

<b>Agreement / CAR Number</b>	GRT-18-0007011-T
<b>AG Contract Number</b>	P0012013003419
<b>Advantage Vendor Number</b>	PZ000007901
<b>DUNS Number</b>	082098703
<b>AFIS Document ID</b>	
<b>Advantage Project Number Eligible From Date Eligibility Expiration Date Project Details</b>	Refer to Exhibit A

## GRANT AGREEMENT

BETWEEN

THE ARIZONA DEPARTMENT OF TRANSPORTATION MULTIMODAL PLANNING DIVISION  
acting for and on behalf of THE STATE OF ARIZONA

AND

COCHISE COUNTY

This GRANT AGREEMENT, established pursuant to Arizona Revised Statutes (A.R.S.) § 28-7281, is entered into \_\_\_\_\_ between the ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) MULTIMODAL PLANNING DIVISION (MPD) acting for and on behalf of THE STATE OF ARIZONA herein referred to as the STATE or ADOT, and COCHISE COUNTY a Local Government agency herein referred to as the RECIPIENT. The STATE, ADOT, and the RECIPIENT are collectively referred to as the “Parties”, and individually as STATE, ADOT, RECIPIENT, and “Party”.

### I. RECITALS

- 1) ADOT is authorized to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of STATE.
- 2) RECIPIENT has obtained appropriate action by ordinance or resolution or otherwise pursuant to the laws or other rules and regulations applicable to it and its governing bodies and is authorized to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of RECIPIENT.
- 3) Exhibit A: Project Award Description provides the Project Award Description, Eligibility Dates, Funding Participation, and Match Requirements. The STATE and the RECIPIENT desire to secure the Project as described in Exhibit A through the expenditure of State Economic Strength Project Funds and carried out according to this Agreement and under the applicable sections of ARS 28-7282 et seq.
- 4) Exhibit B: Program Description provides the statutory reference and describes rules, regulations, and requirements specific to the program(s) awarded in this Agreement.
- 5) Exhibit C: Responsibility Matrix delineates key requirements specific to roles. The STATE and the RECIPIENT desire defining their respective responsibilities related to the expenditure and reimbursement of up to the amount of funds described in Exhibit A and referred to as the PROJECT within the authority granted by the Program described in Exhibit B.

- 6) Exhibit D: Procurement and Third Party Contract Provisions provides rules specific to RECIPIENT procurement in this Agreement.
- 7) Exhibit E: Discrimination & Title VI Requirements provides mandatory Title VI requirements.
- 8) Exhibit F: Disadvantaged Business Enterprise (DBE) Requirements provides mandatory DBE requirements.
- 9) Exhibit G: Insurance (Risk Management) Requirements provides mandatory insurance requirements.
- 10) The RECIPIENT assures that it will comply with applicable provisions of the Americans with Disabilities Act (ADA), (Public Law No. 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including 28 CFR parts 35-36, and applicable provisions of 49 CFR Parts 27, 37 and 38: Transportation for Individuals with Disabilities; Final Rule. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".
- 11) The RECIPIENT warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.
- 12) RECIPIENT qualified local match and fees for the PROJECT to be procured by the STATE is due upon demand and prior to procurement. Match for PROJECT to be procured by RECIPIENT shall be indicated in and deducted from request for reimbursement.
- 13) The APPLICATION for this Agreement does not constitute the AWARD amount. The AWARD will be demonstrated in Exhibit A of this Agreement, incorporated into the document at the time of execution and/or as updated from time-to-time by mutual consent.
- 14) The State has the authority to re-distribute Award if the signed Agreement is not received by the program required deadline, or if applicable cash Match (if required) is not received, so that the Agreement may be executed within 90 days from the date that Exhibit A documenting Award is distributed.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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## **II. SCOPE**

- 1) RECIPIENT shall provide specific services or activities related to eligible funding, herein called the PROJECT in accordance with the RECIPIENT'S application(s), incorporated herein as referenced and as described in Exhibit B and the PROJECT description and Award described in Exhibit A.
- 2) PROJECT expense and cost awards will be detailed in Exhibit A. Awards may consist of any combination of expense or cost categories eligible in the associated grant program.
- 3) PROJECT Award is limited to the quantity, description, and/or pricing of the items identified in Exhibit A. Any needed or desired variation from quantity, description, or pricing must be requested in writing and approved by the Program Manager prior to procurement or incurring expenses. Approvals will

result in a modified Exhibit A being issued. For PROJECT Award items being procured by ADOT, actual pricing that exceeds the estimate on Exhibit A and requiring additional MATCH will be confirmed with the RECIPIENT prior to purchase.

- 4) RECIPIENT eligible PROJECT expenditures or incurrence of costs may not occur prior to the “Expenses Eligible from Date” and must occur prior to the “Eligibility Expiration Date” established in Exhibit A. All support documentation must be dated within that established data range to be considered eligible.
- 5) Authorized PROJECT-appropriate expenses and costs associated with the PROJECT Award, supported by receipts and other suitable and appropriate documentation, and incurred within the Exhibit A established data range are eligible for reimbursement upon execution of this Agreement. Final reimbursement requests must be received no later than 30 days after the calendar quarter within which the Eligibility Expiration Date occurs to be eligible for reimbursement unless an extension has been granted by the Program Manager.

### **III. RESPONSIBILITIES**

#### **1) ADOT or its assignees will:**

- a. Review PROJECTS for compliance with statutory requirements, oversight requirements, and program guidance.
- b. Review documentation supporting PROJECT expenditures for eligibility and ensure program match requirements are met.
- c. Review invoices, when appropriate to the Grant Award, from RECIPIENT and reimburse RECIPIENT within 30 days after receipt and approval of invoices, in a total amount not to exceed the lesser of the approved invoiced costs or the Grant Award.
- d. Communicate with RECIPIENT as necessary to facilitate program compliance and procedural efficiency.

#### **2) RECIPIENT will:**

- a. Administer the grant from award to closeout.
- b. Take necessary steps to ensure compliance with program or Agreement stipulated deadlines.
- c. Develop and have in place prior to use of award internal policies and systems that ensure effective management of awards and compliance with grant requirements.
- d. Implement strong internal controls for accounting and compliance with grant terms and conditions and ensure that RECIPIENT financial management system and any other system used for documentation or compliance is appropriate to implement the Project.
- e. Establish a budget of the costs required to perform the Project and a method for monitoring actual costs against the budget.

- f. Ensure that matching funds qualify under Program requirements and submit payment of Grant required MATCH or other fees as indicated in Exhibit A upon demand by the STATE.
- g. Comply with all terms of the Grant Program in accordance with the RECIPIENT application(s) and statutes in effect at the time of application or subsequently revised and incorporated herein by reference.
- h. Obtain prior written concurrence of the State before assigning any portion of the work to be performed under this Agreement or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement.
- i. Communicate contractual requirements to contractors and sub-contractors and ensure all the requirements of this Agreement are incorporated by means of a contract or other legally binding documents stipulating the contractor and/or sub-contractor's responsibility to comply with this Agreement.
- j. In the event of an accident involving any equipment funded under this Agreement, the RECIPIENT shall, within 48 hours, notify the ADOT Program Manager and the MPD Finance & Administration Manager (see Exhibit B) electronically via email. Any insurance proceeds received when project property has been lost or damaged, the grantee shall a) apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service or b) return an amount equal to the remaining STATE interest in the lost, damaged, or destroyed project property. The RECIPIENT agrees to request from and adhere to guidance from the ADOT Project Manager regarding which option shall be followed.
- k. Communicate with STATE as necessary to facilitate program compliance and procedural efficiency.
- l. Provide all required reports required by Program requirements or as requested by ADOT in a timely manner and as required by the STATE.
- m. Ensure users of PROJECT equipment and/or services meet applicable regulations and statutes.
- n. Review documentation supporting PROJECT expenditures for eligibility and ensure program match requirements are met.
- o. Comply with Performance Measure requirements when and as established or as designated by the STATE for its compliance.
- p. Comply with Cross-Cutting requirements for asset management plans and reporting of asset inventory and condition information when and as established by the STATE.
- q. Demonstrate that funds are expended for eligible and allocable activities; track receipts, disbursements, assets, liabilities, and balances; and track and report program income.
- r. Report to the STATE as required by the program but at a minimum so that payments may be completed quarterly on the invoice form provided by ADOT, for categorized reimbursable Project costs/expenses awarded as detailed in Exhibit A, as authorized and allowable under the grant

requirements, and supported as required with vendor invoices, original receipts, or other suitable and appropriate documentation.

The final invoice for each State Fiscal Year for all work completed through June 30 each year shall be submitted no later than July 15 each year. In the event this deadline cannot be met, the RECIPIENT shall communicate with the MPD Finance Manager to establish a deadline for submission. Invoices received after the deadline for submission may be deemed non-reimbursable.

In the event that no expenditures occurred during a calendar quarter, please notify the ADOT Project Manager and explain the delay in the Project or reason for no billable charges.

To be eligible for reimbursement, costs must meet the following general criteria:

- Be a direct cost. Indirect costs are eligible for reimbursement only with an indirect cost plan approved by the RECIPIENTs federal cognizant agency and accepted by ADOT as indicated on Exhibit A.
  - Be necessary and reasonable for proper and efficient performance and administration of the Project;
  - Be an eligible expense under program regulations and requirements;
  - Be treated consistently. A cost may not be assigned to the grant as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a grant as an indirect cost;
  - Be determined in accordance with generally accepted accounting principles;
  - Not be included as a cost or used to meet cost sharing or matching requirements of any other award in either the current or a prior period;
  - Be the net of all applicable credits; and
  - Be adequately documented to include a system generated financial summary, or Excel spreadsheet accompanied by appropriate backup documentation (i.e. invoices, payroll, etc.), disclosing an expense amount that matches the invoice amount.
- s. Submit program required reports of procurement activities according to the section labeled: **PROCUREMENT AND THIRD PARTY CONTRACT PROVISIONS** and submit reports of contract activities via email in a spreadsheet template provided by the ADOT Program Manager.

#### **IV. MISCELLANEOUS PROVISIONS**

- 1) **Term Incorporation:** This Agreement is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in this Agreement are incorporated by reference as a part of this Agreement. It is RECIPIENT responsibility to ensure that any Agreement between RECIPIENT and its CONTRACTORS for use of grant funds shall incorporate the provisions contained herein.
- 2) **Duration:** This Agreement shall become effective upon signature by the parties hereto and shall remain in force and effect until PROJECT satisfaction plus 36 months after Project completion.

This Agreement may be cancelled at any time prior to the commencement of performance under this Agreement, upon thirty (30) days written notice to the other party.

- 3) **Amendments:** This Agreement may be amended upon mutual agreement of the Parties at any time when in the best interest of STATE, or RECIPIENT. Modifications to Exhibit A describing the details of the approved PROJECT may be modified without adopting a formal amendment to this Agreement; acceptance of the modification shall be indicated by signature on the modified Exhibit A by an authorized signatory from the RECIPIENT.
- 4) **Match:** Any needed or desired variation from quantity, description, or pricing must be requested in writing and approved by the Program Manager prior to procurement. Approvals will result in a modified Exhibit A being issued with updated approved not-to-exceed award, pricing, and MATCH indicated. Without advance approval, RECIPIENT is responsible for all of the increased price or quantity procured.

In the event that this Agreement is terminated after matching and/or fee funds have been issued to and deposited by the STATE, there is no guarantee of timeframe for refund of match funds, and refund shall not occur prior to the reassignment of the PROJECT award to another eligible agency and payment by that agency of any required matching funds. Remitted fees may be non-refundable, depending on the purpose of the fees except when this Agreement is terminated by ADOT or the STATE at no fault of the RECIPIENT.

In circumstances where the RECIPIENT cannot accept delivery of the Project Equipment or where surrender of equipment is required, refund of capital match will be based on current fair-market value at the time of surrender less the cost of any repairs or modifications required to affect reassignment to another RECIPIENT or program.

- 5) **Availability of Funds:** Every payment obligation of STATE under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by STATE at the end of the period for which the funds are available. No liability shall accrue to STATE in the event this provision is exercised, and STATE shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- 6) **Statutory Compliance:** All parties shall comply with all applicable federal, state, and local requirements including all applicable provision of A.R.S. 28-7281 through 28-7286 et seq. and other applicable regulations where and when relevant.
- 7) **Conflict of Interest:** This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
- 8) **Recordkeeping:** All RECIPIENTS and/or their CONTRACTORS and the parties shall retain all data, books, and other records relating to this Agreement for a period of five (5) years after completion of the Agreement. All records shall be subject to inspection and audit by the STATE at reasonable times as set forth in A.R.S. 35-214.
- 9) **Audit:** The administration of resources awarded by ADOT to the RECIPIENT may be subject to audits and/or monitoring by ADOT including but not be limited to: on-site visits by ADOT staff or designees, and limited scope audits. By entering into this Agreement, the RECIPIENT agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by ADOT. In the event ADOT determines that a limited scope audit of the RECIPIENT is appropriate, the RECIPIENT agrees to

comply with any additional instructions provided by ADOT staff to the RECIPIENT regarding such audit. The RECIPIENT further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the ADOT's Office of Audit and Analysis, ADOT's Office of the Inspector General (OIG) and ADOT's Financial Management Services. It is the responsibility of the RECIPIENT to monitor their RECIPIENTS.

The RECIPIENT shall follow up and take corrective action on audit findings. Preparation of summary schedule of prior year audit findings, including corrective action, a timetable for resolution, and current status of the audit findings are required to be submitted to ADOT. Current year audit findings require corrective action, a timetable for resolution, and status of findings will also be reported to ADOT.

If the RECIPIENT fails to take corrective action, ADOT will make a determination to:

- a. make financial adjustments to the allocated Federal funding as determined appropriate, up to and including repayment by the RECIPIENT of disallowed costs, or
- b. ADOT may take other action as determined appropriate.

If the RECIPIENT has not completed corrective action, a timetable for follow-up should be provided.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to ADOT and the Arizona Auditor General. This section does not limit the authority of ADOT to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

Audit Report submission: Copies of reporting packages for audits conducted shall be submitted to:

ADOT at the following address:  
Arizona Department of Transportation  
206 S. 17<sup>th</sup> Ave. MD310B  
Phoenix, AZ 85007

Copies of written communication between the RECIPIENT and the independent auditor in compliance with the Statement on Auditing Standards No 114 and as required by this section titled AUDIT of this agreement shall be submitted by or on behalf of the RECIPIENT directly to:

ADOT at the following address:  
Arizona Department of Transportation  
206 S. 17<sup>th</sup> Ave. MD310B  
Phoenix, AZ 85007

**10) Dispute Resolution / Arbitration:** In the event of any controversy, the Parties agree that it is in their mutual best interest to promptly meet with the purpose of resolving said Dispute. In the event that the Parties cannot resolve their dispute informally, the parties hereto agree to abide by required arbitration as set forth for in Arizona Revised Statute 12-1518.

- 11) **Third Party Antitrust Violations:** The RECIPIENT assigns to the STATE any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the RECIPIENT toward fulfillment of this Contract.
- 12) **Immigration:** To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties or its subcontractor employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.
- 13) **Termination for Convenience:** Either Party has the right to terminate the Agreement, in whole or in part at any time, when in the best interests of the RECIPIENT or STATE without penalty or recourse.
- 14) **Termination for Default:** STATE reserves the right to terminate this Agreement in whole or in part due to failure of RECIPIENT to carry out any term, promise, or condition of the Agreement. STATE will issue a written ten (10) day cure notice to RECIPIENT for failure to adequately perform, or if there is reason for STATE to believe that the RECIPIENT cannot or will not adequately perform the requirements of the Agreement. If RECIPIENT does not submit a Corrective Action Plan to the satisfaction of STATE within the ten (10) day period, then STATE may pursue action in accordance with the Agreement Article titled: *Arbitration*.
- 15) **Entire Agreement.** This Agreement may be amended, modified, or waived only by an instrument in writing signed by both Parties. Should the PROJECT awarded under this Agreement be completed at a lower cost than the amount awarded, or for any other reason should any of these funds not be expended, or expended in other than in strict accordance with the terms and conditions of this Agreement, a proportionate amount of the funds provided shall be reimbursed to the STATE. Except as identified in the PROJECT the RECIPIENT shall not assign any portion of the PROJECT or execute any agreement, contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the STATE.

## **VI. SECURITY AGREEMENT**

- 1) In consideration of the funded PROJECT equipment identified in Exhibit A including any equipment added, and conveying title thereto, the RECIPIENT hereby grants ADOT a security interest in the PROJECT equipment in the amount indicated in Exhibit A as the "STATE Portion" payable to the Department upon its demand, if and only if:
  - a. The RECIPIENT by itself or any agent sells, transfers, offers or attempts to sell or transfer, in whole or in part, the PROJECT equipment, or,
  - b. The PROJECT equipment is totally destroyed or is lost, stolen or otherwise disappears, or,
  - c. This Agreement by and between the STATE and the RECIPIENT is terminated.

- 2) In the event of the occurrences described in Articles VI.1.a or VI.1.c, the RECIPIENT shall be liable for no more than the fair market value of the PROJECT equipment on the date of the occurrence of such event.
- 3) In the event the PROJECT is totally destroyed, lost, stolen, or disappears, the obligation herein may be extinguished by assigning to ADOT the proceeds of insurance covering such an event, provided the assignment and the ultimate payment is equal to the fair market value of the PROJECT equipment on the date of occurrence of such event.
- 4) Upon the occurrence of any other event described herein which would allow the STATE to demand payment under this agreement, the obligation assured herein may be extinguished by assigning the herein PROJECT equipment to ADOT in as good a condition as when received, normal wear and tear excepted, thereby no longer having any further obligation to reimburse the STATE should the STATE exercise its right to terminate the agreement under the Agreement Articles titled: *Termination for Convenience* and/or *Termination for Default*. ADOT may refuse to accept such assignment, if in its sole judgment the PROJECT equipment has been abused or is in such condition as to substantially impair its value.
- 5) During the useful, economical life of the PROJECT equipment, as defined in the current Program Guidebook and Application for the grant year, the equipment may be surrendered to ADOT subject to stipulated terms and ADOT acceptance, and the obligation herein will be extinguished.
- 6) In the event of a vehicle transfer back to ADOT during useful life, the Secondary Manufacturer and Aftermarket Vehicle Components, in addition to the original equipment manufacturer (OEM) components (as supplied by the manufacturer or vendor to the STATE or ADOT) or their equivalent— must remain with the vehicle as delivered by ADOT to the RECIPIENT and are considered to be included in the lien.
- 7) This security agreement and its terms shall not inure to the benefit of any assignee, purchaser for value, or any other person acquiring an interest herein, and this security interest herein created shall not be extinguished until and unless the STATE receives the fair market value of the PROJECT equipment on the date of assignment, purchase, or acquisition of other interest.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**COCHISE COUNTY**

**STATE OF ARIZONA**

**Arizona Department of Transportation**

**By**

**By**

Peggy Judd

Gregory Byres, Division Director  
Multimodal Planning Division

Date Signed

Date Signed

APPROVAL OF COCHISE COUNTY

I have reviewed this Grant Agreement BETWEEN the STATE OF ARIZONA, by and through its ARIZONA DEPARTMENT OF TRANSPORTATION, MULTIMODAL PLANNING DIVISION and COCHISE COUNTY and declare this Agreement to be in proper form and within the powers and authority granted to the COCHISE COUNTY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED \_\_\_\_\_

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Attorney for the COCHISE COUNTY

**Note: This page is mandatory for any public agency. If you are not a public agency, at your option, you may write “Acknowledged and Waived” above an authorized signatory’s signature. It is recommended that you have an attorney review the document even if not mandatory.**

**Exhibit A**  
**PROJECT AWARD DESCRIPTION**

<b>Award Description</b>	<b>Minimum 10% Local Cash Match on Eligible Costs</b>	<b>ESP Grant for Eligible Project Costs</b>	<b>Other Project Costs – RECIPIENT Responsibility</b>	<b>Total Estimated Project Cost (Match + ESP Grant + Other Costs)</b>
ESP, GES18CCP Road Improvements on Robbs Road and Arzberger Road	\$69,837.50	\$475,000.00	\$153,537.50	\$698,375.00

Road improvements on Robbs and Arzberger Roads. Road improvements will help the Willcox wine industry by providing access to the wine grape farms.

The ESP Grant requires 10% percent Local Cash Match toward eligible project costs.

**Eligible Project Costs** include but are not limited to:

- Public highway construction and/or reconstruction
- Turn Lanes
- Acceleration/deceleration lanes
- Utility placement within the public right of way that is component of the overall public highway construction project.
- Curb and gutter and/or other drainage construction associated with the overall public highway construction project

Costs ineligible for reimbursement or use as a match include but are not limited to:

- Application preparation
- Routine maintenance and rehabilitation
- Landscaping
- Beautification
- Construction of areas not designated for vehicular traffic such as sidewalks, etc.
- Work done on private property
- Signage for private companies
- Contingency fees
- Property purchase or easements
- Roadway and highway design and engineering
- Work done prior to the effective date of the ESP agreement
- Grant administration

**EXHIBIT B**  
**PROGRAM DESCRIPTION**  
**Economic Strength Projects Grant Program**  
**State of Arizona Highway User Revenue Fund 100%**

The ESP is a competitive grant program designed to enhance the economic strength and competitiveness of Arizona rural communities by providing funding for highway projects that foster job growth. The ESP will reimburse specified costs of qualifying rural road and/or highway projects that are projected to accomplish one or more of the following: (i) retain a significant number of jobs, (ii) significantly increase the number of new jobs, (iii) foster significant private capital investment and (iv) otherwise make a significant contribution to the regional economy, particularly in base industries.

Administration of the ESP is shared between the Arizona Commerce Authority (ACA) and the Arizona Department of Transportation (ADOT). After initial screening by the ACA of eligible Projects and a recommended priority ranking of eligible Projects by the ACA's Rural Business Development Advisory Council (RBDAC), ADOT is charged with the final selection of approved Projects and with the contractual and financial administration of the Program. Further, see RFP Sections 3.1 and 4.1 and A.R.S. §§ 41-1505(E) and 28-7286(A).

**Available Funding**

Funding for the Program is allocated to ADOT through the Highway User Revenue Fund. The total amount available for grants pursuant to the ESP is \$1,000,000. The ACA and ADOT reserve the right to award less than \$1,000,000 in ESP grants depending on, among other considerations, the number and quality of Project proposals ("Proposals") received. Unallocated Program funds may be available for use in future Economic Strength Grant Project funding rounds. A single ESP grant award cannot exceed \$500,000. There is no prescribed minimum ESP grant award. The ACA and ADOT may choose to make one or more ESP grant awards.

**Eligible Applicants**

Applicants eligible for the ESP are as follows:

- Arizona incorporated cities and towns with populations of less than 150,000 (based on U.S. Census Bureau 2010 population data) not contiguous with or situated within a Metro Area
- Arizona counties with populations of less than 750,000 (based on U.S. Census Bureau 2010 population data)
- Federally recognized Indian tribes situated in Arizona.

<b>STATE Contact Information</b>				
	<b>Agreements</b>	<b>Invoicing</b>	<b>Reimbursement</b>	<b>Project Manager</b>
<b>Name</b>	Sally J. Palmer	-	Angela Ringor	Lynn (Ungyo) Sugiyama
<b>Title</b>	Contracts Program Manager / Compliance Officer	-	Accounting Manager	Senior Transportation Planner IV
<b>Email</b>	<a href="mailto:MPDContracts@azdot.gov">MPDContracts@azdot.gov</a> ; <a href="mailto:SPalmer@azdot.gov">SPalmer@azdot.gov</a>	<a href="mailto:MPDInvoice@azdot.gov">MPDInvoice@azdot.gov</a>	<a href="mailto:ARingor@azdot.gov">ARingor@azdot.gov</a>	<a href="mailto:LUngyoSugiyama@azdot.gov">LUngyoSugiyama@azdot.gov</a>
<b>Phone</b>	602-712-6732	602-712-7333	602-712-8316	602-712-6883

**EXHIBIT C**  
**RESPONSIBILITY MATRIX**

<b>Actions (not all-inclusive list)</b>	<b>RECIPIENT Responsibility</b>	<b>STATE / ADOT Responsibility</b>
Agreement Reviews / Approval	Submit to attorney for review prior to presentation to the governing body; Governing body must take appropriate action to approve the IGA and provide evidence of said action	Draft and send to Awarded Recipient
Match Approval	Where required, obtain official approval/vote and submit to ADOT Contract Program Manager within 90 days of notice of award, identifying original source (federal agency, local revenue, not-for-profit, for-profit.)	Review/Approve as eligible; Maintain Documentation
Execute Agreement	Sign Agreement and return within 60 days of receipt	Execute Agreement within 90 days from award of grant.
Procurement	Procure according to rules established in the Agreement.	Determine applicable procurement laws, rules, and regulations
Expenditures	Expenditures are only eligible upon the execution date of the Agreement and must be incurred within 18 months	Review/Approve as eligible and within permissible timeframe
Reimbursement Requests	Submit the first reimbursement request no later than 8 months after the effective date of the Agreement. Submit Reimbursement/Billing Summary form and adequate support documentation to MPDInvoice@azdot.gov	PM - Review and Approve/Reject within 7 days; Grant Accountant - process payments within 14 days from receipt
Reimbursement Request – End of Each State Fiscal Year	An invoice for all expenditures <b>through 6/30</b> of the ending State Fiscal year shall be submitted <b>no later than 7/15</b> to MPDInvoice@azdot.gov	PM - Review and Approve/Reject within 5 days; Grant Accountant - process payments within 14 days from receipt
Match	Allocate at least 10% match to qualifying project costs on every reimbursement request, identifying fund source	Review/Approve as eligible. Grant funds from other State-funded programs, including the ACA's Rural Economic Development Grant ("REDG"), are ineligible as matching funds

<b>Actions (not all-inclusive list)</b>	<b>RECIPIENT Responsibility</b>	<b>STATE / ADOT Responsibility</b>
Progress Reports	Submit within 20 days after the close of each calendar quarter	Determine content and provide the forms. Track project outcomes relative to goals
Annual Outcome Report	Provide an annual outcome report for a period of 36 months	Track project outcomes relative to goals
Compliance	Comply with all applicable terms and conditions as stipulated in the Agreement and in the application guide.	Oversight & Contract Administration

**EXHIBIT D**  
**PROCUREMENT AND THIRD PARTY CONTRACT PROVISIONS**

In the event the RECIPIENT is authorized to procure Project construction services, RECIPIENT is responsible for following all procurement requirements established in the Agreement, by the Program, and applicable Arizona Revised Statutes.

In the event that zero federal monies will be used as match and this project is not within the bounds of an existing federally funded project:

1. If the RECIPIENT is a local public agency or political subdivision of this state and has adopted the State Procurement Code pursuant to ARS 41-2501, the RECIPIENT shall follow the State Procurement Code. In the event the State Procurement Code has not been adopted, the RECIPIENT must reconcile the differences between local procurement rules and the State Procurement Code and receive authorization to proceed under local rules.
2. If the RECIPIENT has completed procurement self-certification processes through ADOT, the RECIPIENT shall follow the certified procurement rules.

In the event a single dollar of federal funds will be used in this project as match or if this project is within the bounds of an existing federally funded project,

1. If the RECIPIENT is a local public agency or political subdivision of this state and has adopted the State Procurement Code pursuant to ARS 41-2501, the RECIPIENT shall follow the State Procurement Code except and unless a federal rule applicable pursuant to the rules of the funding agency is more restrictive, then it shall apply. In the event the State Procurement Code has not been adopted, the RECIPIENT must reconcile the differences between local procurement rules and the State Procurement Code and receive authorization to proceed under local rules.
2. If the RECIPIENT has completed procurement self-certification processes through ADOT, the RECIPIENT shall follow the certified procurement rules except and unless a federal rule applicable pursuant to the rules of the funding agency is more restrictive, then it shall apply.
3. All other RECIPIENTS of MPD shall follow 2 CFR 200.317 through 200.326 as applicable, Appendix II to Part 200, other CFR references provided in 2 CFR part 200 et seq. Contract provisions are located at: [http://www.ecfr.gov/cgi-bin/text-idx?SID=512ca5e6616b465f5cb28e0bc36a4a67&node=pt2.1.200&rgn=div5#ap2.1.200\\_1521.ii](http://www.ecfr.gov/cgi-bin/text-idx?SID=512ca5e6616b465f5cb28e0bc36a4a67&node=pt2.1.200&rgn=div5#ap2.1.200_1521.ii)
4. The regulations required by the federal funding agency shall be adhered to explicitly. The RECIPIENT must locate the federal funding agency required procurement requirements and contract provisions. For example: FHWA procurement requirements can be linked to at: <http://www.fhwa.dot.gov/construction/> and contract provisions are located at: <http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>

Include applicable contract provisions in every third-party contract and purchase order. In addition to other clauses required throughout this Agreement, a reference a table of required federal terms and conditions is provided to assist you in ensuring appropriate inclusion. The list is not all-inclusive. The RECIPIENT is responsible to provide all statutory / contractual references, explanatory comments, and additional forms and certifications that may be required.

**Scope Changes:** Change orders **within the scope of the work** covered by the contract are permissible. 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 the ADOT Project Manager **with the requirement that the change must involve the work covered by the contract.** All

scope changes must be reviewed and documented in advance of proceeding to ensure the change is permissible under applicable State and/or Federal requirements and regulations.

**Impermissible Changes – Federal Funding:** Certain changes are not permitted when using federal funding. Neither the contractor nor the RECIPIENT may request any change in the scope of work that would be considered impermissible.

**(1) Improper Contract Expansion.** A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the original recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.

**Changes in Quantity:** To categorize virtually any change in quantity as a prohibited cardinal change (sometimes referred to as an —out-of-scope change) fails to account for the realities of the marketplace and unnecessarily restricts a recipient from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. The U.S. Supreme Court decision in *Freund v. United States*, 260 U.S. 60 (1922) supports FTA’s policy.

**(2) Cardinal Changes.** A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons”. A change within the scope of the contract (sometimes referred to as an —in-scope change) is not a —tag-on or cardinal change.

- (a) Identifying Cardinal Changes. Recognizing a cardinal change to a third party contract can be difficult. A cardinal change cannot be identified easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases.
- (b) Tests. Among other things, customary marketing practices can influence the determination of which changes will be “cardinal.” Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was originally contemplated at the time the original contract was entered into, or the cumulative impact on the contract’s quantity, quality, costs, and delivery terms.

**EXHIBIT E**  
**DISCRIMINATION & TITLE VI REQUIREMENTS**  
**(REV 032013)**

The SUBRECIPIENT HEREBY AGREES THAT as a condition to receiving any Federal financial assistance provided by the U.S. Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, as amended, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), the Civil Rights Restoration Act of 1987 (Public Law 100.259) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the U.S. Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the U.S. Department of Transportation, including the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations. The SURECIPIENT shall also incorporate and comply with the terms and conditions established in Appendix A.

**Title VI/Non-Discrimination Assurances:** This Agreement is subject to the provisions of Title VI of the Civil Rights Act and the SUBRECIPIENT is herein notified of such. Additionally, the SUBRECIPIENT shall include the following information in each of its agreements/contracts associated with the Project.

*The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

**APPENDIX A**

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Federal Highway Administration*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential

subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration*, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration*, may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
- b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 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, 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).

**EXHIBIT F**  
**DISADVANTAGED BUSINESS ENTERISE (DBE) REQUIREMENTS**  
**(REV 02282018)**

***This language is applicable if \$1.00 of federal funding is used in payment of expenditures under this Agreement.***

The SUBRECIPIENT receiving DOT-assisted transportation funds through ADOT must adopt and implement ADOT's DBE Program Plan, ADOT's DBE policy, DBE contract specifications and forms as a condition of receiving federal funds. ADOT Subrecipients/Subgrantees of federal funds must comply with ADOT DBE Plan and may not have a plan independent from ADOT.

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

**Non-Discrimination**

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

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

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

By executing this Agreement, the SUBRECIPIENT, agrees to perform the following minimum DBE Program Compliance Required Activities:

FHWA Funded Projects	FTA Funded Projects	Item Number	DBE Program Compliance Required Activities
✓	✓	1	Designate a Disadvantaged Business Enterprise Liaison Officer (DBELO), responsible for adopting and implementing ADOT's DBE Program Plan; acting as the single point of contact for DBE compliance.
✓	✓	2	Adhere to the ADOT DBE Program Plan and concomitant procedures.
✓	✓	3	Follow ADOT's guidelines and procedures, and use the forms developed by ADOT to implement its DBE program.
✓	✓	4	Participate in training conducted by ADOT related to DBE requirements and program regulations

FHWA Funded Projects	FTA Funded Projects	Item Number	DBE Program Compliance Required Activities
✓	✓	5	Require firms that work on DOT-assisted contracts to register in AZ UTRACS.
✓	✓	6	Encourage small firms to register as an SBC (Small Business Concern) via the AZ UTRACS web portal.
✓	✓	7	Utilize certified DBEs found in the AZ UTRACS web portal.
✓	✓	8	Include the DBE contract goal as provided by ADOT BECO for FHWA-funded (and Race-Neutral Agency Voluntary Participation Goal for FTA-funded) contract bid advertisement, bid package, statement of qualification, request for proposal or other solicitation documents.
✓	✓	9	Include applicable DBE contract specifications as provided by ADOT in all DOT-assisted contract bid advertisements, bid packages, statements of qualification, requests for proposal or other solicitation documents.
✓	✓	10	The SUBRECIPIENT shall confirm good faith by the contractor or determine any action required in response to the contractor submission of a verifiable explanation of the discrepancy in the DBE System as early as practicable but in no case later than seven days after reviewing relevant documentation.
✓	✓	11	No later than 15 calendar days after Notice of Procurement Award to a Vendor/Contractor, the SUBRECIPIENT shall enter the name, contact information, and subcontract amounts for all Contracts with federal funding participation associated with this Grant Agreement.
✓	✓	12	No later than 15 days after the end of each month, report payments to prime contractors within the ADOT Local Public Agencies DBE Reporting System located at <a href="http://www.arizonalpa.dbesystem.com">www.arizonalpa.dbesystem.com</a> .
✓	✓	13	Submit contract data in support of monthly, semi-annual and annual federal reporting submission made by ADOT. Subrecipients/Subgrantees, Certification Acceptance Agencies and LPAs are required to use the ADOT Local Public Agencies DBE System, via <a href="http://www.arizonalpa.dbesystem.com">www.arizonalpa.dbesystem.com</a>
✓	✓	14	Monitor and enforce that contractors enter and report subcontractor payments by the last day of each month in the LPA DBE System and that Prompt Payment of DBEs and other subcontractors are monitored and enforced. Monitoring is accomplished through the LPA audit process and its notifications.
✓	✓	15	<p>Monitor and ensure Contractor compliance with DBE policies and regulations, including with the ADOTs concurrence, deems appropriate, which may include, but is not limited to:</p> <ul style="list-style-type: none"> <li>- Withholding payments;</li> <li>- Assessing sanctions;</li> <li>- Liquidated damages; and/or</li> <li>- Disqualifying the contractor from future bidding on the grounds of being non-responsible.</li> </ul>

FHWA Funded Projects	FTA Funded Projects	Item Number	DBE Program Compliance Required Activities
✓	✓	16	ADOT may conduct project site visits to ensure all DBEs are meeting a Commercially Useful Function (CUF) on each DOT-assisted contract. Any DBE determined to not be performing a commercially useful function will be notified by the SUBRECIPIENT within seven calendar days of the decision. In the event that the DBE appeals the decision to ADOT's Business Engagement and Compliance Office, the decision remains in effect unless and until ADOT BECO reverses or modifies Grantee decision. ADOT BECO will promptly consider any appeals and notify the contractor of the ADOT BECO findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.
✓	✓	17	Implement monitoring and enforcement mechanisms to enforce the terms of the contract, including application of applicable sanctions, as needed, for payment reporting, prompt payment, DBE termination/substitution and not meeting the DBE contract goal.
✓	✓	18	Follow DBE contract specification to notify ADOT BECO and ADOT PM in writing to secure ADOT BECO's approval prior to any termination, substitution, or reduction of work of a committed DBE firm used to meet the contract goal.
✓	✓	19	Monitor DBE utilization on projects and notifying ADOT BECO as soon as SUBRECIPIENT is aware of a potential issue that may affect DBE commitments made at award.
✓	✓	20	Ensure that all DBE Certification of Final Payment Forms are submitted by contractors within 30 days of subcontractor completing the work and submit a copy to ADOT BECO.
✓	✓	21	Ensure timely contract closeout by ensuring all subcontractor payments are reported in the DBE System, closeout contracts in the LPA DBE reporting system, and complete all mandatory reporting requirements in the LPA DBE system by April 1st and October 1st of each year.
✓	✓	22	Part of the proposal submission during a formal procurement (RFP, IFB, etc.), the SUBRECIPIENT must incorporate receipt of a bidder's list into the responsiveness / susceptible for award determination. FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST TO THE GRANTEE PROCUREMENT OFFICE BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE BIDDER BEING DEEMED INELIGIBLE FOR AWARD OF THE CONTRACT.
✓	✓	23	Cooperate with ADOT or DOT audits and site visits for DBE regulation and contract compliance; providing access to procedures; project files; and enabling onsite interviews with contracting, financial, DBE compliance, and project staff.
✓	✓	24	Each contract you sign with a contractor or consultant and each subcontract a prime signs with a subcontractor must include the following assurance:

FHWA Funded Projects	FTA Funded Projects	Item Number	DBE Program Compliance Required Activities
✓	✓	24.a	<p><i>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:</i></p> <ul style="list-style-type: none"> <li><i>· Withholding payments;</i></li> <li><i>· Assessing sanctions;</i></li> <li><i>· Liquidated damages; and/or</i></li> <li><i>· Disqualifying the contractor from future bidding on the grounds of being non-responsible.</i></li> </ul>
✓	✓	24.b	<p><i>Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.</i></p>
✓	✓	24.c	<p><i>Each contractor shall designate a full time employee who shall be responsible for the administration of the contractor's DBE program.</i></p>
✓	✓	24.d	<p><i>Each contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.</i></p>
✓	✓	24.e	<p><i>Subcontract Payment Reporting in the DBE system:</i></p>
✓	✓	24.e.1	<p><i>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 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).</i></p>
✓	✓	24.e.2	<p><i>The contractor shall respond to Subrecipient payment audits reported each month electronically through the Department’s web-based payment tracking system (<a href="https://adot.dbesystem.com">https://adot.dbesystem.com</a>), 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.</i></p>
✓	✓	24.e.3	<p><i>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.</i></p>

FHWA Funded Projects	FTA Funded Projects	Item Number	DBE Program Compliance Required Activities
✓	✓	24.f	<i>The contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts.</i>
	✓	24.g	Any language provided in this Agreement DBE Section supersedes language provided by ProcurementPro for FTA-funded contracting requirements.
✓		25	Submit all FHWA DOT-assisted contracts to ADOT to be assessed for a DBE goal.
✓		26	Notify the ADOT PM and ADOT Business Engagement and Compliance Office (BECO) in writing immediately following DOT-assisted project a) bid opening of architect & engineering, design, or construction low bidder or b) selected professional services when the contractor and/or consultant indicates on the DBE Assurance Form that the DBE contract goal cannot be met.
✓		27	Submit all Good Faith Effort documentation to ADOT BECO for review and concurrence prior to awarding of DOT-assisted contracts.
✓		28	Collect DBE Affidavits (FHWA-funded contracts only), bidder/proposer list confirmation email and all other ADOT required forms and submit to ADOT BECO in accordance with the applicable FHWA Compliance Checklist MPOs and COGs available at website <a href="http://www.azdot.gov/bec">www.azdot.gov/bec</a> :
✓		29	Ensure the receipt of Bid Verification Notice from ADOT BECO prior to contract award.
✓		30	Prior to final payment on any Project with a designated DBE goal, the SUBRECIPIENT shall determine whether the consultant met the designated DBE goal. Where the goal was not met, the SUBRECIPIENT must forward the written determination document and a copy of the final invoice to the ADOT MPD Liaison/Project Manager, who will work with the BECO compliance office to determine if a sanction is required. In the event a sanction is required, the SUBRECIPIENT will reduce the final payment on the Project by the fee, copying the vendor with the sanction notice provided by ADOT.

**EXHIBIT G**  
**INSURANCE (RISK MANAGEMENT) REQUIREMENTS**  
**For Projects that Include Construction**  
**(Effective 03/25/2016)**

- 1) **Indemnification:** To the fullest extent permitted by law, the SUBRECIPIENT shall defend, indemnify, and hold harmless The State of Arizona, and its departments, agencies, boards, commissions, universities, Officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the SUBRECIPIENT or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified and held harmless by the SUBRECIPIENT from and against any and all claims. It is agreed that the SUBRECIPIENT will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the SUBRECIPIENT agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.
- 2) *This indemnity shall not apply if the SUBRECIPIENT or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.*
- 3) In addition, should SUBRECIPIENT utilize a contractor(s) and subcontractor(s) the indemnification clause between SUBRECIPIENT and its contractor(s) and subcontractor(s) shall include the following:
  - a. *Contractor* shall defend, indemnify, and hold harmless the SUBRECIPIENT and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, , officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified and held harmless by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors shall include the State of Arizona, and its departments,

agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured and shall also include a waiver of subrogation in favor of the State of Arizona.

*(Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.)* The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in the Intergovernmental Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

5) Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

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

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

*(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)*

6) Business Automobile Liability

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

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

- a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
- b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

*(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)*

7) Workers' Compensation and Employers' Liability

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

- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

8) Additional Insurance Requirements

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

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

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

**ACCEPTABILITY OF INSURERS:** Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. ADOT in no way warrants that the above-required minimum insurer rating is sufficient to protect the Grantees from potential insurer insolvency.

**VERIFICATION OF COVERAGE:** The Grantee shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona). The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy must be in effect prior to commencement of work and remain in effect for the duration of the project.

All certificates required by this Contract shall comply as follows: The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by the grant agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

**INSURANCE REVIEW:** The RECIPIENT shall submit all required insurance certificates to ADOT Risk Management via email to [MVD1@azdot.gov](mailto:MVD1@azdot.gov); cc: the ADOT Project Manager.

**Subject Line to Read:**

- *Review of Insurance for {insert "MPD ESP" and the Contract Number and the name of RECIPIENT}*

**Body of Email:**

- *"Please review the attached insurance certificate for compliance with MPD Economic Strength Program requirements."*
- *"Requested Turn Around: 1 Week"*

**Attach:**

- *Insurance Certificate(s)*

Risk Management will reply back to the RECIPIENT with needed modification(s) and assist where possible to bring the RECIPIENT into compliance. Once the insurance is accepted, Risk Management will send an acceptance response to the RECIPIENT.

**SUBCONTRACTORS:** Grantees certificate(s) shall include all subcontractors as insured's under its policies or SUBRECIPIENT shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.

**APPROVAL:** Any modification or variation from these insurance requirements shall be made by the Department of Transportation, Risk Management Section, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

**EXCEPTIONS:** In the event the Grantee or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-insurance. If the SUBRECIPIENT or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

**Page to be replaced with UPLOADED document**

**AG Determination Letter**