



Professional Services Agreement

CENTRAL YAVAPAI METROPOLITAN PLANNING ORGANIZATION

2050 REGIONAL TRANSPORTATION PLAN ADOT PROJECT #: MPDG9146-200.1

This Professional Services Agreement ("Agreement") is between The Central Yavapai Metropolitan Planning Organization ("CYMPO") and _____ ("Consultant" or "Contractor") and is effective when fully executed by CYMPO and Consultant (collectively the "Parties" and for one a "Party") for the period of time set forth in Exhibit "A".

RECITALS:

WHEREAS, CYMPO is a nonprofit Political Subdivision and is in need of consulting services;

WHEREAS, CYMPO has been approved to receive funds through the Arizona Department of Transportation (ADOT);

WHEREAS the funding administered through ADOT is being provided by the Federal Transit Administration ("FTA") and the Federal Highway Administration (FHWA).

WHEREAS CYMPO has submitted Request for Qualifications for review by various potential providers.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND CONDITIONS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

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Definitions Applicable to this Agreement:

Applicable Law means federal, Arizona statutes, codes, rules, regulations and executive orders (and interpretations of the same) applicable to this Contract or the Work to be performed.

CYMPO means Central Yavapai Metropolitan Planning Organization.

Contract means this Contract including all attachments hereto and incorporations herein.

FTA means Federal Transit Administration.

FHWA means Federal Highway Administration.

ADOT means Arizona Department of Transportation.

Project means the 2050 Regional Transportation Plan (RTP) and all Work to be performed under this Contract.

1. Services.

a. The Central Yavapai Metropolitan Planning Organization (CYMPO) has programmed Federal funding, as outlined in the Fiscal Years 2022-2026 Metropolitan Transportation Improvement Program, for the purpose of conducting a 2050 Regional Transportation Plan.

b. Consultant shall perform all tasks set forth in Exhibit “A” hereto. Consultant shall also perform all subordinate tasks and provide deliverables not specifically referenced in Exhibit “A,” but necessary to the full and effective performance of the tasks specifically referenced.

c. The Consultant shall provide sufficient qualified personnel to perform any and all services as required herein, including but not limited to inspections and preparation of reports, as required by this Agreement and as reasonably requested by the CYMPO.

d. All services identified in this Section 1 above are hereinafter known as the “Work” and shall be completed to the satisfaction of the CYMPO and shall be performed in compliance with the Consultant’s project Schedule set forth in the attached Exhibit "A.”

2. Consultant’s Compensation.

a. CYMPO shall pay to Consultant the “Total Contract Amount” not to exceed \$_____ for all fees and costs for the complete performance of all services and for providing all deliverables set forth in in Exhibit "A.”

b. Payment shall be made by CYMPO to the Consultant for the services provided based upon the Budget provided in Exhibit “A”, including the time and charges therein but, subject

to Consultant's progress in completing, pursuant to the Exhibit "A" Schedule, of each of the Tasks as outlined in Exhibit "A" hereto.

c. The Total Contract Amount includes payment for any and all services to be rendered and materials supplied by the Consultant and any sub-Contractors, which the Consultant may employ for this Contract. It is expressly agreed by and between the parties that the Consultant is solely responsible for any and all payment to such any other Sub-contractors retained by the Consultant and any and all costs incurred by Consultant and Sub-consultant for the work.

d. The Consultant shall bill CYMPO on or before the last day of each month for the fees and costs claimed due the Consultant from the prior billing date cutoff through the 25th day of the month of the billing. The invoice will be based upon Exhibit A for work completed for each itemized task pursuant to Scope of Work; Budget and Schedules provided in Exhibit "A" during the billing period. CYMPO shall pay the amount of such invoices approved for satisfactory work within thirty (30) days of the date of their receipt, but not more than once per month for the applicable billing cycle. CYMPO will give Consultant notice within such thirty (30) days of the basis for disapproval of any portion of an invoice not paid. Payment of an invoice or amount therein shall not act as a waiver to thereafter object to the invoice charges, services, costs or materials provided in or under such invoice or any later invoice due to discovery of overpayment or unsatisfactory work.

e. Receipt of payment of the total amount provided for under Section 2. e. shall not relieve Consultant of its obligation to complete the performance of all those services specified in Exhibit "A" hereto. Should CYMPO request in writing additional services beyond that required by specified Sections 1.a. through 1.c. above and Exhibit "A," then (i) Consultant shall charge and CYMPO shall pay Consultant in accordance with the unit prices for services set forth in Exhibit "A" plus actual costs or (ii) if unit prices do not apply, Consultant and CYMPO shall negotiate a reasonable charge for such services and, if the parties cannot agree, then the amount to be charged will be subject to the resolution process provided in this Contract.

f. Prior to the final payment to the Consultant, the CYMPO shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid monies due to Consultant from CYMPO, and shall apply, hold and/or apply those monies to the appropriate accounts. Consultant shall provide to CYMPO any information necessary to determine the total amount(s) due.

g. Payment by CYMPO and by Contractor to its sub-contractors is subject to Prompt Payment provisions included in Addendum D hereto.

3. Changes in Work and Scheduling.

a. CYMPO, without invalidating the Contract, may, consistent with Applicable Law order extra work, make changes by altering, or deleting any portion of the work as specified herein, or as deemed necessary or desirable by the Executive Director, who shall be an employee of CYMPO not required to be "rebid" pursuant to Applicable Law. All such work shall be performed under the conditions of this Agreement except that any claim for extension of time and additional cost caused thereby shall be made at the time of ordering such change or extra work. Extra work shall be that work not referenced in Section 1.a. – 1.c. above, as further detailed in Exhibit "A." No extra work or change shall be made unless in pursuance of a written order by the Executive Director and no claim for an addition to the Total Contract Amount of the Contract shall be valid

unless so ordered. All applicable provisions of this Agreement, including attachments hereto, shall govern extra work.

b. Bryn Stotler is designated by CYMPO as Project Manager for this Agreement. CYMPO may designate another person as Project Manager by notice given pursuant to this Agreement.

c. In giving instructions, the Project Manager shall have authority to make minor changes in the work, not involving extra cost, and always consistent with the purposes of the work. There shall be no charge for such minor changes.

d. Payment for any change ordered by the Project Manager, other than a minor change, for which no basis of payment is provided for herein, shall be subject to agreement prior to said work being performed but such agreement shall, to the extent possible, be consistent with the unit prices, if any, set forth in Exhibit "A".

e. Adjustments to price and/or Contract Time that are agreed upon shall be incorporated in the written order issued by the Project Manager, which shall be written to indicate acceptance on the part of the Consultant as evidenced by its signature. In the event prices cannot be agreed upon, the CYMPO reserves the right to terminate the Contract as it applies to the items in question and make such arrangements, as it may deem necessary to complete the work. CYMPO may direct the Consultant to proceed with the items in question to be reimbursed pursuant to the unit prices in the Consultant fee proposal.

f. If the Consultant claims that any instructions involve extra cost under this Contract, it shall give the Project Manager written notice thereof by the second business day after the receipt of such instructions, and in any event before proceeding to execute the work. In this event Consultant shall not commence such extra work until therefore upon receipt of an accepted Contract Amendment or other written order of the Project Manager and, in the absence of such Contract Amendment or other written order of the Project Manager, the Consultant shall not be entitled to payment for such extra work. In no case shall extra work be undertaken without written notice from the Project Manager to proceed with the work. The Project Manager and the CYMPO Executive Board must approve all Contract Amendments.

g. The CYMPO Executive Director is authorized to execute an administrative extension of up to 3 months upon written agreement of both Parties. Any extension exceeding 3 months must be approved the CYMPO Executive Board. No extension of work or change shall be made unless in pursuance of a written order by the Executive Director and no claim for an addition to the Total Contract Amount of the Contract shall be valid unless so ordered.

4. Contract Documents and Interpretation. It is agreed by and between the Parties that this Agreement includes the terms and provisions of this Agreement, including Exhibit A hereto and the Addendums A, B, C, D and E, attached hereto, and that the terms thereof shall be binding between the parties (the "Contract Documents"). This Agreement shall in all events be interpreted consistent with Applicable Law but in event of a conflict between the Applicable Law any term in the Contract Documents, the relevant terms of Applicable Law will control. Internally, the Contract Documents will be interpreted in a complementary manner as one document but, in event of an inconsistency or conflict, the documents shall take priority in the following order: (1) this Agreement and Addendums hereto and Exhibit A.

5. A.R.S. §38-511. The provisions of A.R.S. § 38-511 are incorporated herein to the full extent of their applicability to this Professional Services Agreement and Contractor agrees this Contract maybe terminated in event of conflict of interest pursuant to said statute.

6. Independent Contractor, No Agency. It is expressly agreed and understood by and between the parties that the Consultant is an independent Contractor, and the Consultant: will conduct itself consistent with this status; will not hold himself out to be an employee or agent of CYMPO; shall be responsible for payment of Consultant's own taxes, FUTA, FICA, Workman's Compensation and other government and non-government programs and charges; and shall not be compensated as or entitled to benefits or contributions as an employee. In the avoidance of doubt, Consultant is not an agent of CYMPO and has no authority to commit CYMPO or its assets to any obligation whatsoever.

7. Non-Assignment. CYMPO is relying on Consultant's expertise and the expertise and qualifications of Key Personnel identified in Exhibit A hereto. This Agreement is non-assignable by the Consultant and its continuation is contingent upon such persons remaining personally involved in and actively contributing to Consultant's performance under this Agreement or CYMPO consenting to a change in personnel, which consent may be withheld in CYMPO's sole discretion. Subject to the foregoing, the Consultant may subcontract for services and/or materials with CYMPO's consent, which will not be unreasonably withheld or delayed, provided such subcontractor adheres to all applicable ADOT and Federal requirements and Sub-consultant executes all documents required by this Agreement, and all Applicable Law.

8. Indemnification.

a. **CYMPO Indemnification.** The Consultant hereby agrees to indemnify and hold harmless CYMPO and its respective directors, officers, officials, employees, and agents for, from and against any and all claims, liabilities, expenses, losses, damages or lawsuits as a result of the Consultant's negligent acts, errors, or omissions, pursuant to this Agreement, except to the extent said claims, liabilities, expenses or lawsuits arise by the negligent acts or omissions of CYMPO or its agents or employees. The Consultant further releases and discharges CYMPO, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of CYMPO, from any and all claims which the Consultant has or may have against CYMPO, its agents or employees, arising out of or in any way connected with the Consultant's activities under this Agreement, other than those acts which occur due solely to the negligence or willful acts of CYMPO, its employees or agents.

b. **ADOT Indemnification.** The parties to this contract agree that the State of Arizona, its departments, agencies, boards, commissions, and universities shall be indemnified and held harmless by CYMPO and Contractor for the vicarious liability of the State, if any, as a result of ADOT administering any portion of this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards, and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

Contractor agrees and it will cause its subcontractors to agree by inclusion of the following in its sub-contracts: Contractor and Subcontractor will agree 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 "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of CYMPO, contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific

intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified 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.

9. Rights of Review. As required by 2 CFR 200.336 and 2 CFR 200-338, ADOT, FHWA, and FTA shall have the right to access and review the work (and approval or concurrence as appropriate) and upon request contractor shall provide all information and reports, including, but not limited to: all technical reports, the annual report, and all planning and data prepared for CYMPO. If ADOT, FHWA, and/or FTA finds that the work performed fails to comply with any requirement (e.g., work elements or tasks are not conducted in accordance with approved Work Programs, or work elements or tasks are found to be inconsistent with federal or state regulations or guidelines, or products/services were incorrectly procured), ADOT, FHWA, and/or FTA may use the enforcement actions contained in 2 CFR 200.338 to remedy the situation and any other appropriate remedies available at law for as long records are retained.

10. Record Retention. Contractor shall retain sufficient records demonstrating its compliance with the terms of this Agreement including all checks, payrolls, invoices, contracts, vouchers, orders and other accounting documents pertaining in whole or in part to the project for a period of at least six (6) years from the date the completion of work and shall allow ADOT, FHWA, and FTA or their designees, access to such records upon request. The documents shall be clearly identifiable, kept readily accessible and, if feasible, separate from other documents.

11. Procurement, Fixed Assets, Travel. In addition to other clauses required throughout this Agreement or by State law. The following apply to this Agreement and include the applicable contract provisions in every third-party contract / purchase order using federal funding summarized (but not limited to) the following:

- a. The requirements in 2 CFR 200.326,
- b. The requirements in 2 CFR 200 Appendix II,
- c. FHWA funded procurements/contracts located at:

www.fhwa.dot.gov/programadmin/contracts/core02.cfm and
www.fhwa.dot.gov/construction/cqit/form1273.cfm and
<http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>,
as revised from time to time.

d. Any requirements established by a particular funding type, program, or in funding agency guidelines.

e. Provisions for Prompt Payment deadlines. The funding in this Agreement includes reimbursement of expenditures necessary to accomplish the work program. CYMPO does not rely on receipt of funds from ADOT before paying vendors/contractors/consultants. Prompt payment is further addressed in Addendum B hereto.

- f. The requirements in 23 CFR 420.121 (i).

g. Travel is only paid for or reimbursed as provided in Exhibit A and regardless of its inclusion, all travel under this Agreement must comply with the 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>. Travel costs paid to vendors or other non- ADOT-employees must always be supported by appropriate documentation and in the case of rental vehicles, the ADOT approved justification form. Further, Contractor agrees no foreign travel is included or will apply for as work under this Contract.

12. Multiple Years. If this Agreement is written for multiple years and each year's funding is not specified in the written agreement, a two-party document (amendment or signed acknowledgement) must be executed by the CYMPO and its consultant that specifies the next fiscal year's funding approval upon availability of funds.

13. USDOT Disclaimer. In addition, in accordance with 23 CFR 420.117(e), the following disclaimer applies to this Agreement and shall appear on title page of any report and in the title page of any map, or study produced pursuant hereto, except those produced solely for internal use of the parties:

“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”.

14. Incorporation of Federal Terms and Compliance. All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference, including Circular 4220.1. All applicable clauses shown in the FTA Master Agreement apply to each Project funded by FTA. Anything to the contrary herein notwithstanding, all FTA mandated Terms shall be deemed to control in event of a conflict with this Agreement. Any requirements of the Stewardship Agreement with FHWA apply to each Project funded by FHWA. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CYMPO request which would cause CYMPO, ADOT or Contractor to be in violation of FTA Terms and Conditions. These provisions apply to Contractor and shall be incorporated in any, sub-contractor, or lower-tier agreement for which funds from this Agreement shall be used for payment.

15. Due Care. Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances.

16. Title VI/Non-Discrimination Assurances. This Agreement is subject to the provisions of Title VI of the Civil Rights Act and the provisions of Addendum B.

a. Additionally, the Contractor shall include the following information in each of its agreements/contracts associated with this Agreement.

*The **Arizona Department of Transportation**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises*

will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

b. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the terms in attached Addendum B entitled "CYMPO Title VI/Non-Discrimination Assurances DOT Order No. 1050.2A" and Appendix A and E thereto.

17. Third Parties. CYMPO and Consultant are the only Parties to this Agreement, there are no third party beneficiaries to this Agreement except for ADOT as regards indemnification provisions and the right of ADOT and the Federal Government and its agencies and departments including the Federal Highway Administration and the Federal Transit Administration and its various agencies, administrations, or divisions to receive and review books, records, data and reports and to conduct such audits investigations as may be appropriate under applicable law and this Agreement.

18. Funding and Compliance. CYMPO and Consultant acknowledge that funding to pay Consultant is being provided through ADOT and includes federal funds through the Federal-Aid Highway Program. The Parties acknowledge that this Agreement and performance hereunder must comply with all applicable provisions of Federal and State Law and that it will be so interpreted. Consultant is knowledgeable regarding such requirements and specifically agrees to comply with all applicable Federal and State statutes, laws, rules, regulations, ordinances and orders regarding this Agreement and Consultant's performance hereunder.

a. 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.

19. Notices. All notices, requests and demands (notice) to be given by either Party to the other must be in writing, and shall be deemed given when personally delivered or mailed first class by prepaid postage and emailed, and shall be deemed received the day they are so delivered or three (3) days after being so mailed by certified mail or the 2nd business day after being mailed first class and being emailed as follows:

CYMPO:
Attn: Bryn Stotler
1971 Commerce Center Cir. Ste. E
Prescott, AZ 86301
Email: Bryn.Stotler@yavapaiaz.gov

A Party may change the person to receive notice and/or the address upon ten (10) days written notice of the change.

20. Disadvantaged Business Enterprises (DBE).

a) ADOT DBE Program Contractor 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.

b) DBE participation on this Contract is set at 0.00% and, if noted, subject to the following terms and requirements AND the requirements and conditions set forth or to be set forth in Addendum C hereto.

c) Additional ADOT Requirements

- i. Non-discrimination. Contractor, Consultant, Subcontractors and Subconsultants (herein after referred to as “contractor”) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Grantee, with the Department’s concurrence, deems appropriate, which may include, but is not limited to:
 - Withholding payments;
 - Assessing sanctions;
 - Liquidated damages; and/or
 - Disqualifying the contractor from future bidding on the grounds of being non-responsible.
- ii. Program Ensure Non-discrimination. Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.
- iii. Program Administrator. Each contractor shall designate a full-time employee who shall be responsible for the administration of the contractor's DBE program.
- iv. Prohibition re: quotes. Each contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.
- v. Reporting. 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 FHWA and FTA on Federal-aid projects. The contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e., projects with and without DBE goals).
- vi. Audits. 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.

If, by the DBE system audit deadline, the contractor has not submitted the required report for work performed during the preceding month, or the submitted

report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the Project Manager will work with the ADOT MPD Program Manager to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the contract.

- vii. Contract Inclusion. The contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts.
- viii. Superseding Provisions. Any language provided in this Agreement DBE Section supersedes language provided by ProcurementPro for FTA-funded contracting requirements.

21. Compliance with State and Federal Law.

a. The Consultant shall comply with all applicable Federal, State laws, ordinances, rules, regulations, executive orders and local ordinances, as they relate to the performance of work under this Agreement, including Amendments, updates, additions, and changes to the same. Any provision required by law to be inserted in this Agreement shall be deemed inserted, whether or not such provision appears in this Agreement.

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

c. 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."

d. Contractor certifies and warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq. and that this provision will be included in all sub-contracts hereunder.

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

f. Pursuant to 2 CFR 1201.112, CYMPO and/or Contractor shall disclose in writing any potential conflict of interest to ADOT, which shall inform the Federal Awarding Agency in accordance with applicable Federal law.

g. Gratuities. No person doing business with, or who may do business with CYMPO under this Agreement may make any offer of benefits, gifts, or favors to the CYMPO employees.

Failure on the part of the CONTRACTOR or CYMPO to adhere to this policy may result in termination of this contract.

h. Conflict and Dispute Resolution Process. This section shall apply to conflicts and disputes relating to matters subject to this Agreement, or conflicts arising from the performance of this Agreement. The parties shall, prior to filing any action, attempt to resolve any dispute or conflict within forty-five (45) days of a determination of a dispute or conflict. However, this section shall not delay or stop the Parties' rights to terminate the Agreement. In addition, notwithstanding that a conflict or dispute may be pending resolution, this section shall not delay or stop CYMPO from performing the following actions pursuant to its rights under this Agreement: deny payments; disallow costs; deduct the value of ineligible work from subsequent reimbursement requests, or offset for costs (including cost of cover for work) caused or related to the breach.

(i) Initial Resolution: The affected parties to this Agreement shall, at a minimum, ensure the attempted early resolution of conflicts relating to such matters. Early resolution shall be handled by direct discussion between CYMPO – Lindsay Post as Project Manager and the Consultant's Project manager or equivalent identified in Exhibit "A" hereto. This consultation shall occur within fifteen (15) days of the determination of a dispute.

(ii) Mediation: If not resolved, either Party may give notice to and the other Party shall participate in a mediation prior to the filing of any action to enforce, determine or for breach of this Agreement. The Parties shall attempt to agree on a mediator located in Yavapai County and, if they do not agree, CYMPO may select one from Yavapai County so long as that mediator is experienced, neutral and not a government employee nor otherwise a contractor for any government agency located in Yavapai County. The mediator will be selected within ten (10) days of the notice and mediation will be held to the extent reasonably practicable within thirty (30) days of the selection.

(iii) Mediation Unsuccessful. If mediation is unsuccessful, then the terms in Addendum D at #11. "Breaches and Dispute Resolution" will apply.

i. Remedies. Violation or breach of Agreement terms by Consultant shall be grounds for termination of the Agreement and/or to hold progress payments and/or for reduction of sums to be paid for losses, costs and damages suffered due to the breach. Any losses, damages or costs incurred by CYMPO arising from the termination of this Agreement shall be paid by Consultant, including costs incurred in soliciting and new proposals and excess costs in having the work described herein done or completed. This Agreement shall not be considered as specifying the exclusive remedy for any dispute, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

j. Drug-Free Workplace. Consultant agrees that it will comply with the provisions of the Drug-Free Workplace Act of 1988, 41U.S.C. §701 et seq. and maintain a drug free workplace.

22. Miscellaneous Legal Provisions.

a. This Agreement is the result of negotiations by and between the Parties who have retained and had the ability to retain and consult with attorneys of their own choosing and the terms of this Agreement, including any ambiguity in this Agreement, shall be construed neutrally and not for or against any Party hereto.

b. This Agreement shall be governed according to the laws of the State of Arizona.

c. The Parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the Parties hereto waives any right to a trial by jury. In the event of litigation, the Parties hereby agree to submit to a trial before the Court. The Consultant further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.

d. If there is any legal action or proceeding between CYMPO and the Consultant arising from or based upon this Agreement, the unsuccessful Party to such action or proceeding shall pay to the prevailing Party costs and expenses, including reasonable attorneys' fees incurred by such prevailing Party. The award of attorneys' fee shall be made by the Court without a jury.

e. This Agreement represents an entire and integrated Agreement between CYMPO and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. Except as required or allowed by this Agreement, this Agreement may be amended only by written instrument signed by both CYMPO and the Consultant. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

f. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties.

g. None of the provisions of this Agreement shall be held to be waived or modified by reason of any act or reliance whatsoever. No waiver of any term of this Agreement or right hereunder shall be effective unless the waive is in a writing which is clear, unambiguous and executed by the Party sought to be charged. The failure to enforce a term or provision of this Agreement shall not be a waiver. One or more waivers by either Party of any term, condition or covenant shall not, unless clearly stated, be a continuing waiver of such term, condition, or covenant. The failure to enforce the breach of any covenant, term, or condition of this Agreement shall not be a waiver nor shall it be a waiver of the right to enforce the same in the future.

h. This Agreement is binding upon and inuring to the benefit of the Parties, their successors, beneficiaries, and permitted assigns.

i. Each signor hereto represents and warrants that the signor executing this Agreement on behalf of a Party has full power and authority to bind such Party to enter into this Agreement and the Parties represent and warrant are authorized by law to engage in all actions set forth herein.

j. This Agreement is governed according to the laws of the State of Arizona but subject to federal statutes, rules and law when applicable. All cited statutes, public law, executive orders, and policies cited in this Agreement are incorporated by reference as a part of this Agreement. **It is the Consultant's responsibility to ensure that any Agreement between Consultant and its Subcontractors for use of funds hereunder shall incorporate all required provisions contained herein.**

23. **Exhibits and Addendums.**

(a) The following Exhibits attached hereto are made a part hereof.

(i) Exhibit "A" Scope of Work

(b) The following Addendums attached hereto are made a part hereof.

(i) Addendum "A" Insurance Requirements

(ii) Addendum "B" Title VI/Non-Discrimination Assurances

(iii) Addendum "C" Disadvantaged Business Enterprises Application

(iv) Addendum "D" ADOT, FTA and FHWA Requirements Addendum

(v) Addendum "E" FHWA Form 1273

(c) Documents/Certifications to be filled out and returned herewith.

(i) Debarment Certificate

(ii) DBE Registration and Confirmation and Affidavits to be located at:

<https://apps.azdot.gov/files/beco/LPA-CONTRACT-COMPLIANCE/3206PS-DBE-Affidavit-Summary-Consultant.pdf> (for Prime), and

<https://apps.azdot.gov/files/beco/LPA-CONTRACT-COMPLIANCE/3205PS-DBE-Affidavit-Subconsultant.pdf> (for Subconsultant)

(iii) Anti-Lobbying Certificate

24. **Binding Effect.** The terms of this PSA will be binding on the Consultant and any Sub-Consultant performing any work on the Project.

SIGNATURES

DATED this ____ day of _____, 2024.
(This Date to be filled in upon full execution of Contract)

CENTRAL YAVAPAI METROPOLITAN
PLANNING ORGANIZATION, a Nonprofit
Political Subdivision

_____/_____/_____
Date
Craig L. Brown
CYMPO Chair

ATTEST:

_____/_____/_____
Date
Allison McCarthy
CYMPO Administrative Assistant

Consultant

_____/_____/_____
Date

APPROVED AS TO FORM:

_____/_____/_____
Date
Thomas P. Kack, Esq., on behalf of
Musgrove Drutz Kack & Flack, PC
Attorney for CYMPO

Exhibit "A"

(Scope of Work)

SAMPLE

ADDENDUM A

INSURANCE REQUIREMENTS

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

For any Project where a Vendor will be hired to perform Construction, the following minimum insurance shall be required as part of that procurement:

Commercial General Liability (CGL) – Occurrence Form

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

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

Business Automobile Liability

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

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

Workers' Compensation and Employers' Liability

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

1. Policies shall be endorsed, as required by this written agreement, to include the State of Arizona and the Arizona Department of Transportation as additional insureds with respect to liability arising out of all activities performed by, or on behalf of the Subrecipient. (Workers Compensation is exempt from this requirement)

2. Policies shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona and the Arizona Department of Transportation for losses arising from work performed by or on behalf of the Subrecipient.

Additional Insurance Requirements

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

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

Notice of Cancellation

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

Acceptability of Insurers

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

Verification of Coverage

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

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

Subcontractors

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

Approval and Modifications

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

Exceptions

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

Submissions

All insurance certificates and/or endorsements shall be emailed to MPD1@azdot.gov or MLB_MPD@azdot.gov. The SUBRECIPIENT and its contractors/sub-contractors shall cooperate with ADOT Risk Management as appropriate to assure insurance coverage meets applicable requirements.

ADDENDUM B

Title VI/Non-Discrimination Assurances DOT Order No. 1050.2A

The Central Yavapai Metropolitan Planning Organization (CYMPO) (herein referred to as the "Recipient"), **HAS AGREED THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through **Federal Highway Administration and Arizona Department of Transportation**, CYMPO is subject to and will comply with the following and this Contractor is subject to and **Contractor is required to comply with the following**:

Statutory/Regulatory Authorities

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

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

General Assurance

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

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration, the Federal Transit Administration and that it will take actions to effectuate this Agreement. This Assurance is required by subsection 21.7(a)(1) of the Regulations.

1. Contractor agrees it has been notified as follows and Contractor will comply with the following terms:

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

2. Appendix A and E attached hereto are part of this Contract and Contractor will comply with the terms therein and assure that each of its subcontractors complies with such terms.
3. The terms of Appendix D will apply as a covenant running with the land in any future deeds, leases, licenses, permits, or similar instruments entered into by the CYMPO with Contractor or Subcontractor or other parties regarding this Project:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

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 or the Arizona Department of Transportation*, 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 performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the 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, the *Federal Highway Administration or Arizona Department of Transportation* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration or Arizona Department of Transportation*, may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
- b. 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 respect to any subcontract or procurement as the Recipient, the *Federal Highway Administration*, or *Arizona Department of Transportation* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

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

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, **CYMPO** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, **CYMPO** will there upon revert to and vest in and become the absolute property of **CYMPO** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of 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. 1681 *et seq.*)

ADDENDUM C

DISADVANTAGED BUSINESS ENTERPRISES APPLICATION

The ADOT 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 ADOT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. The Consultant will be bound by all of the provisions hereof as will any subconsultant.

1. Non-Discrimination

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

By submitting its proposal, the Consultant, agrees to perform the following minimum DBE Program Compliance Required Activities:

2. DBE Compliance Required Activities:

THE FAILURE TO SUBMIT THE REQUIRED CONSULTANT'S LIST TO THE CYMPO BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE CONSULTANT BEING DEEMED INELIGIBLE FOR AWARD OF AN ON-CALL AGREEMENT.

By submitting a proposal, Consultant agrees to perform the following minimum DBE Program Compliance Required Activities:

1) The Consultant shall confirm good faith by any subcontractor or determine any action required in response to the contractor submission of a verifiable explanation of the discrepancy in the DBE System as early as practicable but in no case later than seven days after reviewing relevant documentation.

2) Submit DBE Certification of Final Payment Form within thirty (30) days of completing the work and submit a copy to CYMPO and ADOT.

3) Cooperate with CYMPO and/or ADOT audits and site visits for DBE regulation and contract compliance; provide access to procedures; project files; and enable onsite interviews with contracting, financial, DBE compliance, and project staff.

4) Each contract you sign with a subcontractor or Subconsultant and each contract your subcontractors or Subconsultants sign must include that following assurance:

a) *A contractor/Consultant and subcontractor/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 Grantee, with the Department's concurrence, deems appropriate, which may include, but is not limited to:*

- i) *Withholding payments;*
- ii) *Assessing sanctions;*
- iii) *Liquidated damages; and/or*
- iv) *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:*

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

ii) *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.*

iii) *If, by the DBE system audit deadline, the contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the Project Manager will work with the ADOT MPD Program Manager to determine if*

sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the contract.

iv) The contractor shall include these provisions in all of its subcontracts and ensure that its subcontractors include these provisions in any lower-tier subcontracts.

v) Any language provided in this Agreement DBE Section supersedes language provided by ProcurementPro for FTA-funded contracting requirements.

3. DBE Goal:

The DBE goal assigned to the 2050 REGIONAL TRANSPORTATION PLAN is 0.00%.

THE CONSULTANT IS ENCOURAGED TO OBTAIN DBE PARTICIPATION ABOVE AND BEYOND THE GOAL ON THIS ON-CALL CONTRACT.

DBE GOAL ATTAINMENT WILL BE REVIEWED ON A BASIS TO HELP ENSURE THAT THE OVERALL DBE GOAL IS MET ON THIS ON-CALL CONTRACT.

The percentage of DBE participation shall be based on the total dollar value of the Contract.

THE CONTRACT WILL NOT BE EXECUTED IF ONE OF THE ABOVE CONDITIONS ARE NOT MET AND/OR THE FIRM FAILS TO SUBMIT THE REQUIRED DBE PARTICIPATION FORMS.

RECEIVING GOOD FAITH EFFORT APPROVAL ON ANY PORTION OF THE CONTRACT DURING THE COURSE OF THE CONTRACT DOES NOT RELEASE THE CONSULTANT FROM ITS OBLIGATION TO MEET THE OVERALL DBE GOAL ON THE CONTRACT.

4. 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 Proposal must be registered in AZ UTRACS. Consultants may verify that their firm and each Subconsultant is registered using the AZ UTRACS website.

Consultants may obtain additional information at the AZ UTRACS website or by contacting CYMPO.

All Consultants 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 Consultant's intentions to use those firms on the project.

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

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

5. DBE Intended Participation Affidavits:

If the Consultant indicates in the Cost Proposal submittal for each Task Order that it has met or exceeded the DBE goal, a DBE Intended Participation Affidavit form for each DBE firm, and the DBE Intended Participation Affidavit – Summary form shall be submitted to CYMPO Procurement Office with each Task Order Cost Proposal as follows:

(1) The DBE Intended Participation Affidavit Form – This form must be submitted for each individual DBE firm at all tiers, including direct expense vendors, that is being proposed to be used to meet the DBE goal on each Task Order. A copy of this form is available from CYMPO.

(2) The DBE Intended Participation Affidavit Summary Form – This form must be completed by the Consultant summarizing information about all DBEs being proposed to meet the DBE goal that are listed on each DBE Intended Participation Affidavit Form. The DBE Intended Participation Affidavit Summary form, along with the DBE Intended Participation Affidavit form for each individual DBE firm, must be submitted together with the Submittal to CYMPO. All forms must be accurate and complete in every detail and must be signed by an officer of the Consultant(s). Percentages and dollar amounts must be accurate. Percentages shall be listed to two decimal places. The DBE Intended Participation Affidavit Summary must be submitted listing all the DBEs intended to be used and the creditable amounts. Copies of these forms are available from CYMPO.

(3) The DBE Intended Participation Affidavits and the DBE Intended Participation Affidavit Summary Forms must be submitted with the submitted documents. The same documents must be submitted as part of any Contract documentation submittals reflecting any revisions to the Task Order amounts associated with the Contract.

(4) A Consultant must determine DBE credit for the contract in accordance with DBE Special Provision Subsection 17.0 Crediting DBE Participation Toward Meeting Goals. The affidavits will be reviewed by CYMPO.

(5) Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) at the time of the submitted documents will be considered for DBE credit. It shall be the Consultant's responsibility to ascertain the certification status of designated DBEs.

All DBE commitment amounts must be finalized between the DBE Subconsultant and the prime Consultant prior to affidavit submittal. Consultants shall not inflate DBE awards in order to meet Contract goals. Reduction of DBE commitments after affidavit submittal and prior to execution of the Contract or any Contract Modification without good cause may be grounds for the Consultant to be considered nonresponsive. Scheduling conflicts are not necessarily evidence of good cause

as this should have been considered prior to affidavit submittal. Consultants are required to use DBEs identified in the Submittal to meet the contract goal, so the Consultant is responsible for ensuring the DBEs listed in the Submittal are available to meet those requirements at the time of the Contract execution.

If removal of a DBE Sub-Contractor/Contractor is requested, submit the required form for DBE removal to the ADOT Business Engagement and Compliance Office (BECO). The Contractor must copy on the form submission and make sure the response from BECO is forwarded to the Procurement Officer, the project manager, and MPDContracts@azdot.gov.

Modifying sub-contractors will require submission of revised DBE forms and approval from BECO and Department's Procurement Office if the modifications alter the DBE commitment on the project.

[In the event this project is federally funded, or if there is voluntary DBE participation in a State-funded project, the project will be entered as a contract or task order in the AZ DBE System \(DOORS\). Payment audits are required. For training on completing payment audits, please see the video: <https://www.youtube.com/watch?v=QFZJIIYmN1I>.](#)

Further DBE compliance and guidelines can be found at <http://www.azdot.gov/business/business-engagement-and-compliance> and are incorporated herein by this reference.

Provisions of this Addendum, including citations to ADOT websites and links are subject to updates/changes to comply with Applicable Law.

ADDENDUM D

ADOT, FTA & FHWA REQUIREMENTS ADDENDUM

The following covenants, conditions, and agreements are binding upon the Parties to the "Contract" between CYMPO and selected Contractor, to other persons and parties as specified herein, including persons and entities that work on or provide services or materials for the Work included in the Contract and are in addition to other terms of the Contract. The following provisions are required to be included in each sub-contract thereunder and are binding regarding all Work and activities performed under the Contract.

1. Inclusion Notices.

This project is expected to be funded in part by the Federal Transit Administration (FTA) as authorized under 49 U.S.C. § 5307, 5337 and/or 5339. This notice of Federal participation will be included in each subcontract financed in whole or part with federal assistance provided by the FTA.

2. No Obligation by the Federal Government.

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

3. Program Fraud and False or Fraudulent Statements or Related Acts

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal

assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
- (4) Contractor shall assure that all costs invoiced are consistent and eligible for federally funded projects and all annual and final fiscal reports and vouchers will include the following certification signed by an official authorized to sign for Contractor.

“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).”

4. Access to Records

1. The Contractor agrees to provide CYMPO, ADOT, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than five years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until CYMPO, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
4. The Contractor understands and agrees that apart from the more limited record access provisions of the Common Grant Rules, 49 U.S.C. Section 5325(g) provides FTA and U.S. DOT officials, the U.S. Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

5. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

6. Civil Rights

The following requirements apply to the underlying Contract in addition to any others set forth therein:

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

age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

7. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CYMPO requests which would cause ADOT, CYMPO or Contractor to be in violation of the FTA terms and conditions.

8. Energy Conservation

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

9. Termination – Applicable to All Contracts Over \$10,000

a. Termination for Convenience

The CYMPO may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to CYMPO to be paid the Contractor. If the Contractor has any property in its possession belonging to the CYMPO, the Contractor will account for the same, and dispose of it in the manner the CYMPO directs.

b. Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the CYMPO may terminate this contract for default. Termination shall be affected by serving a notice of termination

on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the CYMPO that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the CYMPO, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure

The CYMPO in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 days of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to CYMPO's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from CYMPO setting forth the nature of said breach or default, CYMPO shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude CYMPO from also pursuing all available remedies against Contractor and its sureties for said breach or default including the right to "cover" by contracting with an alternate Contractor with Contractor bearing all excess costs and expenses.

d. Waiver of Remedies for any Breach

In the event that CYMPO elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by CYMPO shall not limit CYMPO's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. The termination requirements flow down to all contracts in excess of \$10,000.

f. 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.

10. Suspension and Debarment – Applicable to All Contracts Over \$25,000 Where Funded in Whole or Part by Funds from FTA and/or FHWA

This contract is a covered transaction for purposes of 13 CFR § 500.19. As such, and by signing this contract, the Contractor certifies that none of its principals or affiliates are excluded or disqualified under 13 CFR § 500.19(c) and 13 CFR § 500.19(d).

The Contractor will comply with 13 CFR § 500.19 and will include the requirement to comply with 13 CFR § 500.19 in any lower tier covered transaction it enters into.

The certification in this clause is a material representation of fact relied upon by CYMPO. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to ADOT the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 13 CFR § 500.19 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. Breaches and Dispute Resolution – Applicable to All Contracts Over \$250,000 Funded in Whole or Part by Funds From FTA

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of CYMPO. This decision shall be final and conclusive unless within fifteen (15) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the CYMPO Contract Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by CYMPO, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage and, in any event, within any applicable deadline applicable under Arizona law.

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

12. Lobbying – Applicable to All Contracts in Excess of \$100,000 Where Funded in Whole or Part by FTA or FHWA (See also Form 1273 for FHWA)

a) Contractor certifies that no federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of NAIPTA, any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

b) If any funds other than federally appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of NAIPTA, any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative

agreement, the Contractor shall complete and submit Standard Form LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

c) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

d) The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A3801, et. seq., apply to these certifications and disclosure if any.

e) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000, and not more than \$100,000, for each such failure. See Attachment 49 CFR Part 20 Lobbying Certification.

13. Clean Air – Applicable to All Contracts in Excess of \$150,000 Where Funded in Whole or Part with Funds from FTA or FHWA (See also Form 1273 Attached if There is FHWA Funding)

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall report each violation to CYMPO and ADOT and is required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor shall also include these requirements in each subcontract exceeding \$100,000 financed in whole or part with federal assistance provided by FTA.

14. Clean Water Requirements -- Applicable to All Contracts in Excess of \$150,000 Where Funded in Whole or Part with Funds from FTA or FHWA (See Form 1273 Attached if There is FHWA Funding)

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. Patent and Rights in Data – Applicable to All Contracts

A. **Rights in Data** - these following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - (b) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a

copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

- (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

A. **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

- (1) **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (4) 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.

16. Disadvantaged Business Enterprises (DBE) – Applicable in All Contracts Where Funded in Whole or Part by FTA or FHWA (See also Form 1273 For FHWA Inclusion)

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.00 %. A separate contract goal of 0.00% has been established for this procurement.
- b. 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 this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract

or such other remedy as ADOT deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

17. Prompt Payment – Applicable on All Projects Where Funding in Whole or Part by FTA or FHWA

CYMPO will pay for satisfactory performance of this Contract no later than 30 days from receipt of billing by Contractor. Payment is not conditioned upon CYMPO's receipt of payment of funds from the federal government or ADOT. Contractor shall pay sub-contractors for Work included in billings or invoices from sub-contractors which paid by CYMPO within seven (7) days of Contractor's receipt of funds from CYMPO, except to the extent a portion thereof is withheld due to a portion of the Work billed by sub-contractor being unsatisfactory.

Unless CYMPO holds retainage from Contractor, Contractor is prohibited from holding retainage from its subcontractors for work satisfactorily completed.

Contractor shall provide prompt notice to sub-contractor and CYMPO of Work performed and billed by sub-contractor, which is unsatisfactory and, if Contractor has been paid by CYMPO for such work, the basis of the with-holding any portion thereof.

If specified in the Contract or attachments hereto, CYMPO may hold retainage from Contractor but in this event, it will provide for prompt and regular incremental acceptances of portions of the work and pay retainage to Contractor based on these acceptances. In this event, Contractor may withhold a like retainage from subcontractor but must pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 days after Contractor receives payment of retainage.

For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by CYMPO. When CYMPO has made an incremental acceptance of a portion of this contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The foregoing is enforceable including as a portion of the DBE program as a breach of this Contract and if deemed appropriate.

18. ADA Access

Contractors must comply with applicable requirements of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and USDOT/FTA implementing regulations.

19. Conformance with ITS National Architecture

FTA-funded Intelligent Transportation Systems (ITS) must conform with the locally approved Regional ITS Architecture.

21. Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

22. 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.

23. 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.

24. Domestic Preference

Pursuant to 2 CFR Part 200, Supart 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."

25. 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.

26. 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.

27. 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.

28. 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>.

29. 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.

30. **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.

31. **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.

FTA Certification and Assurances are incorporated herein by reference. They may be obtained at <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>.

32. 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.

33. 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.

34. Geographical Information Systems (GIS) Data

GIS data used during the Study will be provided in the electronic Study close-out file via Compact Disc (CD) or thumb drive. An additional copy should also be submitted to the Local Public Agency (LPA) or Tribal Government representative as applicable.

Such data will be in the format of a geodatabase containing all spatial and related data used in the Study. The data will be in the coordinate system: NAD_1983_StatePlane_Arizona_Central_FIPS_0202_Feet_Intl for all geospatial data submitted. The GIS Attributes Table will use the exact format and field names as provided by the Arizona Department of Transportation, Multimodal Planning Division, GIS Team. Please do not alter the field names, order, or format at all so Department staff can easily consolidate all proposed projects derived from all planning studies completed. Please complete an attributes table for each state highway system proposed project recommended by the study. Each attributes table should be filled out according to the Attributes Table Guidance and follow ATIS Nomenclature Standards. This information may be found at: <https://azdot.gov/planning/transportation-studies>.

35. GIS Metadata Standards

GIS metadata helps to incorporate all known characteristics of a dataset so that those that are not familiar with the data can gain from its knowledge. GIS metadata should be delivered as an XML file. The metadata should include information on, but is not limited to the following:

- Data summary
- Data description
- Data credits (if from existing data what modifications were made?)
- Data creation methods
- Purpose for creating the data
- Contact information for questions
- Updates schedule
- Data steward
- Data extent (i.e. statewide, county wide, etc.)
- Data type (i.e. point, line, or polygon, raster, etc.)
- Limitations of the data
- Scale range (if any)
- Include any associated domain values
- Tags (i.e. searchable words for this data)

36. Pursuant to 2 CFR §200.330, any contract awarded to accomplish this project establishes a Contractor relationship with the Department, and shall not establish a Subrecipient relationship and the disbursement of Federal program funds casts the party receiving the funds in the role of a Contractor. This project is funded under CFDA 20.205 Highway Planning and Construction, FHWA 80%. All terms and conditions required for Contractors / SubContractors of federal recipients under this funding source and according to 2 CFR §200 et seq. shall apply.

37. This contract does not establish a sub-recipient relationship. Any awarded contract establishes a Contractor relationship. A Contractor shall not be entitled to any copyright for anything created for, through, or as a result of this project.

38. Discovery or Admission Into Evidence

The Contractor is herein notified of 23 USC §409. The Contractor shall include the notice in each Subcontractor agreement wherein the scope includes relative completion or submission of reports, surveys, schedules, lists, or data compilation or collection.

“Pursuant to 23 USC §409: Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or

planning the safety enhancement of potential accident sites, hazardous roadway conditions, or rail-way-highway crossings, pursuant to sections 130, 144, and 148 [152] of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.”

- 22. Notwithstanding anything to the contrary omitted here from, the Parties hereby agree to comply with all applicable governmental authority, including the statutes, regulations, and rules of the United States and of Arizona and as they may be amended from time to time. All of the terms of this Addendum will be included in Subcontracts, which may be accomplished by proper incorporation by reference and attachment.**

SAMPLE