

INDEPENDENT CONTRACTOR AGREEMENT

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

WHEREAS:

- A. NAIPTA requires the services of an independent Contractor to provide BRIEF DESCRIPTION OF SERVICES, pursuant to the terms of this Agreement (hereinafter "Services"); and
- B. NAIPTA issued a Request for _____, RFX XXXX-XXX (the "RFX") in order to obtain these Services; and
- C. The Contractor submitted the successful RESPONSE ("_____"); 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 RFX, attached hereto as Exhibit "A," and the _____, attached hereto as Exhibit "B." In the event of a conflict between the terms of the RFP and the _____, the terms of the RFP shall govern. In the event of a conflict between the RFP, the _____, and this Agreement, the terms of this Agreement shall govern.

2. BILLING AND PAYMENT

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

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

3. TERM OF AGREEMENT AND TERMINATION

The first term of this Agreement shall be from the Effective Date thru _____, 20_____. This Agreement may be renewed in writing, signed by both parties, for up to Four (4) additional (12)-month periods upon the same terms and conditions set forth in this Agreement. In the event no renewal is executed on or before the anniversary of the Effective Date, this Agreement shall automatically terminate at midnight on the day preceding the anniversary. **[cannot exceed 5 years from effective date]**

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 hereof and shall supersede all previous and contemporaneous 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 an unanticipated conflict of interest arises, Contractor shall immediately so inform NAIPTA. During the term of this Agreement, Contractor shall not undertake representation of other local government agencies on the matters stated in the Scope of Work, except as expressly authorized by NAIPTA.

8. APPROVAL BY NAIPTA

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

9. NON-ASSIGNMENT

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

10. CANCELLATION OF AGREEMENT

Pursuant to A.R.S. §38-511, the provisions of which are incorporated herein by reference, all parties are hereby put on notice that this Agreement is subject to cancellation by NAIPTA if any person significantly involved in initiating, negotiating, securing, drafting, or

creating the Agreement on behalf of NAIPTA is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity, or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

11. COMPLIANCE WITH LAWS AND NON-DISCRIMINATION

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

12. COMPLIANCE WITH IMMIGRATION LAWS

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

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

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

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

13. INDEMNIFICATION

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

14. CHANGES

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

15. NO AUTHORITY TO BIND NAIPTA

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

16. DECLARATION BY CONTRACTOR

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

17. NOTICE

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

18. CHOICE OF LAW

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

19. WAIVER AND SEVERABILITY

A waiver of any part of this Agreement, whether express or by conduct, shall not constitute a continuing waiver of such part (unless explicitly stated to be so), or a waiver of any other

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

20. INSURANCE [PROFESSIONAL LIABILITY MAY NOT ALWAYS APPLY AND MAY BE WAIVED AT NAIPTA'S DISCRETION.]

- A. The Contractor shall provide and maintain and cause any subcontractors to provide and maintain appropriate insurance. In no event shall the total coverage be less than the minimum insurance coverage specified below:
 - 1. Professional liability in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.
 - 2. Commercial General Liability in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.
 - 3. Automobile Liability in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.
- B. The Contractor shall name NAIPTA, its agents, officials, and employees as additional insureds and shall specify that the insurance afforded by the Contractor shall be primary insurance and that any insurance coverage carried or self-insurance by NAIPTA, any department, or employee shall be excess coverage and not contributory insurance to that provided by the Contractor. Said policy shall contain a severability of interest provision. NAIPTA reserves the right to continue payment of premium for which reimbursement shall be deducted from amounts due or subsequently due Contractor.
- C. Failure on the part of the Contractor to procure and maintain the requested liability insurance and provide proof thereof to NAIPTA within ten (10) days following the commencement of a new policy, shall constitute a material breach of the Agreement upon which NAIPTA may immediately terminate this Agreement. Within ten (10) days of signing this Agreement, the Contractor shall furnish the NAIPTA with copies of the Certificate of Insurance drawn in conformity with the above insurance requirements. NAIPTA reserves the right to request and receive certified copies of any or all of the above policies and endorsements.
- D. The Contractor agrees to comply with statutory requirements for both workers' compensation and unemployment insurance coverage during the term of this Agreement. A Certificate of Insurance for workers' compensation coverage shall be provided within ten (10) days of signing this Agreement. The insurer shall agree to waive all rights of subrogation against NAIPTA, its officers, agents, employees, and volunteers for losses arising from work performed by the Contractor for NAIPTA.

21. INCORPORATION OF RECITALS AND EXHIBITS

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

22. COUNTERPARTS

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

23. PRIORITY OF DOCUMENTS

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

[SIGNATURE PAGES FOLLOW]

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

NAIPTA

By: _____
Print Name

Its: _____
Title

(Signature)

Approved as to form:

ATTEST:

By _____
Scott A. Holcomb
Dickinson Wright
General Counsel, NAIPTA

Clerk of the Board

PHOENIX 53963-1 577944v1