

GENERAL TERMS AND CONDITIONS

1. TERM

A three (3) year contract for initial services will be issued upon execution of the contract, with an option for one (1) additional two (2) year extension for completion of major studies and/or public engagement efforts during design and/or construction at the discretion of NAIPTA Board of Directors. At NAIPTA's option a contract may be awarded for multiple years.

2. CONTRACT ORDER OF PRECEDENCE

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

- Solicitation Instructions and Conditions
- Submission of Qualifications and Agreed upon Pricing
- Terms and Conditions
- General Conditions, including Federal Terms and Conditions
- Scope of Work or Technical Specifications
- Other Provisions of the Contract, whether incorporated by reference or otherwise

In the event the parties hereto cannot resolve a dispute or conflict, the final decision-making authority shall reside with NAIPTA CEO-General Manager.

3. TIME

Time is of the essence in the performance of the Contract. Consultant shall proceed with performance of the Work under the Contract immediately after receipt of the Notice to Proceed, and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the time or times set forth in the Scope of Services. Consultant shall not commence work until it receives the Notice to Proceed, except as otherwise required by the Contract.

4. FUNDING

Every payment obligation of NAIPTA under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by NAIPTA at the end of the period for which funds are available. No liability shall accrue to NAIPTA in the event this provision is exercised, and NAIPTA shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

5. COMPENSATION METHODOLOGY

Compensation - Task Order based Professional Services. A not-to-exceed amount shall be allotted for each task order issued by NAIPTA relative to the Contract. Consultant shall not exceed the executed task order amount without NAIPTA's prior approval.

Consultant, and sub consultants, shall use the most current federally acceptable audited rate pursuant to this section until a more current audit of Overhead Rate is obtained or until the Consultant, or sub consultants, can establish to the reasonable satisfaction of NAIPTA that other information is available that would indicate a rate adjustment is in order pursuant to the Brooks Act as defined in statutes: 40 U.S.C. § 1102 and 49 U.S.C. § 5325(b).

Consultant shall invoice upon completion and acceptance of work by NAIPTA. Invoices may be submitted once per month to the project manager.

Invoices shall conform to policies or regulations adopted from time to time by the Agency. Invoices shall be legible and shall contain, at a minimum, the following information:

- 1) the Contract and order number (if any);
- 2) a complete itemization of all unit prices per the Contract including quantities ordered and delivery order numbers (if any);
- 3) any discounts offered to the Agency under the terms of the Contract;
- 4) evidence of the acceptance of the supplies or services by the Agency;
- 5) unique traceable invoice number(s); and
- 6) any other information necessary to demonstrate entitlement to payment under the terms of the Contract. Failure to provide the above critical information may result in the rejection and return of the invoice for resubmission with complete data.

Payment shall be made within 30 days after the Agency's receipt of a review of properly prepared invoice.

6. DEVIATIONS FROM CONTRACTOR BUDGET AMOUNT

If the Consultant's notice states that the Scope of Work cannot be completed within Contract/Task Order amount, NAIPTA may issue a request for change. Until there is a Change Order or Task Order amendment revision, the Consultant shall proceed with the Scope of Work until the cumulative amount of reimbursable costs incurred by the Consultant equals the Contract/Task Order amount.

If it becomes necessary to modify the Scope of Work to eliminate work that would allow the Scope of Work to be completed within the Contract/Task Order amount, the Consultant's fee may be renegotiated accordingly, pursuant to the Contract. In no event is the Consultant authorized to incur costs which exceed each Contract/Task Order amount without prior written amendment/revision to the Contract. Any such costs incurred without prior written Amendment to the Contract shall not be considered reimbursable costs hereunder.

7. COST NOTIFICATION REQUIREMENT

Within 30 days of the expenditure of 75% of Contract/Task Order amount, the Consultant shall notify NAIPTA when the Consultant believes that the cumulative expenditure of reimbursable costs will reach 100% of the Contract/Task Order amount. The notice shall include the following:

- Date on which the Consultant expects to reach this 100% level and Consultant's best judgment of whether the Scope of Work can be completed within the Contract/Task Order amount. If, however, the Scope of Work cannot be completed within the Contract/Task Order amount, the Consultant shall provide its best estimate of costs.
- The additional cost and/or time required to complete all Scope of Work. Costs include direct labor, ODCs, indirect costs, and reimbursable Sub-consultant costs;
- Proposed changes to the Scope of Work which would allow the Scope of Work to be completed within the Contract/Task Order amount.
- A statement setting forth in detail the reasons why the Scope of Work cannot be completed within each Contract/Task Order amount.

8. PRICE ESCALATION

Consultant will not be eligible for reimbursement of Price Escalation incurred in the performance of the Contract unless specified within the scope of work of any Task Order.

If Price Escalation is specified within the scope the following will apply;

- Any requests for price adjustments must be submitted sixty (60) days prior to the end of each Task Order.
- Justification for the requested adjustment in cost of labor and/or materials must be accompanied by appropriate documentation.
- Escalation shall not exceed the increase in the U.S. Department of Labor (Bureau of Labor Statistics) Consumer Price Index - All Urban Consumers, Series Id: CUUR0400SAO Not

Seasonally Adjusted, Area: West Urban, Item: All Items.

- The start point for determining escalation shall be from the month of Contract award.
- Increases shall be approved in writing by NAIPTA prior to any adjusted invoicing submitted for payment.

9. PARTICIPATION RESTRICTION

NAIPTA has determined that if a Consultant is awarded this professional service contract, it would constitute a conflict of interest and/or unfair competitive advantage concerning scope and work product of:

- Construction
- Service Provision

This Consultant is prohibited from acting as a prime or sub-consultant on aforementioned aspects.

NAIPTA seeks not to limit sub-consultant participation. NAIPTA will review a sub-consultant's work/participation on other contracts on case-by-case basis to determine if there is an apparent conflict or unfair competitive advantage.

Once selected and contract award is made, the Consultant or sub-consultants shall perform any-and-all tasks required by NAIPTA under the executed contract and/or task order. Consultant or sub-consultants will not unduly decline or refuse work because they seek to participate in future contracts without creating a conflict of interest and/or unfair competitive advantage.

The Consultant selected to provide and manage NAIPTA's support services identified in the Scope of Services, shall affirm that it does not have:

- any financial or other interest in the outcome of any of the projects;
- any agreement, enforceable promise, or guarantee to provide any future services with other consultants on any projects;
- any associations or professional or business relationships with anyone who has a financial interest in the outcome of any of the projects, nor does anyone with a financial interest in the outcome of the projects exercise any control over the Consultant's management of the projects.

Consistent with 49CFR 18.36 (C)(1)(V), FTA Best Practices Procurement Manual (BPPM), Section 3.2., "Using Consultants to Prepare Specifications" and Section 2.4.2.2.2., "Organizational Conflicts of Interest," any Consultant or sub-consultant that performs "Design Services" during any phase of construction for any of the projects in Request for Statement of Qualifications, Scope of Services shall not participate in any capacity for the Consultant serving as the primary Consultant for the project it has provided the Design Services.

At any time during the term of this contract, NAIPTA reserves the right to review and determine that an organizational conflict of interest exists for any of the projects as part of the Scope of Services.

Should NAIPTA make a conflict of interest determination, it may solicit proposals through a competitive Request for Proposals (RFP) or Request for Statement of Qualifications (RSOQ) for the project and services where there is a conflict. A consultant that NAIPTA has deemed to have an organizational conflict of interest will not be afforded the opportunity to submit proposals on any advertised RFP or RFQ.

10. TASK ORDER CONTRACTING PROCESS

NAIPTA will utilize a conformed contract with the selected Consultant which establishes basic terms and conditions. As Task Orders are identified by NAIPTA to the Consultant, NAIPTA and

the Consultant will negotiate and execute the Task Order to the Contract relating to the agreed upon work program.

Each Task Order(s) shall be negotiated to establish, but not be limited to, a defined scope of work, compensation amount, method of payment, schedule, approval of sub-consultants, DBE goal (if any), and any applicable Federal Transit Administration (FTA) specific requirements.

11. TRAVEL RELATED EXPENSES

Consultant will not be eligible for reimbursement of travel related expenses incurred in the performance of the Contract unless specified within the scope of work.

Travel and Related Costs. All billable non-local travel and related cost must be pre-approved by NAIPTA. NAIPTA shall compensate Consultant for pre-approved travel per Federal Travel Regulations only. NAIPTA will not compensate for unauthorized travel and related costs. NAIPTA will pay for general travel lodging up to the Federal Per Diem rate. Federal Per Diem Website – www.gsa.gov. A detailed copy of receipts for actual travel claims are required with invoice submission.

12. INSURANCE

In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or subcontractors.

Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.

Minimum Scope and Limits of Insurance. The requirements for insurance are detailed in Exhibit A of these General Terms and Conditions.

13. NOTICES AND COMMUNICATIONS

All correspondence shall reference the Contract name. Prior to commencement of Work on the Project, a notice to the Consultant will be effective if it is delivered to the individual who signed the Contract on behalf of Consultant at the address shown with that signature, to a corporate officer if Consultant is a corporation, to a general partner if Consultant is a partnership, or to another individual designated by Consultant in the Contract or in a written notice to NAIPTA.

Consultant shall designate a representative to represent its organization and act on its behalf. This agent shall have the authority to make binding and enforceable decisions in the name of Consultant and to accept all notices that NAIPTA desires to serve, or that are required by the Contract to be served, on the Consultant. At the start of the work, Consultant shall advise NAIPTA, in writing, of the name, address, and telephone number (both day and night) of such designated agent. Consultant shall notify NAIPTA promptly of any changes in this designation.

All notices and other communications concerning the contract shall be written in English and shall bear the number assigned to the contract by NAIPTA. Notices and other communications may be delivered personally, by telegram, by telephone facsimile, or by regular, certified, or registered mail. Notices and communications are effective when received.

All notices and other communications required or permitted by the contract shall be in writing and (i) delivered in person or by commercial or United States Postal Service overnight delivery service, to the addressees as named in subsequent contract executed between NAIPTA and the Consultant.

All such notices or other communications shall be deemed delivered immediately if delivered in person, three (3) days after deposit in the United States Postal Service first class mail if mailed, upon receipt as indicated on signed certified mail receipt and on the following Business Day if sent by overnight delivery service.

14. NOTICE OF LABOR DISPUTES

If the Consultant has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, the Consultant immediately should give notice, including all relevant information, to NAIPTA Project Manager and NAIPTA Administrative Director.

The Consultant agrees to insert the substance of this clause, including this paragraph in any subcontract under which a labor dispute may delay the timely performance of the Contract; except that each subcontract should provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Sub-Consultant should immediately notify the next higher tier Sub-Consultant or the Consultant, as the case may be, of all relevant information concerning the dispute.

15. COMMUNICATIONS WITH CONTRACTOR'S STAFF

To ensure efficient communication of operational needs, NAIPTA staff shall be permitted to communicate directly with Consultant's staff regarding day to day issues for the purpose of inquiry as to factual performance issues. NAIPTA will not give Consultant's staff directions concerning performance under the Contract. Issues which affect the Contract will be communicated through the Project Manager and the Administrative Director.

16. PROJECT KEY PERSONNEL

The Consultant shall appoint an individual acceptable to NAIPTA to serve as the Project Manager for project from NTP through Contract Closeout. The Project Manager shall be responsible for the all of the activities of management and supervision of the Contract and shall serve as the primary contact to NAIPTA. The Project Manager shall have a minimum of ten (10) years' experience managing similar type size of projects in a public transportation/transit environment.

The consultant shall identify all additional "Key Personnel," including those for subcontractors, in its proposal.

No substitution of any personnel who are identified to provide the services ("Key Personnel") may be made by the Consultant without the prior written consent of NAIPTA. In the event any such Key Personnel are terminated or otherwise become unavailable, the Consultant shall notify NAIPTA of such termination or unavailability and temporarily replace such terminated or unavailable Key Personnel within ten (10) Business Days after such termination or unavailability.

The Consultant shall use its best efforts to provide a replacement of such terminated or unavailable Key Personnel within thirty (30) days after such termination or unavailability. NAIPTA shall have the right to approve or disapprove the proposed replacement of such Key Personnel in advance and in writing, such approval to be exercised at the sole and absolute discretion of NAIPTA, but shall not unreasonably be withheld.

All Key Personnel shall be available to provide the services for which such Key Personnel are responsible at the level of effort and during the Contract period to assist the Consultant in the performance of its duties hereunder.

The Consultant was chosen to perform the Services based upon its qualifications and experience, and the qualifications and experience of the Key Personnel. Therefore, assignment or transfer of

any services to any third party is expressly prohibited unless approved in writing by NAIPTA prior to such assignment or transfer of such services. The Consultant shall not assign all or any part of its interest in or obligations under the contract without NAIPTA's prior written approval, which approval will not be unreasonably withheld. The parties acknowledge that NAIPTA may disapprove a proposed assignment if, as a result of the proposed assignment, the Key Personnel are not acceptable to NAIPTA. Any assignment in violation of this shall constitute an event of Default and is grounds for termination of the Contract, at the reasonable discretion of NAIPTA. Any such termination shall be effective upon ten (10) days' prior written notice. In no event shall any putative assignment create a contractual relationship between NAIPTA and any putative assignee.

17. REMOVAL OF CONTRACTOR'S PERSONNEL

The Consultant acknowledges that any person assigned to work under the Contract must perform their duties so as to not unduly impair Contract performance. By assigning a person to work under the Contract, the Consultant agrees to be responsible for the behavior of that person during Contract performance.

The Consultant acknowledges that NAIPTA has the right to require the removal of any Consultant employee that NAIPTA determines at its sole discretion to be negatively effecting performance of work under the Contract. Examples of such behavior include: (1) conduct which poses a threat to the safety of anyone working under the Contract; (2) conduct which is disruptive to Contract performance; (3) careless work; (4) conduct which is not appropriate when transporting participants under the Contract.

Upon receipt of written notice from NAIPTA that a person's behavior is unduly impairing Contract performance, the Consultant agrees to remove that person from doing any further work on the Contract, and to cause that person to be removed from providing service under the Contract. The Consultant agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person named by NAIPTA.

18. REPORTING

Consultant shall provide regular status reports to NAIPTA as requested.

19. RISK OF LOSS

The Consultant shall bear all loss of conforming material covered under the Contract until received by authorized NAIPTA personnel at the location designated in the Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

20. ANTI-KICKBACK AND GRATUITIES

The Consultant is prohibited from receiving any kickbacks, gratuities, payments, merchandise, equipment, supplies, services or favors in exchange for directing additional billable services to any Sub-Consultant.

21. FUNDING

Offeror is hereby notified that any contract resulting from this RSOQ is contingent upon funds appropriated by NAIPTA's Board of Directors and that may be appropriated in the future by federal or other sources. In the event that funding is eliminated or decreased, Agencies reserve the right to terminate any such contract or modify it accordingly.

22. CONTRACT ADMINISTRATION

To ensure Contract compliance, a contract administration process will be an integral part of contract. NAIPTA employees will be assigned as contract monitors. The contract administration process is an audit and feedback system and will be in addition to any of the other policies and

procedures contained in the RSOQ. The contract administration process is a total quality management tool that empowers NAIPTA to monitor and assure contract compliance. No additional cost is anticipated to be incurred by Consultant by the presence of the contract administration process as long as contract compliance is maintained. Except for the more formalized feedback of findings, the normal Contractor/user relationship will exist per contract terms, and the contract administration process should be transparent.

23. COOPERATION

The Consultant shall fully cooperate with other NAIPTA Consultant(s)/Subcontractors and shall assign and carefully plan and perform its work to accommodate the work of other NAIPTA Consultant(s). The Consultant shall not intentionally commit or permit any act that will interfere with the performance of work by any other NAIPTA Consultant(s).

24. CONTRACT CLOSEOUT

At the end of the Contract period, NAIPTA will review the service to ensure all required deliverables have been met. This includes, but is not limited to submission and acceptance of all reports and inspection and inventory of all NAIPTA equipment and facilities provided to Consultant for the execution of the Contract. Consultant shall resolve any or all outstanding issues within 30 days of Contract expiration at which time NAIPTA will issue a Notice of Contract Closure to finalize the Contract Closure between both parties. Consultant shall keep all records pertaining to the service for a minimum of three (3) years after the Contract expiration and make available said records to NAIPTA or its agents for audit, with advance notice. In the event of litigation or claims, all records will be maintained until disposition of the litigation or claim.

Consultant shall cooperate with NAIPTA and its agents in the Contract closeout process, during the Contract and after the Contract expiration date. Final payment or part thereof, may be withheld by NAIPTA until the Consultant completes or resolves all outstanding issues and Contract closeout process is complete.

25. GOVERNING LAW

The contract shall be governed by the laws of the State of Arizona without reference to conflict of law's provisions.

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and subsequent modifications, clarifications or amendments 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. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any NAIPTA requests that would cause NAIPTA to be in violation of the FTA terms and conditions.

The contract is funded by local government and federal transit administration funds. Consultant shall conform to all applicable FTA regulations and requirements as if all funds involved were FTA funds.

To the extent applicable, NAIPTA and Consultant each warrant compliance with any-and-all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction via the contract, and all applicable employment laws, rules and regulations, including to the extent applicable, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Parties acknowledge that a breach of this warranty is a material breach of the contract and parties are subject to penalties for violation(s) of this provision, including termination of the contract. Consultant and NAIPTA each retain the right to inspect the documents of any-and-all Consultants, Subcontractors and sub-Subcontractors performing work and/or

services relating to the contract to ensure compliance with this warranty. Any-and-all costs associated with inspections are the sole responsibility of the party subject to inspection. NAIPTA and Consultant each hereby agree to indemnify, defend and hold each other harmless for, from and against all losses and liabilities arising from any-and-all violations thereof. In addition, the parties each certify that it does not have a scrutinized business operation in either Iran or Sudan.

26. COMPLIANCE WITH LAWS AND REGULATIONS

The Consultant shall comply with all Federal, State and City laws, statutes, regulations, administrative requirements, executive orders and ordinances.

Consultant shall adhere to all applicable federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Work under the Contract.

If any discrepancy or inconsistency is discovered in the Contract in relation to any such requirements of law, the Consultant shall immediately report the facts to NAIPTA, in writing.

Should changes to any such applicable federal, state, and local laws, regulations, executive orders, and ordinances occur after the date of execution of the Contract which in the Consultant's opinion require a change in the Contract Amount or time required for the performance of the Work hereunder, the Consultant shall provide written notification to NAIPTA.

27. CONTRACTOR LICENSE REQUIREMENT

Consultant shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of their business. Consultant shall keep themselves fully informed of existing and future Federal, State, and Local laws, ordinances and regulations, which in any manner affect the fulfillment of Contract and shall comply with the same. Consultant is advised to contact the Arizona Registrar of Consultants, Chief of Licensing to ascertain licensing requirements for a contract. Consultant shall identify which license(s), if any, the Registrar of Consultants requires for performance of the contract.

28. SEVERABILITY

Should one or more of the provisions contained in the Contract be determined to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remainder of the Contract shall be unaffected. The affected provision shall be amended or interpreted, if possible, so as to correct the deficiency and give effect to the intent of the parties.

29. DILIGENCE AND STANDARD OF CARE

The Consultant represents that it shall perform the services with the standard of care, skill and diligence expected, at the time and place of performance, of recognized professional engineering firms performing services of a similar type and nature.

Opportunity to Cure. NAIPTA may provide Consultant a reasonable opportunity to cure, at Consultant's expense, all errors and omissions which may be disclosed during Project implementation. Should Consultant fail to make such correction in a timely manner, such correction may be made by NAIPTA, and the cost thereof charged to Consultant.

30. APPROVALS

As called for in the contract, Consultant will provide documents for approval by NAIPTA. Any approval or conditional approval with comment signifies permission to Consultant to proceed with the work and indicates, but does not warrant, that NAIPTA has seen nothing in the document at variance with the Contract. The Consultant's proceeding with the work prior to this approval is at the Consultant's own risk. Neither approval nor conditional approval with comment shall relieve Consultant of any of his/her responsibilities under the Contract.

31. CHANGES

NAIPTA may, at any time make changes in the Work within the general scope of the Contract, including but not limited to changes:

- In the specifications;
- In the method or manner of performance of the work;
- In the Agency furnished facilities, equipment, materials, services, or work; or
- In the performance period for the work.

Within 14 calendar days after Consultant's receipt of the written change order request for modification of the contract, Consultant shall submit to NAIPTA a detailed price schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiation between Consultant and the Administrative Director. At the time both parties shall execute a detailed Contract modification in writing. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract disputes clause.

It is distinctly understood and agreed that no claim for payment for work done or materials furnished by the Consultant outside of these parameters shall be paid by NAIPTA. Any such services or materials furnished by Consultant without such written order shall be at the risk, cost and expense of the Consultant, and no claim for compensation for any such services or materials shall be made.

The Consultant, for each, shall maintain separate accounts, of all incurred separable costs allocable to the change. The Consultant shall maintain such accounts until the Parties agree to an equitable adjustment for the changes ordered by NAIPTA.

Acceptance of a Change Order by the Consultant shall constitute a full accord and satisfaction for any-and-all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the change order. The execution of a Change Order by the Consultant shall constitute conclusive evidence of the Consultant's agreement to the ordered changes in the Work. The Contract, as amended, forever releases any claim against NAIPTA for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.

32. VERBAL AGREEMENTS

Verbal change orders to the Contract are not permitted. No changes in the scope, specifications, character, or complexity of work shall be made by the Consultant without first receiving written approval by NAIPTA CEO-General Manager or his designee properly defining and limiting any such change. Consultant shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered by written Contract modification and signed by NAIPTA CEO-General Manager or his designee.

The Consultant shall promptly notify NAIPTA in writing when the Consultant has received direction, instruction, interpretation or determination from any source which the Consultant believes may cause any change in cost or time required for the performance of the Work. Such written notification shall state the date, circumstances, and source of the order and the reasons why the Consultant regards the order or action as a change. Such notice of Change shall be given to NAIPTA before the Consultant acts on said direction, instruction, interpretation or determination

and the Agency shall make written reply within seven (7) Days after its receipt.

If notification is not provided to the Valley prior to commencing work, the Consultant assumes all risks and responsibility for any additional costs incurred and related schedule impacts

33. LEGAL WORKER REQUIREMENTS

Consultant agrees that the Consultant and each Sub-Consultant it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

Under the provisions of A.R.S. § 41-4401, each party hereby warrants to the other that each party and all of its Subcontractors (if any) will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulation that relate to their employees and A.R.S. § 23-214 (A) (hereinafter “Consultant Immigration Warranty”).

A Breach of the Consultant Immigration Warranty shall constitute a material breach of the contract and shall subject the breaching party to penalties up to and including termination of the contract at the sole discretion of the non-breaching party.

Each party retains the legal right to inspect the papers of any Consultant or Subcontractor employee of the other party who works on the contract to ensure that the Consultant or Subcontractor is complying with the Consultant Immigration Warranty. Each party agrees to assist the other party in regard to any such inspections.

Each party may, at its sole discretion, conduct random verification of the employment records of the other party and any of its Subcontractors to ensure compliance with Consultant’s Immigration Warranty. Each party agrees to assist the other party in regard to any random verification performed.

A party will not be considered in materially breach of the contract or the Consultant Immigration Warranty if the party establishes that it has complied with the employment verification provision prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

The foregoing provisions of subparagraphs 1-6 of this article must be included in any contract that a party enters into with any-and-all its Subcontractors who provide service under the contract or any subcontract.

Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, each party certifies that it does not have a scrutinized business operation as defined in A.R.S. §§ 35-391 and 35-393 in either Sudan or Iran.

34. IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) REQUIRED

Consultant understands and acknowledges that the IRCA applies to it. Consultant agrees to comply with the IRCA on performing under the Contract and to permit NAIPTA inspection of their personnel records to verify such compliance.

35. LEGAL COMPLIANCE

To the extent applicable, NAIPTA and Consultant each warrant compliance with any-and-all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction over the services provided via the Contract, and all applicable employment laws, rules and regulations, including to the extent applicable, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Parties acknowledge that a breach of this

warranty is a material breach of the Contract and parties are subject to penalties for violation(s) of this provision, including termination of the Contract. Consultant and NAIPTA each retain the right to inspect the documents of any-and-all Consultants, and Subcontractor performing work and/or services relating to the Contract to ensure compliance with this warranty. All costs associated with inspections are the sole responsibility of the party subject to inspection. NAIPTA and Consultant each hereby agree to indemnify, defend and hold each other harmless for, from and against all losses and liabilities arising from any-and-all violations thereof. In addition, the parties each certify that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. §35-393.

36. CONFLICTS OF INTEREST

The Consultant shall not engage the services in connection with the contract of any present or former employee of NAIPTA or any Consultant thereto who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or contract modifications for the contract. The Consultant agrees that, to the best of its knowledge, no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of the contract.

Without limiting the generality of A.R.S. § 38-501 et seq., no member, officer, employee of NAIPTA or member of its governing body during his/her tenure or for three years thereafter, shall have any interest, direct or indirect, in the contract or the proceeds thereof. The contract is subject to termination pursuant to A.R.S. §38-511.

37. EQUAL EMPLOYMENT OPPORTUNITY

In connection with this procurement, the Consultant will take affirmative action to ensure that all applicants are considered for employment and that employees are treated during an application process and through employment without regard to their race, color, religion, sex, sexual orientation or domestic partnership, national origin, age, marital status, being disabled or disadvantaged, or any war-era veteran status. 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.

The Consultant will furnish all necessary information and reports and will permit access to its books, records, and accounts by NAIPTA for the purposes of investigation to ascertain compliance with the nondiscrimination/ disadvantaged business provisions of any resultant Contract.

38. NON-DISCRIMINATION

NAIPTA has agreed to abide by the assurance found in 49 CFR Part 26.13(a) and required by the U. S. Department of Transportation. As a condition of the Contract, NAIPTA shall require each contract signed by NAIPTA with Consultant, and each subcontract signed by the Consultant with a Subcontractor, to include the following assurance:

“The Consultant, Subcontractor, or sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of the Contract which may result in the termination of the Contract or such other remedy as NAIPTA deems appropriate.”

39. AFFIRMATIVE ACTION

Any Offeror performing under the Contract shall not discriminate against any worker, employee, or any member of the public because of race, creed, color, religion, sex or national origin, nor otherwise commit an unfair employment practice. The Offeror will take affirmative action to ensure

that applicants are employed and that employees are dealt with during employment without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrade, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Offeror further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with the Contract.

40. DBE PROGRAM

Pursuant to federal regulations NAIPTA has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. NAIPTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Agency has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of the Agency to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted Contracts.

Contractor and Subcontractor Obligation. Contractor and/or Subcontractor 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 DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Agency deems appropriate.

41. AMERICANS WITH DISABILITIES ACT

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Consultant understands and agrees that it shall not cause any individual with a disability to be excluded from participation in the Contract or from activities provided for under the Contract on the basis of the disability. As a condition of accepting the contract, the Consultant agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by NAIPTA through contracts with outside Consultants.

The Consultant shall be responsible for and agrees to indemnify and hold harmless NAIPTA from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against NAIPTA as a result of the Consultant's failure to comply with the provisions of subparagraph an above.

42. NONCOMPLIANCE

In the event of the Consultant's noncompliance with the nondiscrimination/disadvantaged business provisions of any resultant Contract, NAIPTA shall impose such Contract sanctions as it may determine to be appropriate, including but not limited to withholding payments under the contract until the Consultant complies; and/or, cancellation, termination, or suspension of the contract in whole or in part.

43. PROHIBITED INTEREST

Without limiting the generality of ARS 38-501 et. seq., no member, officer, employee of NAIPTA, or member of its governing body during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any resultant contract or the proceeds thereof.

44. BREACHES AND DISPUTES

Applicability to Contracts. This section contains provisions or conditions, which will allow for

administrative, contractual, or legal remedies in instances where Consultants violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down. The Breaches and Dispute Resolutions requirements in this section flow down to all tiers.

Disputes. Disputes arising in the performance of contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of NAIPTA CEO-General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Consultant mails or otherwise furnishes a written appeal to NAIPTA CEO-General Manager. In connection with any such appeal, Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of NAIPTA CEO-General Manager shall be binding upon Consultant and Consultant shall abide by the decision.

Performance During Dispute. Unless otherwise directed by NAIPTA CEO-General Manager, Consultant shall continue performance under 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/her employees, agents or others for whose acts he is legally liable, a claim for damages therefore 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 in accordance with A.R.S. Title 12.

Remedies. Unless Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between NAIPTA and Consultant arising out of or relating to the Contract or its breach will be decided in a 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 Consultant shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Confidentiality. Any proceeding initiated under this Section shall be deemed confidential to the maximum extent allowed by State Law and no Party shall make any disclosure related to the disputed matter or the outcome of any proceeding except to the extent required to seek interim equitable relief or to enforce an agreement reached or an award made hereunder. Notwithstanding the above, the Parties understand that NAIPTA is subject to Arizona's public records laws.

Additional Requirement. If at any time during the Contract period, the Consultant fails to render services of reasonably proper quality or has substantially failed to perform, keep and observe any of the terms, covenants, or conditions herein contained on the part of the Consultant to be performed, NAIPTA may give the Consultant written notice to correct such conditions or cure such default and if such condition or default shall continue for ten (10) days after receipt of said written notice, then and in that event, Contract shall cease and expire. In the event of such termination, the Consultant shall immediately return that portion of the advance not applied as a credit against reimbursable expenses.

45. TERMINATION FOR CONVENIENCE

Performance under the contract may be terminated by NAIPTA in accordance with this clause in

whole or, in part, whenever NAIPTA shall elect. Any such termination shall be effected by delivery to Consultant of a Notice of Termination specifying the extent to which performance under the contract is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Consultant shall, unless the notice requires otherwise:

- incur no further obligations in connection with the terminated work, and,
- on the date set forth in the notice of termination, the Contractor will stop work to the extent specified.
- terminate outstanding orders and subcontracts as they relate to the terminated work.
- settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.

NAIPTA may direct the Consultant to assign the Contractor's right, title, and interest under terminated orders or subcontracts to NAIPTA. The Consultant must still complete the work not terminated by the notice of termination and may incur such obligations as are necessary to do so.

NAIPTA may require the Consultant to transfer title and deliver to NAIPTA in the manner and to the extent directed by NAIPTA:

- any completed supplies; and
- such partially completed supplies and materials, parts, as the Consultant has specifically produced or specially acquired for the performance of the terminated part of the contract.

The Consultant shall, upon direction of NAIPTA, protect and preserve property in the possession of the Consultant in which NAIPTA has an interest.

NAIPTA shall be liable only for payment under the payment provisions of the Contract for services rendered before the effective date of termination.

The Consultant shall put a similar clause in all of its Sub-Consultant agreements.

46. TERMINATION FOR DEFAULT

NAIPTA may, by written Notice of Default to the Consultant, terminate the whole or any part of contract, if Consultant fails to perform the services within the time specified herein or any extension thereof; or if Consultant fails to perform any of the other material provisions of the contract or so fails to make progress as to materially endanger performance of contract in accordance with its terms and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the CEO-General Manager may authorize in writing) after receipt of notice from the CEO-General Manager specifying such failure.

If the contract is terminated in whole or in part for default, NAIPTA may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated. Consultant shall be liable to NAIPTA for any excess costs for such similar supplies or services and shall continue the performance of the contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of Subcontractor, Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Consultant. If the failure to perform is caused by the default of a Subcontractor and if such default arises out of causes beyond the control of both Consultant and Subcontractor and without the fault or negligence of either of them, Consultant shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit Consultant to meet the required delivery schedule.

Payment for completed services delivered to and accepted by NAIPTA, shall be at the contract price. NAIPTA may withhold from amounts otherwise due Consultant for such completed deliveries/services such sum as NAIPTA determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.

If, after notice of termination of contract under the provisions of this clause, it is determined for any reason that Consultant was not in default under the provisions of this clause or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for the convenience of NAIPTA.

The rights and remedies of NAIPTA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under contract.

47. OWNERSHIP OF WORK

All reports, drawing plans, specifications and other materials prepared, or in the process of being prepared, for the services to be provided by the proposer shall be and are the property of NAIPTA, and NAIPTA shall be entitled access to and copies of during the progress of the work.

48. CONFIDENTIALITY

The contract creates an exclusive and perpetual license for NAIPTA to copy, use, modify, reuse, or sub-license any-and-all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, work product, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under the contract (“Documents & Data”).

Consultant shall require all Subcontractors to agree in writing that NAIPTA is granted an exclusive and perpetual license for any Documents & Data the Subcontractor prepares under the contract.

Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by NAIPTA. NAIPTA shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by the contract shall be at NAIPTA’s sole risk.

49. INTELLECTUAL PROPERTY

In addition, NAIPTA shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any-and-all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under the contract as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under the contract.

NAIPTA shall have and retain all right, title and interest in Intellectual Property developed or modified under the contract whether or not paid for wholly or in part by NAIPTA, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any-and-all rights to the above referenced Intellectual Property upon request of NAIPTA.

Consultant shall also be responsible to obtain in writing separate written assignments from any Subcontractor or agents of Consultant of any-and-all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of the contract, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of NAIPTA.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of the contract and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of the contract, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

NAIPTA further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any-and-all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under the contract.

NAIPTA and its agents reserve the right to reproduce any-and-all documentation produced by the Consultant, whether such documentation is the Consultant's standard documentation or such documentation is prepared specifically for the work covered by the Contract, for distribution at NAIPTA's will, despite any notice to the contrary appearing on the documentation.

50. PUBLIC RECORDS/CONFIDENTIALITY

The proposal submitted by Consultant becomes the exclusive property of NAIPTA. SOQs will not be publicly opened. SOQs and evaluations will be kept confidential throughout the procurement process. Subject to applicable laws and NAIPTA procurement policies, financial information required to be submitted to establish financial responsibility and other financial data shall be handled as confidential data and utilized on a "need-to-know" basis for SOQ evaluation. Reasonable efforts will be made to avoid disclosure except as necessary for evaluation.

Offerors shall specifically designate and clearly label "CONFIDENTIAL" any-and-all materials, including financial data, or portions thereof which they deem to contain trade secrets or other proprietary information, which is exempt from public inspection and copying. The Offeror shall provide the legal basis for the exemption to NAIPTA upon request. If a SOQ does not clearly identify the "CONFIDENTIAL" portions, NAIPTA will not notify the Offeror that its SOQ will be made available per a Public Records Request. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL", NAIPTA shall determine whether the identified information is confidential pursuant to the Arizona Revised Statutes §36-664 and NAIPTA Procurement Policies and Procedures. If required by law or by an order of a court, NAIPTA may be required to disclose such records or portions thereof, including without limitation those so marked. If NAIPTA determines that the material is not exempt and may be disclosed, NAIPTA will notify the Offeror of the request and allow the Offeror ten (10) working days to take appropriate action. If the Offeror fails or neglects to take such action within said period, the Agency may release the portions of the SOQ deemed subject to disclosure. To the extent that the Agency withholds from disclosure all or any portion of the Offeror's documents at Offeror's request, Offeror shall agree to fully indemnify, defend and hold the Agency harmless from all damages, penalties, attorneys' fees and costs the Agency incurs related to withholding information from public disclosure. By submitting a SOQ, the Offeror consents to the procedure outlined in this paragraph and shall have no claim against the Agency by reason of actions taken under this procedure.

51. PUBLICITY AND ADVERTISING

The Consultant, its Sub-Consultants and suppliers shall not publish, nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the subject matter of the contract at any time without the prior written authorization of NAIPTA. The Consultant shall not display any signs, posters, or any other advertising matter in or on the Work or on or around the Work Site other than those prescribed by the Agreement or by law without the prior written authorization of NAIPTA. In addition, advertising or other copy mentioning NAIPTA or quoting the opinions of any of its employees shall not be released before such copy is approved in writing by NAIPTA before release. Any material proposed for publication must be factual and not state or imply endorsement by NAIPTA of any firm, service, or product.

52. CODE OF ETHICS AND WRITTEN STANDARDS OF CONDUCT

The Consultant understands that NAIPTA is governed by its Code of Ethics. Copies of Code of Ethics can be obtained from NAIPTA.

NAIPTA maintains its own written code of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of NAIPTA will participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award: 1) The employee, officer, agent, or Board member, 2) Any member of his immediate family, 3) His partner, or 4) An organization that employs, or is about to employ, any of the above. NAIPTA's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from Consultant, potential Consultant, or parties to sub agreements. NAIPTA has minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct provide for penalties, sanctions, or other disciplinary action for violation of such standards by NAIPTA's officers, employees, or agents, or by Consultant or their agents.

53. DRUG AND ALCOHOL FREE WORKPLACE

If specified within the scope of work the Consultant agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 655 et. seq., and permit any authorized representative of the United States Department of Transportation or its operating administrations, the any Oversight Agency of Arizona, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Consultant agrees further to certify annually its compliance with Parts 655 and to submit the Management Information System (MIS) reports before March 15 to NAIPTA. To certify compliance, the Consultant shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

54. INDEPENDENT CONTRACTOR

Under the terms of the contract, the Consultant is an independent Consultant and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than NAIPTA employees, assisting in the performance of its services hereunder. The Consultant agrees to be solely responsible for all matters relating to wages, hours of work, working conditions, and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters.

The Consultant agrees to be responsible for its own acts and those of its subordinates, employees and all Sub-Consultants, if any, during the life of the contract. If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

NAIPTA and the Consultant acknowledge that although NAIPTA shall oversee and monitor the Consultant, NAIPTA will not control the day-to-day operations of the Consultant or any of its Sub-Consultants. NAIPTA shall not determine means, methods, techniques, procedures or safety precautions and programs in connection with the Consultant's and sub consultant's performance under the contract, which shall solely be the responsibility and obligation of the Consultant.

Improper Exercise of Authority. It is further understood and agreed that the Consultant shall not in any way exercise any portion of the authority or powers of NAIPTA and shall not make a contract or commitment, or in any way represent itself as an agent of NAIPTA beyond the scope of the contract unless expressly authorized, in writing, by NAIPTA.

Covenants Against Contingent Fees. The Consultant warrants that it has not employed or retained any company or person, to solicit or secure the contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the contract. The preceding sentence does not apply to Contracts entered into with Sub-Consultants for the performance of Professional Services as permitted under the contract. For breach or violation of this warranty, NAIPTA shall have the right to annul the contract without liability, or in its discretion, to deduct from the Contract Price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

55. PRIME CONTRACTOR RESPONSIBILITIES

The selected Consultant will be required to assume responsibility for all services offered in their proposal whether or not they produce them. Further, NAIPTA will consider the selected Consultant to be the sole point of contact with regard to contractual matters.

56. INSPECTION OF WORK

All work (which term in this section includes services performed, and material utilized in the performance of services) shall be subject to inspection and test by NAIPTA to the extent practicable at all times and places during the term of the contract. NAIPTA shall have the right to enter the Consultant's premises for the purpose of inspecting and auditing all data and records which pertain to the Consultant's performance under the contract. NAIPTA and its agents of their choice shall also have the right to enter the Consultant's premises for the purpose of inspecting vehicles owned by the Consultant that are used to provide service under the contract.

If any work performed hereunder is not in conformity with the requirements of the contract, NAIPTA shall have the right to require the Consultant to perform the work again in conformity with such requirements at the Consultant's expense. When the work to be performed is of such a nature that the defect cannot be corrected by re performing the work, NAIPTA shall have the right to (1) require the Consultant to immediately take all necessary steps to ensure future performance of the work in conformity with the requirements of the contract; and (2) reduce the contract price to reflect the reduced value of the work performed. In the event the Consultant fails promptly to perform the work again or take necessary steps to ensure future performance of the work in conformity with the requirements of the contract, NAIPTA shall have the right to have the work performed in conformity with the contract requirements and charge the Consultant any costs to NAIPTA that are directly related to the performance of such work, or to terminate the contract for default.

No completion of any audit or inspection by NAIPTA constitutes a representation that operations or equipment are in compliance with any federal, state or local laws. Such responsibility is uniquely that of the Consultant.

57. AUDIT AND INSPECTION OF RECORDS

The Consultant shall permit the authorized representative of the United States Department of Transportation and of the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to its performance and its subcontracts, if any, under the contract with which Federal funds are used from the date of the contract through and until the expiration of three years after completion of the contract. The inspection and audit provided in this section does not include an audit of the manufacturer's cost and/or profit, with the exception of single bid or sole source situations.

The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Consultant agrees to maintain all books, records, accounts and reports required under the contract for a period of not less than three years after the date of termination or expiration of the contract, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case Consultant 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 18.42(b).

58. FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from events beyond their control. Such events shall include, but not be limited to, acts of God, riots, acts of war, epidemics, unusual and unavoidable delays in delivery, unusually severe weather, governmental acts or omissions of governmental entities, fire, communication line failures, or power failures. Based upon any such event, Consultant may be entitled to a Change Order for extra time and cost, but shall not be entitled to an increase in Fee.

59. LOBBY PROHIBITION

Pursuant to Arizona Revised Statutes 41-1233 and NAIPTA Policy, no person, Consultant, or entity of any sort, public or private shall:

- Retain or employ another person to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any legislation, or the approval or veto of any legislation by the governor, and
- Accept employment or render service for compensation on a contingent basis.
- Lobby the legislature, NAIPTA Board, or any other public body or official for compensation within one year after the person ceases to be a member of the Senate or House of Representatives.
- In any manner seek to improperly influence the vote or decision of any member of the legislature, NAIPTA Board or Committee, or any other public body, official, or NAIPTA employee, through any means.

60. HEADINGS

The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any provisions of this Agreement.

61. INTERPRETATIONS

To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; (b) reference to "persons" or "parties" in this Agreement shall be deemed to refer to natural persons,

corporations, general partnerships, limited partnerships, trusts and other entities; (c) (unless specified otherwise) references to paragraphs, sections or Sections are to paragraphs, sections or Sections of this Agreement; and (d) any reference to “day” in this Agreement shall be deemed to refer to calendar days unless this Agreement expressly requires Business Days.

Exhibits to General Terms and Conditions

EXHIBIT A: INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

A. Contractor shall obtain and submit to NAIPTA before any Services are performed, certificates from the Contractor's insurance carriers indicating the presence of coverages and limits of liability as set forth in the Contract Documents, but in no event shall the coverages and limits be less than those specified as follows:

1. Workers' Compensation:

Coverage A. Statutory Benefits.

Coverage B. Employer's Liability.

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Coverage must include a Waiver of Subrogation endorsement.

Where applicable, U.S. Longshore and Harbor Workers Compensation Act Endorsement shall be attached to the policy.

2. Commercial Auto Coverage:

Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for "Any Auto" or "All Owned, Scheduled, Hired and Non-Owned".

If the Contract Documents require Contractor to remove and haul hazardous waste from the Project site, or if the Project involves such similar environmental exposure, pollution liability coverage equivalent to that provided under the ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000

Coverage must include a Waiver of Subrogation endorsement.

Both policy forms must include:

- i. Premises and Operations coverage with no explosion, collapse or underground damage (XCU) exclusions.
- ii. Products and Completed Operations coverage. Contractor agrees to maintain this coverage for a minimum of 10 years following completion of the Contractor Work and to continue to name NAIPTA as an Additional Insured for the entire 10-year period.

- iii. Blanket contractual coverage for the indemnity/hold harmless agreements assumed in this Subcontract and in the Prime Contract. Any Employee Exclusion will be deleted.
- iv. Broad Form Property Damage coverage, including completed operations or its equivalent.
- v. An endorsement naming NAIPTA, each of the Partners, and any other party required to be named as an additional insured under the Contract Documents, and any other parties in interest as Additional Insured(s) under the coverage specified under Comprehensive General Liability or Commercial General Liability. The endorsement shall be on ISO forms CG2010B 11/85 or CG2026 11/85, or equivalent. Additional Insured Endorsements on both ISO forms CG2010 10/01 and CG2037 10/01 are acceptable. ISO forms CG2010A or CG2010B 10/93 and/or 3/97, or their equivalent, ARE NOT ACCEPTABLE. Any form that does not grant additional insured status for both the ongoing operations and products/completed operations coverages IS NOT ACCEPTABLE.
- vi. An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy."
- vii. Coverage must be on an "Occurrence" form. "Claims Made" and "Modified Occurrence" forms are not acceptable.
- viii. Coverage to include general aggregate limits on a "per project" basis.

4. Excess Liability:

Umbrella Liability to extend the above liability coverages and limits to reach a total combined limit of:

Each Occurrence	\$5,000,000
Aggregate	\$5,000,000

5. Errors & Omissions Liability

(Applicable any design/engineering services are part of Work)

Per Occurrence/Aggregate	\$3,000,000-5,000,000
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Note: higher coverage limits may be required under the Contract Documents, in which case such higher limits shall apply.

Any claims made retro-active data shall be clearly shown on the Certificate of Insurance and shall be effective prior to the commencement of any work

Coverage provided must have no exclusion for design-build projects. Designer must provide evidence of coverage for nine (9) years beyond completion of the Project in the form of a renewal insurance policy certificate and/or the purchase of an extended reporting period endorsement should the policy be cancelled or non-renewed

6. Pollution Legal Liability

\$1,000,000

(Applicable as to any pollutants or hazardous waste exposures as part of Work)

Contractor shall maintain insurance covering losses caused by pollution conditions (including mold) that arise from the Work.

7. Other Requirements

- i. All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation, non-renewal or material reduction in coverage.
 - ii. All policies must be written by insurance companies whose rating, in the most recent Best's Rating Guide, is not less than A- VII. All coverage forms must be acceptable to NAIPTA.
 - iii. Certificates of Insurance with the required endorsements evidencing the required coverages must be delivered to NAIPTA prior to commencement of any Work. Failure of NAIPTA to demand such certificate or other evidence of full compliance with these insurance requirements or failure of NAIPTA to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. NAIPTA shall have the right, but not the obligation, to prohibit Contractor or any of its subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by NAIPTA.
 - iv. Contractor shall be responsible to satisfy any deductible or self-insured retention with respect to any of the coverages required by the Contract Documents.
 - v. NAIPTA reserves the right, in its sole discretion, to require higher limits of liability coverage if, in NAIPTA's opinion, operations by or on behalf of Contractor create higher than normal hazards and, to require Contractor to name additional parties in interest to be Additional Insureds.
 - vi. In the event that rental of equipment is undertaken to complete and/or perform the Work, Contractor agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.
 - vii. In the event that materials or any other type of personal property ("personal property") is acquired for the Project or delivered to the Project site, Contractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.
 - viii. Contractor shall maintain "all risk" insurance, on a replacement cost basis, covering loss or damage to personal property (for which it has title and/or risk of loss) which is to become a final part of the Project, during any time such personal property is in transit and while stored or worked upon away from the Project site. NAIPTA shall be named as additional insured under such insurance.
- B. NAIPTA and Contractor waive all rights against each other and against NAIPTA and the Partners for damages caused by fire or other perils covered by Contractor's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Such insurance may be subject to an amount deductible from the sums otherwise payable thereunder and the burden of such deduction shall be borne by the party receiving the direct benefit of such insurance.
- C. Any additional provisions specific to the Project are attached. In the event of any conflict between the attached terms and the terms of this Exhibit, the Contractor shall comply with the more stringent provisions.