

INDEPENDENT CONTRACTOR AGREEMENT

This INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement") is entered into by and between _____, _____ company (the "Contractor") and **Northern Arizona Intergovernmental Public Transportation Authority**, a political subdivision of the State of Arizona ("NAIPTA"), effective as of _____, 20__ (the "Effective Date").

WHEREAS:

- A. NAIPTA requires the services of an independent Contractor to provide an Asset Management System as detailed in RFP and Proposal scope of work, pursuant to the terms of this Agreement (hereinafter "Services"); and
- B. NAIPTA issued Request for Proposals, RFP 2017-108 Asset Management System (the "RFP"), in order to obtain these Services; and
- C. The Contractor submitted the successful proposal ("Proposal"); and
- D. NAIPTA desires to contract with the Contractor to provide these Services; and
- E. The Contractor is ready, willing, and able to provide the Services pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein, Contractor and NAIPTA agree as follows:

1. SCOPE OF WORK

The scope of work to be performed is outlined in the RFP, attached hereto as Exhibit "A," and the Proposal, attached hereto as Exhibit "B." In the event of a conflict between the terms of the RFP and the Proposal, the terms of the RFP shall govern. In the event of a conflict between the RFP, the Proposal, and this Agreement, the terms of this Agreement shall govern.

2. BILLING AND PAYMENT

Fees. The fee is as described in the submitted proposal and shall not exceed \$ _____, which represents Contractors "best and final" proposal.

- A. Invoices. Contractor shall submit to NAIPTA a monthly invoice describing the services performed. Fees shall be payable within thirty (30) days after receipt and approval of the statement by NAIPTA. Fees for each task shall not exceed the amount for such task set forth in Exhibit "B."

B. Expenses. All Expenses incurred by the Contractor under this agreement are to be covered under the total contract compensation amount.

3. TERM OF AGREEMENT AND TERMINATION

The first term of this Agreement shall be from the Effective Date thru June 30, 2017. This Agreement maybe be renewed in writing, signed by both parties, for up to Four (4) additional (12) month periods upon the same terms and conditions set forth in this Agreement. In the event no renewal is executed on or before the anniversary of the Effective Date, this Agreement shall automatically terminate at midnight on the day preceding the anniversary.

NAIPTA may terminate this Agreement, for any reason, in its sole and absolute discretion, with thirty (30) days written notice. In the event of such termination, NAIPTA will be responsible for all services satisfactorily performed through the date of notice of termination.

4. INDEPENDENT CONTRACTOR

It is understood that Contractor shall be an independent Contractor with respect to services provided under this Agreement, and shall not be deemed to be a partner, employee, joint venturer, agent or to have any other legal relationship with NAIPTA. Except as otherwise expressly provided herein, NAIPTA shall not be responsible for the payment of any taxes, permit fees or licenses incurred or required by Contractor in order to perform services under this Agreement. Contractor understands that the Contractor is responsible to pay, according to law, the Contractor's income tax, and this may include Contractor's self-employment, social security, and other taxes. As an independent Contractor, Contractor is responsible for providing all workers' compensation insurance required by law. Contractor shall be solely responsible for the acts and omissions of its officers, agents, servants, and employees.

5. AMENDMENT AND ENTIRETY OF CONTRACT

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereto and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings, agreements and other communications between the parties. It may not be changed or modified except by an instrument in writing signed by a duly authorized representative of each party.

6. RECORDS AND OWNERSHIP OF WORK PRODUCT

The Contractor agrees:

- A. To submit all reports and invoices specified in this Agreement in a timely manner.
- B. To preserve and make available all records for a period of five (5) years from the date of final payment under this Agreement and for such period of time as is required by any other paragraph of this Agreement including the following:
 - 1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for such a period of five (5) years from the date of any such termination.
 - 2. Records which relate to disputes, litigations or the settlement of claims arising out of the performance of this Agreement or to costs and expenses of this Agreement to which exception has been taken by NAIPTA shall be retained by the Contractor until such appeals, litigations, claims or exceptions have been finally resolved.
 - 3. If any Notice of Claim is served on NAIPTA, or any litigation, claim or audit is commenced before the expiration of the five (5) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. All documents and other work product generated on behalf of NAIPTA in connection with this Agreement (except for Contractor's notes for internal use) are the property of NAIPTA. Contractor agrees that all work product constitutes works "made for hire." In the event any such materials are not works "made for hire," Contractor hereby assigns to NAIPTA all rights in such materials and copyrights therein.

7. CONFLICT OF INTEREST

During the term of this Agreement, Contractor shall not knowingly accept or receive any compensation, fees, expenses, or other thing of monetary value from any person, agency, firm or enterprise with interests in conflict with those of NAIPTA. In the event of an unanticipated conflict of interest arises, Contractor shall immediately so inform NAIPTA. During the term of this Agreement, Contractor shall not undertake representation of other local government agencies on the matters stated in the Scope of Work, except as expressly authorized by NAIPTA.

8. APPROVAL BY NAIPTA

Before this Agreement shall become effective and binding upon NAIPTA, it must be approved by NAIPTA's Board of Directors. In the event that the Board of Directors fails or refuses to approve this Agreement, or approve funding for the Agreement, it shall be null and void and of no effect whatsoever.

9. NON-ASSIGNMENT

Neither this Agreement, nor any obligation of the Contractor hereunder, shall be assigned in whole or in part by Contractor without the prior written consent of NAIPTA.

10. CANCELLATION OF AGREEMENT

Pursuant to A.R.S. §38-511, the provisions of which are incorporated herein by reference, all parties are hereby put on notice that this Agreement is subject to cancellation by NAIPTA if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of NAIPTA is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

11. COMPLIANCE WITH LAWS AND NON-DISCRIMINATION

In the performance of services hereunder, Contractor shall comply with all applicable state, federal and local laws or regulations. Without limiting the foregoing, Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1975 and Federal Executive Order No. 11246, State Executive Order No. 99-4 and A.R.S. §41-1461 et. seq., which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have access to employment opportunities. The Contractor shall comply with Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. The Contractor shall comply with Title VI of the Civil Rights Act of 1964, as amended, which prohibits the denial of benefits or participation in contract services on the basis of race, color, or national origin. The Contractor shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in delivering contract services.

12. COMPLIANCE WITH IMMIGRATION LAWS

Pursuant to the provisions of A.R.S. §41-4401, Contractor warrants to NAIPTA that Contractor and all its subcontractors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Contractor acknowledges that a breach of this warranty by Contractor or any of its subcontractors is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. NAIPTA retains the legal right to inspect the papers of any employee of Contractor or any subcontractor who works on this Contract to ensure compliance with this warranty.

NAIPTA may conduct random verification of the employment records of Contractor and any of its subcontractors to ensure compliance with this warranty.

NAIPTA will not consider Contractor or any of its subcontractors in material breach of the foregoing warranty if Contractor and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

13. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor, as Indemnitor, shall indemnify, defend, and hold Town, its officers, officials, employees, agents, and volunteers (collectively, "Indemnitees") harmless from and against any and all liability, claims, losses, suits, actions, damages, and expenses (including, but not limited to, court costs, attorneys' fees, and costs of claim processing, investigation and litigation (collectively "Claims")) for any personal injury, bodily injury, loss of life, or loss or damage to property, or loss of use thereof, or any violation of any federal, state, or local law or ordinance, or other cause of action related to or arising out of Contractor's performance of its obligations pursuant to the terms of this Agreement, or caused, in whole or in part, by the omissions of Contractor, its owners, officers, directors, employees, subcontractors, or agents. This indemnity includes any claim or amount arising out of or recovered under the Workers Compensation Law or arising out of the failure of Indemnitor 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 Indemnitor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation defense and judgment costs where this indemnification is applicable

14. CHANGES

Any changes to this Agreement shall be made in writing and signed by both parties.

15. NO AUTHORITY TO BIND NAIPTA

The Contractor has no authority to enter into contracts or agreements on behalf of NAIPTA, or in the name of NAIPTA, and nothing in this Agreement is to be construed to provide such authority.

16. DECLARATION BY CONTRACTOR

Contractor declares that the Contractor has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this Agreement.

17. NOTICE

Any notice given in connection with this Agreement shall be given in writing and shall be delivered either by hand to the party or by certified mail-return receipt to the party's place of business as set forth above.

18. CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

19. WAIVER AND SEVERABILITY

A waiver of any part of this Agreement, whether express or by conduct, shall not constitute a continuing waiver of such part (unless explicitly stated to be so), or a waiver of any other part, nor shall a waiver of any breach of this Agreement, or any part of it, whether express or by conduct, constitute a waiver of any succeeding breach. The provisions of this Agreement shall be severable such that if any provision shall be deemed to be invalid and unenforceable for any reason, such invalidity or unenforceability shall not affect the remaining provisions hereof.

20. INSURANCE

- A. The Contractor shall provide and maintain and cause any subcontractors to provide and maintain appropriate insurance. In no event shall the total coverage be less than the minimum insurance coverage specified below:
1. Professional liability in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.
 2. Commercial General Liability in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.
 3. Automobile Liability in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.
- B. The Contractor shall name NAIPTA, its agents, officials and employees as additional insureds and shall specify that the insurance afforded by the Contractor shall be primary insurance and that any insurance coverage carried

or self-insurance by NAIPTA, any department or employee shall be excess coverage and not contributory insurance to that provided by the Contractor. Said policy shall contain a severability of interest provision. NAIPTA reserves the right to continue payment of premium for which reimbursement shall be deducted from amounts due or subsequently due Contractor.

- C. Failure on the part of the Contractor to procure and maintain the requested liability insurance and provide proof thereof to NAIPTA within ten (10) days following the commencement of a new policy, shall constitute a material breach of the Agreement upon which NAIPTA may immediately terminate this Agreement. Within ten (10) days of signing this Agreement, the Contractor shall furnish the NAIPTA with copies of the Certificate of Insurance drawn in conformity with the above insurance requirements. NAIPTA reserves the right to request and receive certified copies of any or all of the above policies and endorsements.
- D. The Contractor agrees to comply with statutory requirements for both workers' compensation and unemployment insurance coverage during the term of this Agreement. A Certificate of Insurance for workers' compensation coverage shall be provided within ten (10) days of signing this Agreement. The insurer shall agree to waive all rights of subrogation against NAIPTA, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for NAIPTA.

21. INCORPORATION OF RECITALS AND EXHIBITS

The Recitals and Exhibits referenced in this Agreement and attached hereto are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

22. COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

23. PRIORITY OF DOCUMENTS

In the event of a conflict between the terms of this Agreement and the terms of any other document related to the Services, the terms of this Agreement shall prevail. In the event of a conflict between the terms of the RFP and the terms of the Proposal, the terms of the RFP will control.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, NAIPTA has caused this document to be executed by its duly authorized representative, this ____ day of _____, 20__.

NAIPTA

By: _____
Print Name

Its: _____
Title

(Signature)

Approved as to form:

By _____
Fredda J. Bisman
Dickinson Wright
General Counsel, NAIPTA

ATTEST:

Clerk of the Board

DRAFT

Exhibit A: Required Certifications and Clauses

FORM A: DISCLOSURE OF RESPONSIBILITY STATEMENT

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1. List any convictions of any person, subsidiary, or affiliate of the company, arising out of obtaining, or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
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2. List any convictions of any person, subsidiary, or affiliate of this company for offenses such as embezzlement, theft, fraudulent schemes, etc. or any other offenses indicating a lack of business integrity or business honesty which affects the responsibility of the contractor. (See procurement policy section 7.2 for types of offenses.)
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3. List any convictions or civil judgments under state or federal antitrust statutes.
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4. List any violations of contract provisions such as knowingly (without good cause) to perform, or unsatisfactory performance, in accordance with the specifications of a contract.
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5. List any prior suspensions or debarments by any governmental agency.
-

6. List any contracts not completed on time.
-

7. List any penalties imposed for time delays and/or quality of materials and workmanship.
-

8. List any documented violations of federal or state labor laws, regulations, or standards, occupational safety and health rules.
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Exhibit A: Required Certifications and Clauses

FORM A: DISCLOSURE OF RESPONSIBILITY STATEMENT

I, _____, as _____
Name of individual Title & Authority

Of _____, declare under oath that the above statements, including
(Company Name

any supplemental responses attached hereto, are true.

Signature

NOTARY:

State of _____

County of _____

Subscribed and sworn to before me on this _____ day of _____,

201__ by _____ representing him/herself to be

_____ of the company named herein.

Notary public

My Commission expires:

Exhibit A: Required Certifications and Clauses

FORM B: NON-COLLUSION AFFIDAVIT

_____ being first duly sworn deposes and says:
(Name of Company Representative)

That she/he is _____ of _____
(Title) (Name of Company)

and that pursuant to Section 112 (C) of Title 23 USC, he/she certifies as follows:

That neither he/she nor anyone associated with the said

_____ (Name of Company)

has, directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding for the proposal for the:

**RFP 2017-108
Asset Management System**

NOTARY:

State of _____

County of _____

Subscribed and sworn to before me on this ___ day of _____,

201__ by _____ representing him/herself to be

_____ of the company named herein.

Notary public

My Commission expires:

Exhibit A: Required Certifications and Clauses

Federal Transit Administration (FTA) Required Clauses and Certifications

This procurement is being funded, in whole or in part, with federal funds through Federal Transit Administration (FTA). As consequence of that funding, the following FTA mandated provisions are included in this proposal.

1. No Obligation by the Federal Government

- (1) NAIPTA and the Contractor acknowledge and agree that:
Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to the NAIPTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Contract.
- (2) The Contractor shall 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 sub-Contractor who will be subject to its provisions.

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

The Contractor acknowledges and agrees that:

- (1) 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 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 this Contract or the FTA assisted project for which work under this Contract 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) If the Contractor 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 Federal 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 shall include the above two (2) clauses in each subcontract financed in whole or in part with federal assistance provided by FTA and each such clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Exhibit A: Required Certifications and Clauses

3. Access to Records

- (1) In accordance with 49 C.F.R, 18,36(i), the Contractor shall provide NAIPTA, 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. Pursuant to 49 C.F.R. 633.17, the Contractor shall provide the FTA Administrator or his authorized representatives including any PMO contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy such excerpts and transcriptions as are reasonably needed.
- (3) Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three 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 the Contractor agrees to maintain same until NAIPTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (4) FTA does not require the inclusion of these requirements in subcontracts.

4. Federal Changes

The 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 Contract (the FTA Master Contract) between NAIPTA and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

5. Civil Rights (> \$10,000)

The following requirements apply to this Contract:

- 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 shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor shall

Exhibit A: Required Certifications and Clauses

comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.

- b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - (a) 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 shall comply with any implementing requirements FTA may issue.
 - (b) 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 shall comply with any implementing requirements FTA may issue.
 - (c) 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 shall comply with any implementing requirements FTA may issue.
- c) The Contractor shall 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.
- d) For assistance with a contract clause incorporating the requirements of the new Disadvantaged Business Enterprise rule in 49 CFR Part 26, contact the FTA HelpLine at www.ftahelpline.com.

Exhibit A: Required Certifications and Clauses

6. Termination (> \$10,000)

- (1) Termination for Convenience. NAIPTA may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in NAIPTA's sole and unfettered opinion, it is in NAIPTA's best interest to do so. 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 NAIPTA for payment. If the Contractor has any property in its possession belonging to NAIPTA, the Contractor shall account for the same, and dispose of it in the manner NAIPTA directs.
- (2) Termination for Default (Construction) NAIPTA may terminate this Contract if: (a) Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Contract or any extension; (b) if the Contractor fails to complete the work within this time; or (c) if the Contractor fails to comply with any other provisions of the Contract. Termination shall be effected by serving a notice of termination upon Contractor setting forth the manner in which the Contractor is in default. In this event, NAIPTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to NAIPTA resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by NAIPTA in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages if: (a) the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor; or, (b) the Contractor within ten (10) days from the beginning of any delay, notifies NAIPTA in writing of the causes of delay. If in the judgment of NAIPTA the delay is excusable, the time for completing the work shall be extended. The judgment of NAIPTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination, of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of NAIPTA.

Opportunity to Cure: In case of a termination for breach or default, NAIPTA may, in its sole and unfettered discretion, allow the Contractor ten (10) calendar days within which to cure the defect. Should a cure period be granted, the notice of termination will state the time period within which cure is permitted together with other appropriate conditions.

If the Contractor fails to remedy the breach or default of any of the terms,

Exhibit A: Required Certifications and Clauses

covenants, or conditions of this Contract to NAIPTA's satisfaction within ten (10) calendar days after receipt by the Contractor of written notice from NAIPTA setting forth the nature of said breach or default, then, and in that event, NAIPTA 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 NAIPTA from also pursuing all available remedies against Propose and its sureties for said breach or default.

Waiver of Remedies for any Breach: Should NAIPTA elect to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by NAIPTA shall not limit NAIPTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

7. Disadvantaged Business Enterprises (Forms G, H, I, & J)

a. This Contract is subject to the requirements of Title 49, CFR, Part 26, and participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The agency's overall goal for DBE participation is 3.82% with 3.82% race neutral goal. A contract goal has not 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 the 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 other such remedy as NAIPTA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFP 26.13(b)).

c. Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from NAIPTA.

e. The Contractor must promptly notify NAIPTA, whenever a DBE subcontractor performing work related to this contract is terminated or fails to

Exhibit A: Required Certifications and Clauses

complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of NAIPTA.

8. **Incorporation of FTA Terms (Form D)**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (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, dated November 1, 2008, 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 the contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the City that would cause NAIPTA to be in violation of the FTA terms and conditions.

9. **Debarment and Suspension (> \$25,000) (Form E)**

The Contractor certifies that neither it nor its “principals” [as defined at 49 CFR 29.995, or affiliates, [as defined at 49 CFR 29.905] are excluded or disqualified [as defined at 49 CFR 29.940 and CFR 29.945]. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

** For contracts over \$25,000, : The Contractor shall be required to submit a certified copy of Attachment 49 CFR Part 29b Debarment Cert with this proposal.

10. **Disputes (> \$100,000)**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the Contract Specialist (Lead) or his designee. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Public Transit Director or

Exhibit A: Required Certifications and Clauses

the Director's designee. 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 Public Transit Director or the Director's designee shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute: Unless otherwise directed by NAIPTA, the Contractor shall continue performance under the Contract while matters in dispute are being resolved.

Claims for Damages: Should either party to this Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose act it is legally liable, a claim for damages therefore shall be made in writing to such other party within five (5) calendar days after the first observance of such injury or damage.

Remedies: Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between NAIPTA and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a State court of competent jurisdiction within the State of Arizona.

Rights and Remedies: The duties and obligations imposed by the Contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by NAIPTA or the Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed upon in writing.

11. Lobbying (> \$100,000) (Form F)

- (1) 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.
- (2) 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

Exhibit A: Required Certifications and Clauses

Standard Form LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

- (3) 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.
- (4) 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 this certifications and disclosure if any.
- (5) 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.

12. Conformance with Intelligent Transportation System (ITS) Architecture

This project will receive a systems engineering analysis to ensure it conforms to the National ITS Architecture and complies with the locally-approved plan for regional ITS architecture.

Exhibit A: Required Certifications and Clauses

Form C: Overall Federal Regulation Compliance

All contractual provisions required by State and Federal Transit Administration (FTA), as set forth in FTA Circular 4220.1F are hereby incorporated into this contract 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, or fail to perform any act, or refuse to comply with any NAIPTA requests which would cause NAIPTA to be in violation of the FTA terms and conditions.

Vendor Representative

Date

Vendor

Exhibit A: Required Certifications and Clauses

Form D: Debarment and Suspension Certification (Lower Tier Covered Transaction) (Attachment 49 CFR 29 Subpart C)

(To be submitted with a bid or Offer exceeding the small purchase for Federal assistance programs, currently \$25,000.)

The prospective lower tier participant (Offeror) certifies, by submission of this Offer, that neither it nor its “principals” as defined at 49 C.F.R. § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the prospective lower tier participant (Offeror) is unable to certify to the statement above, it shall attach an explanations, and indicate that it has done so, by placing an “X” in the following space _____.

THE BIDDER OR OFFEROR, _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

_____ Signature of the Bidder or Offeror’s Authorized Official

_____ Name & Title of the Bidder or Offeror’s Authorized Official

_____ Date

Exhibit A: Required Certifications and Clauses

Form E: Lobbying Certification (Attachment 49 CFR 20)

(To be submitted with a bid or Offer exceeding \$100,000)

The Bidder or Offeror certifies, to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Federal department or agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. 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 thereof.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions (as amended by “Government wide Guidance for New Restrictions on Lobbying”, 61 Fed.Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

THE BIDDER OR OFFEROR, _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

_____ Signature of the Bidder or Offeror’s Authorized Official

_____ Name & Title of the Bidder or Offeror’s Authorized Official

_____ Date

Exhibit A: Required Certifications and Clauses

**Form F: Disadvantaged Business Enterprises Compliance Certification
(Attachment 49 CFR Part 26)**

Prime Contractors:

Please indicate your DBE status, and declare any DBE subcontractors you may use. All declared DBE businesses involved in this contract must complete Attachment DBE.5 and return to NAIPTA. All primary contracts must provide a completed DBE compliance certification.

DBE COMPLIANCE CERTIFICATION

I hereby certify that the Offeror has complied with the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in DOT Programs.

Signature of the Bidder or Offeror's Authorized Official

Name & Title of the Bidder or Offeror's Authorized Official

Date

Exhibit A: Required Certifications and Clauses

**Form G: Disadvantaged Business Enterprises Certification
(Attachment 49 CFR Part 26)**

Pg 1 of 2

Complete this section only if it applies to your firm

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I

have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

Exhibit A: Required Certifications and Clauses

**Form G: Disadvantaged Business Enterprises Certification
(Attachment 49 CFR Part 26)**

Pg 2 of 2

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American Native American
Asian- Pacific American Subcontinent Asian American
Other (specify) _____.

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____
(Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE:

Exhibit A: Required Certifications and Clauses

**Form H: Disadvantaged Business Enterprises Individual Participation
(Attachment 49 CFR Part 26)**

DISADVANTAGED BUSINESS ENTERPRISE INTENDED PARTICIPATION AFFIDAVIT

NAIPTA (Individual) Intended Participation Affidavit

BID NUMBER _____

PROJECT NUMBER _____

Directions:

1. An officer of the contractor(s) must sign this form.
2. A separate affidavit must be submitted for each proposed DBE.
3. All partial bid items must be fully explained. If not, the DBE will be assumed responsible for the entire item.
4. The affidavits must be submitted at the time of bid.

Name of DBE: _____

| DBE Scope Items | Item Amount | DBE Credit (\$) |
|---|---------------------------------|------------------------|
| List items separately. Partial items must be explained. Use additional copies of this form if necessary. | Not to exceed total bid amount. | |
| | | |
| | | |
| | | |
| | | |
| | | |
| Total | | \$ |

Contractor Certification:

I certify that:

- My company has accepted a proposal from the DBE named above.
- My company has notified the proposed DBE of the contracted DBE commitment and this agreement is to be performed in accordance with DBE provisions of this contract.
- My company's use of the proposed DBE for the items of work listed above is a condition of the contract award.
- My company will invite the proposed DBE to attend the preconstruction meeting.
- My company is required to make sufficient reasonable efforts to subcontract either the same or other work to an alternative certified DBE equal to the amount to attain the DBE commitment if a certified DBE is unable or unwilling to perform for work any part of the intended.
- I understand that failure to comply with the information shown on this form will be considered grounds for contract sanctions.

I declare under penalty of perjury in the second degree, and any other applicable state or federal laws, that the statement made on this document are true and complete to the best of my knowledge.

Prime Contractor Name: _____

Date: _____

Officer Signature and Title:

Exhibit A: Required Certifications and Clauses
Form I: Disadvantaged Business Enterprises Overall Sub Participation
(Attachment 49 CFR Part 26)

DISADVANTAGED BUSINESS ENTERPRISE INTENDED PARTICIPATION AFFIDAVIT

NAIPTA (Overall) Intended Participation Affidavit

RFP 2017-106

Integrated Financial System

Directions:

1. This form must reflect the information included on the individual affidavit attachment for each DBE.
2. The form must be signed by an officer of the contractor(s).
3. The form must be notarized.
4. The affidavits must be submitted the time of bid.

| Proposed DBE Subcontractors | Type of Work | DBE Credit (\$) |
|-----------------------------|--|-----------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| (1) | Total Value of DBE Commitments | \$ |
| (2) | Total Bid Amount | \$ |
| | Percent DBE Participation (Divide Line 1 by Line 2) | \$ |

Company Name: _____ Officer Signature: _____

Officer Title: _____

Notary Seal: