

# Exhibit A



## OFFER AND ACCEPTANCE

### OFFER

TO THE STATE OF ARIZONA:

The undersigned hereby offers and agrees to perform in compliance with all terms, conditions, specifications and amendments of this solicitation and any written exceptions in the offer. Signature also acknowledges receipt of all pages indicated in the Table of Contents.

Creative Bus Sales, Inc.  
Offeror (Company) Name

3615 S. 28th Street  
Address

Phoenix AZ 85040  
City State Zip

marcush@creativebussales.com  
Email Address

biddepartment@creativebussales.com  
Company Email Address

  
Signature of Person Authorized to Sign Offer

Marcus Hoffman 3/25/2021  
Printed Name Date

Bid Manager  
Title

602-437-2255  
Phone Number

602-437-2758  
Fax Number

By signature in the Offer section above, the Offeror certifies that the submission of the Offer did not involve collusion or other anticompetitive practices.

### ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR054848 including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until contractor receives a purchase order document.

State of Arizona

Effective this 1st day of May 20 21

DocuSigned by:  
  
Procurement Officer 4/21/2021  
Awarded Date



Procurement

STATE OF ARIZONA  
ARIZONA DEPARTMENT OF TRANSPORTATION  
1739 W. Jackson St., Ste. A  
Phoenix, AZ 85007

## INVITATION FOR BID

**SOLICITATION NUMBER:** BPM003324

**DESCRIPTION:** Mobility Vehicles and Vehicle Conversion Services

**QUESTIONS:** Inquiries regarding the solicitation are to be submitted online through the State's e-Procurement system, Arizona Procurement Portal (APP) (<https://app.az.gov/>) using the Discussion Forum tab.

**OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.**

**Pamela Veal**  
Procurement Officer  
Phone: 602-712-7564  
Email: PVeal@azdot.gov

This solicitation is issued in accordance with A.R.S. §41-2533 and A.A.C. R2-7-B301 et seq., Competitive Sealed Bidding.

"An Equal Opportunity Agency"

*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 Americans with Disabilities Act (ADA), 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, national origin in consideration for an award.*

*Persons that require a reasonable accommodation based on language or disability should contact ADOT's Procurement Office by phone (602) 712-2089. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.*

*Las personas que requieran asistencia (dentro de lo razonable) ya sea por el idioma o discapacidad deben ponerse en contacto con ADOT (602) 712-2089.*

---

<u>SECTION</u>	<u>PAGE</u>
Notice	1
Table of Contents	2
Scope of Work	3
Special Terms and Conditions	13
 <b><u>EXHIBITS</u></b>	
1 - Title VI/Non-Discrimination Assurances Appendix A	25
2 - Title VI/Non-Discrimination Assurances Appendix E	26
3 - ADOT Quarterly Usage Report	27
4 - On-Site Manufacture Inspection Compliance Certification	28
5 - Pre-Award Audit and Certification	29
6 - Purchaser's Pre-Award Requirements Certification	30
7 – Post Award Certification and Requirements	31-32
8 – Purchaser's Post Award Requirements Certification	33
9 – Vehicle Modification Inspection and Acceptance for Category 4	34

## 1. Statement of Need

- 1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement for Statewide Mobility Vehicles and Vehicle Conversion Services.

## 2. Introduction and Background

- 2.1. The State intends to establish a statewide term contract (s) with reliable and capable contractors who can; provide vehicles with wheelchair lifts, mobility accessible vehicles, services to convert existing vehicles as needed, (DUI van conversions, Crime Scene vehicle conversions, etc.), vehicle wraps; registration and licensing of new vehicle purchases, manage multiple agency accounts and delivery points located throughout the state, provide an effective ordering method for contract specific items, has sufficient statewide delivery capabilities when applicable and offers various discounts as stated in this solicitation. This contract(s) will be used on an as needed basis; the State makes no guarantee as to actual spend under any resultant contract.
- 2.2. The Department awards funds to grant subrecipients to purchase vehicles and vehicle services for programs performed on behalf of the FTA and the Department. Eligible subrecipients of these funds include: Federally Recognized Tribal Agencies, Councils of Governments, Metropolitan Planning Organizations, non-profits, local governments, and transit authorities. The grant contracts require them to procure services following FTA requirements. In order to ensure compliance, the Department's subrecipients will be eligible to use the awarded contracts for relevant purchases.

## 3. General Requirements

- 3.1. Contractors shall have the sufficient means to meet the requirements of a statewide contract. Including the ability to create and manage numerous individual accounts for order placement, billing and reporting purposes and the ability to provide a full range of products, offered in order to meet the demands of all eligible agencies. This shall include the ability to resolve customer disputes, handle multiple communications from accounts, deliver vehicles to multiple locations around the state and provide excellent customer service.
- 3.2. Contractors may provide the goods/services described in any or all of the following categories below:
  - 3.2.1.1. Category One: FTA funded vehicles and components
  - 3.2.1.2. Category Two: State funded vehicles and components
  - 3.2.1.3. Category Three: Optional Services (including conversions, modifications and vehicle wraps)

- 3.2.1.4. Category Four: Vehicle Modification services for Client owned equipment
- 3.2.1.5. Timely reporting of known warranty issues by contracted vehicle type and timely response to warranty issues that arise.

#### **4. Specific Requirements**

4.1. The intent of the specifications is to provide the Contractor with sufficient information concerning the products/services to be contracted. The specifications may be detailed or general in nature with regard to any particular product/service. Where not otherwise specified, details of materials or the way in which services will be provided, are left to the discretion of the Contractor, provided only that any offering shall conform, as a minimum, to best industry standards' and practices and to what is currently being sold in the marketplace. Responses shall be considered only from Contractors that have established good reputations in their markets, and who furnish satisfactory evidence of ability to supply the products/service specified herein. Contractors shall show proof of ability to provide all eligible agencies prompt and competent service, including parts and /or repairs if applicable, for all products/services covered by this solicitation.

#### **4.2. Standards and Functions**

- 4.2.1. All equipment and vehicles shall conform to all applicable (OSHA) Occupational Safety and Health Administration, (EPA) Environmental Protection Agency, (ADA) Americans with Disabilities Act 49 C.F.R. § 38), Federal Transit Administration Bus Testing Program (Altoona Research and Testing Center), (FMVSS) Federal Motor Vehicle Safety Standards, (NHTSA) National Highway Traffic Administration, National Mobility Equipment Dealers Association (NMEDA) standards and Buy America regulations and to all industry standards in effect at the time of delivery.
- 4.2.2. An equipment certification label or data plate conformation to requirements established in 48 C.F.R. §567.4 shall be installed when applicable.
- 4.2.3. The equipment supplied shall be standard model of a manufacturer with experience in the production of wheelchair accessible vehicles. Each unit shall include all specified accessories, parts, equipment and options that are listed in the manufacturer's specifications as standard equipment for the specific model, unless otherwise required by an eligible agency. All workmanship and materials shall be of good quality and design.
  - 4.2.3.1. In the event that the manufacturer issues a new model before completion of this contract, all item changes that do not appreciably affect function and performance of the chassis, including cosmetic changes will be accepted.
  - 4.2.3.2. The successful Contractor shall be responsible for delivery of all vehicles in a complete, ready-for-use condition with all components functioning; cleaned, tested, lubricated, serviced and full of fuel.

- 4.2.4. Each component of the equipment response shall be adequate for and compatible with all structural and performance demands placed upon it as part of the complete unit.
- 4.2.4.1. All equipment and parts furnished shall be of the manufacturer's latest design and shall be listed in all current manuals relating to the equipment.
- 4.2.5. All dimensions weights, wire or metal gauges, or other factors expressed numerically in this specification are to be considered as nominal requirements (+ or – 10%) unless indicated otherwise by the words "Minimum", or "Exactly". Where brand names, with or without arrangement numbers, are mentioned, bidders are to understand that brand name or equal is intended.
- 4.2.6. Equipment shall be new, unused and not refurbished.
- 4.2.7. Equipment shall not be a prototype insofar as the general design operation and performance. This requirement is NOT meant to preclude Contractors from offering new models or configurations which incorporate improvements in a current design or add functionality but which in such a new model or configuration may be new to the marketplace.
- 4.2.8. Equipment shall include any and all accessories which may or may not be specifically mentioned herein, but which are normally furnished or which are necessary to make a delivered product ready for its intended use. Such accessories shall be assembled, installed and adjusted such that the product is ready for continuous operation at time of delivery.
- 4.2.9. Equipment shall have assemblies, sub-assemblies and component parts that are standard and interchangeable throughout the entire quantity of a particular product as may be purchased simultaneously by any using agency.
- 4.2.10. Equipment shall be designed and constructed using current industry accepted engineering and safety practices and materials.
- 4.2.11. The Department does not limit competition to entities that has not acquired state license. This procurement is not limited to in-state dealers.

4.3. **Contract Categories minimum requirements**

4.3.1. **Category One: FTA Funded Vehicle and Component requirements**

Category One specifications are intended to describe and to set a minimum requirement for (not to design) vehicles that will be used at a minimum by grantees of Federal Transit Administration (FTA) funding. The Contractor shall comply with all FTA rules and regulations related to FTA funded vehicles.

- 4.3.1.1. The vehicles supplied shall be based on a commercially produced platform. The Contractor shall certify that the platform supplied complies with provisions of the Buy America (49 U.S.C. § 5323(j)(1)) and 49 CFR §661.11 and Appendices A to D.
- 4.3.1.2. Vehicle shall be at a minimum OEM standard and be compatible with GVWR of the completed vehicle after all conversions.
- 4.3.1.3. Vehicles are to be delivered as a complete unit, certified and ready for immediate operation throughout the State of Arizona as designated by the Department.

- 4.3.1.4. All Parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.
- 4.3.1.5. The complete equipment/material supplied shall not include a major component that is of a prototype nature or has not been in production for a sufficient length of time to demonstrate reliability.
- 4.3.1.6. Accessibility: Vehicles must comply with the accessibility requirements of US DOT regulations "Transportation Services for Individuals with Disabilities (ADA), 49 CFR Part 37, and Joint Access Board / DOT Regulations "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles" 36 CFR Part 1192 and 49 CFR Part 38.
- 4.3.1.7. Transit Vehicle Manufacturer Compliance with DBE Requirements: Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR 26.49 requires the TVM to submit a certification that it has complied with FTAs DBE requirements.
- 4.3.1.8. Air Pollution and Fuel Economy: Ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.
- 4.3.1.9. Bus Testing: New bus models or a bus with significant alterations to an existing model must comply with applicable requirements of 49 U.S.C. Section 5318, as amended, and FTA regulations, "Bus Testing," 49 CFR Part 665. The contractor shall perform the following:
  - 4.3.1.9.1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.
  - 4.3.1.9.2. A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
  - 4.3.1.9.3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
  - 4.3.1.9.4. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

- 4.3.1.10. PRE-AWARD AND POST- DELIVERY AUDIT REQUIREMENTS: The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. § 663 and to submit the following certifications:
- 4.3.1.10.1. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists
    - 4.3.1.10.1.1. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
    - 4.3.1.10.1.2. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
  - 4.3.1.10.2. Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the designated specifications.
  - 4.3.1.10.3. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.
  - 4.3.1.10.4. Exhibit 5, 6, 7, and 8 includes the certification information which includes all documents that must be provided at the time of quote and delivery.

**4.3.2. Category Two: State Funded Vehicle and Component requirements**

- 4.3.2.1. Vehicle shall be at a minimum OEM standard and be compatible with GVWR of the completed vehicle after all conversions.
- 4.3.2.2. Vehicles are to be delivered as a complete unit, certified and ready for immediate operation within the State of Arizona.
- 4.3.2.3. The complete equipment/material supplied shall not include a major component that is of a prototype nature or has not been in production for a sufficient length of time to demonstrate reliability.

**4.3.3. Category Three: Optional Services (conversions, modifications, vehicle wraps, etc.)**

- 4.3.3.1. Vehicle conversions/modifications/vehicle wraps services: The using eligible agency may request the awarded Contractor to modify any vehicle (existing or new) for specific organizational needs. Vehicles may require interior and/or exterior modifications per eligible agency requirements. The eligible agency will supply all optional service requests to the Contractor. The Contractor shall identify and conditions that apply to the optional services on a quotation to the using eligible agency for review before any work commences.
- 4.3.3.2. Eligible agencies may make requests for additions or inclusion of additional specifications, qualifications, conditions, etc. Any requests shall be made in writing

and agreed upon by Contractor and the eligible agency prior to issuance of any purchase order for services.

- 4.3.3.3. An eligible agency may provide an existing vehicle (cab, box, chais, etc) to the Contractor for conversion services. It is the sole responsibility of the Eligible Agency to ensure that the vehicle provided is sufficient for conversion (as per vehicle GCWR/GVWR/ etc). The Eligible Agency shall submit detailed layout plans to the Contractor upon issuing an order for conversion services. The layout plans shall account for all items as may be ordered.
- 4.3.3.4. The Contractor shall maintain all manufactures catalog/price lists for all items in accordance with the contract special terms and conditions. Before beginning work on any order, the contractor shall submit a quote in response to the order detailing all pricing. The eligible agency shall approve all quotes in writing. The contractor may begin work upon eligible agency approval.

**4.3.4. Category Four (4) Vehicle Modification services for Client owned equipment**

- 4.3.4.1. Category Four specifications are intended to describe a set of minimum requirements for vehicle modification services for Rehabilitation Services Administration (RSA) Clients and ADA compliant State vehicles. A service that provides modifications of a vehicle to assist an individual to drive or be transported in his/her own vehicle or vehicle authorized by RSA Policy.
- 4.3.4.2. Vehicle modification services include any prescribed by a Certified Driving Rehabilitation Specialist (CDRS) changes to a passenger car, van, SUV or other motor vehicle that permits an individual with a disability to safely drive or ride as a passenger. In accordance with the national Mobility Equipment Dealers Association (NMEDA) and its Quality Assurance Program (QAP) the following types of vehicle modifications are included:
  - 4.3.4.2.1. Mobility Equipment Installation
  - 4.3.4.2.2. Structural Vehicle Modification
  - 4.3.4.2.3. High Tech Driving Systems Installation.
- 4.3.4.3. Structural Vehicle Modification typically referred to as “conversion” which allows the client to enter/exit the vehicle with or in their wheelchair. Structural modifications are done only to vehicles with odometer reading of less than 50,000 miles unless the vehicle can pass an inspection by certified auto mechanic of the brakes, electrical system, body, power train, engine, and safety features which documents that the vehicle is in good working order and requires no major repairs. Structural modifications will not normally be performed on vehicles with odometer readings of over 75,000 miles or manufacturer criteria.
- 4.3.4.4. Structural modifications may include, but are not limited to:
  - 4.3.4.4.1. Lowered floor (10”, 11”, 12”, 14”)
  - 4.3.4.4.2. Power door
  - 4.3.4.4.3. Ramp or lift
  - 4.3.4.4.4. Hydraulic “kneel” features

**SCOPE OF WORK**

- 4.3.4.4.5. Manual securement system for wheelchair
- 4.3.4.4.6. Raised roof
- 4.3.4.4.7. Some door modifications

4.3.4.5. Non-Structural Modifications may include, but are not limited to:

- 4.3.4.5.1. Hand controls;
- 4.3.4.5.2. Additional mirrors;
- 4.3.4.5.3. Left foot accelerator;
- 4.3.4.5.4. Steering device such as a spinner knob or cuff;
- 4.3.4.5.5. Car-top or rear wheelchair or scooter carrier;
- 4.3.4.5.6. Ignition key or parking brake extensions;
- 4.3.4.5.7. Accelerator and brake extensions;
- 4.3.4.5.8. Power seat base;
- 4.3.4.5.9. Seat belt modifications;
- 4.3.4.5.10. Power door opener;
- 4.3.4.5.11. Remote ignition;
- 4.3.4.5.12. Under-vehicle wheelchair lifts;
- 4.3.4.5.13. Swing arm lifts;
- 4.3.4.5.14. Wheelchair restraint device;
- 4.3.4.5.15. Ramps and/or wheelchair lifts not requiring structural modifications;
- 4.3.4.5.16. Transfer seats and/or transfer devices.

4.3.4.6. High Tech Modifications may include, but are not limited to:

- 4.3.4.6.1. Modification of the electrical system;
- 4.3.4.6.2. Modification of steering column;
- 4.3.4.6.3. Low effort or zero effort steering;
- 4.3.4.6.4. Digital “high tech” driving system.

4.3.4.7. The Contractor shall modify the vehicle and perform all work in accordance with the Certified Driving Rehabilitation Specialist, (CDRS) prescription, in compliance with *National Mobility Equipment Dealers Association (NMEDA)/ Quality Assurance Program (QAP)* standards.

4.3.4.8. A Request for a Project Cost Proposal or Quote will be provided to the Contractor from the requesting Vocational Rehabilitation Counselor (VRC) via email in the form of a Vehicle Modification Prescription. An itemized Project Cost Proposal (PCP) or Quote must be provided for each job and approved by the requesting agency. The PCP or Quote must include anticipated timeframes and defined Payment Points based on deliverables. All Project Cost Proposals shall be accompanied by a Vehicle Modification Prescription prepared by a Certified Driving Rehabilitation Specialist (CDRS). No work shall be initiated by the Contractor until requested in writing via an RSA Purchase Authorization.

4.3.4.9. The Contractor must certify that all equipment meets or exceeds the requirements established by SAE International, the National Mobility Equipment Dealers

Association (NMEDA), and the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation.

4.3.4.10. The Contractor must coordinate vehicle fittings/s, trainings and final inspection as it relates to operation and maintenance of the installed equipment.

4.3.4.11. The Contractor must maintain the copyrighted manuals for the structural modifications from National Mobility Equipment Dealers Association (NMEDA).

4.3.4.12. The Contractor must develop and maintain a Quality Management Plan in order to continuously monitor the delivery of services and to ensure that the service provision meets the client's objectives. The quality management plan shall include the following:

4.3.4.12.1. Incident management, corrective action and preventions;

4.3.4.12.2. Complaints and grievances;

4.3.4.12.3. Routine monitoring of Contractor personnel and subcontractors to ensure quality service delivery to RSA clients.

4.3.4.13. **Training** for category Four (4) shall be conducted at the Contractor's place of business prior to the release of the vehicle. The scope of the training shall include the following:

4.3.4.13.1. How to operate and maintain the installed equipment;

4.3.4.13.2. Hands-on practice in maintenance tasks for the installed equipment;

4.3.4.13.3. Hands-on practice with all back-up safety systems, including manual deployment of the lift or ramp, and identification, location and use of specialty tools and implements;

4.3.4.13.4. Hands-on practice using all tie-down systems;

4.3.4.13.5. A review of user options and/or use of other installed safety or adaptive features, including custom labels; and

4.3.4.13.6. Correct any immediately evident installation deficiencies or make minor adjustments per recommendation of the CDRS to meet client accessibility needs prior to acceptance of the vehicle.

4.3.4.14. **Warranty** requirements for Category Four (4) is as follows:

4.3.4.14.1. The Contractor must warrant for a minimum of one (1) year after final acceptance of vehicle modification that work performed under this contract conforms to the requirements of the prescription and is free of any defects of equipment, material, or workmanship performed by the Contractor or any of its subcontractors or suppliers at any tier.

4.3.4.14.2. The Contractor must Provide and coordinate any warranty service including all parts and labor for the stated manufacturer and the Contractor warranty period(s) to the client.

4.3.4.14.3. The warranty for all equipment and services shall start upon final acceptance of the full modification.

**SCOPE OF WORK**

4.3.4.14.4. Under the warranty, the Contractor shall remedy at its own expense any damage to the client's vehicle when that damage is the result of the Contractor's failure to conform to prescription requirements or any such defects of equipment, material, or workmanship.

4.3.4.15. **Licensure/Qualification** requirements for Category Four (4) is as follows:

4.3.4.15.1. The Contractor shall maintain Membership Certificate from the National Mobility Equipment Dealers Association (NMEDA) and have accreditation for Quality Assurance Program (QAP) and hold current, valid manufacturer certifications verifying completion of training on adaptive equipment installations, services performed, and selling of product lines represented by the Contractor.

4.3.4.15.2. The Contractor shall employ on-site Installers who participate in a minimum of two (2) courses per year from the NMEDA Professional Trainings for Technicians curriculum.

4.3.4.15.3. The warranty for all equipment and services shall start upon final acceptance of the full modification.

4.3.4.15.4. The Contractor shall only employ or subcontract with certified welders who meets or exceeds the applicable requirements of the American Welding Society (AWS).

4.3.4.16. The Contractor shall meet the following **performance standards** for Category Four (4) is as follows:

4.3.4.16.1. Adhere to established schedules and timelines for service provision;

4.3.4.16.2. Use industry standard equipment to ensure quality installation;

4.3.4.16.3. Adhere to the NMEDA and Federal Motor Vehicle Safety Standards (FMVSS) standards.

4.3.4.16.4. Maintain valid and up to date business and professional licenses and documentation.

4.3.4.16.5. Upon completion of the vehicle modification and prior to drive off, meet with the client, CDRS and VRC to complete the Vehicle Modification Inspection and Acceptance form (Exhibit 9).

4.4. **Preventative Maintenance (PM) & Safety Program Requirements for new vehicles**

4.4.1. Contractor shall provide for each eligible agency vehicle recipient a comprehensive preventative maintenance (PM) program manual in hardcopy along with an electronic copy or website link. The PM program shall have detailed procedures and stipulate required and recommended intervals (miles and/or months, as applicable) for the supplied vehicle including all components.

4.4.2. Maintenance components and procedures shall be discussed within the context of

- 4.4.2.1. Required minimum factory maintenance items and intervals,
- 4.4.2.2. Factory, secondary manufacturer or vendor suggested additional maintenance items and the anticipated operating environment found in Arizona, i.e. heavy service conditions due to terrain/topography and climate.

4.4.3. Contractor shall place a special emphasis on “safety systems” and the importance for maintenance of related components, including but not limited to regular tire and suspension system inspection and replacement intervals and brake system maintenance. This section should include a specific discussion on high center of gravity vehicle dynamics and the impact of poor maintenance on the operation of these critical systems and overall vehicle safety.

4.4.4. The PM program will explain the value of pre-trip inspection, the importance of recurrent training, warranties, how to select local maintenance contractors and the relationship between the contractor and eligible agency.

4.4.5. The supplied PM program shall provide the vehicle recipient basic “performance targets” and a self-evaluation system to design their individual programs around.

4.4.6. The minimum outlines and details for the required PM program are stated as follows:

- 4.4.6.1. External and structural body and chassis components:
  - 4.4.6.1.1. Exterior, interior and structural (frame, body panel, doors, windows, suspension components, inspection and maintenance).
  - 4.4.6.1.2. Tire replacement, repair or rotation
  - 4.4.6.1.3. External accessory systems (windshield wiper assembly, mirrors, etc.)
  - 4.4.6.1.4. Brake systems
  - 4.4.6.1.5. Steering systems
  - 4.4.6.1.6. Lights-exterior and interior
  - 4.4.6.1.7. Cleaning, shampoo, detail
  - 4.4.6.1.8. Minor body touch up and paint
- 4.4.6.2. Engine & drive train components to include but not be limited to:
  - 4.4.6.2.1. Oil & filter change intervals
  - 4.4.6.2.2. Drive and accessory belt and hose inspection and change intervals
  - 4.4.6.2.3. Valve and timing adjustments
  - 4.4.6.2.4. Electrical/electronic components including but not limited to:
    - 4.4.6.2.4.1 Ignition system, alternator and battery(s)
    - 4.4.6.2.4.2 On-board diagnostic computer
  - 4.4.6.2.5. Coolant system maintenance, including flush & replace
  - 4.4.6.2.6. Fuel systems
  - 4.4.6.2.7. Transmission oil and filter changes and other transmission checks.
  - 4.4.6.2.8. Driveshaft components & operation

## SCOPE OF WORK

- 4.4.6.2.9. Rear differential maintenance, noting limited slip-specific maintenance where applicable
- 4.4.6.3. Wheelchair related components:
  - 4.4.6.3.1. Lift cycling (observation, inspection)
  - 4.4.6.3.2. Lift electrical (including lights), hydraulic and mechanical systems
  - 4.4.6.3.3. Transmission interlock system
- 4.5. Wheelchair and other mobility device securement and equipment stowage and maintenance

### 5. Contractor's Responsibilities

- 5.1. The Contractor shall maintain and provide when requested, contact information of authorized service and repair locations. Contractor shall be responsible for the cost to transport and return vehicles requiring service if service and repair facilities are not available within two hundred (200) mile radius of the eligible agency.
- 5.2. Contractor shall provide appropriate documentation, such as supplying letters, certifications or other documentation that affirm their status as one of the following:
  - 5.2.1. Current authorized dealers:
  - 5.2.2. Current authorized distributors; or
  - 5.2.3. Product manufacturers
- 5.3. Contractor shall be responsible for processing the registration, licensing, title and plating of all new vehicles ordered. Any fees associated with fulfilling these services shall be included in the base vehicle price.

### 6. Department's Responsibilities

- 6.1. The Eligible Agencies will provide final acceptance and approval of any equipment and services delivered

### 1. CONTRACT TERM

The term of any resultant contract shall commence on the effective day of award and shall continue for a period of twelve months (12) thereafter, unless terminated, cancelled or extended as otherwise provided herein.

### 2. CONTRACT EXTENSION

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

### 3. ELIGIBLE AGENCIES

The Contract is a “statewide” contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a “statewide” contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a “delivery order” sub-type of ID/IQ contract to the extent the Work is Materials, and a “task order” sub-type to the extent the Work is Services.

### 4. NON-EXCLUSIVE CONTRACT

This contract shall be for the sole convenience of the Department. The Eligible Agencies reserves the right to obtain like goods or services from another source when necessary. The Off-Contract Purchase Authorization and subsequent procurement shall be consistent with the Arizona Procurement Code.

### 5. ORDERING PROCESS

The Department shall issue a purchase order to the Contractor. Each purchase order must cite the contract number. This purchase order shall be the only document required for the Department to order and the Contractor to deliver the material and/or service.

Any attempts to represent any material and/or service not specifically awarded as being under contract is a breach of the contract and a violation of the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of but not limited to contract cancellation, suspension and/or debarment of the Contractor..

### 6. SHIPPING TERMS

Delivery shall be F.O.B. Destination to the location designated herein. Contractor shall retain title and control of all goods until they are delivered. All risk of transportation and related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the

Contractor. The Department will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

### 7. DELIVERY

Deliveries shall be completed In accordance with the requirements of the contract.

Delivery of the product does not constitute acceptance.

### 8. INSPECTION AND ACCEPTANCE

Each item delivered shall be subject to a complete inspection by the Department within 10 days after delivery. Inspection criteria shall include, but not be limited to, conformity to the specifications, workmanship, quality and materials.

If the delivered product is not accepted and returned for corrective action, an additional fifteen (15) calendar days shall be allowed for inspection of the corrected or replacement product.

The Contractor shall be responsible for the transport of the material to and from the Department for the correction of items or workmanship not in compliance with the specifications.

Product returned for corrective action may delay payment. Invoices will be processed for payment only after the product is accepted.

### 9. INVOICING and PAYMENT

Separate invoices are required for each shipment of product or delivery of service and shall include at a minimum:

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number
- Invoice Number and Date
- Date the items were shipped to the Department
- Contract Line Item Number
- Line Item Description or Item or Service
- Quantity Purchased
- Line Item Unit of Measure
- Price per Unit and Total per Unit (Labor hours, rate)
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes
- Applicable Shipping/Freight Charges
- Total Invoice Amount Due

## SPECIAL TERMS AND CONDITIONS

Invoices not sent to the proper address, late submittals or not containing the necessary and required information may delay payment. A Contractor whose payments are delayed due to improper invoicing shall make no claim against the Department or the State for late or finance charges.

The Department will make every effort to process payment for the purchase of product within thirty (30) calendar days after the Department has conducted the necessary reviews, inspections and acceptance as described herein.

The department acceptance date will be the valid date for starting the thirty (30) calendar day payment period.

Payment due dates, including discount periods, will be computed from the date of acceptance or date of correct invoice (whichever is later) to the date the Department’s warrant is mailed.

**Category One** – Multimodal Planning Division (MPD)- The following additional invoicing requirements apply: The Contractor shall email the invoice to [MPDInvoice@azdot.gov](mailto:MPDInvoice@azdot.gov) using a Billing Summary and Reimbursement Form (BSR) as the cover, which will be provided at time of order.

**Category Four- Department of Economic Security (DES)-** The following invoicing requirements apply: The Contractor shall email the invoice to the RSA Payment and Billing Unit [AIBInvoiceScanning@azdes.gov](mailto:AIBInvoiceScanning@azdes.gov) and include a complete and accurate Contractor Invoice Form which includes:

- The Contractor's name, address and FEI Number;
- The contract number;
- RSA Purchase Authorization number;
- The date of the vehicle acceptance, and
- A copy of the signed Vehicle Modification Inspection and Acceptance form (Exhibit 9)

### 10. ESTIMATED USAGE

The Department anticipates considerable usage under this contract. The Department reserves the right to increase or decrease actual quantities ordered as circumstances may require. No guarantees are made concerning actual purchases under this contract.

### 11. PRICE REDUCTION

A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice through a written contract amendment.

### 12. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be clearly identified and justified. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The Department will determine whether the requested price increase or an alternate option, is in the best interest of the State.

**13. SAFETY STANDARDS**

Items supplied under this contract shall comply with all current applicable safety standards and regulations including the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

**14. WARRANTY**

The Contractor warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.
2. That all items furnished hereunder shall conform to the requirements of this contract and shall be free from defects in design materials and workmanship. Any defects of design, workmanship or materials shall be fully corrected by the Contractor (including parts and labor) without cost to the Department.
3. The warranty period on workmanship and materials shall be based on a minimum of twelve (12) months from the time of acceptance by the Department.

**15. CURRENT PRODUCTS**

All products supplied under this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in the contract.

**16. PRODUCT DISCONTINUANCE**

In the event that a product or model is discontinued by the manufacturer, the Department at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request authorization to substitute a new product or model and provide the following:

1. A formal announcement from the manufacturer that the product or model has been discontinued.

## SPECIAL TERMS AND CONDITIONS

2. Documentation from the manufacturer that names the replacement product or model.
3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.
4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
5. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

### **17. CONTRACT ADMINISTRATION**

The Contractor shall contact the assigned Procurement Officer for guidance or direction in matters of contract interpretation or questions regarding the terms, conditions or scope of the contract.

### **18. NOTICES**

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called "Notices"), shall be in writing and shall be sent by certified United States mail, return receipt requested, or by any other method that provides evidence of receipt, addressed to the party or parties to receive such notice as follows:

- a. If intended for the State, to:

Arizona Department of Transportation, Procurement Group  
1739 W. Jackson Street, MD 100P  
Phoenix, Arizona 85007-3276

- b. If intended for the Contractor, to the address as identified in the Contractor's electronic vendor profile.

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt. Furthermore, such notice may be given by delivering personally such notice, if intended for the State, to the Arizona Department of Transportation, Procurement Officer and, if intended for the Contractor, to the person named on the Offer & Contract Award of this contract, or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

### **19. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY**

This contract may be cancelled if Contractor or any subcontractors or others in the employ or under the supervision of the Contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on ADOT property.

Further, if the Contractor or any subcontractors or others in the employ or under the supervision of the Contractors or subcontractors are asked by an ADOT official to leave the ADOT property, they are advised that failure to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, "Criminal trespass in the third degree; classification."

## 20. INDEMNIFICATION CLAUSE

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor 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 Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

## 21. INSURANCE

The Contractor shall furnish Certificate(s) of Insurance inclusive of the following requirements to the Department. Certificate(s) shall be received within ten (10) calendar days of notification of contract award by the Procurement Officer.

- 21.1. Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.
- 21.2. The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the

Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

21.3. **Minimum Scope and Limits of Insurance:** Contractor shall provide coverage with limits of liability not less than those stated below.

21.3.1. **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 \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000
- Garagekeepers Legal Liability - Direct Primary Coverage:
  - Per Auto \$ 500,000
  - Comprehensive - aggregate \$1,000,000
  - Collision \$ 500,000

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

21.3.2. **Business Automobile Liability:** Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

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

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

commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**21.3.3. Workers’ Compensation and Employers' Liability**

- Workers' Compensation Statutory
  - Employers' Liability
    - Each Accident \$1,000,000
    - Disease – Each Employee \$1,000,000
    - Disease – Policy Limit \$1,000,000
- a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
  - b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

21.4. **Additional Insurance Requirements:** The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

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

**21.5. Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor’s insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (ADOT Procurement Office, 1739 W. Jackson Street, Phoenix, AZ).

**21.6. Acceptability of Insurers**

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

**21.7. Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 21.7.1. All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- 21.7.2. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 21.7.3. All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

**21.8. Subcontractors**

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

**21.9. Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

**21.10. Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

**22. USAGE REPORT**

The Contractor shall furnish the Department a quarterly report showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 3. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit to State a *Quarterly Usage Report* documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted, even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website: <https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

### 23. CO-OP USAGE

Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>

Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer’s instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State’s part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor’s obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor’s refusal to do so would be a material breach of the Contract.

### 24. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by the Department and as they may be amended, the following shall prevail in the order set forth below:

- Federal Terms and Conditions;
- Special Terms and Conditions;
- Uniform Terms and Conditions;
- Statement or Scope of Work;
- Specifications;
- Attachments;
- Exhibits

### **25. KEY PERSONNEL**

It is essential that the Contractor provides adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.

The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the Procurement Officer. The Contractor shall immediately notify the Procurement Officer of key personnel changes. Replacement personnel shall be of substantially equal ability and qualifications. All key personnel changes are subject to the written concurrence of the Procurement Officer prior to any billable work being performed.

### **26. LICENSES, PERMITS, CERTIFICATIONS**

Contractor, at their expense, shall maintain in current status without any violations, complaints, or suspensions during the term of this contract all Federal, State and Local licenses, permits and certifications required for the operation of a business conducted by the Contractor.

### **27. SERIAL NUMBERS**

Equipment supplied under this contract must contain an original manufacturer's serial number. Serial number may not be altered in any way. Throughout the contract term, the Department reserves the right to reject any altered equipment.

### **28. POST AWARD MEETING**

At the discretion of the Department, the Contractor, at their expense, shall attend and participate in post award meetings as scheduled by the Procurement Officer.

**UNIFORM TERMS AND CONDITIONS**  
**Version 9**

**1. Definition of Terms**

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *"Contractor"* means any person who has a Contract with the State.
- 1.5. *"Days"* means calendar days unless otherwise specified.
- 1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

## 2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits;
  - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## 3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the

State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11 Offshore Performance of Work Prohibited.  
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### **4. Costs and Payments**

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and

regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements.

## 5. **Contract Changes**

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6. **Risk and Liability**

6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract 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.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or

maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## **7. Warranties**

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance With Applicable Laws. The materials and services supplied under this

Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

**8. State's Contractual Remedies**

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On

delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. **Contract Termination**

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor 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 cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15<sup>th</sup> Avenue, Suite 201, Phoenix, Arizona, 85007.

## 1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 available at: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance> are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

The Federal Terms and Conditions under this Contract shall be incorporated in any sub-contractor, or lower-tier agreement for any federally-funded task assignment / project awarded under this Contract.

## 2. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

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

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by Federal Funding Agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## 3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project.

Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) (5323(l)) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### 4. ACCESS TO RECORDS AND REPORTS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor shall - provide the Purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also , pursuant to 49 C. F. R. 633.15, provide authorized FTA representative including any PMO Contractor access to Contractor's records and construction sites pertaining to a capital project, defined at 49 U.S.C. 5302(a)1, which is receiving assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Contractor shall provide the Purchaser, authorized FTA representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which receives FTA assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.00.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non- profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor shall provide the Purchaser, FTA, the US Comptroller General or their authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

## Procurement

4. Where a Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor shall retain, and shall require its subcontractors at all tiers, all books, records, accounts and reports required under this contract for a period of not less than five years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

### 5. TERMS OF THE MASTER AGREEMENT AND COMPLIANCE

Contractor shall at all times comply with all applicable Federal Funding Agency laws, regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, available at <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>, between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment to this Master Agreement or the Underlying Agreement. To assure compliance the Recipient must take measures to assure that other participants in its Underlying Agreements (*e.g.*, Third Party Participants) comply. Contractor's failure to so comply shall constitute a material breach of this contract.

All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. In the event of additional funding provided by FHWA, the applicable requirements of the Stewardship Agreement, available at <https://www.fhwa.dot.gov/federalaid/stewardship>, between the Department and FHWA are incorporated by reference.

### 6. CIVIL RIGHTS REQUIREMENTS

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to



## FEDERAL PROVISIONS

### Procurement

support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

#### Equal Employment Opportunity

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex(including sexual orientation and gender identity), age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements Federal Funding Agency may issue.
2. Race, Color, religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.
3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.
4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.



## FEDERAL PROVISIONS

### Procurement

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided, modified only if necessary to identify the affected parties.

#### 7. TERMINATION

Termination of the contract shall be in accordance with the Uniform Terms and Conditions, Section 9., paragraph 9.1 through 9.6.

#### 8. DEBARMENT OR SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 8.1 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The Contractor agrees to the following:

- (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:

**Procurement**

- (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, 2 U.S. OMB, “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note,
- (b) It will review the U.S. GSA “System for Award Management,” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and
- (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
  - (1) Will comply with Federal debarment and suspension requirements, and 2 Reviews the “System for Award Management” at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and

If the Department suspends, debars, or takes any similar action against a Third Party Participant or individual, the Department will provide immediate written notice to the:

- (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
- (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or
- (c) FTA Chief Counsel.

**9. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION**

**CONTROL ACT Clean Water**

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

**Clean Air**

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

- 2) Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

## 10. BUY AMERICA

In any task assignment / project for construction, acquisition of goods, or rolling stock valued at more than \$150,000, the contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

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

## 11. BREACHES AND DISPUTE RESOLUTION

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Department. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the Department. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages -

## Procurement

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Department and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Department or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 12. LOBBYING

The Contractor agrees to comply with the provisions of Title 31, U.S. C 1352 as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. 1601, et seq.] and (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits Federal funds from being expended by a recipient or any lower tier 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, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to the Department.

Contractors who apply or propose/bid for an award of \$100,000 or more in value shall file the attached Lobbying Certification {01Lobbying Certification document} required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

## 13. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S

### Procurement

Government- financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not

available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

#### 14. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### 15. CONFLICTS OF INTEREST / EMPLOYMENT OF FEDERAL PERSONNEL

Contractors will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the Department or the Federal funding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent, any member of his immediate family, His or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. Department officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

#### 16. COPYRIGHT AND PATENT

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

Copyrights pursuant to 23 CFR 420.121 (b): The Department, as a State DOT may copyright any books, publications, or other copyrightable materials developed in the course of the project, and does herein exercise that right. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patents pursuant to 23 CFR 420.121 (i): The Department, as a State DOT is 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, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs 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

## Procurement

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.”

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, nontransferable, 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).

### Procurement

(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

### Procurement

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

### Procurement

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

### Procurement

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,

## Procurement

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.

### 17. RECOVERED MATERIALS

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

### 18. SAFE OPERATION OF MOTOR VEHICLES

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

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and

(2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),

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

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

(a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,

(b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

(c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

## 19. CERTIFICATION AND ASSURANCES

The FTA Certifications and Assurances are incorporated herein by reference. Upon award or contract renewal, the Contractor must agree to comply with the most current FTA Certifications and Assurances by signing and submitting the signature page provided by the Department. In the event FTA issues new Certifications and Assurances, the Department reserves the right to require submission of a new signature page agreeing to comply; to be added to the terms and conditions by Amendment. All such requests are a condition of continued award. FTA Certification and Assurances Link: <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>

## 20. DISADVANTAGED BUSINESS ENTERPRISES

### 1.0 Policy:

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

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

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

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

## 2.0 Assurances of Non-Discrimination:

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

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages;
4. Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding; and/or
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

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

## 3.0 Definitions:

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

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

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

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

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

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

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

## FEDERAL PROVISIONS

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

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

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

- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

## Procurement

(vi) "Women;"

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

### 4.0 Working with DBEs:

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

Arizona Department of Transportation  
Business Engagement and Compliance  
Office 1801 W. Jefferson St., Ste. 101,  
Mail Drop 154A Phoenix, AZ 85007

Phone (602) 712-7761

FAX (602) 712-8429

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

#### 4.01 Mentor-Protégé Program:

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

The Mentor-Protégé program is intended to increase legitimate DBE activities. The program does not diminish the DBE rules or regulations, and participants may not circumvent these rules.

### 5.0 Applicability:

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

Prime contractors are encouraged to obtain DBE participation even if a DBE goal was not established on a contract.

## Procurement

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

### 6.0 Certification and Registration:

#### 6.1 DBE Certification:

Certification as a DBE shall be predicated on:

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

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

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

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

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

#### 6.2 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses authorized to do businesses in Arizona that meet the Small Business



## FEDERAL PROVISIONS

### Procurement

Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

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

SBCs can register online at the AZ UTRACS website.

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

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

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

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

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

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

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

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

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

#### **10.0 Contractor and Subcontractor Requirements:**



## FEDERAL PROVISIONS

### Procurement

#### 10.1 General:

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

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

#### 10.2 DBE Liaison:

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

#### 11.0 DBE Goals

The Department has not established contract goals for DBE participation in this contract.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The contractor is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

#### 11.1 Race Neutral Contract (With No DBE Goal)

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

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts.

NO CONTRACT DBE GOAL HAS BEEN ESTABLISHED FOR DBE PARTICIPATION ON THIS CONTRACT.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The consultant is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

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

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification



## FEDERAL PROVISIONS

### Procurement

System (AZ UTRACS) web portal at <http://www.azutracs.com/> a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime contractors and all subcontractors, including DBEs listed in the offer must be registered in AZUTRACS. Proposers may verify that their firm and each subcontractor is registered using the AZUTRACS website.

Proposers may obtain additional information at the AZ UTRACS website or by contacting BECO.

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

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

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

### 13.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with below.

### Subcontracts:

#### a. Sub-Contract Terms:

1. The Contractor agrees to execute a written Contract with all Subcontractors for work to be completed under this Contract. The executed Contract shall include Subcontractor's Scope of Work and all the Uniform Terms and Conditions set forth in this Contract.
2. The Contractor shall provide electronic copies of signed subcontract agreements with all Subcontractors to ADOT Business Engagement and Compliance Office (BECO) by uploading them to the BECO's online DBE Contract & Labor Compliance Management System (**DBE System**) at <https://adot.dbesystem.com>. Subcontract agreements shall include all required assurances and required clauses as outlined in this Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.
3. The Contractor may be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the

Department.

b. Sub-Contract Payments

1. Retention: If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the Department may retain under the prime contract. Retainage shall be paid to the subcontractor within 7 days of satisfactory completion of the work performed by the subcontractor.
2. No Set-offs Arising from Other Contracts: If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.
3. Partial Payment: The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the Department. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.
4. Final Payment: The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.
5. Payment Reporting: For the purposes of this subsection “Reportable Contracts” means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material or service supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the Department’s web- based DBE System. The DBE System can be accessed from the Department’s BECO website. No later than fifteen calendar days after the Notice to Proceed is issued, the contractor shall log into the Department’s web based DBE System and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter them in the system. Reportable contracts shall be entered into the system no later than five calendar days after approval by the Department.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract by the last day of the month and the contractor shall actively monitor the Department’s DBE System to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the DBE System between payment amounts it reports and payment confirmation amounts reported by others.

## Procurement

The contractor shall ensure that all Reportable Contract activity is reported to the Department. This includes all lower-tier Reportable Contracts, regardless of whether a DBE is involved or not.

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

The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the DBE System.

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

Payment reporting requirements apply to all contracts, federal and non-federal funded.

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

(a) Sanctions for Inadequate Reporting:

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

6. Completion of Work: A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the Department.
7. Disputes: If disputes arise regarding payment of subcontractors, the contractor shall immediately provide the ADOT Project Manager with a written, verifiable explanation if:
  - The contractor does not pay the full amount of any invoice from a subcontractor

## Procurement

within seven days of receipt of a progress payment from the Department, or

- The monthly estimate does not include all work claimed by a subcontractor to have been performed.

The Department will determine whether the contractor has acted in good faith concerning any such explanations. The Department reserves the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether termination requirements were met. The contractor shall implement and use the dispute resolution process outlined in the subcontract, as described in Uniform Terms and Conditions Paragraph, to resolve payment disputes.

8. Non-Compliance: Failure to make prompt partial payment or prompt final payment including any retention, within the time frames established in this contract, will result in remedies, as the Department deems appropriate, which may include, but are not limited to:

- Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.
  - (i) The Department will withhold two times the disputed dollar amount not paid to each subcontractor.
  - (ii) If full payment is made within 30 days of the Department's payment to the contractor, the amount withheld by the Department will be released.
  - (iii) If full payment is made after 30 days of the Department's payment to the contractor, the Department will release 75 percent of the funds withheld. The Department will retain 25 percent of the monies withheld as liquidated damages.
- Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more contracts within 24 months, the Department may, in addition, invoke the following remedies:
  - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors and vendors subject to the requirements outlined under "Liquidated Damages" above,
  - (ii) Terminate the contract for default in accordance with this Contract, and/or
  - (iii) Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding temporarily or permanently, depending on the number and severity of violation.
  - (iv) Reflect the contractor's performance in submitting payment reports and making subcontractor payments utilizing the Department's Vendor Performance Report.

### 14.0 Crediting DBE Participation:

#### 14.01 General Requirements:

To count toward DBE participation, the DBE firms must be certified at the time of Offer submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be

### Procurement

found at <http://www.naics.com/search/>.

Credit is given only after the DBE has been paid for the work performed.

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

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

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

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

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

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

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

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

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

## Procurement

### 14.02 DBE Prime Contractor:

When a certified DBE firm proposes on a contract/Task Assignment all the work that is performed by the DBE contractor or any other DBE subcontractors and DBE suppliers will count toward DBE participation.

### 14.03 Effect of Loss of DBE Eligibility:

For On-Call Task Assignment contracts, if a DBE is deemed ineligible (decertified) or suspended by ADOT or one of its UCP Partner Agencies in accordance with 49 CFR 26.87 and 26.88, the DBE may not be count toward DBE participation on a new Task Assignment, but may be considered for the contract/Task Assignment DBE participation if a subcontract or contract modification for the work to be completed on the Task Assignment was executed before the DBE suspension or decertification is effective.

A subcontract or contract modification for work on the task assignment means, any subcontract or agreement for the task assignment, which includes a specific ADOT TRACS/Project Number, defined scope, duration and budget for the work to be completed under the Task Assignment that is duly signed by the contractor/contractor and subcontractor/subcontractor.

When the contractor/contractor intends to use an ineligible DBE firm or ADOT made a commitment to use an ineligible DBE prime contractor/contractor, but a subcontract or Contract Modification for the work to be completed on the Task Assignment has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward DBE participation. When a subcontract or contract modification is executed with the DBE firm for the work to be completed on the Task Assignment before ADOT notified the firm of its ineligibility, the DBE's work on the Task Assignment may continue to be credited toward DBE participation for the firm's work.

### 14.04 Notifying the Contractor of DBE Certification Status:

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

### 14.05 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the

## Procurement

project. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

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

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

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

The Department will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the Department's decision.

Decisions on CUF may be appealed to the Chief Procurement Officer (CPO). The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the CPO. The appeal must be received by the CPO no later than seven calendar days after the decision of BECO. BECO's decision remains in place unless and until the CPO reverses or modifies BECO's decision. CPO will promptly consider any appeals under this subsection and notify the contractor of CPO's findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The BECO may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the BECO's staff will make every effort not to disrupt work on the project.

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

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the deemed appropriate as outlined in DBE Subsection 2.0 of these DBE provisions.

## Procurement

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

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

The Contractor shall provide electronic copies of subcontract agreements with all Subcontractors by uploading them within 15 calendar days of an executed contract to the ADOT DBE System. Subcontract agreements shall include all required assurances and clauses as outlined in DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits of the Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

The Contractor shall be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department

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

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

The contractor will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the Engineer and BECO.

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

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

## **21. NONDISCRIMINATION**

1. During the performance of this Contract, the Consultant, for itself, its Subconsultants, assignees and successors shall:
  - a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which

### Procurement

may result in the termination of this Contract, disqualification from proposing on other Contracts or other remedy as the State deems appropriate.

- b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.
- c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.
- d. Post in conspicuous places available to employees and applicants for employment, the following notice:  
  

***"It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the- job training. Also, it is the policy to ensure and maintain a working environment free of harassment, intimidation and coercion."***
- e. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter USDOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- f. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- g. In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
- h. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.

## Procurement

2. In the event of the Consultant's noncompliance with the NONDISCRIMINATION provision (Section A) of this Contract, the State shall impose such Contract sanctions as the State or FHWA may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the Consultant under the Contract until the Consultant complies,
  - and/or;
  - b. Cancellation, termination, or suspension of the Contract, in whole or in part.
3. The Consultant shall include the provisions of paragraph 1.a. through 1.h. in every subcontract with Subconsultants, DBEs and non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.
4. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## 22. AFFIRMATIVE ACTION

Contractor shall take the following affirmative action steps with respect to securing supplies, equipment, or services under the terms of this contract:

- a. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.
- b. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.
- c. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.
- d. Where the requirement permits, establish delivery schedules which will encourage participation by firms owned by socially and economically disadvantaged individuals.
- e. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration, as required.

## Procurement

### 23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

### 24. FEDERAL CHANGES

The Contactor and its sub-contractors shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

## 25. PROMPT PAY

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

## 26. FULL AND OPEN COMPETITION

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

## 27. PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

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

## 28. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

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

## 29. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

## 30. NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by law, in the announcement of any third party contract award for goods

### Procurement

and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

### 31. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

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

### 32. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors (<https://www.sam.gov/SAM/>) for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

### 33. OTHER CONTRACT REQUIREMENTS

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

### 34. COMPLIANCE WITH FEDERAL REGULATIONS

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### 35. REAL PROPERTY

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## 36. ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

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

## 37. ENVIROMENTAL JUSTICE

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

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

## 38. ENVIRONMENTAL PROTECTIONS

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

## 39. GEORGRAPHIC INFORMATION RELATED TO SPATIAL DATA

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

## 40. GEOGRAPHIC PREFERENCE

Pursuant to 2 CFR 200.319(b), all procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection

## Procurement

criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract).

### 41. ORGANIZATIONAL CONFLICTS OF INTEREST

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

(1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:

- (a) To that Third Party Participant or another Third Party Participant performing the Project work, and
- (b) That impairs that Third Party Participant's objectivity in performing the Project work, or

(2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,

(3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:

- (a) Any instances of organizational conflict of interest, or
- (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and

(4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### 42. VETERANS PREFERENCE

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

(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and

(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### 43. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

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

**44. AMERICANS WITH DISABILITIES ACT (ADA)**

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

**45. BYRD ANTI-LOBBYING AMENDMENT**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

**46. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**44. BUS TESTING**

The operator of the bust testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the Agency during the point in the procurement process specified by the Agency, but in all cases before final



## FEDERAL PROVISIONS

### Procurement

acceptance of the first bus by the Agency. The complete bus testing report requirements are provide in 49 C.F.R. § 665.11.

#### 45. CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### 47. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

**EXHIBIT 1**  
**Title VI/Non-Discrimination Assurances**  
**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, the *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 set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration*, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration* ,may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
- 6. Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that **if** the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**EXHIBIT 2**  
**Title VI/Non-Discrimination Assurances**  
**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.*).





Procurement

# EXHIBIT 4 ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

## ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

### **(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)**

As required by 49 CFR Part 663 Subpart C, the

\_\_\_\_\_ (Recipient's name)

Certifies that a resident inspector,

\_\_\_\_\_ (Name of inspector)

Was at

\_\_\_\_\_ (the manufacturer's)

manufacturing site during the period of manufacture of the buses,

\_\_\_\_\_ (description of buses).

The inspector visually inspecting the buses, the \_\_\_\_\_ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

## **ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION**

### **(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)**

As required by 49 CFR Part 663 Subpart C, the

\_\_\_\_\_ (Recipient's name)

Certifies that a resident inspector,

\_\_\_\_\_ (Name of inspector)

Was at

\_\_\_\_\_ (the manufacturer's)

manufacturing site during the period of manufacture of the buses,

\_\_\_\_\_ (description of buses).

The inspector visually inspecting the buses, the \_\_\_\_\_ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

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

Title \_\_\_\_\_

## EXHIBIT 5 PRE-AWARD AUDIT AND CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
<b>PRE-AWARD AUDIT (before issuing purchase order)</b>		
Pre-award audit requirements. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.		Master Agreement; 49 CFR §663.21
49 CFR 661.13 Grantee Responsibility (a) The grantee shall adhere to the Buy America clause set forth in its grant contract with FTA Section 16. Preference for United States Products and Services. a. Buy America. Domestic preference procurement requirements of: (1) 49 U.S.C. § 5323(j), as amended by FAST Act, and (2) FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with FAST Act,		49 CFR §663.13
49 CFR §663.23 Description of pre-award audit. A pre-award audit under this part includes— (a) A Buy America certification as described in §663.25 of this part; (b) A purchaser's requirements certification as described in §663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in §663.41 or §663.43 of this part.		49 CFR §663.23
Met? Y/N (if NO 1b, 1 REQ'D)	(1) A Buy America certification:  a) There is a letter from FTA which grants a waive OR	49 CFR §663.25
Met? Y/N (if NO 1a, 2 REQ'D)	b) ADOT reviewed documentation provided by the manufacturer which lists—  1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and  2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.	
Met? Y/N (2 REQ'D)	(2) A purchaser's requirements certification:  a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and  b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's	
Met? Y/N (1 REQ'D)	(3) A manufacturer's Federal Motor Vehicle Safety certification or Certification that Federal motor vehicle standards do not apply.  a) If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	49 CFR §663.41
	a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.	49 CFR §663.43

## EXHIBIT 6 PURCHASER'S PRE-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		
Description		
Program/Phase/Amount s		
Purchaser's Pre-Award Requirements Certification 49 CFR §663.27		
I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and		
I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's		
	Signature	
	Date Signed	

## EXHIBIT 7 POST-AWARD CERTIFICATION AND REQUIREMENTS

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
<a href="http://www.fta.dot.gov/legislation_law/12921_5430.html">The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)</a>		
<b>The Post-Delivery Buy America Certification Requirement</b>		
Select basis* (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
(a) A post-delivery Buy America certification as described in §663.35 of this part;		
§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—		
(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; <b>or</b>		
(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—		
(1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and		
(2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.		
(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; <b>and</b>		
Met? Y/N (3 REQ'D)	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall—		
(1) Provide accurate records of all vehicle construction activities; and		
(2) Address how the construction and operation of the vehicles fulfills the contract specifications.		
(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.		
(c) For procurements of:		
(1) Ten or fewer buses; or		
(2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or		
(3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.		
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 <b>or</b> §663.43 of this part.	
Met? Y/N (1 REQ'D)	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
Met? Y/N (1 REQ'D)	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

## EXHIBIT 7 POST-AWARD CERTIFICATION AND REQUIREMENTS

<b>Only 1 section required: Either &gt; 10 or &lt;= 10</b>	<b>Buy America-Exempt Buses</b>	49 CFR 663(a)
	<b>The Post-Delivery Purchaser's Requirements Certification Requirement</b>	
Met? Y/N (3 REQD if applicable)	<b>More Than Ten Buses or Modified Vans</b> §663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.	49 CFR 663.37(a)&(b)
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, After visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (3 REQD if applicable)	<b>Ten or Fewer Buses or Modified Vans, or any Number of Unmodified Vans</b> §663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.	49 CFR 663.37(c.)
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
<b>Only Mark 1 Option Below</b>	<b>The Post-Delivery FMVSS Certification Requirement</b>	
Met? Y/N (Required if Not Exempt)	<b>FMVSS-Compliant Buses</b> §663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	49 CFR 663.41
Met? Y/N (Required if Exempt)	<b>FMVSS-Exempt Buses</b> §663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	49 CFR 663.43
<b>Only Mark if: Rejecting Vehicle (a) OR Conditional Acceptance (b)</b>	§663.39 Post-delivery audit review.	
	(a) If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.	49 CFR 663.39
	(b) This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.	

## EXHIBIT 8 PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		
Description		
Program/Phase/Amount s		
Purchaser's Post-Award Requirements Certification 49 CFR §663.37		
I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and		
I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's		
	Signature	
	Date Signed	

**EXHIBIT 9**  
**VEHICLE MODIFICATION INSPECTION AND**  
**ACCEPTANCE FOR CATEGORY 4**

**VEHICLE MODIFICATION INSPECTION AND ACCEPTANCE FOR CATEGORY 4**

RSA Client's Name: \_\_\_\_\_  
RSA Counselor's Name: \_\_\_\_\_  
Equipment Installer's Name: \_\_\_\_\_  
CDRS Evaluator's Name: \_\_\_\_\_

Client's Satisfaction with Vehicle Modification Services

1. Was the vehicle modification completed on schedule?  YES  NO

Complements or Complaints: \_\_\_\_\_

2. Are all authorized services completed?  YES  NO

Complements or Complaints: \_\_\_\_\_

3. Do all components function properly?  YES  NO

Complements or Complaints: \_\_\_\_\_

4. Is the workmanship satisfactory?  YES  NO

Complements or Complaints: \_\_\_\_\_

5. Have all questions been answered?  YES  NO

Complements or Complaints: \_\_\_\_\_

If the vehicle modification is not satisfactory, describe issue/s:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has the vehicle mod prescription been filled as specified, ready for payment?  Yes  No

Is additional work required? describe:

\_\_\_\_\_  
\_\_\_\_\_

Sign here if the vehicle modification was satisfactory and accepted by all parties:

RSA Client's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

CDRS Evaluator's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Equipment Installer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Counselor's Signature (or designee): \_\_\_\_\_ Date: \_\_\_\_\_