



REQUEST FOR PROPOSALS

FOR CONSULTING SERVICES FOR THE
PINAL COUNTY COORDINATED MOBILITY GAP ANALYSIS

FOR THE
CENTRAL ARIZONA GOVERNMENTS

IN PARTNERSHIP WITH
PINAL COUNTY

AND IN COORDINATION WITH
SUN CORRIDOR METROPOLITAN PLANNING ORGANIZATION
MARICOPA ASSOCIATION OF GOVERNMENTS

Issued:

August 1, 2023

Request for Proposals Due:

September 13, 2023

Send Submittals To:

Central Arizona Governments
Attn: Travis Ashbaugh
2540 West Apache Trail, Suite 108
Apache Junction, Arizona 85120

Project Funding Provided By:

CFDA	Agency	Grant Program	Title
20.205	FHWA	All	Highway Planning & Construction

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NOTIFICATION

Release Date: August 1, 2023
Closing Date: September 13, 2023

The Central Arizona Governments (CAG) invites qualified firms or individuals to submit a proposal for consideration to conduct the **Pinal County Coordinated Mobility Gap Analysis** in an effort to increase understanding of the transportation needs of the elderly and disabled in Pinal County, while prioritizing strategies to address identified gaps at a sub-regional level.

Proposals must be received by **2:00 PM** on **Wednesday, September 13, 2023**, electronically, via email at tashbaugh@cagaz.org. All qualified firms or individuals will be notified of the anticipated date of final selection.

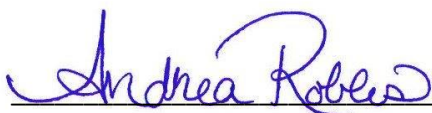
Any proposal received after **2:00 PM** on the above date will not be considered. CAG reserves the right to reject any and all proposals and assumes no liability for the costs of preparing a response for this proposal.

Please note in the SUBJECT LINE within the email:

Request for Proposals: PINAL COUNTY COORDINATED MOBILITY GAP ANALYSIS

The message within the email of the proposal shall also indicate the name and address of the respondent.

Issued by:



Andrea Robles, CAG Executive Director
arobles@cagaz.org
(480) 474-9300

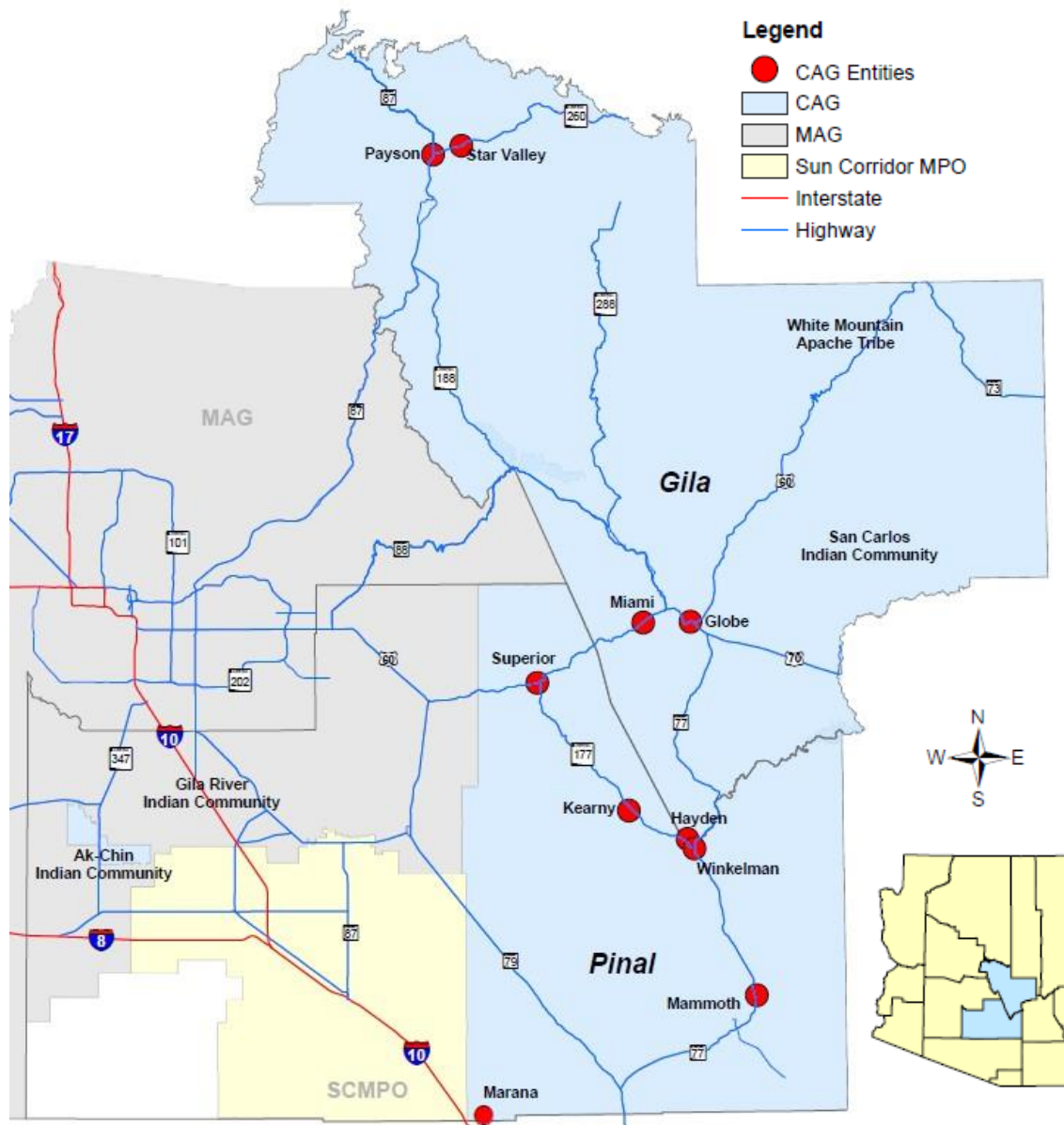
August 1, 2023

Date

CAG BACKGROUND

CAG was incorporated in 1975 and is one of six regional planning districts, or Councils of Governments (COGs), that was established by Executive Order 70-2 signed by the Governor of Arizona to provide effective regional planning services to Gila and Pinal Counties. CAG leads a coordinated planning process for rural and urbanized areas within the Region for a total population of 507,762 (population estimates as of July 1, 2022). However, due to the population growth that occurred since 2000, transportation planning responsibilities were adjusted as a result of the 2010 Census (**Please see Figure 1: CAG Transportation Planning Boundaries**). The boundaries displayed on the map below are for transportation planning purposes only.

Figure 1: CAG Transportation Planning Boundaries



PINAL COUNTY COORDINATED MOBILITY GAP ANALYSIS DESCRIPTION

This Request for Proposal (RFP) has been initiated to select the most qualified planning, engineering, and/or consulting firm to conduct, prepare, and provide the identified services and deliverable work products for the **Pinal County Coordinated Mobility Gap Analysis**. Interested firms should submit proposals listing their transit planning qualifications, relevant experience, and proposed project teams, including subconsultants, to complete the Analysis.

All duties and responsibilities performed as outlined within this RFP must comply with Federal requirements associated with the fund source(s) being used for this Analysis. CAG in partnership with Pinal County and in coordination with the Sun Corridor Metropolitan Planning Organization (SCMPO) and the Maricopa Association of Governments (MAG), will serve to coordinate with the selected planning, consulting firm and/or individual.

Pinal County is predominantly rural, however, multiple areas within the County have been experiencing tremendous growth over the last several years and are expected to nearly double in size over the next 40 years. This will increase the need for on demand transit services as more of the population age and/or become disabled. The Pinal County Board of Supervisors, Pinal County Public Works Staff, SCMPO, MAG, and CAG, often receive phone calls from residents within the County that appear to not have dedicated transportation alternatives for trips to medical appointments, grocery store, prescription pickup, shopping, etc.

The primary purpose of this Analysis is to increase the understanding of the transportation needs of the elderly and disabled populations in Pinal County by reassessing current 5310 and similar transportation providers, identify the gaps between current services and needs, and prioritize strategies to address those identified gaps at a sub-regional level using a data driven approach. The Analysis will not only look at gaps in need, but the financial gap that exists as well. By breaking down Pinal County into smaller sub-regions or zones, attention can be given on a more focused level that has little or no transportation alternatives, providing information tailored for elected officials.

This Analysis will inform agencies and organizations of Pinal County where alternative transportation services are lacking for the disabled and/or elderly populations. The “Financial Gap” task within the proposed Scope of Work is to also identify the funding needed that would close the identified gaps in services. The results of the Analysis will 1) assist current program providers where they may be able to help mitigate the lack of services, 2) encourage the establishment of new providers, as well as understand the financial responsibilities it would take in order to provide the needed services, 3) provide Pinal County the tools to make financial decisions to potentially help fund existing programs to expand in areas lacking services and or establish a new program, and 4) help identify existing providers currently unknown to be revealed through the County. The results will also enhance the Human Services Transportation Coordination Plan updates for CAG, SCMPO, and MAG.

SCOPE OF WORK

The following key task items are not all-inclusive, and firms *may recommend additional tasks deemed necessary* to successfully complete the Analysis. Firms should develop the program that best achieves the goal of the Analysis.

TASK 1: Project Management/Coordination & Scope of Work Refinement

The purpose of Task 1 is to ensure that the project is properly scoped, scheduled, budgeted and managed with proper coordination efforts. The Consultant is encouraged to offer suggestions that help achieve the objectives needed to conduct this analysis.

Approach:

- A. Refine Scope of Work including any additional tasks necessary to successfully complete the Analysis.
- B. Describe activities that are required to manage the Analysis including staffing, equipment, and documentation.
- C. Provide monthly progress reports to the CAG Project Manager, documenting travel and expense receipts and prepare and submit invoices based on first day of the month to the last day of the month.
- D. Coordinate, with the Project Management Team (once defined), monthly progress meetings, and other identified meetings that may include the participation with partner agencies, with input from the Technical Working Group (TWG) once created.
- E. Identify key meetings (and the presenters) in which to present the final Analysis to:
 - 1) Pinal County Board of Supervisors – x 1
 - 2) CAG Regional Council – x 1
 - 3) SCMPO Executive Board – x 1
 - 4) Informational Stakeholder presentations – x 2
 - 5) Technical Working Group – TBD
- F. Coordinate the preparation of all associated agendas, supporting data, summary notes, presentations, working papers, etc., for the overall Analysis and project website. Final Analysis presentations to the Pinal County Board of Supervisors, CAG Regional Council, and the SCMPO Executive Board.
- G. Identify and maintain contact information for key person interviews and/or stakeholder participation.

The Consultant will prepare a Project Management Plan based on the above “Approach.” The CAG Project Manager will review the Project Management Plan in advance of distribution to the Project Management Team.

Outcome/Product Deliverables:

- Refined Scope of Work
- Monthly Invoices with Monthly Progress Reports
- Project Management Plan

TASK 2: Evaluation of Current Conditions and Coordinated Mobility Programs for the Elderly/Disabled populations

The purpose of Task 2 will be to evaluate the current conditions and existing transportation programs that are available for the elderly and/or disabled populations throughout Pinal County that will provide a baseline of information for the use on the remainder of the Analysis.

Approach:

- A. Identify and evaluate service levels (including but not limited to boundaries, locations, schedules, trip capacity per day, vehicle types, etc.) by defining the acceptable level of service, currently being offered by current Coordinated Mobility providers.
- B. Identify targeted population of current Coordinated Mobility providers (client based, elderly/disabled, etc.)
- C. Evaluate current funding sources of current Coordinated Mobility providers to administer/operate the programs.
- D. Evaluate current information that is being disseminated by the current Coordinated Mobility providers to potential program users.
- E. Identify and evaluate current socioeconomic conditions that would identify Coordinated Mobility propensity throughout Pinal County.
- F. Seek public input via survey to gather data and to better understand the existing and potential need of the elderly and/or disabled populations.

The Consultant will prepare a draft section/chapter of the final “Pinal County Coordinated Mobility Gap Analysis” report through the collective efforts on the above “Approach.” The Project Management Team will review and provide comments/input until section/chapter is satisfactory.

Outcome/Product/Deliverables:

- DRAFT Section/Chapter for final “Pinal County Coordinated Mobility Gap Analysis” report.
- Survey – Phase 1

TASK 3: Spatial Gap Analysis

The purpose of Task 3 is to identify where opportunity exists to expand Coordinated Mobility services for the elderly and disabled populations within Pinal County.

Approach:

- A. Identify areas within Pinal County that have no or limited Coordinated Mobility services, building from the results of Task 2.
- B. Identify population clusters and/or other measurable indicators that suggest a higher percentage of the elderly and disabled population within a reasonable/manageable threshold.
- C. Produce visual maps, such as a “Gap Analysis” map, or similar graphics to help understand the comparison between current Coordinated Mobility services and their levels of service, and the lack of Coordinated Mobility services.

The Consultant will prepare a draft section/chapter of the Final “Pinal County Coordinated Mobility Gap Analysis” report through the collective efforts on the above “Approach.” The Project Management Team will review and provide comments/input until section/chapter is satisfactory.

Outcome/Product/Deliverables:

- DRAFT Section/Chapter for final “Pinal County Coordinated Mobility Gap Analysis” report.
- Gap Analysis Map(s)

TASK 4: Sub-Region Recommendations and Prioritization

The purpose of Task 4 is to split Pinal County into appropriately subregional areas and suggest a data driven approach to prioritizing those areas.

Approach:

- A. Determine appropriately sized subregions based on the identified population clusters and/or other measurable indicators from the results of Task 3 in order to subdivide Pinal County in its entirety.
- B. Produce visual maps of identified subregions summarizing the data and reasoning for its boundary decisions.

The Consultant will prepare a draft section/chapter of the final “Pinal County Coordinated Mobility Gap Analysis” report through the collective efforts on the above “Approach.” The Project Management Team will review and provide comments/input until section/chapter is satisfactory.

Outcome/Product/Deliverables:

- DRAFT Section/Chapter for final “Pinal County Coordinated Mobility Analysis” report.
- Sub-regional map of Pinal County as a whole.
- Individual maps of each sub-region.
- Survey – Phase 2

TASK 5: Financial Gap Analysis

The purpose of Task 5 is to understand and provide an estimated cost of providing Coordinated Mobility services for the elderly and disabled populations within manageable areas that can be ideally serviced by a single service provider. A strong focus would be within the underserved areas that have no or limited services and/or limited or no funding sources.

Approach:

- A. Utilizing the results of Tasks 3 and 4, provide cost estimates per subregion that would sustainably provide Coordinated Mobility services focused on the elderly and disabled populations.
- B. Utilizing the results of Tasks 3 and 4, provide cost estimates for current and potential Coordinated Mobility services providers to determine solutions that would provide sustainable Coordinated Mobility services.
- C. Identify potential funding sources and/or other alternative resources or solutions per subregion.

The Consultant will prepare a draft section/chapter of the final “Pinal County Coordinated Mobility Gap Analysis” report through the collective efforts on the above “Approach.” The Project Management Team will review and provide comments/input until section/chapter is satisfactory.

Outcome/Product/Deliverables:

- DRAFT Section/Chapter for final “Pinal County Coordinated Mobility Gap Analysis” report.
 - Cost Estimates for current and potential providers
 - Cost Estimates per sub-region
 - Funding Source Identification

TASK 6: Information Gap Analysis

The purpose of Task 6 is threefold. The first is to inform and educate local elected officials on the value and importance of Coordinated Mobility services. The second is to provide current Coordinated Mobility service providers with the tools necessary to disseminate information to the areas they serve, to potentially reach more people. The third is to provide future potential providers with basic information regarding the requirements and/or guidelines of starting a Coordinated Mobility service program.

Approach:

- A. Create graphic-centric educational fact sheets focused on engaging elected officials’ interests.
- B. Create graphic-centric educational fact sheets focused on the public interests.
- C. Create a marketing “tool-kit” intended to assist current Coordinated Mobility service providers the ability to disseminate information of their programs effectively, with the intention of informing individuals how they may benefit from their services.
- D. Create checklists/guidelines and fact sheets that will help educate future potential Coordinated Mobility service providers. This would also include steps/requirements that would allow a provider (current or future) to access 5310 transit funding.

The Consultant will prepare a draft section/chapter of the final “Pinal County Coordinated Mobility Gap Analysis” report through the collective efforts on the above “Approach.” The Project Manager Team will review and provide comments/input until section/chapter is satisfactory.

Outcome/Product/Deliverables:

- DRAFT Section/Chapter for final “Pinal County Coordinated Mobility Gap Analysis” report.
- Elected Official focused Fact Sheets
- Public focused Fact Sheets
- Current and Potential Provider(s) Toolkit
- New Provider(s) Start-Up Checklist/Guidelines

TASK 7: Final Documents

The purpose of Task 7 is to compile all information (researched and determined) in the Analysis, into one comprehensive document that can be referenced to assist in resolving gaps in Coordinated Mobility services.

Approach:

- A. Provide a final analysis document incorporating all sections tasked within the Analysis, both in word and pdf formats.
- B. Write final analysis document with the intention to supplement and/or enhance sections of the CAG/SCMPO Human Services Transportation Coordination Plan.

Outcome/Product/Deliverables:

- Final Pinal County Coordinated Mobility Gap Analysis (Word and PDF Formats) that include all maps, fact sheets, checklists, data, etc.

TASK 8: Document Title VI Implementation Activities

The purpose of this section is to document and fulfill Title VI requirements to ensure that no person, on the grounds of race, color, and/or national origin shall be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination throughout the Analysis.

Approach:

- A. Perform a basic Limited English Proficiency Four (4) Factor analysis that includes recommendations and pricing to reduce potential significant impacts in relation to the CAG Title VI Plan.
- B. Ensure that the requirements of Title VI and related authorities that include Executive Order 12898, Environmental Justice, are considered and applied in all implementation/operation planning stages in throughout the Analysis.
- C. Provide a technical memorandum documenting compliance and activities with the applicable requirements of the Title VI and Environmental Justice as they pertain to this Analysis.

Outcome/Product/Deliverables:

- Title VI Activities Memorandum

In the event, ADOT and/or Partner Agencies, add to the specific Analysis requirements as described in this scope, such modifications shall be permissible as long as they are within the function of the Analysis. If such a change will represent a significant change in expectation on the CONSULTANT and a price change is required, a budget will be submitted by the CONSULTANT and the pricing for the additional services work to be performed under this Analysis shall be negotiated. Continuation of the contract is contingent on the CONSULTANT's ability to perform all functions under this Analysis. If a price cannot be negotiated for the additional services, the contract may be terminated.

Deadline: Entire Analysis should take twelve (12) months or less.

DBE GOAL (COMMITMENT & DOCUMENTATION)

CAG supports ADOT's Disadvantage Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. CAG has received federal financial assistance from the USDOT and as a condition of receiving the assistance, CAG has signed an assurance that it shall comply with 49 CFR Part 26 and had adopted ADOT's DBE Plan.

A **0.00** percent overall DBE goal assessment has been set for **ADOT PROJECT # MPD9152-8.1**. However, the selected consultant *is encouraged* to employ reasonable means to obtain DBE participation on this contract to help ADOT meet its overall DBE goal if the opportunity presents itself. **See Appendix F** for additional DBE contract compliance and requirements and **Appendix G** for prompt pay and payment reporting provisions.

The selected planning, consulting firm and/or individual is required to adhere to the commitment made to utilize certified DBE as indicated in their Request for Proposal or subsequently agreed to by CAG during negotiations.

Responders to the RFP are **REQUIRED to sign and return with their response on the Proposed Certification Form** that is included herein. Failure to include the signed **Proposal Certification Form** WILL RESULT in the rejection of said proposal.

Prior to submittal, and in compliance with 49 CFR Part 26.11, all contractors and consultants submitting a bid, proposal, or statement of qualifications to work on a federally funded transportation project are required to provide ADOT with a list of every firm who expressed interest in or submitted a bid or proposal to work on the project. Please ensure that prior to submittal for this project that your firm has registered for **AZ UTRACS** and submitted the Bidder's List to ADOT. In conjunction with complying with all terms and conditions of the solicitation, firms are **REQUIRED to submit the corresponding Bidder's List email confirmation notice as part of the proposal. FAILURE TO SUBMIT THE REQUIRED BIDDERS LIST BY THE STATED TIME AND PLACE AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE BIDDER BEING DEEMED INELIGIBLE FOR AWARD OF THE CONTRACT.**

You will need to search for **ADOT PROJECT # MPD9152-8.1** in order to create the Bidder's List at the following link: <https://utracs.azdot.gov/Home>

Subcontract Payment Reporting in the DBE System

ADOT is required to collect data on DBE and non-DBE participation, including lower tier SUBCONSULTANTS, to report to FTA on Federal-aid projects. The CONSULTANT is notified that such record keeping is required by ADOT for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).

The CONSULTANT shall respond to Subrecipient payment audits reported each month electronically through the Department's web-based payment tracking system (<https://adot.dbesystem.com>), reporting its payments to all DBEs and non-DBE SUBCONSULTANTS working on the project. In addition, the contractor shall require that all DBE and non-DBE subcontractors, shall also respond to its audits and report lower-tier SUBCONSULTANT payments in the same manner.

If, by the DBE system audit deadline, the CONSULTANT has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE SUBCONSULTANTS, the Project Manager will work with the ADOT MPD Program Manager to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the CONTRACT.

The CONSULTANT shall include these provisions in all of its SUBCONSULTANTS' contracts, and ensure that its SUBCONSULTANTS include these provisions in any lower-tier subcontracts.

DOCUMENTATION OF CONSULTANT PROGRESS

The selected planning, consulting firm and/or individual shall provide the necessary ADOT progress reports monthly. The reports shall be submitted the first week of any given month for all work activities completed within the previous month and address all necessary work program items as stated within the reports to accompany CAG's billing cycles.

COMPENSATION

The selected planning, consulting firm and/or individual shall provide a price proposal to conduct the Analysis as part of the response to this Request for Proposal. **The price shall include a summary table showing the following for each task:**

- The name of each professional assigned or dedicated to this project.
- The employee classification (role) for each professional listed.
- The estimated hours for each employee classification.
- The standard billing rate for each employee classification.
- The extended amount total for each task and phase.

The price proposal shall show the summation of the professional services and shall also show the estimate for direct project-related expenses. A total project/study cost shall be presented in the summary table.

All work described in the Scope of Work, as well as additional recommended tasks deemed necessary, shall be completed by the selected planning, consulting firm and/or individual to the satisfaction of the CAG Transportation Planning Director.

Progress payments can be made monthly, upon request, following submittal and satisfactory review by CAG staff.

GUIDELINES FOR RFP SUBMITTALS

The RFP respondent shall submit written proposals in compliance with the following requirements:

- Maximum length of 10-pages.
- Page limit is for the proposal content only and does not include covers, cover letter, table of contents, dividers, resume appendix, or the appendices for the required forms.
- Single-sided standard 8 ½" x 11" page size – *(no other page size is allowed)*.
- 11-point font only for text context.
- 9-point font minimum for tables, charts, graphs, captions, and team organization chart.
- Cover letter shall be limited to one page only and must be signed by a party authorized to bind the entity submitting the proposal.
- **One (1) electronic copy in PDF format**, as one document, of the complete proposal submittal document to be electronically emailed to the Transportation Planning Director (tashbaugh@cagaz.org), no later than the due time and date stated within this RFP.
- The subject line in the email shall be **"Request for Proposals: PINAL COUNTY COORDINATED MOBILITY GAP ANALYSIS."** The message within the email of the proposal shall also indicate the name and address of the respondent.
- The electronic PDF file shall not exceed 9 MB in file size for email purposes.
- Submitted proposals become the property of CAG and will not be returned.

PROPOSAL CONTENT

IMPORTANT: Please prepare and organize your proposal in the order outlined below. This will assist the review committee in evaluating your firm's proposal and qualifications more efficiently.

The following items ***must be included*** in each proposal to be considered complete and responsive. The selected planning, consulting firm and/or individual should respond to each of these items in the order listed below. To facilitate the evaluation of each proposal, the planning, consulting firms and/or individual submitting a proposal are required to adhere to the following format:

1. **Cover Letter** – One-page cover letter shall be attached as part of the proposal summarizing the key points made in the proposal, with contact information for the submitting party, and signed by an authorized representative authorized to bind the entity submitting the proposal.
2. **Introduction** – Provide a brief review of the Analysis team makeup and a summary of the team’s specific qualifications and experience in preparing coordinated gap analyses. Outline and discuss your general project approach, project management methodologies, and quality control plan.
3. **Scope of Work** – Address how you or your team proposes to accomplish the activities outlined within the Scope of Work contained in this RFP.
4. **Project Personnel** – Provide an organization chart and identify all key personnel who will actually lead and conduct the Analysis. Include names of all key project personnel and names of subconsultant personnel, and all individuals who are assigned and dedicated to this proposal. For each person, include their job title (role, duties, responsibilities, and a brief summary of their qualifications and relevant experience in transit related coordinated mobility analyses).
5. **Project Schedule** – The entire Analysis is expected to be completed within (12) months upon the execution of the contract. If additional time is anticipated to successfully complete this Analysis, please provide a narrative justification within the proposal.
6. **Experience and References** – Provide a description of experience and or references of work activities and/or services similar in nature to the services being requested. Please provide the following pieces of information if applicable:
 - Project Title
 - Timing – (Start Date, End Date, Duration)
 - Contract Amount – (original and final amounts with an explanation of the difference)
 - Sponsoring Agency
 - Agency project manager (name and current contact phone number and email address)
 - Roles of individuals assigned to this project on the cited reference project.
7. **Project Budget** – Provide a standard line-item budget that is structured to address how the tasks outlined within the Scope of Work will be met. This may include but not limited to:
 - Project Personnel
 - Job title (role)
 - Estimated hours of work
 - Hourly rates
 - Total amounts for type of service and/or activity by Scope of Work Tasks
 - Total amount for the professional services fee
 - Budgeted amount for direct expenses
 - Budgeted amount for services provided by each subconsultant
 - Total amount to complete the Analysis.

Direct expenses may include, but are not limited to, travel/mileage, telecommunications, postage, deliveries, printing, reproduction costs, etc. in a separate section, of the fee proposal, provide the

same information for each subconsultant to be employed (if applicable) to help the prime consultant complete the work for the Analysis.

8. **Availability** – List any and all present activities and job commitments for each key person. Include an estimate of available time each key person can commit to working on this project and completing the work tasks described herein.

The selected planning, consulting firm and/or individual must get approval from CAG for any change in key personnel assigned to this project for any reason. Changing of key personnel may give rise to termination of the consultant depending on the nature and number of changes in key personnel at the sole discretion of CAG.

9. **Appendix 1: Resumes** – Resumes for each key team member identified in the organization chart may be included in an appendix to the proposal document at the consultant’s option. If resumes are provided, each resume shall not exceed two single-sided pages in length.
10. **Appendix 2: Required Forms** – Forms required to be completed and provided with the consultant’s proposal shall be contained in an appendix to the proposal. **Failure to provide the Bidder’s List Confirmation email or to sign and submit the required Proposal Certification form with the Proposal will result in the Proposal being rejected.** Required forms to include in this appendix are:

- *“Bidders List Confirmation Email”*
- *“Signed Request for Proposal Certification Form”*

NOTE: THE PROPOSAL RESPONSE FOR SECTIONS 2 THROUGH 8 ABOVE IS SUBJECT TO THE 10-PAGE LIMIT SPECIFIED IN THE GUIDELINES ABOVE.

GENERAL PROVISIONS

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

Late Proposals – Any proposals received after the time specified above will not be considered.

Proposal Preparation Costs – All costs incurred for the proposal preparation, presentation, or contract negotiations are the responsibility of the consulting firm.

Funding – CAG will be utilizing awarded 5305(e) Transportation planning funds (CFDA # 20.505) from the Federal Transit Administration through ADOT, which is an 80 percent Federal Match to 20 percent Local Match grant. CAG will be providing 100 percent of the Local Match in the form of in-kind contributions through the various meetings scheduled for this Analysis.

Budget – The budget for this proposal is **\$190,000**.

PROPOSAL EVALUATION CRITERIA

Proposals for this project will be evaluated by a Selection Committee appointed by CAG according to the following evaluation criteria, with the weighting of each criterion as indicated:

1.	Analysis understanding, approach and methodology, work plan, and management techniques.	40
2.	Experience with similar analyses and qualifications of the team including ability, familiarity, and involvement in handling similar types of analyses and of the region being analyzed.	20
3.	Clarity, technical soundness, and the use of innovation to perform the work of the Analysis.	20
4.	Workload and availability of key personnel and other resources to perform the work within the specified timeframe and the ability to control costs.	10
5.	Schedule and costs in comparison with each task.	10
	Total Points	100

A Selection Committee will evaluate submitting firm proposals and qualifications to select the best planning, consulting firm and/or individual to undertake the duties and responsibilities of this Analysis. The Selection Committee may select a planning, consulting firm and/or individual directly from the review and ranking of the proposal if there is a clear-cut best firm/team. The Selection Committee may also choose to interview a maximum of three (3) of the submitting firms determined to be the most qualified of all the submittals.

INTERVIEW EVALUATION CRITERIA

After evaluation of the proposals, a shortlist of a maximum of three (3) firms may be identified based upon the composite score of the Selection Committee members. If necessary, a presentation/interview session with each shortlisted firm will comprise the second half of the evaluation and selection process. In the presentation/interview, shortlisted firms will be required to demonstrate their understanding and familiarity with the nature, scope, key issues, innovative concepts, and other aspects and responsibilities of this Study. Criteria upon which the presentation/interview of each planning, consulting firm and/or individual will be evaluated and scored, with the weighting for each criterion are as follows:

1.	Identification of key issues or problems that will need to be considered and any additional insights on the resolution process.	20
2.	Addressed predetermined questions that will be provided prior to the scheduled interview.	20
3.	Experience and capabilities in development of similar coordinated mobility analyses.	20
4.	Specific reasons why the planning, consulting firm and/or individual should be selected to conduct the Analysis.	20
5.	Innovative approaches and concepts.	20
	Total Points	100

The Selection Committee members will individually evaluate the presentation/interview of each of the planning, consulting firm and/or individual candidates and rate them accordingly to the aforementioned criteria. The Selection Committee will then agree upon a consensus ranking, and the CAG Transportation Planning Director will notify each interviewed planning, consulting firm and/or individual of their individual ranking. The Partner Agencies shall then schedule a meeting with the top ranked planning, consulting firm and/or individual for the purpose of finalizing a scope and negotiating a contract.

If negotiations are unsuccessful, CAG will terminate negotiation efforts with the top ranked planning, consulting firm and/or individual and open negotiations with the second (2nd) ranked firm. This process will continue until negotiations are successful. The shortlist will remain in effect for a period of six (6) months from the date of issuance by CAG.

Once a contract has been successfully negotiated with a firm, the contract will be required to be approved by the CAG Regional Council or Executive Committee. Federal language is required to be in all CAG contracts and professional service agreements. The federal terms and provisions will be provided to the accepted and awarded firm.

PROCUREMENT TIMELINE

August 1, 2023	RFP Advertised
September 13, 2023	Proposal Due Date – (by 2:00 PM)
September 27, 2023	Selection Committee reviews proposals and ranks top planning, consulting firm and/or individual for presentation/interviews
October 11, 2023	Planning, consulting firm and/or individual Presentation/Interviews – (if needed)
October 12, 2023	Notification to planning, consulting firm and/or individual selected
November 1, 2023	Contract signed with a Notice to Proceed

CAG reserves the right to reject any or all proposals and to award in the best interest of the region. This RFP is not a commitment to initiate a contract for services.

QUESTIONS CONCERNING THE RFP

Written questions regarding the specifics of this RFP (excluding submittal troubleshooting) should be emailed to the CAG Transportation Planning Director and must be received no later than **fourteen (14) calendar days** before the proposal submittal due date. Questions may then be responded to by written amendment to this document, via email, so that all proposers have the same information. All responses/amendments to the Scope of Work pertaining to questions with regard to the RFP will be posted within a “FAQ” format along with the RFP Notice on the CAG website (<http://cagaz.org/employment.html>). Please check the website periodically for any updates to the “FAQ” document. Verbal statements or instructions shall not constitute an amendment to this RFP. Inquiries shall be made to:

Travis Ashbaugh, AICP
CAG Transportation Planning Director
tashbaugh@cagaz.org
(480) 474-9300

FEDERAL THIRD-PARTY AGREEMENTS

APPLICABLE LAWS AND REGULATIONS:

The following terms are required for federally funded projects. These terms may be waived for non-federal funded projects upon written request from the CONSULTANT. The CONSULTANT agrees to include these requirements in each applicable subcontract issued for services under this contract. Because the solicitation is funded by a Federal agency of the US Department of Transportation (USDOT), the more restrictive of Federal or State Regulations applies.

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

CODE OF FEDERAL DOMESTIC ASSISTANCE (CFDA):

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

PROCUREMENT AND CONTRACT PROVISIONS REQUIREMENTS:

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.36 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through §§200.326 Contract provisions.

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

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

The Federal Terms and Conditions include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in these CONTRACT provisions. All contractual provisions required by the USDOT are hereby incorporated by reference. Anything to the contrary herein

notwithstanding, as authorized by Common Law (49 CFR Part 18) the most restrictive of State or Federally mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this CONTRACT. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any funding Federal agency requests which would cause CAG to be in violation of the Federal terms and conditions. All applicable clauses shown in the funding Federal Agency Grant Agreement with AG apply to this CONTRACT.

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

Federal Transit Administration: The FTA Master Agreement in effect at the time this solicitation was advertised is located at: [FTA Master Agreement FY 2022](#).

NO FEDERAL GOVERNMENT OBLIGATIONS:

The CONSULTANT 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 CONSULTANT or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying CONTRACT.

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS:

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

The CONSULTANT also acknowledges that if it makes, causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a construction project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. 1011 and 49 U.S.C. 5307(n)(1) on the CONSULTANT, to the extent the Federal Governments deem appropriate.

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

ACCESS TO THIR PARTY CONTRACT RECORDS:

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

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

CHANGES TO FEDERAL REQUIREMENTS:

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

Changes to CONTRACT Scope: Federal legislation and implementing regulations allow for change orders within the Scope of Work covered by the CONTRACT. In the event of changed conditions, an adjustment of CONTRACT Scope is permissible if the altered character of the work does not differ materially from that of the original CONTRACT as long as the work is approved by CAG with the requirements that the change must involve the work covered by the CONTRACT. Changes that materially differ from the Scope of Work are considered Cardinal Changes and are not permissible. All work changes must be reviewed by CAG, ADOT Contracts Program Manager, and/or ADOT Procurement Officer in advance of proceeding to ensure the change is permissible under State and Federal requirements and regulations. Work cannot proceed until appropriate financial and administrative processing has occurred and any federal approvals are received when and where necessary and a modified CONTRACT is issued.

TERMINATION:

In the event that the CONTRACT is terminated under the terms of the Uniform Terms and Conditions, as permitted by 49 U.S.C. Part 18, if the CONSULTANT has any property in its possession belonging to CAG, the CONSULTANT will account for the same, and dispose of it in the manner CAG directs. Upon receipt of notice of termination, the CONSULTANT shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to CAG all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this CONTRACT, whether completed or in process.

CAG reserves the right to terminate this CONTRACT or any part thereof for its sole convenience with **thirty (30) days** written notice. In the event of such termination, CONSULTANT shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subconsultants to immediately cease such work. As compensation in full for services performed to the date of such termination, the CONSULTANT shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONSULTANT and CAG, based on the agreed Scope of Work actually completed by the CONSULTANT.

CAG may terminate this CONTRACT for cause ***upon the occurrence of any one or more of the following events:***

1. If CONSULTANT fails to perform pursuant to the terms of this CONTRACT;
2. If CONSULTANT is adjudged to be bankrupt or insolvent;
3. If CONSULTANT makes a general assignment for the benefit of creditors;
4. If a trustee or receiver is appointed for CONSULTANT or for any of CONSULTANT's property;
5. If CONSULTANT files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
6. If CONSULTANT disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction;
7. Where Agreement has been so terminated by CAG, the termination shall not affect any rights of CAG against CONSULTANT then existing or which may thereafter accrue.

CAG may, upon written notice, terminate this CONTRACT for any attempt by CONSULTANT to represent any goods or materials not specifically awarded as being under CONTRACT with CAG. Any such action is subject to the legal and contractual remedies available to CAG inclusive of, but not limited to, CONTRACT cancellation, suspension and/or debarment of CONSULTANT.

NON-DISCRIMINATION:

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

of Labor Regulations (41-CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this CONTRACT.

DISADVANTAGE BUSINESS ENTERPRISE (DBE)

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

DEPARMENT AND SUSPENSION CERTIFICATION

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

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

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

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

ANTI-LOBBYING

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

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

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

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

1. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any fund other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobby Activities" form in accordance with its instructions (www.gsa.gov/forms-library/disclosure-lobbying-activities).
3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000 and not more than \$100,000 for each such failure.
4. The CONSULTANT also agrees, by submitting its offer that it shall require the language for this certification be included in subcontracts with all Subcontractor(s) and lower-tier Subcontractor(s)

which exceed \$100,000 and that all such Subcontractor(s) and lower-tier Subcontractor(s) shall certify and disclose accordingly.

5. CAG shall keep the firm's certification on file as part of its original offer. The CONSULTANT shall keep individual certifications from all Subcontractors and lower-tier Subcontractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.
6. Disclosure forms for the CONSULTANT and its Subcontractor(s) and lower-tier Subcontractor(s) shall be submitted with the offer on the date the offers are due. The CONSULTANT and each Subcontractor and lower-tier Subcontractor shall file revised disclosure forms at the end of each calendar quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. The Disclosure forms shall be submitted by the Procurement Officer to the FHWA for further review.

ENVIRONMENTAL PROTECTION

(This clause is applicable if the Contract exceeds \$100,000. It applies to Federal-aid contracts only)

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

1. Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The CONSULTANT agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the funding Federal agency and the appropriate EPA Regional Office.
2. Include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by an agency of USDOT.

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

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

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

EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).

ENERGY CONSERVATION

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

DRUG-FREE WORK PLACE

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

INSURANCE

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

FLY AMERICA REQUIREMENTS

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

PROMPT PAYMENT

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). The prime CONSULTANT agrees to pay each SUBCONSULTANT under this prime CONTRACT for satisfactory performance of its CONTRACT no later than 30 days from the receipt of each payment the prime CONTRACT receives from the Recipient. The prime CONSULTANT agrees further to return retainage payments to each SUBCONSULTANT within 30 days after the SUBCONSULTANTS work is satisfactorily

completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE SUBCONSULTANTS.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

FULL AND OPEN COMPETITION

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

PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

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

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

NOTIFICATION OF FEDERAL PARTICIPATION

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

INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

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

INELIGIBLE CONSULTANT AND SUBCONSULTANTS

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

OTHER CONTRACT REQUIREMENTS

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

COMPLIANCE WITH FEDERAL REGULATIONS

Any CONTRACT entered pursuant to this solicitation shall contain the following provisions: All USDOT required contractual provisions, as set forth in FTA Circular 42210.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provision contained in this AGREEMENT. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. CONSULTANT shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this CONTRACT. CONSULTANT's failure to comply shall constitute a material breach of this CONTRACT.

ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

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

ENVIRONMENTAL JUSTICE

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

§ 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, “Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 16, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

GEOGRAPHIC PREFERENCE

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

ORGANIZATIONAL CONFLICTS OF INTEREST

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

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

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

Non Federal entities that expend \$750,000 or more in a year in Federal Awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations” (replaced with 2 CFR Part 200, “uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” effective December 26, 2014 as applicable). Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all

sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215(a) of OMB Circular A-133 Subpart B – Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than nine (9) months after the end of the entity’s fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation’s Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

VETERANS PREFERENCE

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

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

SAFE OPERATIONS OF MOTER VEHICLES

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

CERTIFICATION FORM

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

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

- **Request for Proposal Certification Form**

Request for Proposal Certification Form

Contract #: _____ Consultant Name: _____

Please read the seventeen (17) statements below. The statements are to ensure Consultants are aware and in agreement with Federal, and State guidelines related to the award of this contract. Consultants shall submit this Certification Form attached to each Proposal for each RFP advertised, as revisions to the form may occur from time to time. Failure to sign and submit the certification form specified in this RFP with the Proposal will result in the Proposal being rejected.

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

1.	The Consultant and its subconsultants have not engaged in collusion with respect to the contract under consideration.
2.	The Consultant, its principals and subconsultants, have not been suspended or debarred from doing business with any government entity.
3.	The Consultant shall have the proper Arizona license(s) and registration(s) for services to be performed under this contract. Furthermore, the Consultant shall ensure that all subconsultants have the proper Arizona license(s) and registration(s) for their services to be performed under this contract. Key members of the Project Team, including subconsultants, are currently licensed to provide the required services as requested in the RFP package.
4.	The Consultant's signature on any RFP or contract constitutes an authorization to CAG to ascertain the eligibility of the Consultant, its principals, and subconsultants, to enter into contract with CAG and with any other governmental agency.
5.	The Consultant's Project Team members are employed by the Consultant on the date of submittal.
6.	All information and statements written in the proposal are true and accurate and CAG reserves the right to investigate, as deemed appropriate, to verify the information contained in proposals.
7.	Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in conjunction with, the performance of the work hereunder by the Consultant, its agents, representatives, or employees.
8.	No Federally appropriated funds have been paid or shall be paid, by or on behalf of the Consultant, for the purpose of lobbying.
9.	If the project is funded in whole with Federal Aid funds, the Consultant affirmatively ensures that in any subcontract entered into pursuant to this advertisement, minority business enterprises shall be afforded full opportunity to submit proposals/bids in response to this invitation and shall not be discriminated against on the grounds of race, color, or national origin, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation.

10.	The Consultant will utilize all Project Team members, subconsultants, and DBE firms, if applicable, submitted in the RFP, and will not add other Project Team members or subconsultants, unless the Consultant has received prior written approval from the CAG Executive Director.
11.	The Consultant shall meet its DBE goal commitment and any other DBE commitments as stated in its RFP Proposal or Cost Proposal; and shall report on a timely basis its DBE utilization as detailed on the contract.
12.	If selected, the Consultant is committed to satisfactorily carry out the Consultant’s commitments as detailed in the contract and its RFP proposal.
13.	The Consultant is required to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368).
14.	The Consultant is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency.
15.	The Consultant agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; U.S.C. § 701 et seq.) and maintain a drug-free work place.
16.	In Compliance with 49 CFR Part 26.11, the Consultant is required to register with the AZ UTRACS web portal and complete the Online Bidder’s List. Please Note: Any firm being awarded work as a prime or subconsultant on a federally funded project must be AZ UTRACS registered. Failure to submit the corresponding Bidder’s List email confirmation as part of the Proposal will result in rejection of the proposal. Please use <u>ADOT PROJECT # MPD9152-8.1</u>.
17.	The Consultant agrees to comply with all Federal and State requirements listed in the section titled “Federal Third-Party Agreement: Applicable Laws and Regulations.”

I hereby certify that I have read and agree to adhere to the seventeen (17) statements above and that the statements are true to the best of my knowledge as a condition of award of this contract.

Print Name

Print Title

Signature

Date

Print Proposing Firm Name

ASSURANCES

The CAG Executive Director is required to sign Standard DOT Title VI Assurances in accordance with the USDOT 1050.2A. Below is CAG's signed Standard Assurances:

Central Arizona Governments Title VI Assurances

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

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 Stat.252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department of Transportation – Effectuation Of Title VI Of The Civil Rights Act of 1964*);
- 28 CFR Section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

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

General Assurances

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

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

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

Specific Assurances

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

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.33 (e) of 49 CFR § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Request for Proposals for work, or material subject to the Acts and the Regulations made in connection with all *Federal Aid Highway Program* and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*“The **Central Arizona Governments**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, and national origin in consideration for an award.”*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. The period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. The period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, subrecipients, subgrantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

APPENDIX A

Contractor

During the performance of this contract, the contractor, for itself, its assignees, and successor 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 Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, *Federal Highway Administration or the Arizona Department of Transportation*, as they may be amended from time to time, which 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. **Solicitation 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, Regulations, and directives issued pursuant hereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the *Federal Highway Administration or Arizona Department of Transportation* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the *Federal Highway Administration or Arizona Department of Transportation*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration or Arizona Department of Transportation*, may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or

b. Canceling, terminating, or suspending a contract, in whole or in part.

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

APPENDIX B

Clauses for Deeds Transferring United State Property

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

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

(Habendum Clause)

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

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

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

APPENDIX C

Clauses for Transfer or Real Property Acquired or Improved under the Activity, Facility, or Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the **Central Arizona Governments** pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, license, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the **Central Arizona Governments** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the **Central Arizona Governments** will have the right to enter or re-enter the lands and facilities thereon, and the above describe lands and facilities will there upon revert to and vest in and become the absolute property of the **Central Arizona Governments** and its assigns.*

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

APPENDIX D

Clauses for Construction/Use/Access to Real Property Acquired under the Activity, Facility or Program

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

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the grounds of race, color or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts of Regulations, as amended set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the **Central Arizona Governments** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter or re-tenant and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination, the **Central Arizona Governments** will there upon revert to and vest in and become the absolute property of the **Central Arizona Governments** and its assigns.*

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

APPENDIX E

Performance of Contract

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 U.S.C. § 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 and activities” to include all the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the American Disability 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 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123), (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 *et seq.*).

APPENDIX F

Professional Service Contracts – With No DBE Goal

DISADVANTAGE BUSINESS ENTERPRISES:

1.0 Policy:

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

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

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

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

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

2.0 Assurances of Non-Discrimination:

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

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

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

3.0 Definitions:

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

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

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

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

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

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

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

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

- (1) Operates as a for-profit business registered to do business in Arizona;
- (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;

- (3) Is independently owned and operated;
- (4) Is not dominant in its field on a national basis; and
- (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary NAICS code.

(H) Socially and Economically Disadvantage 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 Federal or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
 - iv. **“Asian-Pacific Americans”** – which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. **Subcontinent Asian Americans”** – which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi. **“Women;”**
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

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

Arizona Department of Transportation
Business Engagement and Compliance Office
1801 W. Jefferson St., Suite 101, Mail Drop 154A
Phoenix, AZ 85007
Phone: (602) 712-7761
FAX: (602) 712-8429
Email: ContractorCompliance@azdot.gov
Website: www.azdot.gov/beco

4.1 Mentor-Protégé Program:

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

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

5.0 Applicability

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

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

6.0 Certification and Registration:

6.1 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 of 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 <https://utracs.azdot.gov/>.

DBE firms and firms seeking DBE certifications 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 Arizona 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 <https://utracs.azdot.gov/UnifiedCertificationProgram/>. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

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

6.2 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 business in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary NAICS code.

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

SBCs can register online at the AZ UTRACS website.

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

7.0 DBE Financial Institutions:

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

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

8.0 Time is of the Essence:

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

9.0 Computation of Time:

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

10.0 Consultant and Subconsultant Requirements:

10.1 General:

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

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

10.2 DBE Liaison:

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

11.0 DBE Goal:

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

12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

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

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

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

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

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

13.0 Payment Reporting:

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

14.0 Crediting DBE Participation:

14.1 General Requirements:

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

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

The entire amount of a contract that is performed by the DBE's own forces, including the costs 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 and DBE subconsultant purchases or leases from the prime consultant or its affiliate will not be credited toward DBE participation.

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

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

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

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

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

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

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

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

14.2 Effect of Loss of DBE Eligibility:

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

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

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

14.3 Notifying the Consultant of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subconsultant or supplier that is either decertified or certified during the term of the contract to immediately notify the consultant and all parties to the DBE

contract in writing, with the date of decertification or certification. The consultant shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.4 Police Officers:

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

14.5 Commercially Useful Function:

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

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

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

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

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

The LPA/Subrecipient will notify the consultant, in writing, if it determines that the consultant's DBE subconsultant is not performing a CUF. The consultant will be notified within seven (7) calendar days of the LPA/Subrecipient's decision.

Decisions on CUF may be appealed to the ADOT BECO. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the ADOT BECO. The appeal must be

received by ADOT BECO no later than seven (7) calendar days after the LPA/Subrecipient's decision. LPA/Subrecipient's decision remains in place unless and until the ADOT BECO reverses or modifies the LPA/Subrecipient's decision. ADOT BECO will promptly consider any appeals under this subsection and notify the consultant of the ADOT BECO finding and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

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

15.0 Required Provisions for DBE Subcontracts:

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

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

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

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

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

16.0 Certification of Final DBE Payments:

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

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

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

17.0 False, Fraudulent, or Dishonest Conduct:

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

APPENDIX G

Prompt Pay and Payment Reporting Provisions

MEASUREMENTS AND PAYMENTS:

Partial Payments:

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

An estimate of the work submitted shall be deemed approved and certified for payment after seven (7) days from the date of submission unless before that time the LPA/Subrecipient Procurement Office or Designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The contractor shall work with the LPA/Subrecipient or the LPA/Subrecipient Designee to finalize monthly estimate. The progress payments shall be paid on or before 14 days after the estimate of the work is certified and approved in accordance with Arizona Revised Statutes Section 34-221.

The contractor shall pay to the contractor's subcontractors or materials suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven (7) days of receipt of each progress payment the respective amounts allowed the contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest, except that no contract for construction services may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment.

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

Subcontractor Payments:

(1) Retention

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

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

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

(3) Partial Payment:

The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the LPA/Subrecipient Procurement Office. Notwithstanding any provision of Arizona Revised Statutes Section 34-211, 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 (7) days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(5) Payment Reporting:

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

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the LPA DBE system which can be accessed at AZ UTRACS on the Arizona Transportation Business Portal at <https://utracs.azdot.gov/>. No later than fifteen (15) calendar days after the preconstruction conference, the contractor shall log into the system and enter or verify the name, contract information, and subcontract amounts for Reportable Contracts on the project. As reportable Contracts are approved over the course of the contract, the contractor shall enter the subcontractor information in the LPA DBE System. Reportable contracts information shall be entered into the system no later than five calendar days after approval by the LPA/Subrecipient Procurement Office.

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

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

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

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

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

a) Sanctions of Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$1,000.000 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 liquidation damages provided for elsewhere in the contract.

(6) Completion of Work:

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

(7) Disputes:

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

The contractor shall provide a verifiable explanation of the discrepancy in the LPA DBA System as early as practicable but in no case later than seven (7) days after the date of the alert email.

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

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

(8) Non-Compliance

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

a) Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

- i. The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.
- ii. If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
- iii. If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as liquidated damages.

b) Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:

- i. Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the liquidated damages described in paragraph (a) above,
- ii. Terminate the contract for default,
- iii. Disqualify the contractor from future bidding, temporarily or permanently, depending on the number and severity of violations, if applicable.

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