

## INDEPENDENT CONTRACTOR AGREEMENT

This INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement") is entered into by and between VENDOR NAME, (the "Contractor") and Northern Arizona Intergovernmental Public Transportation Authority, a political subdivision of the State of Arizona ("NAIPTA"), effective as of January 1, 2018 (the "Effective Date").

### WHEREAS:

- A. NAIPTA requires the services of an independent Contractor to provide Highway 180 Traffic Survey services as further described in the issued RFP, pursuant to the terms of this Agreement (hereinafter "Services"); and
- B. NAIPTA issued Request for Proposals, RFP 2018-102 (the "RFP"), in order to obtain these Services; and
- C. The Contractor submitted the successful Proposal, including the Best and Final Offer pricing, ("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 \$XX,XXX, 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. All travel will require preapproval and will be subject to reimbursement at federal per diem rates. Contractor will be required to submit detailed travel receipts along with invoice for reimbursement.

### **3. TERM OF AGREEMENT AND TERMINATION**

The first term of this Agreement shall be from the Effective Date for twelve (12) months. This Agreement may be renewed in writing, signed by both parties, for up to Two (2) 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. ISRAEL BOYCOTT PROVISION**

Each party certifies to the other 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.

### **14. 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 Indemnatee shall, in all instances except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, 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

### **15. CHANGES**

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

### **16. 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.

### **17. 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.

### **18. 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.

## **19. CHOICE OF LAW**

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

## **20. 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.

## **21. 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:
  - i. Professional liability in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.
  - ii. Commercial General Liability in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.
  - iii. 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.

## **22. 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.

## **23. 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.

## **24. 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, the Contractor** has caused this document to be executed by its duly authorized representative, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Vendor Name)

By: \_\_\_\_\_  
Print Name

Its: \_\_\_\_\_  
Title

\_\_\_\_\_  
(Signature)

STATE OF \_\_\_\_\_ }

} ss.

County of \_\_\_\_\_ }

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

by \_\_\_\_\_.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Seal

\_\_\_\_\_  
Notary Public



**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:

ATTEST:

By \_\_\_\_\_  
Fredda J. Bisman  
Dickinson Wright  
General Counsel, NAIPTA

\_\_\_\_\_  
Clerk of the Board

## Exhibit C: NAIPTA CERTIFICATIONS

### DISCLOSURE OF RESPONSIBILITY STATEMENT

PG 1 OF 2

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 6.2 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.

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6. List any contracts not completed on time.

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

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8. List any documented violations of federal or state labor laws, regulations, or standards, occupational safety and health rules.

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**DISCLOSURE OF RESPONSIBILITY STATEMENT**

PG 2 OF 2

I, \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_,  
Name of individual Title & Authority Company Name

declare under oath that the above statements, including any supplemental responses attached hereto, are true.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Title:

My Commission expires:

\_\_\_\_\_

(Notary Public)

**NON-COLLUSION AFFIDAVIT**

**AFFIDAVIT BY CONTRACTOR**

**CERTIFYING THAT THERE WAS NO COLLUSION IN BIDDING FOR CONTRACT**

STATE OF ARIZONA ) ) ss

COUNTY OF: ) )

\_\_\_\_\_  
(Name of Company, Representative)

being first duly sworn, deposes and says:

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 bid for the:

By: \_\_\_\_\_

(Name of Individual/Representative)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Title:

My Commission expires:

\_\_\_\_\_  
(Notary Public)

## **Exhibit C: Federal Terms and Certifications**

### **Federal Transit Administration (FTA) Required Terms 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**

- a) 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.
- b) 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

- a) 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.
- b) 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.
- c) 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.

#### **3. Access to Records**

- a) 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.
- b) 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.

- c) 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).
- d) FTA does not require the inclusion of these requirements in subcontracts.

#### **4. Access to Third Party Contract Records**

The following access to records requirements may apply to this Contract:

Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, 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. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his/her 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.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to 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 Contractor agrees to maintain same until the Purchaser, 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).

#### **5. 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.

#### **6. 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 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:

- i) 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.
- ii) 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.
- iii) 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](http://www.ftahelpline.com).

## **7. 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 the NAIPTA through contracts with outside Consultants.

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

## **8. Termination (> \$10,000)**

- a) 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.

- b) 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, 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.

## **9. Incorporation of FTA Terms (Form A)**

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.

## **10. Suspension and Debarment (>\$25,000) (Form B)**

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.

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.

#### **11. Lobbying (> \$100,000) (Form C)**

- a) Contractor certifies that no federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of NAIPTA, any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of NAIPTA, any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
- c) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- d) The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A3801, et.seq., apply to this certifications and disclosure if any.
- e) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000, and not more than \$100,000, for each such failure. See Attachment 49 CFR Part 20 Lobbying Certification.

#### **12. Disadvantaged Business Enterprises (Forms D, E, F, & G)**

- 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 1% with 1% 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. The Contractor must promptly notify NAIPTA, whenever a DBE subcontractor performing work related to this contract is terminated or fails to 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.

### **13. Buy America (> \$100,000) (Form H)**

The Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchase (currently less than \$100,000) made with capital, operating, or planning funds.

The Contractor, as a condition of responsiveness, shall submit with the proposal a completed Buy America certification form, Attachment 49 CFR 661.6, if applicable.

### **14. 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 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 of 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.

### **15. Clean Air (> \$100,000)**

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall report each violation to

NAIPTA and understands and agrees that NAIPTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

#### **16. Clean Water (> \$100,000)**

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

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

#### **17. Recycled Products**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### **18. Cargo Preference (for all ocean vessel transportation)**

Contractor shall: (a) use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the Contract, to the extent such vessels are available at fair and reasonable rates for United States - Flag commercial vessels; (b) furnish within twenty (20) working days following the thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading); and, (c) include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### **19. Fly America (for all foreign air transportation)**

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

#### **20. Davis-Bacon and Copeland Anti-Kickback Acts (construction > \$2,000)**

##### **a) Minimum wages –**

- i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the

full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii)

- (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (a) Except respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (b) The classification is utilized in the area by the construction industry; and
  - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (d) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the

- 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
  - iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis- Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
  - v)
    - (1) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
      - (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
      - (b) The classification is utilized in the area by the construction industry; and
      - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
    - (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
    - (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
    - (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
  - b) **Withholding** - NAIPTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor

or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, NAIPTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c) **Payrolls and basic records –**

i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii)

- (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the NAIPTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (a) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
  - (b) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (c) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (4) The falsification of any of the above certifications may subject the contractor or

subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- iii) The contractor or subcontractor shall make the records required under paragraph (A)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d) **Apprentices and trainees -**

- i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- e) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- f) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- g) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- h) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- i) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j) **Certification of eligibility** –
  - i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- k) **Contract Work Hours and Safety Standards Act (> \$100,000)**
  - i) Overtime Requirements – No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the base rate of pay for all hours worked in excess of forty hours in such workweek.
  - ii) Violation; liability for unpaid wages; liquidated damages – In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of



the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- iii) Withholding for unpaid wages and liquidated damages – NAIPTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- iv) Subcontracts – The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## **21. Bonding Requirements (> \$100,000)**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts.

### **Bid Bond Requirements (Construction)**

- a) Bid Security: A Bid Bond must be issued by a fully qualified surety company acceptable to NAIPTA and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
- b) Rights Reserved: In submitting this Bid, it is understood and agreed by bidder that the right is reserved by NAIPTA to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of NAIPTA.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of NAIPTA, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of NAIPTA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by NAIPTA as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense NAIPTA for the damages occasioned by default, then the undersigned bidder agrees to indemnify NAIPTA and pay over to NAIPTA the difference between the bid security and NAIPTA's total damages, so as to make NAIPTA whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

### **Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

- a) Performance bonds
  - i) The penal amount of performance bonds shall be 100 percent of the original contract price, unless NAIPTA determines that a lesser amount would be adequate for the protection of NAIPTA.
  - ii) NAIPTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NAIPTA may secure additional protection by directing the Contractor to increase the penal

amount of the existing bond or to obtain an additional bond.

- b) Payment bonds
  - i) The penal amount of the payment bonds shall equal:
    - (1) Fifty percent of the contract price if the contract price is not more than \$1 million; or
    - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - (3) Two and one half million if the contract price is more than \$5 million.
  - ii) If the original contract price is \$5 million or less, NAIPTA may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)** The Contractor may be required to obtain performance and payment bonds when necessary to protect the NAIPTA's interest.

- a) The following situations may warrant a performance bond:
  - i) NAIPTA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
    - (1) A contractor sells assets to or merges with another concern, and NAIPTA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
    - (2) Substantial progress payments are made before delivery of end items starts.
    - (3) Contracts are for dismantling, demolition, or removal of improvements.
- b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
  - i) the penal amount of performance bonds shall be 100 percent of the original contract price, unless NAIPTA determines that a lesser amount would be adequate for the protection of NAIPTA.
  - ii) NAIPTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NAIPTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the NAIPTA's interest.
- d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
  - i) The penal amount of payment bonds shall equal:
    - (1) Fifty percent of the contract price if the contract price is not more than \$1 million; or
    - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - (3) Two and one half million if the contract price is increased.

#### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. NAIPTA shall determine the amount of the advance payment bond necessary to protect NAIPTA.

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. NAIPTA shall determine the amount of the patent indemnity to protect NAIPTA.

#### **Warranty of the Work and Maintenance Bonds**

- a) The Contractor warrants to NAIPTA, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by NAIPTA, free from faults and defects and in conformance with the Contract Documents. All work

not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- b) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by NAIPTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to NAIPTA. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to NAIPTA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

## **22. Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **23. Energy Conservation**

Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Arizona Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

## **24. 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.

## **25. Notification of Federal Participation**

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

## **26. Declaration Regarding Material Assistance / Non-Assistance to a Terrorist Organization (Form I)**

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List (see the Arizona Homeland Security Division website for a reference copy of the Terrorist Exclusion List).

Any answer of “yes” to any question, or the failure to answer “no” to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, “material support or resources” means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess

of one hundred dollars, as well as communications, lodging, training, safe houses, dales documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

## **Exhibit C Forms: Federal Certifications**

## **Forms: Federal Certifications**

### **Form A: 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.

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Vendor Representative

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Date

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Vendor

**Forms: Federal Certifications**

**Form B: 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

## Forms: Federal Certifications

### Form C: 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



## **Forms: Federal Certifications**

### **Form D: Disadvantaged Business Enterprises Compliance Certification**

**(Attachment 49 CFR Part 26)**

*All vendors are required to complete and certify compliance with requires of 49 CFR Part 26 Participation by DBE in DOT Programs.*

**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.

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Signature of the Bidder or Offeror's Authorized Official

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

---

Date

## Forms: Federal Certifications

### Form E: Disadvantaged Business Enterprises Certification

Pg 1 of 2

#### (Attachment 49 CFR Part 26)

*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.

## Forms: Federal Certifications

### Form E: Disadvantaged Business Enterprises Certification (cont'd)

Pg 2 of 2

#### (Attachment 49 CFR Part 26)

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

Asian- Pacific American

Subcontinent Asian American

Native 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:

## Forms: Federal Certifications

### Form F: Disadvantaged Business Enterprises Certification

#### NAIPTA (Individual) Intended Participation Affidavit

#### DISADVANTAGED BUSINESS ENTERPRISE INTENDED PARTICIPATION AFFIDAVIT

Procurement Number: \_\_\_\_\_

Procurement Name: \_\_\_\_\_

#### 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: \_\_\_\_\_

<b>DBE Scope Items</b> List items separately. Partial items must be explained.	<b>Item Amount</b> Not to exceed total bid amount.	<b>DBE Credit (\$)</b>
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:

Northern Arizona Intergovernmental Public Transportation Authority \_\_\_\_\_  
RFP 2018-102 Highway 180 Traffic Study, Exhibit C

## Forms: Federal Certifications

### Form F: Disadvantaged Business Enterprises Overall Sub Participation

(Attachment 49 CFR Part 26)

#### NAIPTA (Overall) Intended Participation Affidavit

#### DISADVANTAGED BUSINESS ENTERPRISE INTENDED PARTICIPATION AFFIDAVIT

Procurement Number: \_\_\_\_\_

Procurement Name: \_\_\_\_\_

#### 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 at 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:**

## Forms: Federal Certifications

### Form K: BUY AMERICA CERTIFICATION

#### (Attachment 49 CFR Part 661)

*(To be submitted with a bid or Offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)*

#### **Certificate of Compliance**

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

#### **Certificate of Non-Compliance**

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_