Deliverable: Provide an approximate 30 minute update to the MetroPlan Board at 3 to 5 meetings prior to June 30, 2022.

### **1.4 Public Engagement and Communication Plan (Defined further in Task 5)**

Develop a robust public engagement and communication plan and schedule of public meetings. Provide leadership in developing content for, promoting attendance at, and synthesizing information from each public engagement effort that complies with MetroPlan's adopted Title VI and Environmental Justice plan available at [www.metroplanflg.org/compliance](http://www.metroplanflg.org/compliance). Consultant will use IAP2 standards to recommend engagement levels for various groups, document direction provided

from staff, advisory group, TAC and Executive Board, and manage process in a manner consistent with direction provided (see Task 5).

## **Task 2. Document Current Socioeconomic and Transportation Conditions**

### **2.1 Collect and Analyze Socioeconomic Data**

The consultant will utilize and evaluate any US Census, State, Local or other socioeconomic and land use data as applicable.

- A. Deliverable: Prepare a report on relevant trends and their implications for policy and transportation demands in the Flagstaff region. Document how different trends will influence analyses and performance metrics later in the process.

### **2.2 Research and develop trip generation rates in response to COVID 19.**

Develop 1 to 3 credible methodologies for trip generation rates and make a recommendation with justification on which methodology to use in model forecasting. Review with staff, steering committee and TAC and get consensus to move forward with a specific methodology prior to moving on to other tasks.

- A. Deliverable: Prepare a brief literature review and explain how, if at all, trip generation rates in the regional model should be changed to reflect lasting impacts of the pandemic on travel behavior.

## **Task 3: Validation and Update of Traffic Forecast Model using 2019 Data**

### **3.1 Update as needed**

The consultant will review the MetroPlan 2018 base year model which is being calibrated and finalized in Winter 2020 and discuss with MetroPlan staff where updates and additional work is needed. MetroPlan staff are expected to begin the process of updating the model with 2019 data and will require some level of assistance, to be determined, from the RTP consultant.

- Maintain a TransCAD license (agency or consultant) or other capability to edit MetroPlan travel demand model inputs and run the regional transportation demand model
- Modify the base data files to represent the various desired planning scenarios (e.g., network, demographic, etc.)

- A. Deliverable: Calibrated 2019 base year model

## **Task 4: Project 2045 Costs and Performance Metrics based on two different scenarios:**

- Current land use plan assumptions that include TDM

- Sustainable model emphasizing Transportation Demand Management (TDM) land use and transportation facility and system design including bike, pedestrian and transit modes and a focus on trip reduction.

#### **4.1 Project 2045 Costs (Construction and Operating) and Performance Metrics based on the current land use plan**

- The consultant will review current land use plans and approved projects and funding sources and will work with MetroPlan staff to develop a 2045 scenario using the regional transportation demand model.
  - This scenario will incorporate recent changes in community policy and interests including the results of the Milton/180 Corridor Master Plan and sustainability initiatives.
  - The consultant will develop a programming sequence for the current land use plan scenario for roads, pedestrians, bikes and transit. This work will include a conceptual budget on how the complete program of projects would be funded and implemented. This scenario will be fiscally constrained using existing and reasonably forecasted local, state and federal revenues.
  - This work will be consistent with the voter approved program of projects from 2018.
  - As part of this work, the consultant will validate costs of construction and ongoing operating and maintenance costs to confirm adequacy of funding levels and identify discrepancies, if any.
  - Since some local funds sunset in 2041, the consultant will work with stakeholders to identify reasonably available revenues for the period 2041 to 2045 for streets, highways, pedestrians, bicycles and transit. This work will include:
    - Developing and recommending a methodology for local revenue assumptions 2021 through 2045.
    - Reviewing with staff, advisory group, Executive Board and TAC and get consensus to move forward with a specific methodology prior to moving on to other tasks. Questions to be answered include:
      - Will we assume ongoing extensions of existing local revenue sources at flat levels as currently approved by voters?
      - Will we assume that all local revenue sources are not renewed on their pending sunset dates?
      - Will we use a combination of the above methods?
  - The consultant will develop metrics of system performance including, but not limited to, Vehicle Miles Traveled (VMT), greenhouse gas emissions, travel times in key corridors, economic impacts and other metrics informed by the expertise of the consultant and the input of the steering committee and TAC.
- A. Deliverable: The consultant will provide a written report that addresses each of the items in scope 4.1 including maps, charts, tables, explanatory text and graphics necessary to communicate findings and recommendations.
- B. Deliverable: The written report described in deliverable 4.1.A will provide the foundation for a more complete and final report prepared for adoption by the MetroPlan Board.

#### **4.2 Project 2045 Costs (Construction and Operating) and Performance Metrics based on enhanced sustainability elements**

- The consultant will develop adaptations of Proposition 419 and 420 projects to include elements like dedicated bus lanes, protected bike lanes and a range of travel demand management measures such as tele-commuting policies to change mode-share.
- The consultant will work with MetroPlan staff to adequately represent the impacts of these mode shift strategies in the regional transportation model.
- The consultant will develop a programming sequence for the sustainability scenario for roads, pedestrians, bikes and transit. This work will include a conceptual budget on how the complete program of projects would be funded and implemented. This scenario will NOT be fiscally constrained using existing and reasonably forecasted local, state and federal revenues.
- As part of this work, the consultant will validate costs of construction and ongoing operating and maintenance costs to confirm adequacy of funding levels and identify discrepancies, if any.
- Since some local funds sunset in 2041, the consultant will work with stakeholders to identify reasonably available revenues for the period 2041 to 2045 for streets, highways, pedestrians, bicycles and transit. This work will include:
  - Developing and recommending a methodology for local revenue assumptions 2021 through 2045.
  - Reviewing with staff, advisory group, Executive Board and TAC and get consensus to move forward with a specific methodology prior to moving on to other tasks. Questions to be answered include:
    - Will we assume ongoing extensions of existing local revenue sources at flat levels as currently approved by voters?
    - Will we assume that all local revenue sources are not renewed on their pending sunset dates?
    - Will we use a combination of the above methods?
- The consultant will develop metrics of system performance including, but not limited to, Vehicle Miles Traveled (VMT), greenhouse gas emissions, travel times in key corridors, economic impacts and other metrics informed by the expertise of the consultant and the input of the steering committee and TAC.

NOTE: Assumption is that existing fiscally constrained local revenues and historic federal funding revenues are utilized for both scenarios. Additional conceptual projects based on conservatively attainable additional federal funds will be discussed through the process.

- A. Deliverable: The consultant will provide a written report that addresses each of the items in scope 4.1 including maps, charts, tables, explanatory text and graphics necessary to communicate findings and recommendations.
- B. Deliverable: The written report described in deliverable 4.2.A will provide the foundation for a more complete and final report prepared for adoption by the MetroPlan Board.



**Task 5: Provide a robust public engagement experience that is compelling, well-attended, educational, delivers actionable information, and “reports out”.**

**5.1 Develop a communication “brand” so that the purpose, vision and approach for the RTP is conveyed in a way that community members can easily understand.**

- We want the community to understand what we are doing, why we are doing it, how they can engage and why it matters. For example, the program might be branded as “Transpo 2045 – Creating the Finest Transportation System in the Country”.

A. Deliverable: Develop a clean, concise, consistent way to communicate to the public our goals, vision, approach, how they can be involved, and the significance of the project.

**5.2 Consider tools and options for a robust public engagement experience and get approval for approach from the MetroPlan project manager.**

A. Deliverable: Share recommendations with the advisory group as requested by the project manager and refine the tools and approach so that there is buy-in from the advisory group.

B. Deliverable: Provide a presentation to staff and the advisory group that conveys how the public outreach program will work.

**5.3 Apply the results of work completed in Tasks 1 through 5 and create a public engagement tool which demonstrates choices and the metric impacts of those choices.**

- For example, as a public participant chooses wider roads and reduced automobile travel times, emissions may increase. Conversely, as a public participant chooses grade separated bike lanes and policy disincentives to automobile traffic, economic performance may be reduced.

A. Deliverable: Create a graphically engaging and educational system which shows transportation and policy choices and the impacts and trade-offs of these choices and provide access so that at least 100 to 400 members of the public participate

B. Deliverable: Complete a 400 person statistically valid random sample survey to determine and measure relative support from the community on various transportation policy and project choices.

**5.4 Create a public engagement tool that helps define what it means to have “The finest transportation system in the country”.**

(Note: MetroPlan’s vision is “To create the finest transportation system in the Country” and we need more insight into what that description means to the community.)

**5.5 Provide disclaimer that the Sustainability Plan is a technical and not a legal analysis.**

- The local propositions were approved for specific projects and the ability to modify those projects needs to be considered separately by the community and is beyond the scope of the RTP.

**5.6 Provide a mechanism for aggregating and synthesizing public participation inputs so the results can be reported out in meaningful ways.**

- There are least two and probably additional ways to share this data:
  1. Explain the rigorous nature of transportation planning analysis and why various choices result in various outcomes. For example, explain how planners calculate with credibility the impacts of bike lanes on VMT reduction and the subsequent impacts on economic activity. In other words, explain why conclusions being drawn are credible and defensible.
  2. Synthesize the range of responses of public input in a manner that policy makers and the general public can understand. For example, provide an aggregate response of all answers, a focus on weighted outliers, and an expert analysis of reading “between the data points” to arrive at what seems to be a consensus or majority perspective of the public.

**5.7 Provide program, schedule and communication tools for reporting out the final RTP and what was learned from the technical planning and public engagement effort.**

- A. Deliverable: Ensure that the information gleaned from the planning effort is widely available and strategically shared with critical groups including elected bodies, appointed commissions, media contacts, stakeholders and advisory group. This work will include drafting a press release, a published final plan, developing a PowerPoint presentation, and conducting outreach in partnership with MetroPlan staff.

**5.8 Develop an outreach methodology to engage minority, low-income, and LEP populations.**

- A. Deliverable: Develop data collection tools to document engagement of minority, low-income and LEP populations as part of the outreach process.
- B. Deliverable: Create engagement tools based upon MetroPlan’s Title VI and Environmental Justice Plan ([link](#)) to engage minority, low-income, and LEP populations in standardized manner.

**Task 6: Policy Development, Recommendation and Alternatives (Policy Plan)**

- A. Deliverable: The consultant will synthesize the results of the planning, financial, performance and public engagement inputs and develop a policy recommendation for the RTP. This policy recommendation (Policy Plan) will address the inherent conflict between the “current land use” and “sustainability” scenarios and

recommend a policy framework for moving forward. This Policy Plan will make a case for why a particular policy approach is being recommended and provide alternative policy scenarios with pros and cons of each. For example, if the Policy Plan recommends maximizing opportunities for a sustainable transportation system, the resulting economic development, environmental impact, and impacts on the transportation system, would need to be identified. Further, the Policy Plan would need to tie to other policies it is attempting to support, i.e., climate emergency.

The Policy Plan would also have to provide at least one other viable alternative for implementing the RTP. For example, if the sustainability approach is recommended, the viable alternative might be a modified traditional land use plan. This alternative would also need the economic development, environmental impact, and impacts on the transportation system identified and would need to be based in other local policy such as economic development, voter approval of ballot initiatives, etc.

Please note that MetroPlan has no expectation for what the Policy Plan recommends, i.e., current land-use, sustainability or a hybrid. However, MetroPlan staff do expect that the Policy Plan captures and synthesizes the universe of inputs gleaned throughout the planning process and makes a cogent case for whatever Policy Plan is put forth for consideration by the MetroPlan Executive Board.

#### **Task 7: Completing Equity and Accessibility Analysis**

The consultant will analyze Title VI and Environmental Justice population segments and document in the final Plan. Develop and apply an accessibility analysis for all surface transportation modes in each scenario using the MetroPlan regional transportation model and filter those results against Title VI communities and 2<sup>nd</sup> home communities.

#### **Task 8: Flexibility**

The tasks listed herein are the minimum tasks expected for work to meet the project objectives. If, during the course of the project, tasks are discovered that must be performed to reach the project objectives, the agency PM will request a quote for the additional work and a revised project schedule. The PM will then submit justification and the quote and schedule revision to the MetroPlan Executive Director for approval.

## **PROPOSAL REQUIREMENTS AND EVALUATION**

### **WRITTEN QUESTIONS**

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

Inquiries may be made to:

**Jeff Meilbeck, MetroPlan Executive Director, 928-220-2272**  
**Or via Email: [jeff.meilbeck@metroplanflg.org](mailto:jeff.meilbeck@metroplanflg.org)**

### **PRE-PROPOSAL MEETING:**

A virtual Pre-Proposal meeting to answer questions about this RFP will be held on March 26, 2021 at 10:30 AM via ZOOM.

**<https://us02web.zoom.us/j/83612116988?pwd=aU95RUJvT3RJV0ZWZVQ2R0FSdXd6Zz09>**

**Meeting ID: 836 1211 6988**  
**Passcode: 869063**

### **PREPARATION**

Proposals shall consist of no more than ten (10) double-sided 8 ½ x 11 pages including the front and back cover, using not less than type size 11 font. The proposal length does not include table of contents, resumes, required grant provision/certification documents. ***To be considered, proposals must include signed certification forms (Attachments B, C and D) and the required email confirmation of Bidders List from AZUTRACs or will be deemed non-responsive.*** Proposals should provide a concise description of the consultant's qualifications, team members, project approach, project schedule, and a detailed cost proposal, by task, to deliver the proposed work under the RFP.

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

### **PROPOSAL REFERENCES**

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

### **SUBMITTALS**

One (1) electronic copy (flash drive) and one (1) bound printed copies of the complete response to RFP to be received no later than 12:00 pm local time on **May 3, 2021**. The response to the RFP should be addressed to:

**MetroPlan  
6 East Aspen Suite 200  
Flagstaff, AZ 86001**

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

#### LATE PROPOSALS

Any proposal received after 12:00 PM local time on May 3, 2021 will not be considered.

#### REVIEW PROCESS

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

<u>EVALUATION CRITERIA</u>	<u>100 POINTS</u>
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1. Proposed project approach, particularly for tasks 4, 5 and 6. – 30
2. Specific experience of the consultant in a project of this type – 20
3. Experience of the proposed project team and availability within current and anticipated work load for this project – 20
4. Cost proposal – 15
5. Overall quality of the response to RFP evidencing interest in the project – 10
6. Proposed schedule – 5

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

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

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

The evaluation committee members will individually evaluate the presentation/interview of each of the candidate firms and rank them according to the aforementioned criteria. The evaluation committee will formulate a consensus ranking and generate a recommendation to the MetroPlan Executive Director. The MetroPlan Executive Director will consider the

Committee's recommendation and approve initiation of contract negotiations. The MetroPlan Executive Director will meet with the top ranked consultant for the purposes of negotiating a contract. If negotiations are successful, the MetroPlan Executive Director will present a draft contract to the MetroPlan Board of Directors for consideration of approval, rejection or modification. Any such contract may be reviewed with input requested from the RTP Advisory Group, the Technical Advisory Committee and the Management Committee before it goes to the MetroPlan Executive Board. If negotiations are unsuccessful, the MetroPlan Executive Director will terminate negotiation efforts with the top ranked consultant and open negotiations with the next highest ranked consultant, and so on. This process will continue until negotiations are successful, or until this RFP is terminated. The MetroPlan Executive Board reserves the right to reject any and all proposals, or any part thereof; to accept any proposal or any part thereof; or to waive any informalities when it is deemed to be in MetroPlan's best interest.

### WITHDRAWAL OF PROPOSALS

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

### RESPONSIBILITIES/COMPLIANCE

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

### ADDITIONAL TERMS AND CONDITIONS

1. This solicitation does not commit METROPLAN to award an Agreement or to pay for costs associated with the preparation of the RFP or pre-agreement expenses.
2. METROPLAN reserves the right to make an award considered to be in the best interest of the region.
3. METROPLAN reserves the right to accept or reject any or all RFP responses received, to cancel all or part of the RFP, or to negotiate with all qualified firms.
4. METROPLAN may, at its discretion, require additional terms and conditions at the time the final Agreement is negotiated. The additional terms and conditions would be for clarification of particular language or correcting errors in the RFP including for example omissions or misstatements that are discovered.
5. No prior, current, or post-award verbal agreement(s) with any officer or employee of METROPLAN shall affect, modify, or supersede any terms or modifications of this RFP.
6. The Firm chosen may be required to submit revisions of their responses as a result of negotiations.
7. The selected Firm will be required to furnish evidence of insurance coverage to include, but not limited to Professional Liability, Workers Compensation, and automobile. Set limits will be provided at contract negotiations.
8. The selected consultant and sub-consultants shall possess any necessary Arizona licenses and permits necessary to operate in the State and shall provide evidence of such to METROPLAN.
9. The selected consultant and sub-consultants shall not assign or subcontract services or responsibilities without prior written approval from the METROPLAN.

10. Any changes to the response requirements will be made by written addendum. METROPLAN reserves the right to waive any minor irregularities, informalities or oversights in the RFP documents, or any corresponding responses that does not materially affect or alter the intent and purpose of the RFP, that is not in violation of Arizona or Federal Government rules, laws and regulations.
11. All materials and data used for this study are the property of METROPLAN.
12. The selected consultant shall at all times comply with all applicable Federal Funding Agency regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
13. METROPLAN reserves the right to engage in a contract extension with the selected consultant should additional funding become available. This optional extension would serve to meet METROPLAN's continued regional transportation study needs for up to 12 months after the scheduled RTS project completion.

## FUNDING

MetroPlan is the designated Metropolitan Planning Organization (MPO) for the Flagstaff, Arizona Urbanized Area, and has available Statewide Planning Research (SPR) funds in accordance with federal and state allocations. In support of the Plan, MetroPlan has budgeted these funds for planning activities as identified in accordance with the MetroPlan Unified Planning Work Program.

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

## **RFP SCHEDULE**

February 3, 2021	MetroPlan Executive Board approval to release RFP
March 22, 2021	RFP Released
March 26, 2021	Preproposal Meeting 10:30 AM
May 3, 2021	Responses to RFPs due by 12:00 pm
May 2021	Responses to RFPs reviewed and ranked
May 12, 2021 9:00 to Noon	Interviews <b><u>may</u></b> be conducted by selection committee
May 2021	Contract negotiations
May 26, 2021	MetroPlan Technical Advisory Committee contract review (optional)
May 27, 2021	MetroPlan Management Committee contract review (optional)
June 2, 2021	Consideration by MetroPlan Executive Board



## Grant Provisions

**Grant Agency:** Federal Highway Administration (FHWA) through Arizona Department of Transportation (ADOT), State Planning and Research (SPR) grants

**Grant Name:** Regional Transportation Plan 2045

**Grant Number:** GRT-19-0007314-T

**Project Number:** MPD19-7314.21.400.1

**CFDA Number:** 20.205

### FEDERAL THIRD-PARTY AGREEMENTS

#### **APPLICABLE LAWS AND REGULATIONS:**

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

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

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

#### **CODE OF FEDERAL DOMESTIC ASSISTANCE (CFDA):**

A component of the Federal Funding Accountability and Transparency Act requires that sub-awards greater than \$25,000 document the funding Catalog of Federal Domestic Assistance (CFDA) program number, participating Federal Agency name, and percentage of participation. This requirement provides data relevant to the Department's FFATA and/or Recover Act compliance reporting. FTA requires reporting for All Procurements, not just that > \$25,000.

#### **PROCUREMENT AND CONTRACT PROVISIONS REQUIREMENTS:**

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322

Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.36 Contract provisions. All other non-Federal entities, including sub recipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

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

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

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

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

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

**NO FEDERAL GOVERNMENT OBLIGATIONS:**

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

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

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS:**

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

fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate.

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

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

#### **ACCESS TO THIRD PARTY CONTRACT RECORDS:**

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

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

#### **CHANGES TO FEDERAL REQUIREMENTS:**

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

Changes to CONTRACT Scope: Federal legislation and implementing regulations allow for change orders within the Scope of Work covered by the CONTRACT. In the event of changed conditions, an adjustment of CONTRACT Scope is permissible if the altered character of the work does not differ materially from that of the original CONTRACT as long as the work is approved by METROPLAN with the requirement that the change must involve the work covered by the CONTRACT. Changes that materially differ from the Scope of Work are considered Cardinal Changes and are not permissible. All work changes must be reviewed by METROPLAN, ADOT Contracts Program Manager, and/or ADOT Procurement Officer in

advance of proceeding to ensure the change is permissible under State and Federal requirements and regulations. Work cannot proceed until appropriate financial and administrative processing has occurred and any federal approvals are received when and where necessary and a modified CONTRACT is issued.

#### **TERMINATION:**

Termination for Convenience (General Provision) The recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions.

If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Termination for Convenience (Professional or Transit Service Contracts) The recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

#### **NON-DISCRIMINATION**

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

#### **DISADVANTAGE BUSINESS ENTERPRISE (DBE)**

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

#### **DEBARMENT AND SUSPENSION CERTIFICATION**

In accordance with 49 CFR 29.505, and by signature on this CONTRACT, the CONSULTANT certifies its compliance, and the compliance of any subconsultants or subcontractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving Federal Funds:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any Federal Agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. Had not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years as specified by 49 CFR 29.305(a).

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

Therefore, CONSULTANT shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".

MetroPlan is 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. CONSULTANT agrees to comply, and assures the compliance of subconsultants 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 CONSULTANT agrees to and assures that its third party contractors and subconsultants will review the Excluded Parties Listing System and assure that its subconsultants establish and maintain entity registration on the System for Award Management before entering into any contracts.

#### **ANTI-LOBBYING**

The CONSULTANT agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress, in connection with any of the following covered Federal actions: 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; the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

CONSULTANTS who apply or bid for an award of \$100,000 or more shall file the certification required by Attachment pursuant to 49 CFR part 20, "New Restrictions of Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any persons 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 shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to the Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier to the recipient.

The CONSULTANT agrees to comply with the provisions of 31 U.S.C. § 1352 (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits Federal funds from being expended by a recipient or any lower tier subrecipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to METROPLAN.

The CONSULTANT certifies, by signing and submitting the offer, to the best of his/her knowledge and belief, that:

1. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal 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 any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any fund other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and 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 the "Disclosure of Lobby Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).
3. 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 and entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000 and not more than \$100,000 for each such failure.
4. The CONSULTANT also agrees, by submitting its offer that it shall require that the language for this certification be included in subcontracts with all Subcontractor(s) and lower-tier Subcontractors which exceed \$100,000 and that all such Subcontractors and lower-tier Subcontractors shall certify and disclose accordingly.
5. METROPLAN shall keep the firm's certification on file as part of its original offer. The CONSULTANT shall keep individual certifications from all Subcontractors and lower-tier Subcontractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.
6. Disclosure forms for the CONSULTANT and its Subcontractors and lower-tier Subcontractors shall be submitted with the offer on the date the offers are due. The CONSULTANT and each Subcontractor and lower-tier Subcontractor shall file revised disclosure forms at the end of each calendar quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. The Disclosure forms shall be submitted by the Procurement Officer to the FHWA for further review.

## **ENVIRONMENTAL PROTECTION**

(This clause is applicable if the Contract exceeds \$100,000. It applies to Federal-aid contracts only) In reference to the Clean Air Act, the CONSULTANT agrees to:

1. Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The CONSULTANT agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the funding Federal agency and the appropriate EPA Regional Office.

2. Include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by an agency of USDOT.

In reference to the Clean Water Act, the CONSULTANT agrees to:

1. Comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
2. To report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the funding Federal agency and the appropriate EPA Regional Office.
3. To include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by an agency of USDOT.

Also, the CONSULTANT is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).

#### **ENERGY CONSERVATION**

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

#### **DRUG-FREE WORK PLACE**

The CONSULTANT agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; U.S.C. § 701 et seq.) and maintain a drug-free work place.

#### **INSURANCE**

CONSULTANT and, if applicable, SUBCONSULTANTS, shall procure and maintain, for the duration of the CONTRACT, insurance against claims for injuries to persons or damages to property which may arise from, or in conjunction with, the performance of the work hereunder by the CONSULTANT, its agent's representatives or employees. Insurance required by METROPLAN must be met following award of a CONTRACT and prior to CONSULTANT and, if applicable, SUBCONSULTANTS, beginning work of project.

#### **FLY AMERICA REQUIREMENTS**

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). CONSULTANT shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their SUBCONSULTANTS are required to use US Flag air carriers for US 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. CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US 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. CONSULTANT shall include the requirements of this section in all subcontracts that may involve international air transportation.

#### **PROMPT PAYMENT**

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). The prime CONSULTANT agrees to pay each SUBCONSULTANT under this prime CONTRACT for satisfactory performance of its CONTRACT no later than 30 days from the receipt of each payment the prime CONTRACT receives from the Recipient. The prime CONSULTANT agrees further to return retainage payments to each SUBCONSULTANT within 30 days after the SUBCONSULTANTS work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE SUBCONSULTANTS.

#### **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

#### **FULL AND OPEN COMPETITION**

In accordance with 49 U.S.C § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

#### **PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS**

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

#### **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

CONSULTANT shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. § 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

#### **ACCESS REQUIREMENT FOR PERSONS WITH DISABILITIES**

CONSULTANT shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. CONSULTANT shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

#### **NOTIFICATION OF FEDERAL PARTICIPATION**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, CONSULTANT shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of Federal assistance as a percentage of the total cost of the third party contract.

#### **INTEREST OF MEMBERS OR DELEGATES TO CONGRESS**

No members or, or delegates to, the US Congress shall be admitted to any share or part of this CONTRACT nor to any benefit arising therefrom.

#### **INELIGIBLE CONSULTANT AND SUBCONSULTANTS**

Any name appearing upon the Comptroller General's list of ineligible CONSULTANTS for federally-assisted contracts shall be ineligible to act as a SUBCONSULTANT for CONSULTANT pursuant to this CONTRACT. If CONSULTANT is on the Comptroller General's list of ineligible CONSULTANTS for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this CONTRACT.

#### **OTHER CONTRACT REQUIREMENTS**

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

#### **COMPLIANCE WITH FEDERAL REGULATIONS**

Any CONTRACT entered pursuant to this solicitation shall contain the following provisions: All USDOT required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provision contained in this AGREEMENT. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. CONSULTANT shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated

from time to time during the term of this CONTRACT. CONSULTANT'S failure to comply shall constitute a material breach of this CONTRACT.

#### **ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY**

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

#### **ENVIRONMENTAL JUSTICE**

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

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

#### **ENVIRONMENTAL PROTECTIONS**

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

#### **GEOGRAPHIC INFORMATION AND RELATED SPATIAL DATA**

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

#### **GEOGRAPHIC PREFERENCE**

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

## ORGANIZATIONAL CONFLICTS OF INTEREST

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

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

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

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

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

## **VETERANS PREFERENCE**

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

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

## **SAFE OPERATION OF MOTOR VEHICLES**

The CONSULTANT is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the CONSULTANT or AGENCY. The CONSULTANT agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle CONSULTANT owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this AGREEMENT.

## **CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

## TITLE VI ASSURANCES

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

### Statutory/Regulatory Authorities

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

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

### General Assurances

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

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

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

### Specific Assurances

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

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all *Federal Aid Highway Program* and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. **"MetroPlan,** in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business

*enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

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

## APPENDIX A

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

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

## APPENDIX B



## CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting 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.

## 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 Non-discrimination 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 Non-discrimination 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 the **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.

## APPENDIX D

### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **MetroPlan** pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, 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) no person on the ground 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, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, **MetroPlan** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, **MetroPlan** 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.

## APPENDIX E

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

### **Pertinent Non-Discrimination Authorities:**

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

## **APPENDIX F**

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

#### **1.0 Policy:**

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

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

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

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

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

#### **2.0 Assurances of Non-Discrimination:**

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

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

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

### 3.0 Definitions:

**(A) Commercially Useful Function (CUF):** Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.

**(B) Disadvantaged Business Enterprise (DBE):** A for-profit small business concern which meets both of the following requirements:

- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**(C) NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

**(D) Non-DBE:** Any firm that is not a DBE.

**(E) Race-Conscious (RC):** A measure or program focused specifically on assisting only DBEs, including women-owned DBEs.

**(F) Race-Neutral (RN):** A measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

**(G) Small Business Concern (SBC):** A small business that meets all the following conditions:

- (1) Operates as a for-profit business registered to do business in Arizona;
- (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
- (3) Is independently owned and operated;
- (4) Is not dominant in its field on a national basis; and
- (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

**(H) Socially and Economically Disadvantaged Individuals:** Any individual who is citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

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

#### **4.0 Working with DBEs:**

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

Arizona Department of Transportation Business Engagement and Compliance Office

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

Phone: (602) 712-7761

FAX: (602) 712-8429

Email: [ContractorCompliance@azdot.gov](mailto:ContractorCompliance@azdot.gov) Website: [www.azdot.gov/bec](http://www.azdot.gov/bec)

#### **4.01 Mentor-Protégé Program:**

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

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

#### **5.0 Applicability:**

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the consultant uses a percentage of DBEs, as defined herein, to meet the contract-specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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

## **6.0 Certification and Registration:**

### **6.01 DBE Certification:**

Certification as a DBE shall be predicated on:

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

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

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

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

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

### **6.02 SBC Registration:**

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



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

SBCs can register online at the AZ UTRACS website.

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

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

### **7.0 DBE Financial Institutions:**

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

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

### **8.0 Time is of the Essence:**

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

### **9.0 Computation of Time:**

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

### **10.0 Consultant and Subconsultant Requirements:**

#### **10.01 General:**

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

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

#### **10.02 DBE Liaison:**

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

### **11.0 DBE Goal:**

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

## **12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:**

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all consultants and subconsultants who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at <http://www.azutracs.com/> a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

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

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

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

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

## **13.0 Payment Reporting:**

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

## **14.0 Crediting DBE Participation:**

### **14.01 General Requirements:**

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

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

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

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

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

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

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

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

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

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

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

#### **14.02 Effect of Loss of DBE Eligibility**

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

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

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

#### **14.03 Notifying the Consultant of DBE Certification Status:**

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

#### **14.04 Police Officers:**

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

#### **14.05 Commercially Useful Function:**

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

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

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

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

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

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

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

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

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

### **15.0 Required Provisions for DBE Subcontracts:**

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

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

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

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

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

### **16.0 Certification of Final DBE Payments:**

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

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

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

### **17.0 False, Fraudulent, or Dishonest Conduct:**

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

## **APPENDIX G**

### **PROMPT PAY AND PAYMENT REPORTING PROVISIONS MEASUREMENTS AND PAYMENTS:**

#### **Partial Payments:**

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

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

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

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

#### **Subcontractor Payments:**

##### **(1) Retention**

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

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

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

##### **(3) Partial Payment:**

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

**(4) Final Payment:**

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

**(5) Payment Reporting:**

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

The requirements of this subsection apply to all Reportable Contracts.

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

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

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

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

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

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

**a) Sanctions of Inadequate Reporting:**

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$1,000.00 as liquidated damages, from the monies due to the

contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

#### **(6) Completion of Work:**

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

#### **(7) Disputes:**

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

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

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

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

#### **(8) Non-Compliance**

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

- a) Liquidated Damages:** These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.
  - i. The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.
  - ii. If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
  - iii. If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as liquidated damages.
- b) Additional Remedies:** If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:



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

ii. **Terminate the contract for default,**

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

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

ATTACHMENT B -

CONSULTANT CERTIFICATION FORM

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

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

**Request for Proposal Certification Form**

Contract #: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

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

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

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

9.	If project is funded with Federal Aid funds, the Consultant affirmatively ensures that in any subcontract entered into pursuant to this advertisement, minority business enterprises shall be afforded full opportunity to submit proposals/bids in response to this invitation and shall not be discriminated against on the grounds of race, color, or national origin, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation.
10.	The Consultant will utilize all Project Team members, sub-consultants and DBE firms, if applicable, submitted in the RFP, and will not add other Project Team members or sub-consultants, unless the Consultant has received prior written approval from METROPLAN.
11.	The Consultant shall meet its DBE goal commitment and any other DBE commitments as stated in its RFP proposal or Cost Proposal; and shall report on a timely basis its DBE utilization as detailed in the contract.
12.	If selected, the Consultant is committed to satisfactorily carry out the Consultant's commitments as detailed in the contract and its RFP proposal.
13.	The Consultant is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. 1368).
14.	The Consultant is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency.
15.	The Consultant agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, subtitle D; U.S.C. § 701 et seq.) and maintain a drug-free work place.
16.	MetroPlan, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
17.	In Compliance with 49 CFR Part 26.11, the Consultant is required to register with the AZ UTRACS web portal and complete the Online Bidder's List. <b>Please Note:</b> any firm being awarded work as a prime or sub-consultant on a federally funded project must be AZ UTRACS registered. <b>Failure to submit the corresponding Bidder's List email confirmation as part of the Proposal will result in rejection of the proposal. {Project number MPD19-7314.21.400.1 - 2045 Regional Transportation Plan}</b>
18.	The Consultant agrees to comply with all Federal and State requirements listed in the section titled "Federal Third Part Agreement: Applicable Lawdebs and Regulations."

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

Print Name \_\_\_\_\_ Print Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Proposing Consultant Firm Name \_\_\_\_\_



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

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

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

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

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

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

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

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

**Attachment E –**  
**SAMPLE CONTRACT FOR PROFESSIONAL SERVICES**  
Contract No. \_\_\_\_\_

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

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

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

**SERVICES**

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

**FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION (FMPO)  
2045 REGIONAL TRANSPORTATION PLAN**

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

2. **Compensation:** In consideration for the Contractor’s satisfactory performance, MetroPlan shall pay Contractor \_\_\_\_\_. Any price adjustment must be approved by mutual written consent of the parties. The MetroPlan Executive Director or his/her designee may approve an adjustment if the annual Contract price is less than \$50,000; otherwise MetroPlan board approval is required.
3. **Standard Terms and Conditions:** MetroPlan Standard Terms and Conditions, attached hereto as Exhibit B, are hereby incorporated into this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. **Key Personnel/Subcontractors:** Contractor’s shall provide the contact information for Key Personnel and Subcontractors (if any). Key Personnel are those employees whose license number and signature will be placed on key documents and those employees who have significant responsibilities for completion of the services. The MetroPlan Representative for this contract has the right to approve any proposed substitution of Key Personnel or Subcontractors.

**METROPLAN RESPONSIBILITIES**

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

**CONTRACT TERM**

7. **Contract Term:** The Contract term is for a period of [INSERT YEARS/MONTHS] unless terminated pursuant to the Standard Terms and Conditions. This Contract shall be effective as of the date signed by both Parties. Performance shall commence within ten (10) days from MetroPlan’s issuance of the

Notice to Proceed, and shall be completed on or before \_\_\_\_\_, 20\_\_ consistent with the Schedule of Services.

8. Renewal: This Contract may be renewed or extended for up to \_\_\_\_ additional \_\_\_\_\_ [INSERT YEAR/MONTH] terms by mutual written consent of the Parties. The MetroPlan Executive Director or his designee shall have authority to approve renewal on behalf of MetroPlan.

#### DATA AND RECORDS

9. 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.
10. 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.
11. 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

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

#### MISCELLANEOUS

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

To MetroPlan:

MetroPlan  
Attn: Jeff Meilbeck  
6 E Aspen Ave, Suite 200  
Flagstaff, AZ 86001  
[Jeff.meilbeck@metroplanflg.org](mailto:Jeff.meilbeck@metroplanflg.org)  
Phone:

To Contractor:

With a copy to:

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

With a copy to:

14. Incorporation of RFP. Each Party agrees that all terms and conditions of the 2045 Regional Transportation Plan Request for Proposals dated \_\_\_\_\_, 2021, are incorporated by reference as if fully set forth herein.

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

CONTRACTOR

\_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

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

FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION dba MetroPlan

\_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Approved as to form:

\_\_\_\_\_

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

Notice to Proceed issued: \_\_\_\_\_, 20\_\_\_\_



**EXHIBIT A**  
**SCOPE OF WORK**

[The final Scope of Work under the 2045 Regional Transportation Plan is yet to be determined.]

## **EXHIBIT B**

### **STANDARD TERMS AND CONDITIONS**

#### **IN GENERAL**

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

#### **MATERIALS**

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

11. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from MetroPlan.
12. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of MetroPlan, shall constitute shall deliver conforming materials, or services, in each installment or lot of the contract a breach of the contract as a whole.
13. **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.
14. **LIENS:** All materials and other deliverables supplied to MetroPlan shall be free of all liens otherthan 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.
15. **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**

16. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by MetroPlan.
17. **LATE INVOICES:** MetroPlan may deduct up to 10% of the payment price for late invoices. MetroPlan operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, MetroPlan will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
18. **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.
19. **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.

- 20. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by MetroPlan; or (b) when acceptable materials and/or materials were received by MetroPlan.
- 21. **AMOUNTS DUE TO METROPLAN:** Contractor must be current and remain current in all obligations due to MetroPlan during performance. Payments to Contractor may be offset by any delinquent amounts due to MetroPlan or fees and charges owed to MetroPlan under this Contract.
- 22. **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**

- 23. **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.
- 24. **CONTROL:** Contractor shall be responsible for the control of the work.
- 25. **WORK SITE:** Contractor shall inspect the work site and notify MetroPlan in writing of any deficiencies or needs prior to commencing work.
- 26. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of MetroPlan or adjacent property in performance of the work and safeguard the worksite.
- 27. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
- 28. **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.
- 29. **WARRANTY:** Contractor warrants all work for a period of one (1) year following final acceptance by MetroPlan. Upon receipt of written notice from MetroPlan, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from MetroPlan, MetroPlan may perform the work and Contractor shall be liable for the costs. This one-year warranty is in addition to, and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

### **INSPECTION, RECORDS, ADMINISTRATION**

- 30. **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.
- 31. **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.

- 32. PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as “confidential”, MetroPlan will endeavor to notify Contractor prior to release of such information.

### **INDEMNIFICATION. INSURANCE**

- 33. 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.
- 34. INSURANCE:** Contractor shall maintain all insurance coverage required by MetroPlan, including public liability and worker’s compensation.
- 35. INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless MetroPlan against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by MetroPlan of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against MetroPlan and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the MetroPlan against any and all expenses, losses, royalties, profits and damages, attorneys fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

### **CONTRACT CHANGES**

- 36. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 37. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
- 38. AMENDMENTS:** This Contract may be amended by written agreement of the parties.
- 39. SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.
- 40. NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 41. ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of MetroPlan, which will not be unreasonably withheld. Any assignment without such consent shall

be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to MetroPlan. The Executive Director shall have authority to consent to an assignment on behalf of MetroPlan.

- 42. BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

## **EMPLOYEES AND SUBCONTRACTORS**

- 43. SUBCONTRACTING:** Contractor may subcontract work in whole or in part with MetroPlan's advance written consent. MetroPlan reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
- 44. NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment.
- 45. DRUG FREE WORKPLACE:** Contractor personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
- 46. IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to MetroPlan that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all State and Federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of MetroPlan. MetroPlan retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist MetroPlan in regard to any such inspections. MetroPlan may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist MetroPlan in regard to any random verification performed. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).
- 47. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, the Parties certify that they are not currently engaged in and agree, for the duration of the agreement, not to engage in a boycott of Israel.

## **DEFAULT AND TERMINATION**

- 48. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-

defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches the non-defaulting party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law in addition Contract remedies provided for herein.

49. **METROPLAN REMEDIES:** In the event of Contractor's default, MetroPlan may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to MetroPlan to pay for the costs of such substitute service. MetroPlan may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
50. **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.
51. **SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
52. **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.
53. **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.
54. **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.
55. **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.
56. **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.
57. **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**

- 58. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with MetroPlan, without the prior written consent of the MetroPlan.
- 59. NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent Notice may be sent by email as a secondary form of notice.
- 60. 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.
- 61. GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
- 62. FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 63. ATTORNEYS FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs, professional fees and expenses.



## **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:
- a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, 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.
  - b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
  - c. 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.
  - d. 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.
  - e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
  - f. 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  
6 E. Aspen 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**

### **DBE Assurances**

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