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Description	Subrecipient agreement for Project Funding

MASTER SUBRECIPIENT AGREEMENT
 BETWEEN
 FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION
 AND
 THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into _____, between the FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION, a metropolitan planning organization authorized under Federal law and formed under Arizona law as a non-profit corporation, herein referred to as "METROPLAN;" and the CITY OF FLAGSTAFF, an Arizona municipal corporation, herein referred to as "CITY" or "SUBRECIPIENT". METROPLAN and the CITY are collectively referred to as the "Parties", and individually as a "Party".

RECITALS

- 1) The Parties desire to ensure a continuing, cooperative, and comprehensive transportation planning process that involves cooperation/coordination between the CITY and METROPLAN through the sharing of information.
- 2) MetroPlan its boundaries were designated pursuant to the requirements of Title 23, Section 134 of the United States Code (23 U.S.C. 134) and Title 23, Section 450 of the Code of Federal Regulation (23 CFR 450 et seq.).
- 3) MetroPlan is charged with the responsibility of carrying out transportation planning and programming processes that lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods; and supports metropolitan community development and social goals.
- 4) ADOT is a State Transportation Agency pursuant to Title 23, Section 134 of the United States Code (23 U.S.C. 134) and Title 23, Section 450 of the Code of Federal Regulation (23 CFR 450). ADOT is the direct recipient of federal apportioned and grant funds from Federal Highway Administration (FHWA) funds including but not limited to: State Planning and Research (SPR) funds, Metropolitan Planning Funds (PL), Surface Transportation Block Grant (STBG) funds; and from Federal Transit Administration (FTA) funds including but not limited to: apportioned funds per United States Code (49 U.S.C. 5303), 5310 Program funds, 5311 Program funds; and other federal and state funds over which ADOT has fiduciary responsibility. METROPLAN has received funds from ADOT as the cognizant agency/funder for METROPLAN, as a metropolitan planning organization, to implement projects.
- 5) METROPLAN desires to provide funding to CITY as a subrecipient for the purpose of performing the work identified in the Scope of this Agreement, and/or as identified for other specific projects. This Master Subrecipient Agreement shall apply to the overall relationship between METROPLAN and the CITY with specific projects identified on an annual or more frequent basis through addenda to this Agreement. All such projects set out by addenda shall be referred to herein collectively as the "Projects".
- 6) The Catalog of Federal Domestic Assistance (CFDA) numbers are provided below for funds awarded to METROPLAN as a subrecipient under ADOT and for which METROPLAN may pass on all or part of those funds to CITY as a further subrecipient; this list is not all-inclusive and does not limit use of other funds under this Agreement.

Catalog of Federal Domestic Assistance (CFDA)			
CFDA Number	Agency	Grant Program	Title
20.205	FHWA	all	Highway Planning and Construction
20.505	FTA	5304/5305	Metropolitan Transportation Planning
20.513	FTA	5310	Capital Assistance Program for Elderly Persons and Persons with Disabilities
20.509	FTA	5311	Formula Grants for Other Than Urbanized Areas

- 7) In accordance with 2 CFR 200.328, METROPLAN 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.
- 8) METROPLAN has primary responsibility for administering FHWA and FTA funds allocated to it as a metropolitan planning organization and ensuring that such funds are expended for eligible costs, purposes, and activities in accordance with 23 CFR 420.113, that are allowable per 2 CFR 200 et seq., as adopted or otherwise modified pursuant to 2 CFR 1201 and that are within the metropolitan planning organization boundaries.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representation herein, the parties desiring to be legally bound, do agree as follows:

INCORPORATION OF RECITALS

All of the recitals set forth above are hereby incorporated into this Agreement and form part of the terms and obligations of this Agreement.

RESPONSIBILITY MATRIX for TIMED EVENTS

This RESPONSIBILITY MATRIX FOR TIMED EVENTS is provided to summarize compliance items within the scope and/or terms and conditions in this Agreement that contain deadlines, due dates, or required-by dates; and is intended as a quick reference reminder only. In the event that a deadline, due date, or required-by date is not found within this table or otherwise differs, the scope and/or terms and conditions in this Agreement take precedence.

Due Date	CITY	METRO PLAN	TASK
3/31	X		Complete Annual Audit of prior year & Submit Report
4/1	X		Submit Annual Indirect Cost Plan
4/1	X		Complete LPA DBE System Reporting
Prior to 6/30	X	X	Execute Amendment to Extend Agreement
10/1	X		Complete LPA DBE System Reporting
7 Days	X		Confirm good faith by contractors or determine action required for LPA DBE system discrepancies
7 Days	X		Notify the contractor within 7 days of receiving notice from ADOT BECO that a participating DBE is not meeting a Commercially Useful Function
15 Days	X		Within 15 calendar days after Notice of Procurement Award, enter federally-funded contracts in the LPA DBE System.
15 Days	X		Report payments to prime contractors in the LPA DBE System no later than 15 days after the end of each month
30 Days		X	Issue payment or request for additional support within 30 days of receipt of invoice
30 Days	X		Comply with request for additional invoice support
30 Days	X		DBE Certification of Final Payment Forms submitted within 30 days of subcontractor work completion
90 days of Expiration or Termination of Grant		X	Submit all financial, performance and related reports for the to ADOT
Within 90 days of Annual Notification	X		Sign, Affirm, and Return FTA Certifications and Assurances
Last Day of Each Month	X		Monitor and enforce that contractors enter and report subcontractor payments in the LPA DBE System
Monthly or Quarterly	X		Submit Invoice & Progress Report
Quarterly	X		Submit notice of no activity if applicable
Quarterly	X		Submit federal Disclosure of Lobbying Activity, Standard Form LLL if applicable

Section 1.0 SCOPE OF WORK

(a) Transportation Planning and Design

The CITY will:

- 1) Prepare and provide all necessary documents for the design of agreed upon Projects; review and approve documents required by METROPLAN and FHWA to qualify certain Projects for and to receive federal funds. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; review right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.
- 2) Administer the Projects, advertise for, receive and open bids, award and enter into a contract(s) with a firm(s) for the completion of the Projects. If the bid amounts exceed the cost estimate, obtain METROPLAN concurrence prior to awarding the contract. Once awarded, invoice METROPLAN for the difference between estimated and actual costs, if applicable. Comply with 2 CFR 200 and include Attachment A Federal terms and conditions in their procurement solicitation and contract.
- 3) Enter into an agreement with the planning design consultant for Projects.
- 4) Be responsible for the cost of any City requested changes to the scope of work of Projects in excess of available federal funds; such changes will require METROPLAN and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Projects' delay attributable to the City if such claims exceed available federal funds.
- 5) Upon notification of Projects completion, agree to accept, maintain and assume full responsibility for Projects in writing.

The SUBRECIPIENT must exercise the State's tribal consultation and coordination protocol. The purpose for this provision is to ensure compliance with "ADOT's Tribal Consultation Policy" (Exhibit F) and Arizona Revised Statute Section 41-2051, Subsection C - Responsibilities of state agencies located at: <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/02051.htm>. An ADOT Tribal Transportation Consultation Online Training Course and Handbook are available to the SUBRECIPIENT on the Arizona Tribal Transportation website at: <http://www.aztribaltransportation.org/training.asp>.

The SUBRECIPIENT shall establish and maintain an entity registration on the federal System for Award Management website: <https://www.sam.gov/SAM/>. This registration will be used by ADOT to confirm eligibility to receive federal funds.

The CITY shall adhere to relevant requirements from the agreements between METROPLAN and ADOT, as modified from time-to-time, or provide METROPLAN with relevant information, data, or reports to aid in METROPLAN's compliance. The FTA Master Agreement may be located at <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>. The FHWA Stewardship Agreement may be located at <https://www.fhwa.dot.gov/federalaid/stewardship>.

In the event that the CITY determines that it will not follow any requirements established by optional funding sources, METROPLAN shall request an amendment to this agreement to remove that funding source and/or its funded Projects. In the event reimbursements have already been issued from that funding source, 100% of those reimbursements must be returned to METROPLAN at the time of amendment request.

The CITY shall commence, carry on, and complete the agreed upon Projects with all practicable dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions hereof, and all applicable laws, including all applicable transportation planning responsibilities.

The CITY shall submit to METROPLAN such data, reports, records, contracts, and other documents relating to CITY's performance as a SUBRECIPIENT, as METROPLAN, ADOT, the current Federal funding legislation, FHWA, and/or FTA may require.

(b) Requirements for Pass-Through

In the event that the CITY passes through funds to another entity, the CITY is responsible for meeting the requirements of 2 CFR 200.331.

Section 2.0 BUDGET

METROPLAN will approve the transfer of Federal Highway Administration (FHWA) Surface Transportation Block Grant (STBG) funds to the CITY for the Projects in each fiscal year of this agreement. The federal funds will be used for the planning and design of the Projects. The initial budget for the initial fiscal year, FY 2022-2023, is attached hereto as Schedule 2.0 and incorporated herein by reference. Additions for additional fiscal years' budgets, and additional Projects within any one fiscal year, may be added to this agreement by mutual agreement through one or more amendments or addenda to update Schedule 2.0.

The Parties acknowledge that the final Projects' costs may exceed the initial estimate(s) shown in Schedule 2.0, and in such case, the CITY is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the available federal funds as set forth in Section 1.0. If the final bid amount is less than the initial estimate(s), the difference between the final bid amount and the initial estimate(s) will be de-obligated or otherwise released from the applicable Projects. The CITY acknowledges it remains responsible for and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the final bid amount in excess of available federal funds as set forth in Section 1.0.

The CITY may not incur any costs for work outlined above or in any subsequent amendments prior to receiving written approval from METROPLAN. Any costs incurred prior to receiving written approval from METROPLAN for State funds shall not be eligible for reimbursement.

Section 3.0 **RIGHTS OF REVIEW**

As required by 2 CFR 200.337, METROPLAN, ADOT, FHWA, and FTA shall have the right to access and review the work (and approval or concurrence as appropriate), including, but not limited to: all technical reports, and all planning data prepared by the CITY under the terms of this agreement. If METROPLAN, ADOT, FHWA, and/or FTA finds that the work performed fails to comply with any requirement (e.g., work elements or tasks are found to be inconsistent with federal or state regulations or guidelines, or products/services were incorrectly procured), METROPLAN, ADOT, FHWA, and/or FTA may use the enforcement actions contained in 2 CFR 200.339 to remedy the situation and any other appropriate remedies available at law. Right of access lasts as long as the records are retained (2 CFR 200.337(c)).

Section 4.0 **ACCOUNTING RECORDS**

(a) Establishment and Maintenance of Accounting Records.

The CITY shall implement strong internal controls for accounting and compliance with grant/funding terms and conditions and ensure that its financial management system and any other system used for documentation or compliance is appropriate to implement this agreement. The financial management systems must comply with all the requirements of 2 CFR 200.302.

The CITY shall establish separate Projects Accounts to be maintained within its existing accounting system or set up independently. Such accounts are referred to herein collectively as the Budget. The Budget and supporting documentation as set forth in 2 CFR 200 et seq., shall be made available upon request for examination by METROPLAN, ADOT, FHWA, and FTA or the Comptroller General of the United States in accordance with the requirements of 2 CFR 200.337. Documentation shall be collected and stored as designated in 2 CFR 200.336; whenever practicable, in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements.

(b) Funds Received or Made Available for the Projects

Pursuant to the requirements of 2 CFR 200.307, the CITY shall record in the Projects Account all payments received by it from METROPLAN pursuant to this article and all other funds provided for, accruing to, or otherwise received from and through MetroPlan.

(c) Costs Incurred for the Projects

The CITY shall charge to each Projects Account all eligible costs of this agreement. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of METROPLAN shall not be considered eligible costs. Determination of eligible costs shall be in accordance with the requirements of 2 CFR 200.402 through 2 CFR 200.414 and 2 CFR 200.420 through 2 CFR 200.476.

(d) Documentation of Projects Costs

All costs charged to the Projects including any approved services contributed by the CITY or others, shall be supported as required by 2 CFR 200.302 (b)(3) and 2 CFR 200 et seq.

(e) Documentation of Matching Funds

Match is defined as monies from non-federally funded sources used for matching or cost sharing requirements as defined and allowed under 2 CFR 200.306 and 2 CFR 200 Subpart E. Most federally-funded programs cannot use federal funds to provide match but certain exceptions exist to that stipulation. The CITY is responsible for ensuring that match is obtained from sources eligible for the relevant funding source on each Projects. The CITY shall maintain records of verifiable matching funds and verifiable third party in-kind contributions as required by 2 CFR 200.306 and 2 CFR 200.302. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees or cost-type contractors. These records must explain and demonstrate how the value placed on each third party in-kind contribution was derived.

(f) Checks, Orders, and Vouchers

Any check or order drawn by the CITY with respect to any item which is or will be chargeable against the Projects will be drawn only in accordance with a properly signed voucher then on file with the CITY stating in proper detail the purpose for which such check or order is drawn. Signed vouchers shall incorporate the certification requirements pursuant to 2 CFR 200.415. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this agreement shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents, and shall be maintained for at least 5 years after final payment.

(g) Indirect Costs

If the CITY desires to be reimbursed for indirect costs, the CITY must prepare an indirect cost rate proposal and related documentation to support those costs. A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. If the CITY does not receive more than \$35 million in direct Federal funding, the CITY must develop an indirect cost proposal in accordance with the requirements of 2 CFR 200 Appendix VII and maintain the proposal and related supporting documentation for audit pursuant to 2 CFR 200.333 and submit the proposal to the cognizant agency for indirect costs if required by the cognizant agency to do so.

Pursuant to 2 CFR 200 Appendix VII.D.1.d, indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

Section 5.0 **AUDIT**

The administration of resources awarded by METROPLAN to the CITY may be subject to audits and/or monitoring by METROPLAN and ADOT, as described in this section.

(a) Monitoring

In addition to reviews of audits conducted in accordance with 2 CFR 200 Subpart F, et seq., monitoring procedures may include, but not be limited to, on-site visits by METROPLAN staff or designees, limited scope audits as defined by 2 CFR 200 et seq. and/or other procedures. By entering into this Agreement, the CITY agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by METROPLAN. In the event METROPLAN determines that a limited scope audit of the CITY is appropriate, the CITY agrees to comply with any additional instructions provided by METROPLAN staff to the CITY regarding such audit. The CITY further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by ADOT, including 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 CITY to monitor their sub-recipients.

(b) Federally funded

Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in 2 CFR 200 Subpart F, et seq.) are to have audits done annually using the following criteria:

- 1) In the event that the CITY or their sub-recipient expends \$750,000 or more in Federal awards in its fiscal year, the CITY and the sub-recipient must have a Single Audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq. Any

non-Federal entity that expends less than \$750,000 in Federal awards during the non-Federal entity's fiscal year is exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503: Relation to Other Audit Requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, the State, ADOT, and the Government Accountability Office (GAO). In determining the Federal awards expended in its fiscal year, the CITY and sub-recipient shall consider all sources of Federal awards, including Federal resources received from ADOT. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR 200, et seq. An audit of the CITY conducted by the Arizona Auditor General or an independent auditor in accordance with the provisions 2 CFR 200 Subpart F, et seq. will meet the requirements of this part.

- 2) In connection with the audit requirements, the CITY shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508, et seq.
- 3) If the CITY expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq., is not required. However, if the CITY elects to have an audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq., the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from CITY resources obtained from other than Federal entities).
- 4) If the CITY is exempt from the Federal audit requirements, pursuant to 2 CFR 200.501(d), records must be available for review or audit by appropriate officials and an annual financial report must be submitted to ADOT MPD Finance
- 5) Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency
- 6) In compliance with 2 CFR 200.512(a), et seq. the audit shall be completed, and the report must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period.

(c) Other audit requirements

The CITY 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 METROPLAN. Current year audit findings require corrective action, a timetable for resolution, and status of findings will also be reported to METROPLAN.

If the CITY fails to take corrective action, METROPLAN will make a determination to:

- 1) make financial adjustments to the allocated Federal funding as determined appropriate, up to and including repayment by the CITY of disallowed costs, or
- 2) take other action as determined appropriate.

If the CITY 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 in accordance with the section titled *REQUISITIONS AND PAYMENTS: Billing Limitation and Closeout* of this Agreement. Access to records and audit work papers shall be given to METROPLAN, 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.

(d) Report submission

- 1) Copies of reporting packages for audits conducted in accordance with 2 CFR 200 Subpart F, et seq., and required by this section titled AUDIT and/or the section titled REQUISITIONS AND PAYMENTS of this Agreement shall be submitted when required by 2 CFR 200 Subpart F, et seq., directly to each of the following:
 - a) Rosie.wear@metroplanflg.org
 - b) The Federal Audit Clearinghouse (FAC) designated in 2 CFR 200.512 et seq., at: <https://harvester.census.gov/facweb/>.

- c) Other Federal agencies and pass-through entities in accordance 2 CFR 200 Subpart F, et seq.
- 2) Copies of written communication between the CITY 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 CITY directly to:
 - a) Rosie.wear@metroplanflg.org
 - b) Any written communication required to be submitted to METROPLAN pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200 Subpart F, et seq.
 - c) CITY, when submitting financial reporting packages to METROPLAN for audits done in accordance with 2 CFR 200 Subpart F, et seq. should indicate the date that the reporting package was delivered in correspondence accompanying the reporting package.

(e) Record Retention

The CITY, along with their sub-recipients, shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five years from the date the audit report is issued, and shall allow METROPLAN, ADOT, FHWA, and FTA or its designee, access to such records upon request. The CITY shall ensure that audit working papers are made available to METROPLAN, ADOT, FHWA, and FTA, or its designee, upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by METROPLAN.

Section 6.0 **REQUISITIONS AND PAYMENTS**

City obligations:

- 1) Invoices must be submitted no less than quarterly, by no later than the 20th day of the month. A payment must occur at a minimum each quarter. Support project-appropriate expenses and costs associated with receipts and other suitable and appropriate documentation pursuant to 2 CFR 200 Subpart E – Cost Principles, 2 CFR 200 et seq., as appropriate. All support documentation must be dated within the Project’s fiscal year (except the final closeout invoicing as described in this Agreement) to be considered eligible. The SUBRECIPIENT may not incur any costs for work outlined in any amendment prior to receiving approval of that amendment. Any costs incurred prior to receiving such written document shall not be eligible for reimbursement in accordance with 2 CFR 200.458
- 2) Reimbursement requests must include a system-generated ledger report(s) that includes proof of payment (such as check number and date paid). Except for travel receipts and payments to contractors, detailed support documentation shall be maintained by the SUBRECIPIENT and shall not be submitted to METROPLAN unless and until requested.
- 3) Be fully responsible for the proper billing of any federal reimbursable costs or charges, including those incurred by its sub-recipients. Requests for payment shall include documentation of expenditures as required by 2 CFR 200 et seq., as appropriate, and be accompanied by reporting of work accomplished by the CITY as described in the narrative progress report.

The narrative progress report shall describe the work and products accomplished which adequately justify and support the payment requested;

Projects Summary. A tabular summary must be submitted with the Progress Report that lists all projects showing the budget of that item, every funding source contributing toward completing that item, the amounts billed to date, the total remaining work element/project balance, and the percent billed. Refer to Exhibit A examples. This report is intended to demonstrate the progress of a project across all funding sources provided by METROPLAN.

- 4) If no costs were incurred in the quarter, submit a statement to the METROPLAN so indicating but be aware that projects deemed inactive or not showing any forward progress may be in jeopardy of losing funding pursuant to federal rules and/or ADOT policy.
- 5) Comply with all applicable provisions of this Agreement.

- 6) **Certifications Required:** As required pursuant to 2 CFR 200.415 to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the CITY, which reads as follows:

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

- 7) **Financial Management:** The CITY’s financial management systems must comply with all the requirements of 2 CFR 200.302.

METROPLAN Obligations

Subject to other provisions hereof, METROPLAN will approve and honor such requisitions in amounts deemed proper in accordance with 2 CFR 200 et seq. to ensure the implementation of this agreement and will reimburse eligible costs thereof in accordance herewith.

In accordance with 23 U.S.C. 104 and specific guidance from ADOT, FHWA and FTA, METROPLAN will reimburse the CITY for actual expenses incurred by the CITY. Requests for payment shall include documentation of expenditures as required by 2 CFR 200 et seq., and METROPLAN, as appropriate, and be accompanied by reporting of work accomplished by the CITY as described in the narrative progress report.

METROPLAN will reimburse the CITY no later than 30 days from receipt of the request for reimbursement from the CITY. If METROPLAN believes the CITY did not provide adequate supporting documentation for reimbursement claims, METROPLAN will request resubmission by the CITY.

Notwithstanding any other provision of this section, METROPLAN may, by providing written notice, elect not to make a payment in the event of

- 1) Misrepresentation: The CITY made a misrepresentation of a material nature r in or with respect to any document or data furnished therewith or pursuant hereto
- 2) Litigation: There is then pending litigation with respect to the CITY’s performance of any of its duties or obligations which may jeopardize or adversely affect this Agreement, or payments to the CITY
- 3) Conflict of Interests: The CITY has violated any of the conflict of interest provisions of this Agreement.

(d) Disallowed Costs

In determining the amount of the payment, METROPLAN will exclude all costs incurred by the CITY prior to the effective date of this Agreement and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by METROPLAN.

It is agreed by the CITY that where official audits or reviews disclose that the CITY has been reimbursed by METROPLAN for ineligible work, under applicable federal and state regulations, that the value of such ineligible items will be deducted by METROPLAN from subsequent reimbursement requests following determination of ineligibility Upon receipt of a notice of ineligible items the CITY may present evidence supporting the propriety of the questioned reimbursements. Such evidence will be evaluated by METROPLAN, and the CITY will be given final notification of the amounts, if any, to be deducted from subsequent reimbursement requests.

In addition, the CITY agrees to promptly reimburse METROPLAN within 30 days for any and all amounts for which METROPLAN has made payment to the CITY if such amounts become ineligible, disqualified, or disallowed for federal reimbursement due to any act, error, omission, or negligence of the CITY. This includes omission or deficient documentation of costs and charges, untimely, incomplete, or insufficient submittals, or any other reason declared by the applicable Federal Agency, ADOT, or METROPLAN.

The CITY agrees that METROPLAN may offset such amounts from payments due for work or services done under any agreement between the parties if payment from the CITY is not received by METROPLAN after the 30th day from the written notice from METROPLAN. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by METROPLAN.

(e) Availability of Funds

Every payment obligation of METROPLAN under this contract 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 METROPLAN at the end of the period for which the funds are available. No liability shall accrue to METROPLAN in the event this provision is exercised, and METROPLAN shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

Section 7.0 PROCUREMENT, FIXED ASSETS, TRAVEL

(a) Procurement Policy

Pursuant to the authority granted in 2 CFR 1201.317 for States to determine the policies and procedures for sub-recipients of the State to follow when procuring property and services under a Federal award, ADOT, and thereby METROPLAN, herein establishes this procurement rule:

- 1) If the sub-recipient is a local public agency or political subdivision of this state and has adopted the State Procurement Code pursuant to A.R.S. 41-2501, the sub-recipient shall follow the State Procurement Code except and unless a federal rule applicable pursuant to the rules for the funding or federal program is more restrictive, then the federal requirement shall apply.

All other sub-recipients 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, except and unless a federal rule applicable pursuant to the rules for the funding or federal program is more restrictive, then the federal requirement shall apply.

The CITY certifies that all procurement related to this Agreement shall include a fully executed contract with its vendor prior to incurring expenditures for that procurement and shall comply with all applicable federal, state, local, and tribal regulations.

Each procurement must reference the DBE System “contract/project number” designated for the AZUTRACS “bidder’s list” purposes that were established in advance with the submission of the WP. When new procurements using funding under this Agreement are needed, email MPDCONTRACTS@AZDOT.GOV to request the new “contract/project number” to be used in AZUTRACS goal assessment requests and bidder’s lists. Post award, each procurement shall be entered into the DBE system (DOORS) using that designated “contract/project number”.

In addition to other clauses required throughout this Agreement or by State law, the CITY shall include applicable contract provisions in every third-party contract / purchase order using federal funding summarized (but not limited to) the following:

- 1) The requirements in 2 CFR 200.326,
- 2) The requirements in 2 CFR 200 Appendix II,
- 3) FHWA funded procurements/contracts located at: www.fhwa.dot.gov/programadmin/contracts/core02.cfm and www.fhwa.dot.gov/construction/cqit/form1273.cfm and <http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>, as revised from time to time,
- 4) FTA funded procurements/contracts: Circular 4220 Third Party Contracting Guidance or its Appendix D, as revised from time to time, available at: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>. Procurement Pro from National RTAP can be a good resource for the required federal language except that the State DBE and Title VI required language must also be included. Using Procurement Pro does not relieve the sub-recipient from the responsibility of ensuring that all the terms and conditions are complete and in compliance with Federal, State, and Local regulations.
- 5) Any requirements established by a particular funding type, program, or in funding agency guidelines
- 6) Provisions for Prompt Payment deadlines. The funding in this Agreement includes reimbursement of expenditures necessary to accomplish the work program. Payment may not rely on receipt of funds from ADOT before paying vendors/contractors/consultants.

7) The requirements in 23 CFR 420.121 (i).

The SUBRECIPIENT certifies that it shall 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.

(b) Travel

All travel for the CITY and its Vendors funded through this agreement must comply with the State policies for Travel. In the event the CITY chooses to reimburse vendors or employees at rates higher than those authorized in State travel policy, when submitting travel reimbursement requests, each receipt must indicate the amount excluded from the reimbursement request. The CITY may not request reimbursement for costs not permissible under State policy. All travel may be directly approved by the CITY consistent with and in support of identified work tasks contained within this agreement. Only actual expenses are reimbursable, within maximum reimbursement limits as described and established by the rates for travel: A.R.S. 38-621 through 38-627, Reimbursement for Expenses; State of Arizona Accounting Manual (SAAM), Section 50.65, Vendor Travel, Section 50.95 Reimbursement Rates available at <https://gao.az.gov/publications/saam>. The CITY shall also comply with the policies governing individually operated motor vehicles in Section 50.15 of the SAAM. Travel costs paid to vendors or other non-ADOT-employees must always be supported by appropriate documentation and in the case of rental vehicles, the ADOT approved justification form.

(c) Permits

Proper permits must be obtained to conduct business or work on ADOT's right of way when applicable.

Section 8.0 **CONTRACTS OF THE CITY**

When a contract is written for multiple years and each year's funding is not specified in the written agreement, a two party document (amendment or signed acknowledgement) must be executed by the CITY and its consultant that specifies the next fiscal year's funding approval upon availability of funds.

Section 9.0 **PUBLICATIONS**

All reports and maps completed as a part of this Agreement, jointly written or produced by the CITY, except copies of such documents made for the exclusive internal use of the CITY, shall include an acknowledgment on the front cover or a title page, or in the case of maps, in the title block, which identifies the cooperative parties.

In addition, in accordance with 23 CFR 420.117(e), all such documents shall contain the following disclaimer statement:

“This report was funded in part through grant[s] from the Federal Highway Administration and/or Federal Transit Administration, U.S. Department of Transportation. The contents of this report reflect the views and opinions of the author(s) who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily state or reflect the official views or policies of the U.S. Department of Transportation, the Arizona Department of Transportation, or any other State or Federal Agency. This report does not constitute a standard, specification or regulation”.

Section 10.0 **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

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 SUBRECIPIENT shall also incorporate and comply with the terms and conditions established in Appendices A and E.

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 this agreement.

*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, 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.*).

Section 11.0 DISADVANTAGED BUSINESS ENTERPRISES (DBE)

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 <https://azdot.gov/business/business-engagement-and-compliance/dbe-contract-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
✓	✓	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 in the ADOT Local Public Agencies DBE System, via www.arizonalpa.dbesystem.com 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, the SUBRECIPIENT reports payments to prime contractors within the ADOT Local Public Agencies DBE Reporting System located com.
✓	✓	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 www.arizonalpa.dbesystem.com
✓	✓	14	Monitor and ensure that contractors enter and report subcontractor payments by the last day of each month for the previous 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	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: - Withholding payments; - Assessing sanctions;

- Liquidated damages; and/or
- Disqualifying the contractor from future bidding on the grounds of being non-responsible.

- | | | | |
|---|---|------|--|
| ✓ | ✓ | 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’s 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: |
| ✓ | ✓ | 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"> · <i>Withholding payments;</i> · <i>Assessing sanctions;</i> · <i>Liquidated damages; and/or</i> · <i>Disqualifying the contractor from future bidding on the grounds of being non-responsible.</i> |

- ✓ ✓ 24.b *Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.*
- ✓ ✓ 24.c *Each contractor shall designate a full time employee who shall be responsible for the administration of the contractor's DBE program.*
- ✓ ✓ 24.d *Each contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.*
- ✓ ✓ 24.e *Subcontract Payment Reporting in the DBE system:*
- ✓ ✓ 24.e.1 *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).*
- ✓ ✓ 24.e.2 *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.*
- ✓ ✓ 24.e.3 *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.*
- ✓ ✓ 24.f *The contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts.*
- ✓ ✓ 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 www.azdot.gov/bec: <https://azdot.gov/sites/default/files/2019/09/2017-mpo-checklist-ps-final-2-7.pdf>.*
- ✓ 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 DBE Liaison and Regional Planner/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.

Section 12.0 DEBARMENT/SUSPENSION

The federal funding in this Agreement is considered a covered transaction under 2 CFR 1200.220 for purposes of debarment and suspension considerations. Thus, both sub-recipient pass-through agreements and agreements for contractors, subcontractors, suppliers, consultants or its agent or representation in any transaction is subject to this requirement. The CITY 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. The CITY agrees to comply and assures the compliance of each third-party contractor and sub-recipient 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 SUBRECIPIENT agrees to and assures that its third party contractors and sub-recipients will review the Excluded Parties Listing System and assure that its subrecipients establish and maintain entity registration on the System for Award Management before entering into any contracts.

Section 13.0 PROHIBITED INTERESTS

Neither the CITY nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement in connection with any property included or planned to be included , in which a member, officer, or employee of the CITY either during his tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquired or had acquired prior to the beginning of his or her tenure any such interest, and if such interest is immediately disclosed to the CITY, the CITY may waive the prohibition contained in this paragraph, provided, that any such present member, officer, or employee shall not participate in any action by the CITY or the locality relating to such contract, subcontract, or arrangement. The CITY must disclose any such interest to METROPLAN within five business days of receipt of disclosure.

The CITY shall insert in all contracts entered into in connection with this agreement any property included or planned to be included in this agreement, and shall require its contractors to insert in each of their subcontracts, the following provision:

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

The provisions of this paragraph shall not be applicable to any agreement between the CITY and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

Pursuant to 2 CFR 1201.112, the CITY shall disclose in writing any potential conflict of interest to METROPLAN, who shall inform ADOT, thereby the Federal awarding agency in accordance with applicable Federal awarding agency policy.

Section 14.0 GRATUITIES

Employees of the CITY shall not accept any benefits, gifts, or favors from any person doing business with, or who may do business with the CITY under this Agreement.

Any person doing business with, or who may do business with the CITY under this Agreement may not make any offer of benefits, gifts, or favors to the CITY employees. Failure on the part of the CITY to adhere to this policy may result in termination of this contract.

Section 15.0 BONUS OR COMMISSIONS

By execution of this Agreement, the CITY represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining approval of its application for the financial assistance hereunder.

Section 16.0 CONFLICT AND DISPUTE RESOLUTION PROCESS

The affected parties to this Agreement shall, at a minimum, ensure the attempted early resolution of conflicts relating to such matters. Early resolution shall be handled by direct discussion between the following officials: for the CITY – City Attorney and for MetroPlan - the Director or designee.

If resolution is not accomplished, the parties agree to resolve all disputes through arbitration, after exhausting applicable administrative review and if required by applicable law, to the extent required by A.R.S. § 12-1518, except as may be required by other

applicable statutes or regulations (49 C.F.R. 18.43 (5) (b)).

Section 17.0 SUSPENSION OR TERMINATION FOR CONVENIENCE

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

METROPLAN shall reimburse the CITY for those eligible expenses incurred during the Agreement period which are directly attributable to the completed portion of the work covered by this Agreement, provided that the work has been completed in a manner satisfactory and acceptable to METROPLAN. The CITY shall not incur new obligations for the terminated portion after the effective date of termination.

METROPLAN may seek any remedy available at law for recovery of any funds paid to CITY for any and all amounts for which METROPLAN has made payment to the CITY if such amounts are not directly attributable to the completed portion of the work covered by this Agreement or have been paid to the CITY for work completed after the effective date of the termination.

In addition to the rights reserved in the Agreement, METROPLAN may terminate the Agreement in whole or in part due to the failure of the CITY to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement.

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

Section 18.0 FORCE MAJEURE

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

Section 19.0 INDEMNIFICATION

To the fullest extent permitted by law, the SUBRECIPIENT shall indemnify, defend, and hold harmless METROPLAN, the State of Arizona, ADOT and its officers, officials, agents and employees (hereinafter referred to in this section 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, contractors, 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 the SUBRECIPIENT to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the indemnitee, be indemnified by 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, ADOT and its officers, officials, agents and employees for losses arising from the work performed by the SUBRECIPIENT under this Agreement. This indemnity clause shall not apply if the SUBRECIPIENT or its subcontractor(s) is/are an agency, board, commission or University of the State of Arizona.

Section 20.0 INSURANCE REQUIREMENTS

INSURANCE REVIEW:

SUBRECIPIENT must submit the following to MetroPlan.

INSURANCE REQUIREMENTS:

The SUBRECIPIENT and/or any contractor(s) shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under the Agreement, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the SUBRECIPIENT, its agents, representatives, employees and/or contractors/subcontractors.

The Insurance Requirements herein are minimum requirements for the Agreement and in no way limit the indemnity covenants contained in the Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the SUBRECIPIENT from liabilities that arise out of the performance of work under the Agreement by the SUBRECIPIENT, its agents, representatives, employees and/or contractors/subcontractors, and the SUBRECIPIENT is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE

The SUBRECIPIENT shall provide coverage with limits of liability not less than those stated below. Deductible(s), Self Insurance, and Self-Insured Retention (SIR) amounts are subject to review and approval by ADOT Safety and Risk Management.

Commercial General Liability (CGL) – Occurrence Form

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

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

- 1) The policy shall be endorsed, as required by written agreement, to include the “The State of Arizona, ADOT, and its officers, officials, agents, and employees” shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the SUBRECIPIENT
- 2) The policy shall contain a waiver of subrogation endorsement in favor of METROPLAN, the State of Arizona, the Department and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the SUBRECIPIENT.

Business Automobile Liability

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

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

- 1) The policy shall be endorsed, as required by written agreement, to include the “The State of Arizona, ADOT, and its officers, officials, agents, and employees” to be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the SUBRECIPIENT involving automobiles owned, leased, hired or borrowed by the SUBRECIPIENT.
- 2) The policy shall contain a waiver of subrogation endorsement in favor of METROPLAN, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the SUBRECIPIENT.

Workers' Compensation and Employers' Liability

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

- Disease – Policy Limit \$1,000,000
- 1) The policy shall contain a waiver of subrogation endorsement in favor of METROPLAN, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the SUBRECIPIENT.

Additional Insurance Requirements

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

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

Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor’s insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to 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.

Acceptability of Insurers

The SUBRECIPIENT’s insurance, if purchased rather than self-insurance, shall be placed with insurance companies duly licensed in the State of Arizona or which hold approved non-admitted status on the Arizona Department of Insurance’s List of Qualified Unauthorized Insurers. Insurers shall have an “A.M. Best” rating of not less than A- VII or be duly authorized to transact Workers’ Compensation insurance in the State of Arizona . The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the SUBRECIPIENT from potential insurer insolvency.

Verification of Coverage

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

Subcontractors

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

Approval

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

Exceptions

If the SUBRECIPIENT or contractor(s)/sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above insurance requirements shall apply.

Section 21.0 COPYRIGHT AND PATENT

Indemnification: To the extent permitted by A.R.S. § 41-621 and § 35-154, the CITY shall indemnify and hold harmless METROPLAN and ADOT against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of this Agreement performance or use by METROPLAN or ADOT of materials furnished or work performed under this Agreement. METROPLAN or ADOT shall reasonably notify the CITY of any claim for which it may be liable under this paragraph.

Copyrights pursuant to 23 CFR 420.121 (b): The State DOTs and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patents pursuant to 23 CFR 420.121 (i): The State DOTs and their subrecipients are subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, incorporated herein as Exhibit D, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs and their subrecipients must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

Section 22.0 ANTI-LOBBYING

The CITY agrees to comply with the provisions of Section 1352 of Title 31, U.S. Code (Public law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11, 23 CFR 630.112(c)(5) , and 49 CFR part 20 and 2 CFR 200.450. The legislation prohibits Federal appropriated funds from being expended by a recipient or any lower tier sub-recipients 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, amendments or modification of any Federal contract, grant, loan or cooperative agreement. Certification is required to indicate compliance with 49 CFR 20.100(a). Disclosure must be made on Standard Form LLL, found at <https://www.gsa.gov/forms-library/disclosure-lobbying-activities> if any non-appropriated funds are used for such activities described herein. All disclosure statements are to be furnished to ADOT.

The CITY agrees to require all lower tier subcontractors who have agreements exceeding \$100,000.00 to complete Lobbying Certification (Exhibit B) and when appropriate, the Disclosure of Lobbying Activities (Exhibit C).

Section 23.0 ENERGY CONSERVATION

The CITY is required to comply with mandatory standards and policies, as applicable relating to energy efficiency which are contained in the State Energy Conservation Plan issued by the State of Arizona in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

Section 24.0 ENVIRONMENTAL PROTECTION

The CITY 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 regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grant or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to FHWA, FTA, and to the U.S.E.P.A. Assistant Administrator Enforcement (EN-329).

Section 25.0 **DRUG FREE WORKPLACE**

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

Section 26.0 **TRANSPARENCY ACT**

As a sub-recipient of federal funds through METROPLAN, the CITY warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, and in the method specified by METROPLAN, the CITY will provide information that is requested by METROPLAN to enable METROPLAN to comply with the requirements of the Act, as may be applicable.

Section 27.0 **FTA CERTIFICATIONS AND ASSURANCES**

Pursuant to 49 U.S.C. 5323(n), the FTA consolidated the certifications and assurances required by Federal law or regulations for its programs.

On an annual basis, any agency with an active FTA capital or formula project must provide an affirmation by SUB-RECIPIENTS attorney pertaining to the SUB-RECIPIENTS legal capacity. The SUB-RECIPIENT must agree to comply with all categories applicable to ADOT, who is considered to be the APPLICANT and SUB-RECIPIENT of the funds by FTA, regardless of current applicability of the initial award under this Agreement. This is to ensure that should the category become applicable during the life of the Agreement, the SUB-RECIPIENT will comply. The FTA Certifications and Assurances will be provided to the SUB-RECIPIENT under separate packet as they are released by FTA and subsequent to ADOT electronic agreement. Continuation of this Agreement shall be contingent on completion and submission of that packet within the deadline expressed at time of distribution. The FTA Certifications and Assurances, as modified and accepted each year shall be considered incorporated into this Agreement by reference.

The Parties understand and agree that not every provision of the Certifications and Assurances will apply to every Applicant or each of the Projects. The type of project and SUB-RECIPIENT will determine which Certifications and Assurances apply.

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

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

SUB-RECIPIENT understands and agrees that when applying for funding on behalf of a consortium, joint venture, partnership, or team, SUB-RECIPIENT must identify the activities each member will perform and the extent to which each member of that consortium, joint venture, partnership, or team will be responsible for compliance with the Certifications and Assurances, except as FTA determines otherwise in writing.

The FTA Certification and Assurances required of ADOT and its SUB-RECIPIENTS are issued annually subsequent to ADOT signing the same. They are available for viewing in the e-Grant system and on the FTA website and are incorporated herein by reference. Completion and Signing of this FTA Certification and Assurances document is a requirement and a condition to receive FTA funding through ADOT and does not relieve the SUB-RECIPIENT of any obligation of other certifications or assurances required in any application or contracting process, and should be treated as an addition to such certifications and assurances.

Section 28.0 **INCORPORATION OF FEDERAL TERMS**

All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. All applicable clauses shown in the FTA Master Agreement apply to each of the Projects funded by FTA. Any requirements of the Stewardship Agreement with FHWA apply to each of the Projects funded by FHWA. This provision shall be incorporated in any sub-recipient, sub-contractor, or lower-tier agreement for which funds from this Agreement shall be used for payment.

In addition to other clauses required throughout this Agreement or by State law, the SUBRECIPIENT will include applicable contract provisions in every third-party contract / purchase order using federal funding summarized (but not limited to) the following:

- a) The requirements in 2 CFR 200.326,

- b) The requirements in 2 CFR 200 Appendix II,
- c) The requirements in 2 CFR 1201,
- d) FTA funded procurements/contracts: Circular 4220.1- – Third Party Contracting Guidance or its Appendix D, as revised from time to time,
- e) Any requirements established by a particular funding stream, program, funding agency guideline, or established by ADOT.

Section 29.0 MISCELLANEOUS PROVISIONS

- 1) 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 the SUBRECIPIENTs responsibility to ensure that any Agreement between SUBRECIPIENT and its CONTRACTORS for use of grant funds shall incorporate the provisions contained herein.

The CITY and METROPLAN shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in the Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement. METROPLAN shall endeavor to ensure the CITY is notified and made aware of such applicable laws and procedures.

This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards to conflicts of interest.

In accordance with Arizona Revised Statutes Section 11-952 (D), incorporated herein by reference, is the written determination of each Party’s legal counsel that the Parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Party.

Each Party shall keep confidential all information, in whatever form, produced, prepared, observed, or received by the Party to the extent that such information is confidential by law.

- 2) 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 subcontractors' employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.
- 3) The CITY 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”.
- 4) **Israel Boycott Not Permitted:** The SUBRECIPIENT warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.
- 5) The **RESPONSIBILITY MATRIX FOR TIMED EVENTS** page(s) is herein incorporated as a part of this Agreement.
- 6) The Subrecipient agrees that if it receives Federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or any other agency, or insurance proceeds for any portion of activity approved for funding under its Agreement, the Subrecipient shall provide written notification to ADOT, and reimburse ADOT for any share that duplicates funding provided by any agency or insurance company.

As the Recipient of any federal portion of funding under its Agreement, ADOT is responsible for refunding the awarding federal agency as applicable.

- 7) All notices or demands upon any party relating to this Agreement shall be in writing and delivered as instructed. If delivery method not instructed herein, acceptable methods shall be: delivered in person, sent by electronic mail (e-mail), or sent by U.S. Mail addressed as follows:

To the CITY at:	To METROPLAN at:
City of Flagstaff Grants and Contracts Manager 211 West Aspen Avenue Flagstaff, Arizona 86001 (928) 213-2227	FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION 6 E. Aspen Avenue, Suite 200, Flagstaff, Arizona 86001 (928) 266-1293

Section 30.0 AGREEMENT PERIOD, MODIFICATIONS, EXTENSION, AND AUTHORITY

- 1) The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and the Parties are authorized by law to engage in the cooperative action set forth herein.

This Agreement shall become effective upon its execution by all Parties hereto and shall remain in force and effect through June 30, 2024 unless amended, terminated, cancelled or extended as otherwise provided herein. By mutual written amendment, this Agreement may be extended annually for up to a maximum of four years. METROPLAN reserves the right to unilaterally extend the period for thirty-one (31) days beyond the stated expiration date without obtaining acknowledgement or signature from the SUBRECIPIENT and the SUBRECIPIENT shall be bound by any such extensions.

- 2) This Agreement shall be modified or extended only through a written amendment within the scope of the Agreement. This includes addenda to specify additional projects or details that will become part of the collective Projects. Additionally, the authorized representative(s) are also required to sign such amendments as deemed necessary by both Parties.

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

FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION

CITY OF FLAGSTAFF

By

By

Date

Date

ATTEST

FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION

CITY OF FLAGSTAFF – CITY CLERK

By

By

Date

Date

APPROVAL OF AGREEMENT

I have reviewed the above referenced Agreement, BETWEEN the CITY OF FLAGSTAFF and FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION, and declare this agreement to be in proper form and within the powers and authority granted to FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION under the laws of the State of Arizona. No opinion is expressed as to the authority of the CITY OF FLAGSTAFF to enter into this agreement.

DATED _____

Attorney for FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION
MANGUM, WALL, STOOPS & WARDEN, PLLC

APPROVAL OF AGREEMENT

I have reviewed the above referenced Agreement, BETWEEN the CITY OF FLAGSTAFF and FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION, and declare this agreement to be in proper form and within the powers and authority granted to THE CITY OF FLAGSTAFF under the laws of the State of Arizona. No opinion is expressed as to the authority of the FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION to enter into this agreement.

DATED _____

Attorney for CITY OF FLAGSTAFF

EXHIBIT A Billing Summary / Reimbursement Request

The format provided herein is in effect for the duration of this Agreement unless and until METROPLAN issues a thirty (30) day written notice of change. An amendment to this Agreement is not required for changes to this format.

Arizona Department of Transportation Multimodal Planning Division Billing Summary / Reimbursement Request															
Subrecipient or Vendor? (Select from List)		Subrecipient		ADOT PM Name						MPO Tracking Number (Use Format: MPOname; RTAP use "METROPLAN") (By - last 2 digits of the State Fiscal Year (July 1 - June 30))					
Agency Name										Contract Number (Only Use for Executed JPA, GRV, ISA, or ISA)					
Agency PM Name / Email (Necessary if Unaccredited / Registered / PAAG)										AFIS GAE Number					
Invoice Number		Invoice Status (Select from List)		Invoice Date						Subrecipients Leave Blank					
Subrecipient Comment (Optional)				Billing Period						Federal Funding Agency (Select from List)					
Remit Payment to (Select from List)										Funding Program (Select from List)					
Entry required in field 05										Entry required in fields 02 and 06					
										Subrecipients Leave Blank					
SUMMARY OF WORK FOR WHICH PAYMENT IS REQUESTED															
Agency Identifier or Reference	GAE Line No	Program / Phase	Race Conscious DBE Goal %	Project Description	Original Federal Award	Approved Changes to Federal Award	Total Awarded Federal Budget	\$ (Net Amount) Invoiced Previously	Balance (Total Budget - Previously Invoiced)	Billing for This Invoice Prior to Reductions	Other Reductions in a Form, BECO Sanctions, Disallowed	Match % to Apply	Match % Applied to this Line	Net Amount Due for This Invoice	Balance After This Invoice
							\$ -		\$ -					\$ -	\$ -
							\$ -		\$ -					\$ -	\$ -
							\$ -		\$ -					\$ -	\$ -
Click Button to Insert Line					TOTALS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	\$ -
This section is only applicable to the FINAL reimbursement request submission - Please leave blank.															
The fields completed on this page indicate this is the Final Invoice Reimbursement Request and that there was NO Race Conscious Goal On this Project.															
Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank	
Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank	
<small>Submitter Certification required pursuant to 4 CFR 200.415: By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise, (U.S. Code Title 38, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).</small>															
<small>I Confirm No Race Conscious DBE Goal was Assessed for the Project(s) and No A2 DBE Firms Participated.</small>															
Submitter - Authorized Signatory		I certify that my typed signature is a legally-binding signature.				Date Signed		Optional - 2nd Authorized Signatory		I certify that my typed signature is a legally-binding signature.				Date Signed	
Please Leave Blank															
Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank	
ADOT PROGRAM/PROJECT MANAGER REVIEW															
The ADOT Project Manager is required to review for each of these items. By approving this invoice, you certify these requirements are met.		Travel charges are in accordance with State/ADOT Policy				Status		Reason for Rejection				ADOT PM Signature Required			
		Progress toward Scope aligns with Awarded Requirements				Invoice Approved									
		Invoicing aligns with Progress and Awarded Budget / Pricing				Invoice Rejected									
		Support Documents align to Invoice and adequately supports costs													
Confirmed: BECO required DBE Forms are attached.															
FIMS PROCESSING															
Status		Warrant / Check / ACR Payment No and Date				Date		A/P or C/A Processed By		Color Key					
Not FTA Funded - Please leave section below blank															
Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank	
Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank		Please Leave Blank	
<small> Pink with Red Text = Entry/Correction Required White Label = Field Not Provided in ADOT Documentation White Field = Entry in Field Permitted Pink Orange = Form Calculated Field Teal = Vendor/Customer Generated Grey = Disregard Field </small>															

EXHIBIT B

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

EXHIBIT C

Form found at <https://www.gsa.gov/forms-library/disclosure-lobbying-activities>

APPENDIX B TO PART 20—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____	
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____			5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____		
6. Federal Department/Agency:			7. Federal Program Name/Description: CFDA Number, if applicable: _____		
8. Federal Action Number, if known:			9. Award Amount, if known: \$ _____		
10. a. Name and Address of Lobbying Entity (of individual, last name, first name, MI):			b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):		
<small>(Detach Continuation Sheet(s) SF-LLL-A, if necessary.)</small>					
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned			13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify: _____		
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____					
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: <small>(Detach Continuation Sheet(s) SF-LLL-A, if necessary.)</small>					
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No					
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the Fed. agency when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported in the Congress next session and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Federal Use Only.			Authorized for Local Reproduction Standard Form - 332		

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - 332-A

Exhibit D
Standard Patent Rights

Required Pursuant to 37 CFR 401.14:

(a) Definitions

- (1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
- (2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.
- (3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- (6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (7) The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.
- (8) The term contractor means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

(b) Allocation of Principal Rights

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

- (1) The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

- (2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (4) For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).
- (5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

(d) Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention—

- (1) If the contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.
- (2) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.
- (3) In any country in which the contractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Contractor and Protection of the Contractor Right to File

- (1) The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the contractor's business to which the invention pertains.
- (2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- (3) Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest

- (1) The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.
- (2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.
- (4) The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

- (1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor.. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (2) The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).
- (3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include

information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- (1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Contracts with Nonprofit Organizations

If the contractor is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the contractor;
- (2) The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor

determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Federal agency may review the contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.



ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

MGT-16.01 DEPARTMENT-WIDE NATIVE NATION/ TRIBAL GOVERNMENT CONSULTATION POLICY

Effective: July 23, 2019
Supersedes: MGT-16.01 (09/14/2016)
Responsible Office: Director's Office (602) 712-7227

Review: July 23, 2021
Transmittal: 2019 – July
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1.01 PURPOSE

This policy establishes guidance for the Arizona Department of Transportation's (ADOT) relationship with Native Nations/Tribal Governments in the State of Arizona.

1.02 SCOPE

This policy is intended to guide ADOT personnel when interacting with the Native Nations/Tribal Governments in Arizona. To support the implementation of this policy, an online training course titled, ADOT Tribal Transportation Consultation Training and accompanying Handbook is available from the ADOT Learning Center Online Training page.

1.03 AUTHORITY

A.R.S § 28-332(A)

Executive Order 13175

Executive Order 2006-14

United States Department of Transportation (US DOT) Order 5301.1

18 U.S.C. § 1151

1.04 BACKGROUND

The Arizona Department of Transportation (ADOT) is a multimodal transportation agency that is responsible for planning, building and operating the state highway system and the Grand Canyon Airport. Within the State, multimodal transportation systems cross numerous jurisdictional boundaries. In particular, approximately 1,237 centerline miles of the state highway system traverse Native Nation/Tribal lands along with 18 airports maintained by the Native Nations/Tribal Governments. There are 22 Native Nations/Tribal Governments that have jurisdiction over approximately 28% of the land base within Arizona. Thus, the State is committed to work together with the Native Nations/Tribal Governments for the common purpose of protecting the health, safety and welfare of the traveling public in Arizona through a continuously improving working relationship.

Furthermore, Executive Order 13175 (November 6, 2000 reaffirmed by President Barack Obama November 5, 2009), "Consultation and Coordination with Indian Tribal Governments", the United States Department of Transportation (US DOT) Order 5301.1 (November 16, 1999), "Department of Transportation Programs, Policies and Procedures Affecting American Indians, Alaska Natives and Tribes" and the Arizona Governor's Executive Order 2006-14 (September 14, 2006), "Consultation and Cooperation with Arizona Tribes" all require state departments of transportation to consult, cooperate and coordinate with Native Nations/Tribal Governments in statewide and metropolitan transportation planning processes. This is in addition to addressing environmental, cultural, historic, natural and human resource issues during the implementation of transportation programs and construction projects impacting Native Nations/Tribal reservations and aboriginal lands within the State boundaries. Consequently, the State is committed to consult, cooperate and coordinate with the Native Nations/Tribal Governments on the implementation of their respective multi-modal transportation mission and goals.

1.05 DEFINITIONS

Airport Development Grant	A written agreement between parties allowing certain approved airport improvement costs to be reimbursed by ADOT at a given rate of participation.
Consultation	Meaningful and timely discussion in an understandable language with tribal governments during the development of regulations, policies, programs, plans or matters that significantly or uniquely affect federally recognized American Indian tribes and their governments.
Cooperation	Working together in carrying out decision making activities to achieve a common goal or objective.
Coordination	Cooperative actions among agencies and entities to integrate activities, responsibilities, and control to ensure resources of all parties are used as efficiently as possible.
Intergovernmental Agreement (IGA)	An agreement between political subdivisions including cities, counties, tribes or any other governmental agency or political subdivision. Includes interagency agreements, i.e., agreements between agencies or departments of the State.

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Joint Project Agreement (JPA)	An agreement between parties for the joint exercise of powers to accomplish a task. A Joint Project Agreement is a type of intergovernmental agreement (IGA).
Memorandum of Agreement (MOA)/ Memorandum of Understanding (MOU)	A written agreement between parties to cooperatively work together on an agreed upon project or meet an agreed upon objective. The purpose is to have a written understanding of the agreement between parties.
Native Nations/Tribal Governments	The 22 Federally recognized Native Nations, Tribal Governments, and Tribal Communities that have jurisdiction over lands located within the boundaries of the State of Arizona. These tribes are acknowledged to exist by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454.
State Transportation Improvement Program (STIP)	A statewide prioritized listing/program of transportation projects covering a period of four years that is consistent with the state long-range transportation plan, metropolitan transportation plans, and Transportation Improvement Programs (TIPs), and required for a project to be eligible for funding under Title 23 United States Code and Title 49 United States Code, Chapter 53.

1.06 POLICY

ADOT recognizes the sovereign status of Native Nations/Tribal Governments and their jurisdiction over lands within reservation boundaries as defined by Federal law [18 U.S.C. §1151]. ADOT also recognizes its exclusive control and jurisdiction over state highways within reservation boundaries as defined in A.R.S. § 28-332(A). In recognition of Native Nations/Tribal sovereignty, ADOT respects the unique and continuous existence of each Native Nation's/Tribe's government, people, history, culture, codes and laws.

1. ADOT is committed to developing relationships with the Native Nations/Tribes in Arizona, and will respect and consider all transportation concerns. ADOT appreciates and encourages the Native Nations'/Tribal Governments' contribution to the transportation concerns of the State of Arizona.

MGT-16.01 Department-Wide Native Nation/Tribal Government Consultation

Effective: July 23, 2019

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Supersedes: MGT-16.01 (09/14/2016)

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2. ADOT will neither solicit nor assert any claim to Federal resources that would otherwise be provided directly to Native Nations/Tribes, unless an impacted Native Nation/Tribe gives consent.
3. ADOT will maintain and operate State owned transportation infrastructure within Native Nation/Tribal lands in the best interest of the State while respecting the concerns of the Native Nations/Tribal Governments and their communities.
4. ADOT management, including the director, deputy directors, division directors, district engineers, and other designated staff, will maintain the appropriate working relationships with Native Nation/Tribal Government elected officials and staff to assure the continuous operation of all respective transportation systems.
5. ADOT will consult with Native Nations/Tribal Governments during the transportation planning processes and implementation of the Statewide Transportation Improvement Program (STIP) in accordance with Federal Highway Administration, Federal Transit Administration, and Federal Aviation Administration policies and this policy.
6. ADOT will enter into Intergovernmental Agreements, Joint Project Agreements, Memoranda of Agreement, Memoranda of Understanding or Airport Development Grants when considered mutually appropriate by ADOT and the appropriate Native Nation/Tribal Government.
7. ADOT, while acknowledging funding and jurisdictional limitations, will work with Native Nations/Tribal Governments to identify available resources to jointly or individually fund projects to benefit the State and Native Nation/Tribal communities.
8. ADOT will conduct technical training, when appropriate and as resources allow, and support planning, development, construction, maintenance, and operation of transportation facilities under Native Nation/Tribal jurisdiction.
9. ADOT will engage in partnering efforts, when appropriate and as resources allow, by encouraging and improving understanding and communication with the Native Nations/Tribal Governments.
10. ADOT will encourage mutual understanding of unique cultural and organizational practices among ADOT and the Native Nations/Tribal Governments.
11. ADOT will provide timely opportunities for communication with Native Nations/Tribal Governments about decisions that may affect them. ADOT values reciprocity by Native Nations/Tribal Governments and encourages timely notification on matters that may affect the State.
12. ADOT will share appropriate technical information and data with Native Nations/Tribal Governments in accordance with established ADOT policy. ADOT values reciprocity and

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encourages all Native Nations/Tribal Governments to share appropriate technical data with the State in accordance with established Native Nations/Tribal Government policy.

13. ADOT will assist Native Nations/Tribal Governments to implement transportation programs by providing technical assistance, reference tools, sharing data, conducting joint Native Nations/Tribal Government and State projects, and by cooperatively resolving transportation issues to the extent resources allow.

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SCHEDULE 2.0

Budget and Project(s) Scope

For the initial Project under this Agreement to be pursued during FY 2022-2023, which is referred to informally by the Parties as the "Downtown Mile", the estimated Project costs are as follows:

Planning and Design:

MetroPlan Federal-aid funds	\$ 490,000.00
City Funds (Federally required local match)	\$ 29,619
Total	\$ 519,619