



**NOTICE OF REQUEST FOR PROPOSALS  
FOR**

**Lake Havasu Metropolitan Planning Organization (MPO)  
CONSULTING SERVICES FOR THE  
2050 Regional Transportation Plan**

**ISSUED:**

**March, 14, 2025.**

Request for Proposals due:

**April, 11, 2025 at 1:00 PM**

Issued by Lake Havasu Metropolitan Planning Organization (MPO)

900 London Bridge Rd, Building B  
Lake Havasu, AZ 86404  
928-453-2823

Sarah Lojewski, LHMPO Director  
[lojewskis@lhcaz.gov](mailto:lojewskis@lhcaz.gov)

Project Funding Provided by:

CFDA  
20.205

Agency  
FHWA

Grant Program  
SPR

Title  
Statewide Planning and Research

Contract #: LHMPO 2025-01

ADOT Project #: **MPD9147-200.1**

# TABLE OF CONTENTS

1. NOTIFICATION: .....	3
2. INTRODUCTION .....	4
3. PROJECT DESCRIPTION .....	6
4. SCOPE OF WORK .....	7
Task 1 – Project Management & Coordination .....	7
Task 2 – Public Outreach and Involvement.....	8
Task 3 - Modeling and System Evaluation .....	9
Task 4 – Financial Analysis .....	10
Task 5– Project Prioritization.....	10
Task 6 – Project Scoping .....	11
Task 7 – Grant Assistance.....	11
Task 8– Final Implementation Plan .....	11
5. DBE GOAL AND DOCUMENTATION .....	12
6. COMPENSATION .....	12
7. GUIDELINES FOR RFP SUBMITTALS.....	12
8. PROPOSAL CONTENT .....	13
9. GENERAL PROVISIONS .....	15
10. PROPOSAL EVALUATION CRITERIA.....	15
11. INTERVIEW EVALUATION CRITERIA.....	16
12. PROCUREMENT TIMELINE.....	17
13. QUESTIONS CONCERNING THE RFP .....	18
14. ADDITIONAL TERMS AND CONDITIONS .....	18
15. THIRD PARTY AGREEMENTS .....	19
16. CERTIFICATION FORMS .....	19
17. CONTRACTOR DEMOGRAPHIC PROFILE.....	22
APPENDIX “A” .....	24
APPENDIX “B” .....	34
APPENDIX “C” .....	38

# I. NOTIFICATION:

---

Release Date: March, 14, 2025

Closing Date: April, 11, 2025

The Lake Havasu Metropolitan Planning Organization invites qualified firms or individuals to submit proposals to provide consulting services for preparation of a **2050 Regional Transportation Plan** for the designated Lake Havasu Metropolitan Planning Organization.

Proposals will be received until **1:00 PM** on **April 11, 2025** at the Lake Havasu Metropolitan Planning Organization offices, located at **900 London Bridge Road, Building B, Lake Havasu, AZ 86404**.

Any proposal received after **1:00 PM** on the above date will be returned unopened. The Lake Havasu Metropolitan Planning Organization reserves the right to reject any and all proposals and assumes no liability for the costs of preparing a response to this request.

The outside of the Proposal envelope shall indicate the name and address of respondent and addressed to the Lake Havasu Metropolitan Planning Organization, at the aforementioned address.

Please note on the outside of the envelope:

**Request for Proposals: 2050 Regional Transportation plan**

Issued by:

---

Sarah Lojewski, LHMPO Director  
900 London Bridge Road, Building B  
Lake Havasu, AZ 86404  
Email: [Lojewskis@lhcaz.gov](mailto:Lojewskis@lhcaz.gov)  
Phone: 928-453-2823

Date: March, 14, 2025

## 2. INTRODUCTION

---

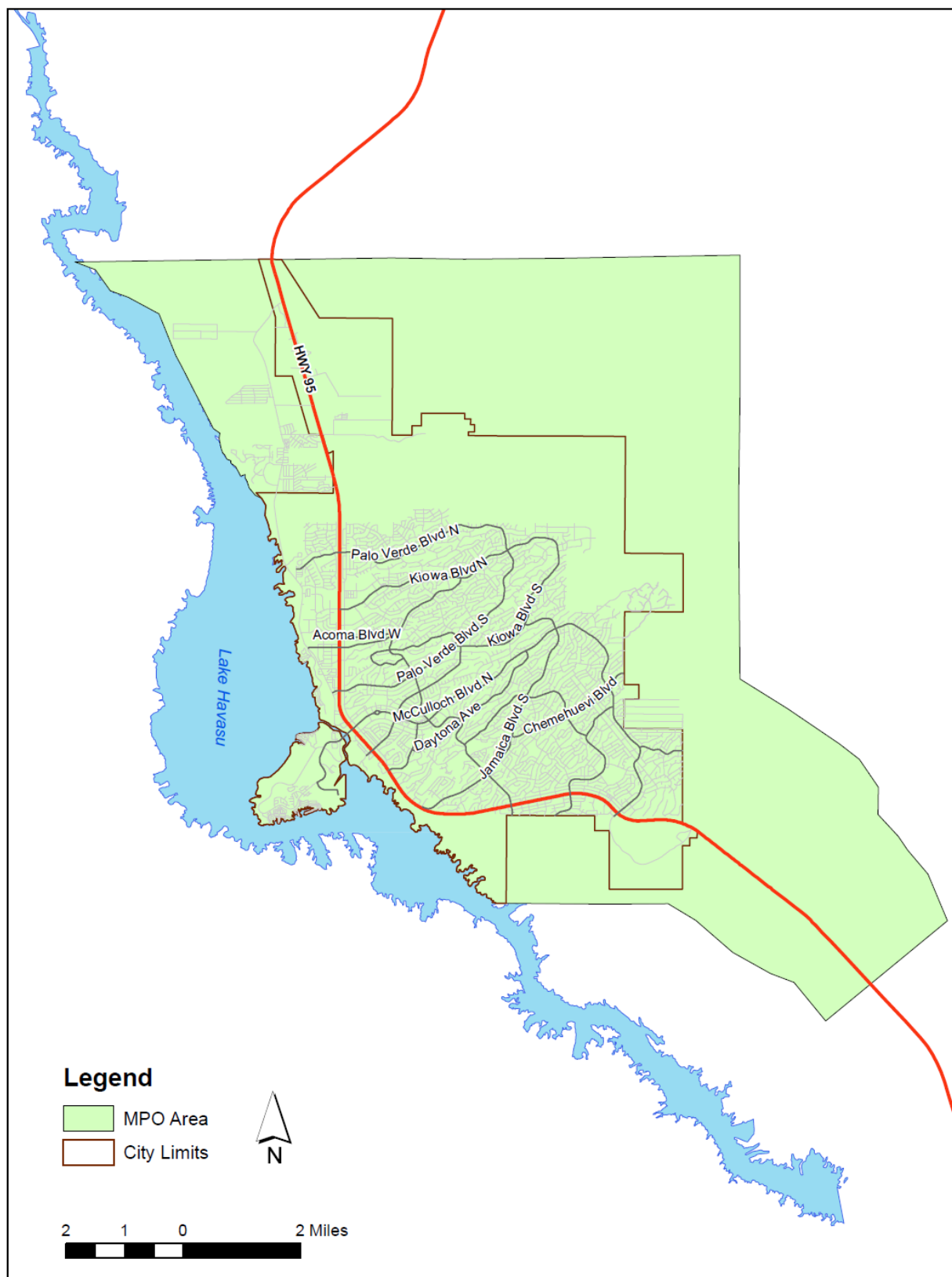
The Lake Havasu Metropolitan Planning Organization (MPO) is a federally designated agency responsible for coordinating transportation planning and programming in urbanized areas with populations of 50,000 or more. The MPO's mission is to provide planning and programming services for the safe and efficient movement of people and goods consistent with the region's overall land use, economic, social and environmental goals. Special emphasis is placed on providing equal access to a variety of transportation mode choices (transit, bicycling, walking, automobile, carpool, etc.) and ensuring effective public involvement throughout the planning process.

The MPO is involved in transportation planning and related planning issues (e.g., land use) on a regional scale, makes transportation planning decisions and sets transportation planning policies for the metropolitan planning area it covers.

Good planning involves citizens, increases efficiency and effectiveness of the public investments in transportation, and promotes transportation services and infrastructure that are consistent with the community's desires.

The planning process enhances the community's character and quality of life by considering the interaction between land use and transportation and their cumulative effect on the built and natural environments. The MPO performs its mission through planning related activities and documents.

## LAKE HAVASU METROPOLITAN PLANNING ORGANIZATION TRANSPORTATION PLANNING BOUNDARIES



### 3. PROJECT DESCRIPTION

---

LHMPO is pursuing a project that will develop a comprehensive 2050 Regional Transportation Plan for the Lake Havasu Metropolitan Planning Organization transportation planning area. The Plan will establish regional objectives and strategies to serve the need of the public, safely and practically. It is also the intent of this plan to serve as support for future Federal & State grant funds while describing a sustainable approach to utilizing these funds.

Purpose of the Plan:

- Scope of Work and Project Schedule
- Four Factor Analysis
- Detailed Public Involvement Plan
- Updated regional Goals, Objectives, and Targets
- Revised Project Selection Process
- Revised Project Selection Application
- Revised Project Scoring Matrix
- Verification of all Federal and State requirements for the RTP
- System Performance Report
- DRAFT RTP for internal and public review, including all updated and new information
- Final RTP for submittal to ADOT and FHWA by no later than August 14, 2026, including all updated and new information
- Final RTP Executive Summary

LHMPO and the consultant will strive to address issues and needs for multi-modal transportation for the current and future LHMPO region. Planning efforts should include innovative public outreach that includes the general public, businesses, interest groups, and key stakeholders; and **shall** include facilitation of planning activities and conversations amongst local public agencies and their elected officials.

## 4. SCOPE OF WORK

---

**The Lake Havasu Metropolitan Planning Organization (LHMPO) 2050 Regional Transportation Plan shall focus on identifying goals and objectives for multi-modal transportation needs.**

The RTP shall establish the vision for the LHMPO region and develop short-term and long-term goals and objectives. These goals and objectives should guide the implementation of the RTP, define long-range strategies, and set priorities. Short-term goals and objectives will inform MPO decision-making for the next five years, shaping investment programs in the TIP and studies proposed for funding in the UPWP cycle. The Vision, goals, and objectives should also consider federal, state, and local requirements, as well as stakeholder and public priorities. They should be achievable, measurable, and provide a framework for decision-making through 2050. Additionally, these elements will help communicate the LHMPO's values to stakeholders, partners, and the public.

The scope of work for the **LHMPO 2050 Regional Transportation Plan** includes review and incorporation of all applicable information and provisions from previously completed local and regional planning studies within the LHMPO transportation planning boundaries, as well as those from Mohave County or other areas outside the LHMPO boundaries that may impact the implementation plan.

This Scope of Work serves as a guide to the anticipated work involved in this planning project. Proposers are encouraged to offer refinements in their proposals, highlighting any suggested improvements.

The LHMPO 2050 Regional Transportation Plan will include the following tasks, each of which shall include the development and provision of a summary working paper with its overview, key points, findings, and recommendations incorporated into the final report.

### Task I – Project Management & Coordination

The **Consultant** shall provide project management and coordination with LHMPO staff, the Technical Advisory Committee (TAC), and all stakeholders. The prime consultant shall also manage and coordinate closely with team sub-consultants to ensure on time delivery and responsive performance.

Upon notice to proceed, the **Consultant** shall develop a refined project scope with input from the LHMPO Project Manager (Director) and the TAC.

The **Consultant** shall prepare a GANTT type (bar chart) project schedule that shows approximate dates for meetings, milestones, public outreach, and deliverables.

#### **Deliverable:**

- The **Consultant** shall prepare and provide to the TAC a Project Management Plan including a refined scope of work and schedule for the LHMPO 2050 Long-Range Transportation Plan. The Project Management Plan will identify proposed dates of TAC, Stakeholder, LHMPO Executive Board, and Public Outreach meetings as well as tentative discussion topics.

## Task 2 – Public Outreach and Involvement

LHMPO is seeking an **innovative public outreach program** that will be highly effective in gaining public input and acceptance of the plan. The **Consultant** shall involve the use of web-based tools and social media programs, as well as traditional public meetings. The **Consultant** is encouraged to propose an outreach program that will increase collaboration, provide better information and input to inform the study team enabling an effective system design and successful result.

The **Consultant** shall conduct a Limited English Proficiency (LEP) Four Factor Analysis for the project study area. Section Five of the US Department of Transportation guidance on LEP requires a Four Factor Analysis to determine the need for translation services to ensure LEP populations are able to receive information about and can participate in the planning process in the language they best understand. The **Consultant** is encouraged to use the most recently available census data to conduct the Analysis. The Analysis will be used to determine if LEP population(s) exist in the study area and to ensure public outreach materials are made available to the LEP population(s). The process and results of the Analysis shall be documented in the final plan.

The **Consultant** shall conduct at least **two (2) public meetings** at local events (such as Downtown Friday Night) and public open houses for the purpose of providing an overview and explanation of the system alternatives and to gather public comments and other useful input. Following these meetings, a public outcome as to which alternative is preferred should be evident and documented.

The **Consultant** shall conduct at least **one public survey** to engage the public and gather input on the public's priorities for transportation investment and help develop the vision, goals, and objectives for the plan.

The **Consultant** shall use social media and innovative internet-based survey and outreach mechanisms (e.g. MetroQuest, 76 engage, etc.) and strategies to strengthen outreach efforts to reach a larger audience.

The **Consultant** shall provide a complete brand Identity for LHMPO including design of a new logo that reflects the brand's vision, values, and target audience.

The **Consultant** shall be responsible for:

- Preparation of all presentation and informational materials for the LHMPO TAC, LHMPO Executive Board meetings, general public meetings, and stakeholder meetings.
- Preparation of materials and cost of advertisements and outreach activities.
- Preparation of contact lists, public notices, and documentation of the public involvement process and input received in the plan.
- Public meeting notification through news releases and advertising in the local newspaper. News releases and advertising materials will be provided in all languages identified as necessary according to the Four Factor Analysis.
- Draft, design and place black and white ad (size: 4 col. x 10 in.). Advertising materials will be provided in all languages identified as necessary according to the Four Factor Analysis.
- Distribute email invitations to compiled stakeholder list.
- Coordinate public meeting dates, times and set-up.
- Locate, review and procure meeting facilities; ensure Americans with Disabilities Act (ADA) compliance; provide rider of insurance on behalf of client, if needed.
- Prepare basic logistical meeting materials such as directional signage, sign-in sheets and comment cards.



- Provide meeting supplies.
- Provide sufficient staff to facilitate meeting.
- Prepare summary of meeting and attach written comments.
- Provide fact sheet, PowerPoint presentation and displays.
- Provide necessary translation services for all public meetings (with 48 hours advance notice) for any languages identified as necessary according to the LEP Four Factor Analysis.
- Brand development-strategy, name, guidelines
- Logo design-concept development, revisions, final logo files, logo variations
- Additional Brand assets-color palette, typography, imagery style, stationery design

#### **Deliverables:**

- Public Involvement Plan
- 4 Stakeholder/TAC Meetings (milestones/working papers)
- 2 Presentations to Executive Board, and to Lake Havasu City Council (if necessary)
- 2 Public Open House Meetings/Virtual Public Meetings
- One Public Survey (Visioning)

## **Task 3 - Modeling and System Evaluation**

The **Consultant** shall develop a Travel Demand Model for the LHMPO region. The **Consultant** shall develop current and future population and employment data at the traffic analysis zone (TAZ) level for the base year (2025) and long term (2050). The **Consultant** shall review and update Title VI and regional demographic information as necessary. The **Consultant** shall review current TAZ boundaries to determine if system boundaries are appropriate for the study area. Updated data should be used to create a calibrated model of current and future travel demand on the LHMPO street network. The LHMPO does not have a preference for the software which will run the model however the **Consultant** shall define their preferred modeling software and explain why it is the most appropriate fit for the LHMPO region.

The **Consultant** shall evaluate and report on existing conditions of the regional transportation system. This evaluation shall review goals, performance measures, and targets established by ADOT and LHMPO. The evaluation shall include a review and update of all socioeconomic data, roadway data including functional classifications, traffic data, safety, pavement and bridge conditions, transit, bicycle, and pedestrian transportation, freight, aviation and any new technologies such as Autonomous vehicles (AV), and Electric vehicles (EV). The existing conditions evaluation shall report on progress achieved toward goals and performance targets and identify where deficiencies currently exist. The assessment shall identify both the operational and safety performance of the existing transportation network. The assessment shall also evaluate the multimodal network including pedestrian, bicycle, trail, and transit facilities in the region and identify any existing deficiencies, gaps or barriers to service.

The **Consultant** shall prioritize evaluating expansion projects to effectively move traffic through the community. Special emphasis should be placed on ensuring better connectivity between the municipality and the County. The **Consultant** should consider options for a potential by-pass or additional road networks that improve freight travel through the regional mobility. Additionally, the **Consultant** shall assess pedestrian, bicycle, and trail infrastructure, identifying opportunities for multi-modal transportation improvements that support both local and regional connectivity. The **Consultant** shall evaluate future conditions of the regional transportation system, forecasting future traffic conditions based on projected land use, socioeconomic data, committed improvements, and economic

growth. The future conditions assessment will utilize an updated, calibrated, and validated travel demand model to evaluate future system performance, demands on the transportation system, and future improvement strategies and needs. The analysis of future conditions should provide a comparison of 2050 baseline (no-build) conditions to 2050 build conditions, effectively illustrating future deficiencies and the impact of proposed improvements on traffic volumes, levels of service, and other established performance measures.

**Deliverable:**

- Working Paper – Modeling and System Evaluation

## Task 4 – Financial Analysis

The **Consultant** shall analyze funds available in the LHMPO region through 2050. The available funding will be used to budget transportation funding for planning, project development and programming. The plan should evaluate and identify all funding sources available in the LHMPO region and should consider any alternative funding source. Examples of potential funding sources include Highway User Revenue Funds (HURF), City Development Fees, Surface Transportation Block Grants Funds, Highway Safety Improvement Funds, and Federal transit grant funding. Reasonable cost estimates should be developed for all projects identified in the future needs assessment. Financial analysis should include short-term, medium-term and long-term revenue forecasts for capital improvements, operations/maintenance, and planning activities. Forecasts and cost estimates should include an inflation rate to reflect year of expenditure dollars. Budgetary cost estimates should consider; operating costs, capital costs, maintenance costs, improvement costs, sponsor agency administrative costs, and any other costs necessary to implement, operate and maintain the proposed system.

**Deliverable:**

- Working Paper-Financial Analysis
- The findings and conclusions of the financial analysis completed for this task shall be included in the draft and final plan.

## Task 5– Project Prioritization

The **Consultant** shall develop a policy driven project prioritization process including the identification of which performance measures are met with each recommendation. The project prioritization categories should include preservation, modernization, expansion, and mobility. The consultant will update the LHMPO scoring categories as well as the scoring values of each category. The consultant will ensure that the updated criterion aligns with any adjustments made to the goals, objectives and targets. The consultant will work with the TAC to review and potentially revise the current project nomination forms and project selection process. This will determine best practice for selecting projects for the upcoming years.

**Deliverable:**

- Update project Nomination form
- Update scoring and prioritization criteria Matrix
- Update project selection process

## Task 6 – Project Scoping

The **Consultant** will Prioritize and identify the top 5 ranked projects in each category bike, PED, safety, intersections/signals, and pavement preservation. The **consultant** will provide a full project scope with funding estimates for each identified project. The project scopes shall include goals, criteria, milestones, schedule, costs, funding, assumptions, exclusions, and constraints.

### **Deliverable:**

- Create five (5) full planning level project scopes in each category with the above mentions included with a full cost estimate of design, construction, and inflation factors.

## Task 7 – Grant Assistance

The **Consultant** will help LHMPO by actively looking for grant funding opportunities including planning, design, and construction to fund prioritized projects. The consultant will assist LHMPO in identifying grant opportunities that would be most applicable to the LHMPO region and may also include technical assistance in preparing grant applications. The consultant should consider any innovative financing techniques that can be implemented, or new funding sources that can be obtained and what support would be required.

### **Deliverables:**

- Identify short term grant funding opportunities (next 5 years) and develop list of projects with the most potential to successfully secure grant funding.
- Two (2) meetings with LHMPO staff and City Grants Writer to review grant eligibility, technical questions, applications process and schedules.

## Task 8– Final Implementation Plan

The **Consultant** shall develop a draft and final plan which includes elements identified in each of the tasks above. In addition, the final plan shall include an implementation plan that identifies the projects and strategies that meet the existing and future needs of the LHMPO region based on regional goals and strategies, analysis of existing and future regional conditions, project funding availability, and project prioritization. The implementation plan shall review available and anticipated funding and develop a timeframe for implementation of prioritized projects. The implementation plan shall identify all the necessary steps to plan, design, equip, construct needed infrastructure, carry out the plan, continually evaluate, and provide for future extension of services. Information provided shall be in non-technical language whenever possible and the use of tables, graphs, and pictures in lieu of text is highly encouraged. The final plan shall also include an **Executive Summary** which provides an overview of the Plan's vision, current transportation needs, proposed strategies, prioritized projects, funding strategy and implementation plan.

The Draft Plan and Final Plan shall be posted for a 30 day public review/comment period.

### **Deliverables:**

- 3 hard copies of the Final 2050 Regional Transportation Plan
- 3 hard copies of the Final 2050 Regional Transportation Plan Executive Summary
- Digital copies of both documents
- Comment Resolution form to address comments received

All materials and data used for this study are the property of LHMPO.

## 5. DBE GOAL AND DOCUMENTATION

---

It is important to read and comply with **APPENDIX “A”**.

A DBE goal of **0%** has been established on this contract. The consultant is still encouraged to obtain DBE participation above the goal on this project.

**IMPORTANT:** All prime consultants, subconsultants and DBE's must be registered in the AZ UTRACS system on the Arizona Department of Transportation (ADOT) web site at the time of responding to this solicitation and must complete an on-line bidders/proposers list at AZ UTRACS web portal; and submit the corresponding bidders list email confirmation with the RFP response.

## 6. COMPENSATION

---

The selected consultant shall provide a monthly brief written progress report. Additionally, a progress report must accompany each project billing. The report shall include, at a minimum, a statement of work accomplished to date and during the billing period, the budgeted amount by work task, and percent completion, the hours expended and cost for the billing period, and the amount spent to date.

*All work described in the ‘Scope of Work’ shall be completed to the satisfaction of the LHMPO Technical Advisory Subcommittee, LHMPO staff, and the LHMPO Executive Board. In addition, the selected Consultant shall comply with the Prompt Pay & Payment Reporting Provisions – **APPENDIX “B”***

## 7. GUIDELINES FOR RFP SUBMITTALS

---

The RFP respondent shall submit written proposals with the following information:

- Maximum length of 20-pages
- Page limit is for the proposal content only and does not include covers, cover letter, table of contents, dividers, resume appendix, or required form appendix
- Single-sided standard 8½" x 11" page size
- No other page size is allowed
- 12 Point Font only for text content
- 10 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
- **Electronic Submission:** Proposal shall be submitted with a digital signature by a person authorized to sign.
- Proposals submitted through DemandStar at <https://www.demandstar.com/app/buyers/bids/493668> details must be submitted under the appropriate solicitation opportunity. Submissions erroneously submitted under the wrong solicitation will not be considered.
- **Hard Copy Submission:** At least one (1) bound hard copy and one (1) electronic copy (in PDF format on a flash/thumb drive) of the proposal, must be submitted. Submittals must be clearly addressed to the Lake Havasu MPO Office, 900 London Bridge Road Bld. B, Lake Havasu City, Arizona, 86403.
- Submittals must be in a sealed envelope with the RFP Number and the Proposer's name and address clearly indicated on the envelope.

## 8. 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 consultant should respond to each of these items in the order listed below. To facilitate the evaluation of each proposal, potential consultants submitting a proposal are required to adhere to the following format:

1. **Cover Letter:** One-page cover letter shall be attached as a 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 study team makeup and a summary of the team's specific qualifications and experience in preparing similar plans. Outline and discuss the team's general project approach, project management methodologies, and any applicable experience and qualifications of the team/firm and its subcontractors.
3. **Scope of Work:** Address how your team proposes to accomplish the individual tasks contained in the RFP scope of work.

The scope of work presented in your proposal shall be a refined scope of work incorporating any changes, additions, or modifications to the scope of work presented in this RFP deemed beneficial to the project by the consultant. The consultant shall highlight any changes made to the scope and explain why the change was made and how it will benefit the overall plan. The reviewer should be able to readily see and understand the refined scope being presented by the consultant.

4. **Project Personnel:** Provide an organization chart identifying all key personnel who will **actually** lead and conduct the effort for LHMPO. Include names of all key project personnel and names of sub-consultant personnel, as well as all individuals who are assigned and dedicated to the plan. For each person, include a job title (role), duties, responsibilities, and a brief summary of qualifications and relevant experience in planning studies of this type.
5. **Experience and References:** Provide a description of at least three (3) previous projects similar in nature to the services requested. For each project, provide the:
  - 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 contract phone number and email address)
  - Roles of individuals assigned to this project on the cited reference project
6. **Project Schedule:** Provide a Gantt style timetable for accomplishing the tasks outlined in the proposed scope of work. Assume the notice to proceed per the procurement timeline provide within this RFP.

7. **Project Budget:** Provide a standard line item budget that is structured to address the proposed budgeted amount for each of the tasks identified in the scope of work. At a minimum, the budget must show project personnel, job title (role), estimated hours of work, hourly charge rates, total amounts for each task, a total amount for the professional services fee, budgeted amount for direct expenses, budgeted amount for services provided by each sub-consultant, and total amount for completing the Plan. 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 sub-consultant to be employed to help the prime complete the work to prepare and provide the LHMPO 2050 Regional Transportation Plan
8. **Availability:** List any and all present activities and job commitments for each key person. Include an estimation of available time each key person can commit to working on this project and completing the work tasks described herein. The consultant must get approval from LHMPO for any change in the project manager, task managers, or sub-consultants assigned to this project for any reason. Changing of key personnel may give rise to termination of the consultant contract depending on the nature and number of changes in key personnel at the discretion of the LHMPO Executive Director.

*NOTE: The proposal response for sections 2 through 8 above is subject to the 20-page limit specified in the submittal guidelines above.*

9. **Appendix I – 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 one single-sided page 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:

- **Bidder's List Confirmation email**
- **Signed Request for Proposal Certification Form – Section 16 of this RFP**
- **While not required and completely voluntary , LHMPO asks that you please also include the "Contractor Demographic Profile Request Form" – Section 17 of this RFP**

## 9. GENERAL PROVISIONS

---

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

**Late Proposals:** Any proposal 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. LHMPO will not pay for any information solicited or received.

**Funding:** LHMPO has elected to utilize SPR funds to finance this Plan. In support of the Plan, LHMPO will provide the local government match in the form of In-kind, or if necessary a cash match.

**Budget:** The **Maximum** budget for this proposal is **\$300,000**.

## 10. PROPOSAL EVALUATION CRITERIA

---

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

1.	Project understanding and approach.	30
2.	Clarity of proposal, realistic approach, technical soundness, and enhancements to elements outlined in this Request for Proposals (RFP).	30
3.	Experience and capabilities in development of similar studies.	20
4.	Experience and qualifications of the project manager, task managers, and sub-consultants on the team.	10
5.	Proposed schedule and budget.	10
	Total Points	100

A Selection Committee will evaluate submitting firm proposals and qualifications to select the best firm to undertake the study and completion of the 2050 Regional Transportation Plan. **The Selection Committee may select a consultant directly from the review and ranking of the proposals if there is a clear cut best firm/team (i.e. may choose not to interview).** The Selection Committee may also choose to interview a maximum of three of the submitting firms determined to be the most qualified of all the submittals.



## II. 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 of the short listed firms 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 scope, location, key issues, innovative concepts, and other aspects of this project. Criterion upon which the presentation/interview of each firm will be evaluated, with weighting for each criterion are as follows:

1.	Observation of existing conditions and key project information	20
2.	Identification of key issues or problems that will need to be considered.	20
3.	Innovative approaches in the process	20
4.	Experience and capabilities in development of similar studies	30
5.	Specific reasons why the firm should be engaged for the project	10
	Total Points	100

The Selection Committee members will individually evaluate the presentation/interview of each of the candidate firms and rate them accordingly to the aforementioned criteria. The Selection Committee will then formulate a consensus ranking, and the LHMPO Executive Director will notify the top ranked candidate firm and will meet with the top ranked firm for the purposes of negotiating a contract.

If negotiations are unsuccessful, the LHMPO Transportation Manager will terminate negotiation efforts and open negotiations with the 2<sup>nd</sup> ranked firm. This process will continue until negotiations are successful. The shortlist will remain in effect for a period of twelve (12) months from the date of issuance by LHMPO.

Once a contract has been successfully negotiated with a firm, the contract will be required to be approved by the LHMPO Attorney, LHMPO Executive Director, and LHMPO Executive Board Chair. Federal language is required to be in all LHMPO contracts and professional services agreements and will be provided to the accepted firm.

*LHMPO reserves the right to reject any or all proposals and to make any award which it considers to be in the best interest of the region. This Request is for a Request for Proposals and is not a commitment to initiate a contract for services. This is a qualifications based selection process and is not a bidding process.*



## 12. PROCUREMENT TIMELINE

Lake Havasu MPO – Request for Proposals (RFP) Timeline	
Due Dates:	Description:
February 11, 2025	<b>Executive Board Meeting - Approval</b> (Executive Board approval to advertise the RFP, authority for Selection Committee and LHMPO Director to select top candidate, and authority for LHMPO Director and Executive Board Chair (LHMPO Purchasing Agent) to Award Contract (Notice to Proceed and Professional Service Agreement).
February 14, 2025	<b>1<sup>st</sup> Preliminary Notice</b> (30 calendar days before official advertisement date)
March 7, 2025	<b>2<sup>nd</sup> Preliminary Notice</b> (7 calendar days before official advertisement date)
March 14, 2025	<b>Official Procurement/Advertisement Date</b>
March 19, 2025	<b>Questions Deadline</b> (5 business days after official advertisement date, consultants to submit all questions regarding the RFP to the LHMPO)
March 26, 2025	<b>Questions Response</b> (5 business days after consultant questions deadline, the LHMPO will respond, in writing (and posted to the LHMPO website), to all questions regarding the RFP)
<b>April 11, 2025</b>	<b>Proposal Submittal Deadline</b> (While not required, and in order to ensure comprehensive responses, the LHMPO will set a 45-60 day timeframe in which bidders have to respond to RFP)
April 21, 2025	<b>Proposal Ranking</b> (Each proposal will be reviewed & ranked/scored by selection committee members per the RFP evaluation criteria. Final ranking to be completed 10 business days after the proposal submittal deadline)
April 22, 2025	<b>Interviews – If Necessary</b> (Interviews may be scheduled if needed, Interviews will be conducted per the RFP interview evaluation criteria. Locations for Interviews may be conducted in-person or virtually (e.g., Zoom, GoToMeeting, or Teams) pending availability and or other factors.
May 19, 2025	<b>Professional Service Agreement – Contract &amp; Negotiations.</b> (Once a top firm has been selected, the LHMPO and that Consulting firm will finalize the Professional Service Agreement (Contract) and make any necessary revisions to the Scope of Work (Budget, Tasks, and or Timeline).
June 13, 2025	<b>Notice to Top Firm</b> (Notify the top-ranked firm/selected bidder within 5 business days of last interview or proposal ranking of the selection committee's final decision).

Please note that many of these dates are estimates. The timeline may proceed more quickly or slowly depending on how certain events unfold

LHMPO reserves the right to reject any or all proposals and to make any award which it considers to be in the best interest of the region. This Request is for a Request for Proposals and is not a commitment to initiate a contract for services. This is a qualifications based selection process and is not a bidding process.

## 13. QUESTIONS CONCERNING THE RFP

---

Written questions regarding this RFP should be mailed or emailed to LHMPO and must be received no later than **5 business days** after the official advertisement date. Questions may then be responded to by written amendment to this document. Verbal statements or instructions shall not constitute an amendment to the RFP.

**Inquiries shall be made to:**

**Sarah Lojewski, Director, LHMPO**  
900 London Bridge Road, Building B  
Lake Havasu, Arizona 86404  
and via Email: [Lojewskis@lhcaz.gov](mailto:Lojewskis@lhcaz.gov)  
(928) 453-2823

## 14. ADDITIONAL TERMS AND CONDITIONS

---

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

8. Any changes to the response requirements will be made by written addendum.
9. LHMPO reserves the right to waive any minor irregularities, informalities or oversights in the RFP documents, or any corresponding responses that does not materially affect or alter the intent and purpose of the RFP, that is not in violation of Arizona or Federal Government rules, laws and regulations.

## 15. THIRD PARTY AGREEMENTS

---

The **Consultant** will acknowledge and agree to all additional State and Federal terms, conditions, assurances, and provisions outlined in **APPENDIX “A”, “B”, and “C”** of this RFP document for this project.

## 16. CERTIFICATION FORMS

---

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

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

- **Request for Proposal Certifications Form**

# Request for Proposal Certifications Form

Contract #: \_\_\_\_\_ Consultant Name: \_\_\_\_\_

**Please read the sixteen (16) 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 the specific Certification form attached to 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 RFP will result in the RFP being rejected.**

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

<b>1.</b>	The Consultant and its sub-consultants have not engaged in collusion with respect to the contract under consideration.
<b>2.</b>	The Consultant, its principals and sub-consultants have not been suspended or debarred from doing business with any government entity.
<b>3.</b>	The Consultant shall have the proper Arizona license(s) and registration(s) for services to be performed under this contract. Furthermore, the Consultant shall ensure that all Sub-consultants have the proper Arizona license(s) and registration(s) for services to be performed under this contract. Key members of the Project Team, including sub-consultants, are currently licensed to provide the required services as requested in the RFP package.
<b>4.</b>	The Consultant's signature on any RFP or contract constitutes an authorization to LHMPO to ascertain the eligibility of the Consultant, its principals and sub-consultants to enter into contract with the MPO and with any other governmental agency.
<b>5.</b>	The Consultant's Project Team members are employed by the Consultant on the date of submittal.
<b>6.</b>	All information and statements written in the proposal are true and accurate and that LHMPO reserves the right to investigate, as deemed appropriate, to verify information contained in proposals.
<b>7.</b>	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 agent's representatives or employees.
<b>8.</b>	No Federally appropriated funds have been paid or shall be paid, by or on behalf of the Consultant for the purpose of lobbying.
<b>9.</b>	If project is funded with Federal Aid funds, the Consultant affirmatively ensures that in any subcontract entered into pursuant to this advertisement, minority business enterprises shall be afforded full opportunity to submit proposals/bids in response to this invitation and shall not be discriminated against on the grounds of race, color, or national

	origin, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation.
<b>10.</b>	The Consultant will utilize all Project Team members, sub-consultants and DBE firms, if applicable, submitted in the RFP, and will not add other Project Team members or sub-consultants, unless the Consultant has received prior written approval LHMPO Executive Director.
<b>11.</b>	The Consultant shall meet its DBE goal commitment and any other DBE commitments as stated in its RFP proposal or Cost Proposal; and shall report on a timely basis its DBE utilization as detailed in the contract.
<b>12.</b>	If selected, the Consultant is committed to satisfactorily carry out the Consultant's commitments as detailed in the contract and its RFP proposal.
<b>13.</b>	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).
<b>14.</b>	The Consultant is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency
<b>15.</b>	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.
<b>16.</b>	In Compliance with 49 CFR Part 26.11, The consultant is required to register with the AZ UTRACS web portal and complete the Online Bidder's List. <b>Please note:</b> any firm being awarded work as a prime or sub-consultant on a federally funded project must be AZ UTRACS registered. <b>Failure to submit the corresponding Bidder's List email confirmation as part of the Proposal will result in rejection of the proposal.</b> Please use ADOT Project # <b>MPD9174-200.1</b>

*I hereby certify that I have read and agree to adhere to the sixteen (16) statements above and that the statements are true to the best of my knowledge as a condition of award of this contract.*

Print Name and Title: \_\_\_\_\_

Signature and Date: \_\_\_\_\_ Date: \_\_\_\_\_

Proposing Firm Name: \_\_\_\_\_

# 17. CONTRACTOR DEMOGRAPHIC PROFILE

---

## NON-DISCRIMINATION IN PURCHASING AND CONTRACTING

It is the policy of the Lake Havasu Metropolitan Planning Organization (LHMPO), and their Fiscal Agent, the City of Lake Havasu, that discrimination against businesses by reason of the race, color or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the LHMPO Executive Board that the LHMPO and all vendors and contractors doing business with the LHMPO shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the LHMPO without regard to the race, color, gender or national origin of the ownership of any such business.

The Lake Havasu Metropolitan Planning Organization is committed to ensuring that no person is discriminated against on the ground of color, race, or national origin as provided by the Title VI of the Civil Rights Act of 1964. As a bidder or contractor for the LHMPO, you are asked to assist the LHMPO in assuring that documentation of non-discrimination policies is provided for procurement activities of the LHMPO as set forth in 49 CFR Part 26.

The attached Demographic Profile request is a voluntary disclosure of your company's demographic profile in order to assist the LHMPO in analyzing trends in procurement activities in order to ensure compliance with non-discrimination policies. This voluntary disclosure of demographic data will not be used as a criteria for award of LHMPO contracts.

## CONTRACTOR DEMOGRAPHIC PROFILE FORM: NON-DISCRIMINATION IN PURCHASING AND CONTRACTING

**INSTRUCTIONS:** Please indicate the sex, Hispanic/Non-Hispanic ethnicity, and race for the owner(s) and office(s) or branch (es) of your company providing the services for the proposed project. Include all those employed in your company, either full or part-time, to the extent demographic data is known. Company owners may be a sole proprietorship, one or more shared owners, including an employee owned company, or other legal partnerships.

Definitions of sex, ethnicity and race as defined by the Bureau of the Census: [www.census.gov](http://www.census.gov)

	Sex Male	Sex Female	Ethnicity Hispanic	Ethnicity Non- Hispanic	Race White	Race Black/ African- American	Race Asian	Race Hawaiian or Pacific Islander	Race American Indian or Alaskan	Race Multi Racial/ Two or More	Race Other Race
<b>Company Owner(s)</b>											
<b>Office(s) or Branch(es)</b>											

- ☐ I/We are a registered DBE company with the State of Arizona.
- ☐ I/We are a publically traded company with multiple shareholders/demographic data unknown.
- ☐ I/We choose to not disclose our company's demographic profile to the LHMPO.

\_\_\_\_\_  
**NAME OF COMPANY  
LOCATION(S)**

\_\_\_\_\_  
**BRANCH OFFICE**

\_\_\_\_\_  
**AUTHORIZED SIGNATORY FOR COMPANY**

\_\_\_\_\_  
**DATE**

# APPENDIX “A”

---

## PROFESSIONAL SERVICES DBE PROVISIONS

FOR USE ON LPA/SUBRECIPIENT FEDERAL AID PROJECTS WITHOUT DBE GOALS

### DISADVANTAGED BUSINESS ENTERPRISES:

#### 1.0 Policy:

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

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

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

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined 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 will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49CFR Part 26 on the basis of race, color, sex, national origin, age or disability.

In Compliance with the ADOT DBE Program Plan, the Subrecipient/Subgrantee shall not, directly or through contractual or any other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program. The Subrecipient will



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

The Subrecipient agrees to perform the following minimum DBE Program Compliance Required Activities:

- Part of the proposal submission during a formal procurement (RFP, IFB, etc.), the Subrecipient must incorporate receipt of a bidder's list into the responsiveness / susceptible for award determination. **FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST TO THE GRANTEE PROCUREMENT OFFICE BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE BIDDER BEING DEEMED INELIGIBLE FOR AWARD OF THE CONTRACT.**
- Each contract you sign with a contractor or consultant and each subcontract a prime signs with a subcontractor must include the following assurance.
  - a) *A vendor/contractor/consultant/subcontractor/subconsultant (herein after referred to as "contractor") shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Grantee, with the Department's concurrence, deems appropriate, which may include, but is not limited to:*
    - *Withholding payments;*
    - *Assessing Sanctions;*
    - *Liquidated damages; and /or*
    - *Disqualifying the contractor from future bidding on the grounds of being non-responsible.*
  - b) *Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.*
  - c) *Each contractor shall designate a full time employee who shall be responsible for the administration of the contractor's DBE program.*
  - d) *Each contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.*
  - e) *Subcontract Payment Reporting in the DBE system:*
    - e.1) *The Arizona Department of Transportation (the Department) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report FTA on Federal-aid projects. The contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).*
    - e.2) *The contractor shall respond to Subrecipient payment audits reported each month electronically through the Department's web-based payment tracking system (<https://adot.dbesystem.com>), reporting its payments to all DBEs and non-DBE subcontractors working on the project. In addition, the contractor shall require that all DBE and non-DBE subcontractors shall also respond to its audits and report lower-tier subcontractor payments in the same manner.*
    - e.3) *If, by the DBE system audit deadline, the contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the Project Manager will work with the ADOT MPD Program Manager to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions.*
  - f) *The contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts.*
  - g) *Any language provided in this Agreement DBE Section supersedes language provided by ProcurementPro for FTA-funded contracting requirements.*

### 3.0 Definitions:

- (A) **Commercially Useful Function (CUF):** Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.
- (B) **Disadvantaged Business Enterprise (DBE):** a for-profit small business concern which meets both of the following requirements:
  - (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
  - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (C) **NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
- (D) **Non-DBE:** any firm that is not a DBE.
- (E) **Race-Conscious (RC):** a measure or program focused specifically on assisting only DBEs, including women-owned DBEs.
- (F) **Race-Neutral (RN):** a measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- (G) **Small Business Concern (SBC):** a business that meets all of the following conditions:
  - (1) Operates as a for-profit business registered to do business in Arizona;
  - (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
  - (3) Is independently owned and operated;
  - (4) Is not dominant in its field on a national basis; and
  - (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.
- (H) **Socially and Economically Disadvantaged Individuals:** any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
  - (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
  - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

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

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

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

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

##### **4.01 Mentor-Protégé Program**

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

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

## **5.0 Applicability:**

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

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

## **6.0 Certification and Registration:**

### **6.01 DBE Certification:**

Certification as a DBE shall be predicated on:

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

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

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

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

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

### **6.02 SBC Registration:**

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

authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code

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

SBCs can register online at the AZ UTRACS website.

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

## **7.0 DBE Financial Institutions:**

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

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

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

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS

## **9.0 Computation of Time:**

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, 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.

## **11.0 DBE Goal:**

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

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

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

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

Prime consultants and all subconsultants, including DBEs listed in the SOQ must be registered in AZ UTRACS. Proposers may verify that their firm and each subconsultant is registered using the AZ UTRACS website.

Proposers may obtain additional information at the AZ UTRACS website or by contacting the LPA/Subrecipient.

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

### **14.0 Crediting DBE Participation:**

#### **14.01 General Requirements:**

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

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

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subconsultant 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 that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime consultant or its affiliate(s).

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

Consultants executing agreements with subconsultants, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms



and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the LPA/Subrecipient and ADOT deem appropriate as outlined in DBE Subsection 2.0.

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

The consultant shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions. The Consultant shall provide electronic copies of signed subcontract agreements for all DBE Subconsultants listed on the DBE Intended Participation Affidavit Summary by uploading them within 15 calendar days of an approved contract to the LPA DBE System.

#### **16.0 Contract Performance:**

The LPA/Subrecipient will visit the consultant's office to conduct reviews to ensure compliance with CUF and other DBE requirements. The reviews may include, among other activities, interview of DBEs and their employees and the consultant and its employees. The consultant shall cooperate in the review and make its employees available. The consultant shall inform the LPA/Subrecipient in advance when each DBE will be working on the project to help facilitate reviews.

The LPA/Subrecipient reserves the right to request and inspect all records of the consultant and all records of the DBEs and non-DBE subconsultants concerning this contract. The consultant must make available a copy of all documents related to all contracts to LPA/Subrecipient upon request.

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

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

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

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

#### **18.0 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 “B”

---

## CONSTRUCTION AND PROFESSIONAL SERVICES/DESIGN CONTRACTS PROMPT PAY AND PAYMENT REPORTING PROVISIONS

\*\* FOR USE ON LPA FEDERAL AID PROJECTS \*\*

(09/20/2016)

### MEASUREMENTS AND PAYMENT:

#### Partial Payments:

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

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

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

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

#### Subcontractor Payments:

##### (I) Retention:

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

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

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

**(3) Partial Payment:**

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

**(4) Final Payment:**

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

**(5) Payment Reporting:**

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

The requirements of this subsection apply to all Reportable Contracts.

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

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

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

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

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

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

**(a) Sanctions for Inadequate Reporting:**

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

**(6) Completion of Work:**

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

**(7) Disputes:**

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

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

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

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

**(8) Non-compliance:**

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

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

(i) The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.

- (ii) If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
  - (iii) If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as liquidated damages.
- (b) Additional Remedies. If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:
  - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the liquidated damages described in paragraph (a) above,
  - (ii) Terminate the contract for default,
  - (iii) Disqualify the contractor from future bidding, temporarily or permanently, depending on the number and severity of violations, if applicable.

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

# APPENDIX “C”

---

## Mandatory Terms, Conditions, and Requirements for use of federal US DOT funding through ADOT MPD

**Monitoring Activities:** Pursuant to 2 CFR 200.328, the project/work in this solicitation/contract is funded with federal funds through the Arizona Department of Transportation, Multimodal Planning Division (ADOT). In accordance with 2 CFR 200.328, ADOT shall monitor all activities performed by its staff or by sub-recipients of U.S. Department of Transportation funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met. The Contractor and its sub-contractors shall fully cooperate with such monitoring as requested.

**Governing Law:** This Contract is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in the funding Agreement between the State of Arizona and are incorporated by reference as a part of this Contract.

**Compliance with Funding Agency Requirements:** Pursuant to 2 CFR 200.336 and 2 CFR 200.338, upon request, the Contractor shall provide information or reports to assist in adherence to relevant requirements from the agreements between ADOT, its sub-recipient, and the agencies of the US Department of Transportation. If ADOT, or the federal funding agency finds that the work performed fails to comply with any requirement (e.g., work elements or tasks are not conducted in accordance with approved scope, or work elements or tasks are found to be inconsistent with federal or state regulations or guidelines, or products/services were incorrectly procured), ADOT, or the federal funding agency may use the enforcement actions contained in 2 CFR 200.338 to remedy the situation and any other appropriate remedies available at law.

**"Certification of Eligibility of Costs:** Pursuant to 2 CFR 200.402 - .414, 2 CFR 200.420 - .475, and 2 CFR 200.415, the Contractor shall assure that costs invoiced are consistent and eligible for federally funded projects.

To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment must include a certification, signed by an official who is authorized to legally bind the Contractor which reads as follows:

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

**Record Retention:** Pursuant to 2 CFR 200.415, A.R.S. 35-214 and the State of Arizona Accounting Manual, sections 0045 and 7035, CONTRACTORS and SUBCONTRACTORS shall retain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents, and shall be maintained for at least 5 years after final payment.

**Applicable Terms and Conditions:** Pursuant to 2 CFR 200.326, the Contractor's contracts with its sub-contractors shall include all the terms and conditions of this Contract. Each sub-contractor must agree to comply with all the terms and conditions to be awarded.

The Contractor certifies that it shall communicate contractual requirements to contractors and sub-contractors and ensure all the requirements of this Contract are incorporated by means of a contract or other legally binding documents stipulating the contractor and/or sub-contractor's responsibility to comply with this Contract."

**Administrative, contractual, or legal remedies for violation or breach of contract terms:** Pursuant to 2 CFR 200, Subpart F, Appendix II; 41 USC 1908, for contracts in excess of the simplified acquisition threshold in 41 USC 134 (currently \$250,000), failure by the Contractor to carry out the requirements of the Contract, especially in compliance with the Federal terms and conditions and programmatic requirements, represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Issuer, with the funding agency's concurrence, deems appropriate, which may include, but is not limited to:

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

Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the Issuer may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it."

**Termination for cause or convenience:** Pursuant to 2 CFR 200, Supart F, Appendix II, the issuer of this Contract reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the issuer without penalty or recourse. Upon receipt of written notice, the Contractor shall stop all work, as directed in the notice, notify all sub-recipients of the effective date of the termination and minimize all further costs to the issuer of this Contract. In the event of termination under this paragraph, all documents, data, and reports prepared by the Contractor and its sub-contractors under this Contract shall become the property of and be delivered to the issuer of this Contract upon request. The Contractor and its sub-contractors shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials/deliverables accepted before the effective date of the termination. The Contractor and its sub-contractors shall continue to perform in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

The issuer of this Contract shall reimburse the Contractor for those eligible expenses incurred during the Contract period which are directly attributable to the completed portion of the work covered by this Contract, provided that the work has been completed in a manner satisfactory and acceptable to the issuer. The Contractor shall reimburse its sub-contractor in a similar fashion. The Contractor and its sub-contractors shall not incur new obligations for the terminated portion after the effective date of the termination.

In addition to the rights reserved in the Contract, the issuer may terminate the Contract in whole or in part due to the failure of the Contractor or its sub-contractors to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract.

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

**Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended:** Pursuant to 2 CFR 200, Supart F, Appendix II, for contracts in excess of \$150,000, the Contractor herein agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.



1251-1387). Violations must be reported to the contracting agency and to ADOT, who will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**Debarment and Suspension / Excluded Parties List:** Pursuant to 2 CFR 200, Supart F, Appendix II and 23 CFR 121 (j), the Contractor shall not award a Sub-contract to any parties listed on the government wide exclusions list in the System for Award Management (SAM).

**Anti-Lobbying Certification:** Pursuant to 2 CFR 200, Supart F, Appendix II (i), for any contract exceeding \$100,000, the Contractor and its sub-contractors shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**Procurement of recovered materials:** Pursuant to 2 CFR Part 200, Supart F, Appendix II (j) and 2 CFR 200.323, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Telecommunications and Video Surveillance Services or Equipment:** Pursuant to 2 CFR Part 200, Supart F, Appendix II (K) and 2 CFR 200.216 the Contractor shall not procure or obtain, or extend or renew a contract to procure or obtain, or procure or obtain equipment, services, or systems that uses covered telecommunication equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) as described in Public Law 115-232, section 889.

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country."

**Domestic Preference:** Pursuant to 2 CFR Part 200, Subpart F, Appendix II (L) and 2 CFR 200.32, as appropriate and to the extent consistent with law, the Contractor and its sub-contractors should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part



of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber."

**Patents:** Pursuant to 23 CFR 420.121 (i), patents and inventions developed in the course of the Project are subject to federal standard patent rights at 37 CFR 401.14. The Contractor shall include the clauses from 37 CFR 401.14, suitably modified to identify the parties, in all sub-contracts, regardless of tier. The clauses shall be retrieved in their entirety from <https://www.ecfr.gov/current/title-37/chapter-IV/part-401/section-401.14>, or as the link may be updated from time to time, and shall be adjusted only to the extent to identify the parties.

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

**Rights to Inventions Made by Nonprofits and Small Business Firms:** Pursuant to 2 CFR 200 Appendix II (F) Rights to Inventions Made Under a Contract or Agreement. The funding provided for this Contract meets the definition of "funding agreement" under 37 CFR §401.2 (a) the Issuer of this Contract must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**Conflict of Interest:** Pursuant to 2 CFR 1201.112, the Contractor shall disclose in writing any potential conflict of interest to the federal funding agency, the contracting agency, or the Arizona Department of Transportation.

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

**Equipment Use, Management, and Disposal:** Pursuant to 2 CFR 1201.313 the Contractor shall follow State of Arizona rules with respect to the use, management and disposal of equipment acquired under this contract.

**Prompt Payment:** The funding in this Contract includes reimbursement to the Issuer of expenditures necessary to accomplish the Project. Payment by the Issuer may not rely on receipt of funds from the Arizona Department of Transportation before paying Contractors.

Pursuant to 49 CFR 26.29 Contractors must pay Subcontractors for satisfactory performance (i.e., all the tasks called for in the subcontract for the invoicing period have been accomplished and documented as required by the Issuer and any deliverables are approved by the relevant approver no later than 7 days from receipt of each payment the Issuer makes to the Contractor. The prompt payment provision applies to Subcontractors at all tiers. This applies to all Subcontractors, not just DBEs.

In the event the Contractor fails to invoice the Issuer according to its scheduled invoicing activities, and in any case where a Contractor's invoice has been rejected through no fault of the sub-contractor's performance, the

Contractor shall pay each Subcontractor for satisfactory work completed in no more than 30 calendar days from receipt of invoice for that work. "

**Retainage:** Contractors are herein notified they are prohibited from holding retainage from SubContractors, nor are Contractors subject to retainage withholding by the Contracting Agency for this Project pursuant to 49 CFR 26.29.b(1).

**Travel:** All travel for the Contractor must comply with the State of Arizona (State) policies for Travel. Only actual expenses are reimbursable, within maximum reimbursement limits as described and established by the rates for travel: A.R.S. 38-621 through 38-627, Reimbursement for Expenses; State of Arizona Accounting Manual (SAAM), Section 50.65, Vendor Travel, Section 50.95 Reimbursement Rates available at <https://gao.az.gov/publications/saam>. In the event the MPO chooses to reimburse Contractors/Consultants at rates higher than those authorized in the State travel policies, when submitting travel reimbursement requests, each receipt must indicate the amount that exceeds the State rate. The Contractor shall also comply with the policies governing individually operated motor vehicles in Section 50.15 of the SAAM. Travel costs paid to Contractors/Consultants must always be supported by appropriate documentation and in the case of rental vehicles, the ADOT approved justification form.

**Tribal Consultation:** In the event that this project is located within tribal land or includes tribal involvement as a stakeholder, the Contracting Agency and the Contractor must exercise tribal consultation and coordination protocol when providing related services. The purpose for this provision is to ensure compliance with ""ADOT's Tribal Consultation Policy"" and Arizona Revised Statute Section 41-2051, Subsection C - Responsibilities of State Agencies: <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/02051.htm>.

**Report Disclaimer:** Pursuant to 23 CFR 420.117(e), all reports and other project-related documents shall contain the following disclaimer statement:

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

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

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and
- (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving.

The Contractor agrees to comply with:

- (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
- (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and
- (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
  - (a) Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an

employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,

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

(c) Extension of Provision. The Contractor agrees to include the preceding section in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance."

"The contracting Agency is receiving US DOT-assisted transportation funds for this Contract through the Arizona Department of Transportation and has adopted and implemented ADOT's DBE Program Plan, ADOT's DBE policy, DBE contract specifications and forms as a condition of receiving federal funds. ADOT Subrecipients/Subgrantees of federal funds must comply with ADOT DBE Plan and may not have a plan independent from ADOT.

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

#### Non-Discrimination

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

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

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

By executing this Agreement, the Contractor, agrees to perform the following minimum DBE Program Compliance Required Activities and include the following assurance with each contract with a contractor or consultant and each subcontract a prime signs with a subcontractor:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting Agency, with ADOT's concurrence, deems appropriate, which may include, but is not limited to:

- Withholding payments;
- Assessing sanctions;

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

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

The Contractor shall designate a full time employee who shall be responsible for the administration of the contractor's DBE program.

The Contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.

**Subcontract Payment Reporting in the DBE system:**

The Arizona Department of Transportation (ADOT) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to funding agencies of the USDOT on Federal-aid projects. The contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).

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

If, by the DBE system audit deadline, the Contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the contracting Agency will work with ADOT MPD Contracts 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 Contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts."

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

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

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

## **Title VI APPENDIX A**

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

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

enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **Title VI APPENDIX E**

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

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

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



proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et seq) "

"Non-Discrimination: Pursuant to 49 CFR Part 26, The Contractor and its sub-contractor/subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Issuer, with the funding agency's concurrence, deems appropriate, which may include, but is not limited to:

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

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

The Contractor shall designate a full time employee who shall be responsible for the administration of the contractor's DBE program.

The Contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders."

**Subcontract Payment Reporting in the DBE system:** The Arizona Department of Transportation (the Department) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to FAA, FTA and FHWA on Federal-aid projects. The Contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).

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

If, by the DBE system audit deadline, the Contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the contract issuer will work with the ADOT MPD Contracts 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 Contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts."

**Excluded Parties:** The federal funding in this Agreement is considered a covered transaction under 2 CFR 1200.220 for purposes of debarment and suspension considerations. Thus agreements for contractors/consultants and their sub-contractors/consultants are subject to this requirement. The Contractor

and its Sub-contractors are prohibited from making any award or permitting any award at any tier to any party which has not established and maintained its entity registration on the federal System for Award Management or one that is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs pursuant to 2 CFR 200.212. The Contractor agrees to comply, and assures the compliance of each third-party contractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension Non-procurement)," and 2 CFR 200.212. The Contractor agrees to and assures that its third party contractors will review the Excluded Parties Listing System and assure that its sub-contractors establish and maintain entity registration on the System for Award Management before entering into any contracts.

**Conflict of Interest:** The Contractor and their sub-contractors shall not enter into any contract, subcontract, or arrangement in connection with the project, in which a member, officer, or employee, during tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquired or had acquired prior to the beginning of his or her tenure any such interest, and if such interest is immediately disclosed to the Issuer of the Contract, who must further report this to its funding agency, and may waive the prohibition contained in this paragraph, provided, that any such present member, officer, or employee shall not participate in any action by the Contractor or the locality relating to such contract, subcontract, or arrangement. The Contractor must disclose any such interest to the Issuer within five business days of receipt of disclosure.

The contractor shall insert in all contracts entered into in connection with the project, and shall require its contractors to insert in each of their subcontracts, the following provision:

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

Pursuant to 2 CFR 1201.112, the Contractor shall disclose in writing any potential conflict of interest to the Issuer; this requirement is passed to the Contractor's sub-contractors. The issuer shall inform the funding agency who shall inform the Federal awarding agency in accordance with applicable Federal awarding agency policy. "

**Indemnification:** The Contractor shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Contractor's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

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



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

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

**FTA Funding: Certifications and Assurances:** In the event there is FTA funding for work under this Contract, on an annual basis, the Contractor must agree to comply with all categories of the FTA Certifications and Assurances applicable to the Contract. The FTA Certifications and Assurances will be provided to the Contractor under separate packet as they are released by FTA. Continuation of this Agreement shall be contingent on completion and submission of that packet within the deadline expressed at time of distribution. The FTA Certifications and Assurances, as modified and accepted each year shall be considered incorporated into this Agreement by reference.

The Parties understand and agree that not every provision of the Certifications and Assurances will apply to every Project. The type of Project will determine which Certifications and Assurances apply.

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

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

Completion and Signing of an FTA Certification and Assurances document is a requirement and a condition to receive FTA funding for any project and does not relieve the contractor of any obligation of other certifications or assurances required in any contracting process, and should be treated as an addition to such certifications and assurances. Is there a link to an ADOT or FTA webpage that contains up to date certs and assurances forms (signature pages) for inclusion into our agreements / contracts?"

**Incorporation of Federal Provisions:** All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. All applicable clauses shown in the FTA Master Agreement between the State and FTA apply to each Project funded by the Arizona Department of Transportation using FTA funds. Any requirements of the Stewardship Agreement between the State and FHWA apply to each Project funded by the Arizona Department of Transportation using FHWA funds. This provision shall be incorporated in any sub-contractor/consultant, or lower-tier agreement for which funds from this contract shall be used for payment.

**Immigration and E-Verify:** To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its sub-contractors/consultants warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties' or its subcontractors' employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.

**Americans with Disabilities Act:** The Contractor assures that it will comply with applicable provisions of the Americans with Disabilities Act (ADA), (Public Law No. 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including 28 CFR parts 35-36, and applicable provisions of 49 CFR Parts 27, 37 and 38: Transportation for Individuals with Disabilities; Final Rule. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding “Non-Discrimination”.

**Fly America:** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**Israel Boycott Not Permitted:** State Legislation has been enacted to prohibit a public entity from contracting with a value of \$100,000 or more with a company currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, the Contractor warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.

**Promoting Free Speech and Religious Liberty:** The Contractor shall ensure that all funds under awarded in this Project shall be expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

**Contracts for construction, acquisition of goods, or rolling stock valued at more than \$150,000 -**

**Buy America:** The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in US DOT funded projects are produced in the United States, unless a waiver has been granted by the funding USDOT agency, or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

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

**Construction Contracts - Equal Employment Opportunity:** Pursuant to 2 CFR 200 Appendix II (C) Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order

11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**Construction Contracts - Davis-Bacon Act:** Pursuant to 2 CFR 200 Appendix II (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**Work Employing Mechanics or Laborers:** Pursuant to 2 CFR 200 Appendix II (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### **§ 401.14 Standard patent rights clauses.**

The following is the standard patent rights clause to be used as specified in [§ 401.3\(a\)](#):

##### **Standard Patent Rights**

###### **(a) Definitions**

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act ([7 U.S.C. 2321](#) et seq.).

(2) *Subject invention* means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, [7 U.S.C. 2401\(d\)](#)) must also occur during the period of *contract* performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 ([15 U.S.C. 632](#)) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at [13 CFR 121.3-8](#) and [13 CFR 121.3-12](#), respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 ([26 U.S.C. 501\(c\)](#)) and exempt from taxation under section 501(a) of the Internal Revenue Code ([25 U.S.C. 501\(a\)](#)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) The term *statutory period* means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per [35 U.S.C. 102\(b\)](#) as amended by the Leahy-Smith America Invents Act, [Public Law 112-29](#).

(8) The term *contractor* means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

#### **(b) Allocation of Principal Rights**

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

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

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

(2) The *contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the *contractor* files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The *contractor* will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) For any subject invention with *Federal agency* and *contractor* co-inventors, where the *Federal agency* employing such co-inventor determines that it would be in the interest of the government, pursuant to [35 U.S.C. 207\(a\)\(3\)](#), to file an initial patent application on the subject invention, the *Federal agency* employing such co-inventor, at its discretion and in consultation with the *contractor*, may file such application at its own expense, provided that the *contractor* retains the ability to elect title pursuant to [35 U.S.C. 202\(a\)](#).

(5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the *Federal agency*, be granted. When a *contractor* has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the *Federal agency* notifies the *contractor* within 60 days of receiving the request.

#### **(d) Conditions When the Government May Obtain Title**

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

(1) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the *contractor* fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the *contractor* has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(3) In any country in which the *contractor* decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

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

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) The *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at [37 CFR part 404](#) and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the



*funding Federal agency* to the extent the *contractor*, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

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

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

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under contract in order that the *contractor* can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the *contractor* the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the *contractor* will, no less than 60 days prior to the expiration of the statutory deadline, notify the *Federal agency* of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, *inter partes* review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the *contract*) awarded by (identify the *Federal agency*). The government has certain rights in the invention."

**(g) Subcontracts**

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor.. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

#### **(h) Reporting on Utilization of Subject Inventions**

The *Contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by [35 U.S.C. 202\(c\)\(5\)](#), the *agency* agrees it will not disclose such information to persons outside the government without permission of the *contractor*.

#### **(i) Preference for United States Industry**

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

#### **(j) March-in Rights**

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

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

### **(k) Special Provisions for Contracts with Nonprofit Organizations**

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

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;
- (2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with [35 U.S.C. 202\(e\)](#) and [37 CFR 401.10](#);
- (3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the *contractor* agrees that the *Federal agency* may review the *contractor's* licensing program and decisions regarding small business applicants, and the *contractor* will negotiate changes to its licensing policies, procedures, or practices with the *Federal agency* when the *Federal agency's* review discloses that the *contractor* could take reasonable steps to implement more effectively the requirements of this [paragraph \(k\)\(4\)](#). In accordance with [37 CFR 401.7](#), the *Federal agency* or the *contractor* may request that the Secretary review the *contractor's* licensing program and decisions regarding small business applicants.