



Mountain Line

**(Northern Arizona Intergovernmental
Public Transportation Authority)**

3773 N. Kaspar Dr., Flagstaff, AZ 86004

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OWNER'S REPRESENTATIVE MASTER CONTRACT

CONTRACT NO. _____



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EXHIBITS

- A Owner's Program
- B. Owner's Representative Services
- C Owner's Representative Fees
- D Project Task Order Form
- E Insurance Requirements

This Contract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.



OWNER'S REPRESENTATIVE MASTER CONTRACT

Contract No.

THIS MASTER CONTRACT ("Contract") is made and entered into on the ____ day of _____, 20____, by and between Northern Arizona Intergovernmental Public Transportation Authority, a political subdivision of the State of Arizona, hereinafter called ("Mountain Line" or "Owner") and _____ ("Owner's Representative" or "OR").

Mountain Line and Owner's Representative agree as follows:

ARTICLE 1 PARTIES

Mountain Line: Mountain Line
3773 N. Kaspar Dr.
Flagstaff, AZ 86004
Mountain Line Representative:
Telephone:
E-mail:

OWNER'S REPRESENTATIVE: (Name)
(Address)
Arizona Registration No.
Federal Tax ID No.:
OR's Representative:
Telephone:
E-mail:

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract between Mountain Line and Owner's Representative for any project shall consist of the following Contract Documents:

1. This Master Contract;
2. Owner's Program attached as Exhibit A
3. Programming Services attached as Exhibit B;
4. Programming Fees attached as Exhibit C;
5. Project Task Order in the form attached hereto as Exhibit D;
6. Exhibit E - Insurance Requirements- attached;
7. Exhibit F – Dispute Resolution – attached;
8. The Request for Proposals ("RFP") issued by Mountain Line for this Master Contract; and
9. The Proposal submitted by Owner's Representative dated _____ "Proposal").

2.2 MASTER AGREEMENT

This is a Master Contract providing the basis by which Mountain Line may issue, and Owner's Representative may accept, an authorization to perform Services for or in relation to a specific project. This Master Contract shall govern all contracts and other agreements between Mountain Line and Owner's Representative, unless expressly excluded, in writing, in such contract or agreement.

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2.2.1 Authorization by Mountain Line to perform Services and agreement by Owner's Representative to perform specific Services shall be made by separate "Project Task Order," as set forth in the attached Exhibit D. The terms and conditions set forth herein, and attached hereto, including any and all Exhibits and properly adopted amendments or modifications hereto, are expressly agreed to by Owner's Representative and shall be applicable for any and all Services performed by Owner's Representative for Mountain Line and shall be incorporated (whether specifically referenced or not) into every Project Task Order, change order, contract or agreement (whether written or oral) entered into between Owner's Representative and Mountain Line. This Master Contract does not obligate or require Mountain Line to offer any Project Task Order to Owner's Representative, and no contract in relation to any specific Services shall be entered into until a Project Task Order therefore has been fully executed by Mountain Line and Owner's Representative.

2.2.2 Issuance of Project Task Orders: Mountain Line may, in its sole discretion, issue a Project Task Order in the form attached hereto as Exhibit D, to Owner's Representative to perform the Services specified in the Project Task Order. Upon acceptance by the Owner's Representative, each Project Task Order, together with this Master Contract, shall constitute the Contract for performance of the Services set forth in the Project Task Order.

2.3 Agreement to the terms set forth herein is a material and necessary precondition and inducement to Mountain Line entering into this Master Contract, and each Project Task Order, with Owner's Representative.

ARTICLE 3 GENERAL PROVISIONS

3.1 Mountain Line retains the Owner's Representative to consult with and assist the Mountain Line in developing and implementing the Owner's Program as defined in this Contract, and administer, review, coordinate and obtain successful completion of the Project included in the Owner's Program and under Project task Order. The Owner's Representative shall be the Mountain Line's agent and shall exercise its skill and judgment in furnishing those Services.

3.2 TEAM RELATIONSHIP The Mountain Line and the Owner's Representative agree to proceed with the Program on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Contract in an economical and timely manner.

3.3 EXTENT OF AGREEMENT This Contract is solely for the benefit of the Parties, with the Project Task Orders represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between this Contract and any other contract entered into by the Mountain Line in connection with the Program, as between the Mountain Line and the Owner's Representative, this Contract shall govern.

3.4 DEFINITIONS

3.4.1 The Program Management Documents consist of:

3.4.1.1 as to the specific Project covered thereby, the Project Task Order;

3.4.1.2 written amendments to this Contract signed by both the Mountain Line and Owner's Representative.

3.4.1.3 this Contract; and

3.4.1.4 the Owner's Program provided in subsection 3.4.4.



In case of any inconsistency, conflict or ambiguity among the Program Management Documents, the Documents shall govern in the order in which they are listed above.

3.4.2 The Services to be provided by the Owner's Representative are the Basic Services as set forth in ARTICLE 4 of this Contract, plus any Additional Services that may be authorized by the Mountain Line under ARTICLE 4, as more specifically set forth in Exhibit B.

3.4.3 The term Day shall mean calendar day.

3.4.4 The Owner's Program is a description of the Mountain Line's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements, as set forth in Exhibit A.

3.4.5 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up.

ARTICLE 4 OWNER'S REPRESENTATIVE'S BASIC SCOPE OF SERVICES

The Owner's Representative shall provide the services indicated in Exhibit B as the Owner's Representative's responsibility in the Basic Scope of Services during the Phases described below. These services may be provided in one or more of the phases of the Owner's Program or in one or more phases of a discrete project within the overall program. The duration of the phases will be used as the basis of compensation of the Owner's Representative as described in ARTICLE 8, and as set forth in each applicable Project Task Order. Portions of each of the Phases of Service may commence before the previous phase is completed, in which case both phases may proceed concurrently, and may extend beyond the termination of another phase (*i.e.*, the Programming Phase will start before the other Phases and continue through the other Phases, and possibly beyond).

4.1 The four Phases of Service are defined as follows and are further identified in Exhibit B.

4.1.1 Programming Phase: The Programming Phase includes assisting in the further development of the Owner's Program as defined in subsection 3.4.4 above and Exhibit A, and the preliminary evaluation of each Project's(s') feasibility based on the Owner's Program and other relevant information and as set forth in the applicable Project Task Order,

4.1.2 Planning & Design Phase: Planning & Design Phase for the entire Program and individual Projects include the services during the development of the design and specifications through the preparation of zoning, NEPA, construction documents and procurements for a discrete Project as outlined in Exhibit B and the applicable Project Task Order.

4.1.3 Construction Phase: The Construction Phase commences upon the issuance of a written notice to the contractor to proceed with construction of a discrete project as outlined in Exhibit B.

4.1.4 Project Closeout Phase: The Project Closeout Phase commences when a project, or a designated portion, is sufficiently complete in accordance with the contract documents so that Mountain Line can occupy or utilize the Program, or a designated portion, for the use for which it is intended and continues until the Project is fully and finally completed and accepted by the, and may be extended through the warranty period for each Project.



4.2 Owner's Representative shall perform the Services required by, and in accordance with this Master Contract and as outlined in Exhibit B, and the applicable Project Task Orders to the satisfaction of the Project Manager and the General Standard of Care. In addition, Owner's Representative shall provide all of the Services as applicable to a specific Project Task Order and appropriate for the Project encompassed by the Project Task Order.

4.3 Warranties:

4.3.1 The Owner's Representative may engage such subconsultants or professional associates as Owner's Representative may deem necessary or desirable for the timely and successful completion of this Contract. However, the use of such subconsultants or professional associates for the performance of any part of the services specified in the Proposal shall be subject to the prior written approval of Mountain Line. Owner's Representative will submit a complete list of subconsultants in the Proposal and for each Project Task Order and will update information on the list during the term of the Contract, should the status or identity of said subconsultants change. Employment of such subconsultants or professional associates in order to complete the Services set forth in Exhibit B shall not entitle Owner's Representative to additional compensation beyond that set forth in Article 7 or Exhibit C. The Owner's Representative shall be responsible for and shall warrant all Services including work delegated to such subconsultants or professional associates.

4.3.2 The Owner's Representative shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) conducted in accordance with the prevailing standard of care by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of Arizona; (ii) be provided by properly trained, qualified, and licensed workers, subconsultants, and/or subvendors; (iii) conform to the requirements of this Contract; and (iv) meet all specifications, requirements and legal regulations, statutes and/or codes that apply thereto, including, without limitation, all federal, state, county, and Mountain Line rules regulations, ordinances and/or codes that may apply.

4.3.3 Immediately upon notice from the Contract Administrator thereof, Owner's Representative shall correct or replace as required by the Contract Administrator, at Owner's Representative's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services and/or Deliverables provided under this Contract. Mountain Line's acceptance or approval of the Services shall in no way relieve the Owner's Representative of any of Owner's Representative's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services.

4.4 Coordination: Owner's Representative shall be responsible for coordinating the performance of the Services with Mountain Line, the City of Flagstaff and Arizona Department of Transportation ("ADOT") and the other design professionals and contractors involved in the Project, as applicable. Owner's Representative shall also cooperate with Mountain Line in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity or regulatory agency, including participation in any hearings or meetings.

ARTICLE 5 DELIVERABLES

5.1 DELIVERABLES AS PART OF THE SERVICES



5.2 Owner's Representative shall provide all of the Deliverables required under the Scope of Service under this Contract including those set forth in Exhibit B in the time specified, manner, and format required by and to the satisfaction of Mountain Line.

5.2.1 Owner's Representative shall timely provide the Deliverables in accordance with the Master Contract, including Exhibit B, unless otherwise provided in a Project Task Order.

5.2.2 Owner's Representative shall also timely provide to Mountain Line all of the Deliverables necessary to fully and timely complete all of the Services under a Project Task Order.

5.2.3 Additional items, if any, which Owner's Representative must deliver to Mountain Line prior to commencing the Services on a Project shall be set forth in the Project Task Order.

ARTICLE 6 MOUNTAIN LINE RESPONSIBILITIES

6.1 Mountain Line shall arrange, to the extent Mountain Line deems it necessary, for access to and make provisions for the Owner's Representative to enter upon public and private property as required for the Owner's Representative to perform services hereunder.

6.2 Mountain Line shall provide information in its position which Mountain Line deems necessary for Profession to perform the Services.

6.3 Additional services to be provided and responsibilities assumed by Mountain Line, if any, in relation to a specific Project shall be set forth in the Project Task Order.

6.4 Additional information to be provided by Mountain Line, if any, shall be set forth in the Project Task Order

6.5 Mountain Line shall provide full information in a timely manner regarding requirements for the Program, including the Owner's Program requirements and other relevant information necessary for the Owner's Representative to provide its services.

The Owner's Representative shall be entitled to rely on the completeness and accuracy of the information required by this section.

6.6 Unless otherwise agreed in writing, Mountain Line shall contract directly for the provision of design, construction and other services, work and goods required to implement the Program and which are not provided by the Owner's Representative under this agreement. Upon the written authorization of Mountain Line, the Owner's Representative shall enter into such contracts as agent for the Owner.

6.7 If Mountain Line becomes aware of any error, omission or failure of the Owner's Representative to meet the requirements of this Contract Mountain Line shall give prompt written notice to the Owner's Representative.

ARTICLE 7 MOUNTAIN LINE AND OWNER'S REPRESENTATIVE DESIGNATED REPRESENTATIVES

7.1 Mountain Line and the Owner's Representative agree that the success of their contractual relationship will depend in large part on the individuals designated to represent Mountain Line and the Owner's Representative for the purposes of this Contract. In order to further the team relationship contemplated by this Contract, Mountain Line and the Owner's Representative agree that their respective representatives will be mutually agreeable and that these representatives will not be changed except upon written consent, which will not be unreasonably withheld. Mountain Line and Owner's



Representative shall each designate, in writing, two individuals, one as their primary representative and the second as an alternate to act in the absence of the primary representative. The primary representative and the alternate shall each have the authority to bind the respective Parties in all matters requiring the Parties approval, authorization or written notice.

7.2 THE OWNER'S REPRESENTATIVE'S DESIGNATED REPRESENTATIVES. The Owner's Representative's designated representatives shall be fully acquainted with the Owner's Representative's Scope of Services and the Owner's Program.

7.3 MOUNTAIN LINE'S DESIGNATED REPRESENTATIVES. Mountain Line's designated representatives shall be fully acquainted with the Owner's Program.

7.4 The primary designated representatives shall communicate with each other as often as needed during the term of this Contract and, at a minimum, shall confer either personally or by telephone at least weekly during any periods when programing is being performed, during any active Project, and as otherwise directed in a Project Work Order.

ARTICLE 8 CONTRACT DURATION

8.1 Time is of the essence of this Master Contract and each Task Order. Owner's Representative shall complete all Services within the schedule set forth in the Task Order, and Owner's Representative shall strictly comply with said schedule and failure to do so shall be a material breach of the Contract.

8.2 The first term of this Contract shall be from the Effective Date thru June 30, 2025, unless sooner terminated as provided herein. This Contract may be renewed in writing, signed by both parties, for up to two (2) additional five (5) year periods upon the same terms and conditions set forth in this Contract.

ARTICLE 9 CONTRACT PRICE

The total amount paid to the Owner's Representative under this Master Contract, including reimbursable expenses, shall not exceed \$. The Contract Price for each Task Order shall be set forth in the Project Work Order.

ARTICLE 10 COMPENSATION

10.1 BASIS FOR COMPENSATION. Owner's Representative shall be compensated for the Services under this Contract as set forth in Exhibit C hereto and as set forth in Individual Project Task Orders.

10.2 INVOICES. Invoices for services shall be submitted on a monthly basis on the schedule, including the descriptions and information, and in the format, required by Mountain Line.

10.3 PAYMENTS. Payments of undisputed amounts for Program Management Services shall be due and payable within thirty (30) Days following Mountain Line's approval of the Owner's Representative 's monthly invoice to the Owner. Undisputed payments due but unpaid shall bear interest at the rate of five percent (5%) per annum.,

ARTICLE 11 COST OF THE OWNER'S REPRESENTATIVE SERVICES

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To the extent agreed to and provided in Exhibit C, the Owner may agree to pay the Owner's Representative for the Cost of the Services as defined in this Article. The Cost of Services include:

11.1 Wages paid for labor in the direct employ of the Owner's Representative in the performance of the Program Management Services.

11.2 Salaries of Owner's Representative 's employees engaged in the performance of the Program Management Services.

11.3 Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Owner's Representative 's standard personnel policy.

11.4 Reasonable transportation, travel, hotel and moving expenses of the Owner's Representative 's personnel incurred in connection with the Program Management Services.

11.5 Cost of materials, supplies and equipment of any nature used, rented or consumed in providing Program Management Services, including transportation and maintenance of same.

11.6 Payments made by the Owner's Representative to Consultants and contractors for performing a portion of the Program Management Services, under arrangements approved by the Owner.

11.7 Cost of the premiums for all insurance which the Owner's Representative is required to procure or deems necessary.

11.8 Sales, use, gross receipts or other taxes, tariffs or duties related to the Program Management Services for which the Owner's Representative is liable.

11.9 Permits, fees, licenses, tests, royalties, damages for infringement of patents and/or copyrights, including costs of defending related suits for which the Owner's Representative is not responsible as set forth in section 3.8, and deposits lost for causes other than the Owner's Representative 's negligence.

11.10 Losses, expenses or damages to the extent not compensated by insurance or otherwise, including settlements made with the approval of the Owner, except to the extent any such loss or expense is solely due to the negligence of the Owner's Representative.

11.11 Management information and computer assisted design systems, reproduction costs, photographs, long distance telephone charges, facsimile transmissions, data transmission, data processing services, postage, express delivery charges, reasonable petty cash expenses, and record storage.

11.12 Documented costs incurred due to an emergency affecting the safety of persons and/or property, owned by Mountain Line to the extent that Mountain Line agrees that an emergency exists or existed and agrees to the costs.

11.13 Legal, mediation and arbitration fees and costs, reasonably and properly resulting from the Owner's Representative 's performance of the Program Management Services, other than those arising from disputes between the Owner and Owner's Representative.

11.14 All other costs not set forth in this Article 11 are not recoverable except as may be expressly agreed to in writing in Exhibit C, a specific Task Order or prior written agreement by the Parties.



ARTICLE 12 CHANGES TO THE CONTRACT

12.1 All changes must be approved in writing by and Owner's Representative prior to the commencement of such changes.

12.2 The entire Scope of Services to be performed in accordance with this contract is set forth in Exhibit B. Services which are not included in Exhibit B will be considered Additional Services, only if approved in writing by the Contract Administrator prior to their performance. The Owner's Representative shall not perform such Additional Services without prior written authorization in the form of an approved change order or contract amendment from Mountain Line. In the event the Owner's Representative performs such claimed Additional Services without prior written authorization from Mountain Line, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Owner's Representative shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

ARTICLE 13 INSURANCE

13.1 **INSURANCE:** Owner's Representative shall secure and maintain during the life of this contract, the insurance coverages set forth in Exhibit E.

13.2 **FAILURE TO PROVIDE:** Failure to provide proof of insurance and the required endorsements, in forms acceptable to Mountain Line, will be material breach and grounds for termination of the Contract by Mountain Line for cause.

ARTICLE 14 INDEMNITY

14.1 To the fullest extent permitted by law, Owner's Representative, its sub-contractors, subconsultants, successors, assigns, and guarantors, shall indemnify and hold harmless Mountain Line, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Owner's Representative, Contractor, or other persons employed or used by Owner's Representative in the performance of the Contract

14.2 If court of law determines that this section is void under A.R.S. § 34-226 because a word, words, or phrase in this section makes this section void under A.R.S. § 34-226, then such word, words, or phrase (as applicable) shall be deemed to be stricken to the extent necessary so that this section is not void under A.R.S. § 34-226 and the remaining obligations shall remain in full force and effect; and the language of this section shall be retroactively reformed to the extent reasonably possible in such a manner so that the reformed language provides essentially the same rights and benefits to the fullest extent permitted by A.R.S. § 34-226(B).

14.3 The Owner's Representative's obligations under this Article shall survive the expiration or earlier termination of this Contract.

14.4 In the event that any action or proceeding shall at any time be brought against any of the Indemnitees by reason of any Claim referred to in this Article, the Owner's Representative, at the Owner's Representative's sole cost and upon at least 10 day's written notice from Mountain Line, shall defend the same with counsel acceptable to Mountain Line, in Mountain Line's sole discretion.

14.5 The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions in this Article and shall not be construed in any way to limit the scope and magnitude of this



Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

ARTICLE 15 TERMINATION AND SUSPENSION

15.1 Mountain Line has the right to terminate this Master Contract for cause or convenience or to terminate any portion of the Services which have not been performed by the Owner's Representative.

15.2 In the event Mountain Line terminates this Master Contract or any part of the Services as herein provided, Mountain Line shall notify the Owner's Representative in writing, and immediately upon receipt of such notice, the Owner's Representative shall discontinue all Services, or the specific Services being terminated, as applicable, under this Master Contract.

15.3 Upon such termination, the Owner's Representative shall immediately deliver to Mountain Line any and all documents or work product generated by the Owner's Representative under the Master Contract (collectively, the "Work Product"), together with all unused material supplied by Mountain Line applicable to the Services being terminated. Owner's Representative shall be responsible only for such portion of the work as has been completed and accepted by Mountain Line. Use of incomplete data by Mountain Line shall be their sole responsibility.

15.4 Upon receipt of notice of termination, Owner's Representative shall appraise the Services it has completed but has not yet been paid for and shall submit the Services and appraisal to the Master Contract Administrator for evaluation.

15.5 The Owner's Representative shall receive as compensation in full for Services performed and approved by the Contract Administrator to the date of such termination, a fee for the percentage of Services actually completed and accepted by Mountain Line. This fee shall be in the amount to be mutually agreed-upon by the Owner's Representative and Mountain Line, based upon the Scope of Work set forth in Exhibit B and the payment schedule agreed to in writing by Mountain Line. If mutual agreement between the Parties cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the Scope of Work and the amount of compensation Owner's Representative is entitled to for such work, and the Master Contract Administrator's determination in this regard shall be final. Mountain Line shall make such final payment within 60 days after the latest of: (i) Owner's Representative's completion or delivery to Mountain Line of any portion of the Services not terminated; or (ii) Owner's Representative's delivery to Mountain Line of all Work Product and any unused material supplied by Mountain Line.

15.6 APPROPRIATION OF FUNDS

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of Mountain Line and the Mountain Line Board of Directors does not appropriate funds to continue this Contract and pay for charges hereunder, Mountain Line may terminate this Contract at the end of the current fiscal period. Mountain Line agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 14 of this Contract at least thirty (30) days prior to the end of the current fiscal period and will pay to the Owner's Representative approved charges incurred through the end of such period.



ARTICLE 16 DISPUTE RESOLUTION

16.1 DISPUTE RESOLUTION REPRESENTATIVE (DRR) PROCESS

16.1.1 The Parties under the Contract agree that all claims and disputes in relation to the Program which are not resolved in the ordinary course of the Program (Claim or Claims) shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the DRR Process).

16.1.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

16.1.3 For claims by the Owner's Representative, the DRR Process shall be initiated by the party asserting the claim serving written notice on Mountain Line setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Program Schedule for, the Program; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.

16.1.4 For claims by Mountain Line, the DRR process will be initiated by Mountain Line providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.

16.1.5 The DRR Notice shall be hand-delivered and e-mailed to the other parties' designated Dispute Resolution Representatives.

16.1.6 The other parties shall respond in writing to the DRR Notice (DRR Response) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed to the other parties' Dispute Resolution Representatives.

16.1.7 The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

16.1.8 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

16.1.9 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

16.1.10 Unless otherwise designated in a written notice to the other parties, the Owner's Representative and the representatives of the Owner's Representative and of the Owner's Representative shall act as the parties' designated Dispute Resolution Representatives.

16.1.11 If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties' designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Program Schedule, or any other change requiring a written Change Order or Amendment, the parties shall execute an appropriate written Change Order or Amendment pursuant to the terms of the Contract Documents.



16.2 **MEDIATION**

16.2.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under B(4) above, or after the DRR is terminated pursuant to § 2.5 above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.

16.2.2 The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar days of the written demand, either party may make a request to the Civil Presiding Judge of the Coconino County Superior Court to appoint a mediator. The mediation shall occur within forty (40) calendar days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time. Failure to comply with the time periods set forth herein shall constitute a waiver of the right and/or obligation to mediation, and shall not toll or otherwise extend any accrual of a cause of action or claim, statute of limitations or other time limit on the accrual or assertion of a claim or cause of action.

16.2.3 The qualifications for the mediator shall be that they be: (a) an experienced mediator, arbitrator or litigator of construction disputes; and (b) having engaged a significant portion of their time involving and/or resolving construction disputes for at least the past five (5) years.

16.2.4 Each party shall provide to the other party and the mediator all of the information and documentation required under 2.1 and 2.2 above, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.

16.2.5 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Flagstaff, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in the Coconino County, Arizona, Superior Court.

16.3 **LITIGATION**

16.4 Any controversy or claim arising out of or relating to this Agreement or its breach not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, shall be decided by litigation filed in the Coconino County Arizona Superior Court. The parties specifically agree to jurisdiction and venue in such Failure to comply with the time periods set forth herein shall constitute a waiver of the right and/or obligation to participate in the DRR Process or mediation, and any accrual of a cause of action or claim, statute of limitations or other time limit on the accrual or assertion of a claim or cause of action shall not be tolled or extended.

ARTICLE 17 MISCELLANEOUS PROVISIONS

17.1 **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

17.2 **ATTORNEYS' FEES.** In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or an account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses (including expert witness fees), determined by the arbitrator or court sitting without a jury, which fees shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.



17.3 ENTIRE AGREEMENT. This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

17.4 GOVERNING LAW. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Coconino County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

17.5 INDEPENDENT CONTRACTOR. The services Owner's Representative provides under the terms of this Contract to Mountain Line are that of an Independent Contractor, not an employee, or agent of Mountain Line. As an independent contractor, Owner's Representative shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from Mountain Line; (c) not be entitled to any Mountain Line sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide his/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

17.6 TAXES. Owner's Representative shall be solely responsible for any and all tax obligations which may result out of the Owner's Representative's performance of this contract. Mountain Line shall have no obligation to pay any amount for taxes, of any type, incurred by the Owner's Representative. Mountain Line will report the value paid for these Services each year to the Internal Revenue Service ("I.R.S.") using Form 1099. Mountain Line shall not withhold income tax as a deduction from contractual payments. Owner's Representative acknowledges that Owner's Representative may be subject to I.R.S. provisions for payment of estimated income tax. Owner's Representative is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

17.7 AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

17.8 COMPLIANCE WITH LAW. The Owner's Representative specifically agrees and hereby warrants to Mountain Line that in the performance of the Services, Owner's Representative and anyone acting on Owner's Representative's behalf, including but not limited to Owner's Representative's subconsultants, will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this Contract.

17.9 SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

17.10 WAIVER. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agent or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

17.11 COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the digital signatures constitute original signatures and that a digital contract containing the signatures (original or digital) of all the Parties is binding upon the Parties.

17.12 COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS. Pursuant to the provisions of A.R.S. § 41-4401, the Owner's Representative warrants to Mountain Line that the Owner's Representative and all its subconsultants 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).

CONTRACT NO. _____



Owner's Representative acknowledges that a breach of this warranty by the Owner's Representative or any of its subconsultants is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. Mountain Line retains the legal right to inspect the papers of any employee of the Owner's Representative or any subconsultant who works on this Contract to ensure compliance with this warranty.

17.13 Mountain Line may conduct random verification of the employment records of the Owner's Representative and any of its subconsultants to ensure compliance with this warranty.

17.14 Mountain Line will not consider the Owner's Representative or any of its subconsultants in material breach of the foregoing warranty if Owner's Representative and its subconsultants 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 A.R.S. § 23-214(A).

17.15 The provisions of this Article must be included in any contract the Owner's Representative enters into with any and all of its subconsultants who provide services under this Contract or any subcontract. As used in this Section "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.

17.16 ISRAEL BOYCOTT PROVISION. Owner's Representative certifies to Mountain Line 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.

17.17 CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, Mountain Line may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Mountain Line is, at any time while the Contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or an Owner's Representative to any other party to the contract with respect to the subject matter of the contract.

17.18 LICENSES. Owner's Representative shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Owner's Representative and the Services.

17.19 PERMITS AND RESPONSIBILITIES. Owner's Representative shall, without additional expense to Mountain Line, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

17.20 LIENS. Owner's Representative shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if Mountain Line requests, Owner's Representative shall deliver appropriate written releases, in statutory form of all liens to Mountain Line.

17.21 PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of Mountain Line and shall not be used or released by Owner's Representative or any other person except with the prior written permission of Mountain Line.

17.22 WORKPLACE COMPLIANCE. The Owner's Representative understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

17.23 THIRD PARTIES. The Services to be performed by the Owner's Representative are intended solely for the benefit of Mountain Line. No person or entity not a signatory to this Contract shall be



entitled to rely on the Owner's Representative's performance of its services hereunder, and no right to assert a claim against the Owner's Representative by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Contract or the performance of the Owner's Representative's services hereunder.

17.24 PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control. Agreement to the terms set forth herein is a material and necessary precondition and inducement to Mountain Line for entering into the Contract with Owner's Representative.

17.25 The Owner's Representative shall reveal fully and in writing any financial or compensatory agreements which the Owner's Representative has with any prospective contractor prior to Mountain Line's publication of requests for proposals or comparable documents.

17.26 The Owner's Representative hereby warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Owner's Representative, to solicit or secure this contract, and that the Owner's Representative has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Owner's Representative any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

17.27 The Owner's Representative shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

17.28 ASSIGNMENT. This Contract may not be assigned in whole or in part without prior written consent of Mountain Line, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

17.29 COMMUNICATIONS. All communications concerning the performance of the Services or the Project shall be provided to the designated Project Manager and Owner's Representative's Representative set forth in Article 1 of the Contract. Mountain Line may change the designated Project Manager and may change Owner's Representative's Representative, by written notice to the other party. Communications may be exchanged by e-mail upon the written agreement of the Parties, but e-mail communications are not binding upon Mountain Line and cannot change the terms of the Contract or the scope of work, or effectuate any change that requires a written change order. The use of e-mails is for information only, and e-mails will have no legal or binding effect. Unless otherwise provided herein, formal demands and or notices under the Contract shall be in writing and shall be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To Mountain Line:	Project Manager
To Owner's Representative:	Owner's Representative's Representative for the Contract

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have executed this Master Contract through their duly authorized representatives, whose signatures bind their respective entities as of the effective date.

“Mountain Line”

CONTRACT NO. _____



**NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION AUTHORITY, A
POLITICAL SUBDIVISION OF THE STATE OF ARIZONA**

Signature

Name

Title

ATTEST:

Signature _____

Name _____

Title _____

APPROVED AS TO FORM:

DICKINSON WRIGHT, PLLC
Mountain Line Attorneys

**“PROFESSIONAL”
[COMPANY NAME]**

Signature

Name

Title

EXHIBIT A – TO OWNER’S REPRESENTATIVE MASTER CONTRACT

Owner’s Program

CONTRACT NO. _____



CONTRACT NO. _____



EXHIBIT B – TO OWNER'S REPRESENTATIVE MASTER CONTRACT

Owner's Representative Services

CONTRACT NO. _____



EXHIBIT C – TO OWNER’S REPRESENTATIVE MASTER CONTRACT

Owner’s Representative Fees

CONTRACT NO. _____



EXHIBIT B – TO OWNER’S REPRESENTATIVE MASTER CONTRACT

EXHIBIT D – TO OWNER’S REPRESENTATIVE MASTER CONTRACT
SCOPE OF SERVICES, FEES, AND SCHEDULE FORM

**NORTHERN ARIZONA INTERGOVERNMENTAL PUBLIC TRANSPORTATION AUTHORITY,
a political subdivision of the State of Arizona (“Mountain Line”)**

PROFESSIONAL PROJECT TASK ORDER

Project Task Order No. _____

Contract No. _____

Project No. _____

THIS PROJECT TASK ORDER is made and entered into on the _____ day of _____, 20____, by and between Northern Arizona Intergovernmental Public Transportation Authority, a political subdivision of the State of Arizona, hereinafter called (“Mountain Line”) and the "Owner’s Representative" designated below. This Project Task Order is entered in to pursuant to and incorporates herein the terms and provisions of the Owner’s Representative Master Contract No. _____, dated _____, 20____, between Mountain Line and Owner’s Representative (“Contract”). Upon full execution of this Project Task Order, the Project Task Order, together with the Project Task Order Contract (including all of the Contract Documents as defined therein), shall be the Contract between the Parties for the professional services specified herein (“Services”).

Mountain Line and Owner’s Representative agree as follows:

Mountain Line: **Mountain Line**
 3773 N. Kaspar Dr
 Flagstaff, AZ 86004
 Project Manager:
 Telephone:
 E-mail:

OWNER’S REPRESENTATIVE: {Name}
 {Address}
 Representative:
 Telephone:
 E-mail:

PROJECT DESCRIPTION: This Project Task Order # _____ is _____.
The Project is scheduled to commence on _____, 20____ and be completed no later than _____, 20____.

PROJECT SITE ADDRESS/LOCATION: This Project Task Order # _____ is located _____.

PROJECT TASK ORDER PRICE (Not to Exceed): \$ _____

CONTRACT NO. _____



1. _____ **Fixed Price:** All-inclusive in the above Project Task Order Price; or
2. _____ **Fee:** The Task Order Task Fee is in the amount of \$_____ to be paid in installments based upon monthly progress reports and detailed invoices submitted by _____ in such form as approved by Mountain Line, to be paid subject to the following limitations:
 - a. **Documentation of Monthly Progress**
 - i. Prior to approval of the preliminary documentation (or ___% of plans), the billed amount shall not exceed _____% of the total Contract Amount.
 - ii. Prior to approval of the final documentation (or ___% of plans) deliverable, the billed amount shall not exceed _____% of the total Contract Amount.
 - iii. If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed _____% of the total Contract Amount prior to submittal of the final report deliverables.
 - b. **Reimbursable Costs:** (Reimbursable costs are at state per diem rates for all travel, lodging, and incidentals.)
 - i. The Project Task Order Reimbursable Cost is in the amount of \$_____ to be paid based upon monthly progress reports and detailed invoices submitted by _____ in such form as approved by Mountain Line
 - c. **Other:**
 - i. Sub-Contractor Mark Up will be paid in the following manner: _____.
 - ii. Unique Insurance and/or Bond Requirements: _____.
 - iii. Unique Compliance with Government Provisions: _____.

SCOPE OF SERVICES, DELIVERABLES, AND PROJECT SCHEDULE/DURATION: Attachment 1.

UNIQUE INSURANCE AND/OR BOND REQUIREMENTS (IF ANY) (Article 11):
Attachment 2.

PROJECT SPECIFIC CONDITIONS (IF ANY): Attachment 3.

IN WITNESS, WHEREOF, the parties hereto have executed this Task Order through their duly authorized representatives and bind their respective entities as of the effective date.

“Mountain Line”

Signature _____
Name _____ Title _____

ATTEST:

Signature _____
Name _____ Title _____

“PROFESSIONAL”

Signature _____
Name _____ Title _____

CONTRACT NO. _____

PROJECT TASK ORDER # _____

ATTACHMENT 1 – SCOPE OF WORK AND PROJECT SCHEDULE

(To be completed by Mountain Line)

PROJECT DESCRIPTION:

(To be completed by Mountain Line:)

PROJECT SCHEDULE:

(To be completed by Mountain Line:)

PROJECT DELIVERABLES:

(To be completed by Mountain Line:)



PROJECT TASK ORDER # _____

ATTACHMENT 2 - UNIQUE INSURANCE REQUIREMENTS (IF ANY)

NOTE: Owner's Representative's Insurance coverage to be reviewed and approved by Contract Services Specialist PRIOR TO CONTRACT EXECUTION.

{Provide any additional insurance requirements beyond the Standard Insurance Requirements, and/or bond requirements for the Project beyond the original contract scope to confirm adequate insurance and bond coverages for this Project}



PROJECT TASK ORDER # _____

ATTACHMENT 3 - PROJECT SPECIFIC CONDITIONS (IF ANY)

{To be completed by Mountain Line}

{List Unique Issues with Specific Government Provisions beyond the Master Contract, if any:}



EXHIBIT E TO OWNER'S REPRESENTATIVE MASTER CONTRACT – MINIMUM INSURANCE REQUIREMENTS

NOTE: Owner's Representative's Insurance coverage to be reviewed and approved by Contract Services Specialist PRIOR TO CONTRACT EXECUTION.

INSURANCE REQUIREMENTS

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

1. Workers' Compensation:

Coverage A. Statutory Benefits.

Coverage B. Employer's Liability.

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

Coverage must include a Waiver of Subrogation endorsement.

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

2. Commercial Auto Coverage:

Auto Liability limits of \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for "Any Auto" or "All Owned, Scheduled, Hired and Non-Owned".

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

3. Commercial General Liability:

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

Coverage must include a Waiver of Subrogation endorsement.

Both policy forms must include:



- i. Blanket contractual coverage for the indemnity/hold harmless agreements assumed in this Subcontract and in the Prime Contract. Any Employee Exclusion will be deleted.
- ii. Broad Form Property Damage coverage, including completed operations or its equivalent.
- iii. Coverage must be on an "Occurrence" form. "Claims Made" and "Modified Occurrence" forms are not acceptable.

4. Excess Liability:

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

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

5. Pollution Legal Liability

Per Claim/Aggregate	\$1,000,000
---------------------	-------------

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

Owner's Representative shall maintain insurance covering losses caused by pollution conditions (including mold) that arise from the Work.

6. Other Requirements

- i. All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation, non-renewal or material reduction in coverage.
- ii. All policies must be written by insurance companies whose rating, in the most recent Best's Rating Guide, is not less than A- VII. All coverage forms must be acceptable to Mountain Line.
- iii. Certificates of Insurance with the required endorsements evidencing the required coverages must be delivered to Mountain Line prior to commencement of any Work. Failure of Mountain Line to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Mountain Line to identify a deficiency from evidence that is provided shall not be construed as a waiver of Owner's Representative's obligation to maintain such insurance. Mountain Line shall have the right, but not the obligation, to prohibit Owner's Representative or any of its subcontractors from entering the Program site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Mountain Line.
- iv. Owner's Representative shall be responsible to satisfy any deductible or self-insured retention with respect to any of the coverages required by the Contract Documents.
- v. Mountain Line reserves the right, in its sole discretion, to require higher limits of liability coverage at Mountain Line's expense if, in Mountain Line's opinion, operations by or on behalf of Owner's Representative create higher than normal hazards and, to require Owner's Representative to include additional parties in interest to be Additional Insureds.



- B. Any additional provisions specific to the Program are attached. In the event of any conflict between the attached terms and the terms of this Exhibit, the Owner's Representative shall comply with the more stringent provisions.

EXHIBIT C TO OWNER'S REPRESENTATIVE MASTER CONTRACT: DISPUTE RESOLUTION

1. INFORMAL DISPUTE RESOLUTION

The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Program, therefore any and all disputes in relation to the Contract will initially be referred to the Mountain Line's Representative, the Owner's Representative Designated Representative and/or the Owner's Representative Designated Representative as applicable to the dispute, for immediate resolution, and in no event more than five (5) days after the dispute arises. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative (DRR) process set forth below, which is intended to be an expedited process.

2. DISPUTE RESOLUTION REPRESENTATIVE (DRR) PROCESS

- 2.1** The Parties under the Contract agree that all claims and disputes in relation to the Program which are not resolved in the ordinary course of the Program (Claim or Claims) shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the DRR Process).
- 2.2** The DRR Process shall be initiated through service of a DRR Notice as set forth below:
- 2.2.1** For claims by the Owner's Representative, the DRR Process shall be initiated by the party asserting the claim serving written notice on Mountain Line setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Program Schedule for, the Program; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.
- 2.2.2** For claims by Mountain Line, the DRR process will be initiated by Mountain Line providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.
- 2.2.3** The DRR Notice shall be hand-delivered and e-mailed to the other parties' designated Dispute Resolution Representatives.
- 2.3** The other parties shall respond in writing to the DRR Notice (DRR Response) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed to the other parties' Dispute Resolution Representatives.
- 2.4** The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.



- 2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.
- 2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.
- 2.7 Unless otherwise designated in a written notice to the other parties, the Owner's Representative and the representatives of the Owner's Representative and of the Owner's Representative shall act as the parties' designated Dispute Resolution Representatives.
- 2.8 If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties' designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Program Schedule, or any other change requiring a written Change Order or Amendment, the parties shall execute an appropriate written Change Order or Amendment pursuant to the terms of the Contract Documents.
- 3. MEDIATION**
- 3.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under B (4) above, or after the DRR is terminated pursuant to § 2.5 above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.
- 3.2 The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar days of the written demand, either party may make a request to the Civil Presiding Judge of the Coconino County Superior Court to appoint a mediator. The mediation shall occur within forty (40) calendar days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time.
- 3.3 The qualifications for the mediator shall be that they be: (a) an experienced mediator, arbitrator or litigator of construction disputes; and (b) having engaged a significant portion of their time involving and/or resolving construction disputes for at least the past five (5) years.
- 3.4 Each party shall provide to the other party and the mediator all of the information and documentation required under 2.1 and 2.2 above, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.
- 3.5 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Phoenix, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction thereof.
- 4. ARBITRATION**
- 4.1 If the mediation is unsuccessful, within ten (10) days of the unsuccessful mediation, by written notice of arbitration the parties shall submit the dispute and/or claim to be resolved through binding arbitration conducted according to the then current Construction Industry Arbitration Rules of the AAA, but not administered or conducted by the AAA, which arbitration shall be held in Coconino County, Arizona, utilizing a single arbitrator selected by the parties, unless the parties agree, in writing, to an alternative arbitration procedure.
- 4.2 If: (a) the parties cannot agree on a single arbitrator within two (2) weeks of the demand for arbitration; or (b) the parties at any time prior to the arbitrator being appointed and the arbitrator has accepted the appointment, cannot agree upon any significant aspect of the arbitration, not already addressed herein, either party may submit the Claim directly to the AAA to select the Arbitrator, and thereafter the arbitration shall be administered by the AAA.
- 4.3 The arbitrator shall be an attorney with at least fifteen (15) years of experience in construction related practice, and whose practice, for at least the last five (5) years, consists of at least 50% construction law.



- 4.4 At the request of either party, the arbitration may include as parties, through joinder, consolidation or otherwise, additional persons or entities involved in the Program, involving claims and/or disputes with common issues and/or facts. The arbitrator shall promptly rule upon any request for joinder or consolidation.
- 4.5 In relation to claims in which the amount in controversy is less than \$250,000, no discovery other than exchange of documents, designation of witnesses and detailed disclosure of claims and defenses (including specifically a detailed basis for calculating all claims), and no more than 3 depositions and 1 expert per side, shall be allowed, subject to disclosure of such other information as approved by the arbitrator. Otherwise, discovery shall be allowed and/or limited as decided by the arbitrator.
- 4.6 The prevailing party in any arbitration or court proceeding under this Contract shall be entitled to an award of its attorneys' fees, costs, and expenses (including expert witness fees) incurred.
- 4.7 A demand for arbitration shall be made within the time limits specified in the Contract Documents as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- 4.8 The Parties agree to participate as a party, by joinder and/or consolidation, in any arbitration, litigation, or other dispute resolution involving as an issue, claim, or defense, any action, inaction, or service provided under this Contract or in relation to the Program or the Work, or any defect or deficiency in the Work.
- 4.9 The party filing a notice of demand for arbitration, or a counterclaim, must assert in the demand or counterclaim all Claims then known to that party on which arbitration is permitted to be demanded.
- 4.10 Any award by the arbitrator shall not include any consequential or punitive damages.
- 4.11 The award entered by the arbitrator shall be a reasoned award.
- 4.12 The award entered by the arbitrator shall be final and judgment may be entered thereon in the Arizona Superior Court.
5. **CONTINUATION OF WORK DURING DISPUTE RESOLUTION**
Owner's Representative agrees that during any dispute between the parties, Owner's Representative will continue to perform its obligations under the Contract until such dispute is resolved.
6. **RIGHT TO FILE SUIT FOR INJUNCTIVE RELIEF**
Notwithstanding any other provision in the Contract, Mountain Line has the right to immediately file in court and pursue an action for a temporary restraining order and/or injunctive relief against Owner's Representative if Mountain Line determines that such action is necessary to protect its interests under the Contract, to obtain specific performance of any provision of the Contract, to advance the completion of the Program, or to protect health, welfare and/or safety, including without limitation, an action of an order directing Owner's Representative to continue or return to construction the Work under the Contract.