

## **INTERGOVERNMENTAL AGREEMENT**

**Between  
CITY OF BISBEE  
And  
SOUTHEASTERN ARIZONA GOVERNMENTS ORGANIZATION  
For  
TECHNICAL ASSISTANCE – BIBEE BUS SERVICE**

THIS AGREEMENT made and entered into by and between the City of Bisbee (hereinafter, "Bisbee"), and the SouthEastern Arizona Governments Organization, the regional Council of Governments for Cochise, Graham, Greenlee, and Santa Cruz Counties (hereinafter, "SEAGO").

### SECTION 1: RECITALS

**WHEREAS**, COB has been awarded federal 5311 funding by the Arizona Department of Transportation's Multimodal Transportation and Planning Department (hereinafter "ADOT") to administer an FTA Section 5311 transit program (Bisbee Bus); and

**WHEREAS**, in 2024, SEAGO was awarded Transportation Planning Funds to conduct the Bisbee Route Efficiency Study; and

**WHEREAS**, the Bisbee Route Efficiency Study was completed in July 2025, and several recommendations were made to improve the efficiency of the Bisbee Bus System; and

**WHEREAS**, COB is in need of technical assistance to implement those recommendations; and

**WHEREAS**, SEAGO is the Transportation Planning and Technical Assistance entity for its member government agencies and the regional mobility manager as designated by ADOT; and

**WHEREAS**, SEAGO possesses professional expertise, staffing, organizational capacity, and the intent to assist the COB in performing specific activities and services relating to its grant agreement with ADOT and set forth in the scope of services; and

**WHEREAS**, SEAGO has submitted a budget proposal included in this AGREEMENT (hereinafter, "Exhibit B"), for the scope of services to be completed consistent with the deliverables identified in Exhibit A; and

**WHEREAS**, SEAGO agrees to comply with all Federal Clauses identified in Exhibit C and Exhibit D (DBE) from the City of Bisbee's Grant Agreement with ADOT.

**NOW, THEREFORE**, pursuant to Arizona Revised Statutes §11-952, authorizing contracts and agreements between public agencies or public procurement units for cooperative actions, and pursuant to 2 CFR §200.318(e), encouraging state and local intergovernmental agreements or inter-entity agreements for procurement of common goods and services, in consideration of the mutual promises contained in this AGREEMENT, and of the mutual benefits to result therefrom, the parties agree as follows:

SECTION 1: RECITALS

The above recitals are incorporated herein and are a material part of this AGREEMENT.

SECTION 2: TERM

The term of this AGREEMENT shall be from October 3, 2025 to April 3, 2026.

SECTION 3: PURPOSE AND SCOPE

The purpose of this AGREEMENT is to secure the expertise of SEAGO to perform activities and services necessary to assist COB in implementing the recommendations made in the Bisbee Route Efficiency Study. SEAGO shall perform the services described in Exhibit A of this Agreement consistent with the Parties' Recitals in Section 1, above.

SECTION 4: FINANCING AND COMPENSATION

The work performed under this AGREEMENT shall be financed from the ADOT grant funding described in SECTION 1. Bisbee will compensate SEAGO for its performance, and SEAGO agrees to accept as complete payment for such full performance, the sum of **thirty-one thousand, two hundred dollars (\$31,200)** over the six (6) month term of this AGREEMENT. Charges for additional services that constitute a requested increase in scope of services may be negotiated. Such additional work shall be requested in writing by SEAGO or COB and must be approved by the Bisbee City Manager and the SEAGO Executive Director pursuant to SECTION 14 of this AGREEMENT.

SECTION 5: TERMINATION

Either party may terminate this AGREEMENT without cause upon providing thirty (30) days written notice to the other party. In the event either party is in breach of this AGREEMENT, this AGREEMENT may be terminated after providing written notice with twenty (20) days to correct or remedy the breach. If said breach is not remedied, this AGREEMENT shall terminate at the expiration of the twenty (20) day period. SEAGO will not be responsible to provide services after the date of termination. Bisbee will not be responsible for any payments after the date of termination unless attributable to services provided prior to the date of termination.

This AGREEMENT may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

SECTION 6: PERFORMANCE OF SERVICES

SEAGO promises and agrees to provide the services, as described in this AGREEMENT in a good, competent and professional manner, and as specifically indicated in Exhibit A and Exhibit B, which are incorporated herein by this reference and made a part of this AGREEMENT as if the same were fully set forth herein. In the event that any incorporated term or provision conflicts with this AGREEMENT, this AGREEMENT controls.

SECTION 7: INVOICING AND PAYMENTS

Prior to submitting an invoice, SEAGO shall submit to Bisbee a completed and current Form W-9. **SEAGO shall invoice the COB on a monthly basis during the 6-month term of this**

**AGREEMENT.** The invoice shall show SEAGO's name, address, phone number, the amount due, the tasks completed for each service performed during the fiscal quarter of the invoice, and any other necessary information. All invoices are subject to review and certification of COB's authorized representative prior to payment. Upon receipt of SEAGO's completed Form W-9, and subject to the availability of funds, Bisbee shall remit payment to SEAGO within thirty (30) days of the invoice date.

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

**SECTION 8: RESPONSIBILITY**

Each party agrees to assume responsibility for the conduct of its employees, officials, and agents and for all claims, demands, suits, damages, and loss which result from the negligence or intentional torts of such party or its agents, officials, and employees in the performance of this AGREEMENT. The extent of the foregoing liabilities shall be limited to, and determined by, the respective fault of the parties in comparison with others, including, but not limited to the other party who may have contributed to, or in part caused any such claim to arise.

**SECTION 9: ADMINISTRATION OF AGREEMENT**

Each party shall designate a representative or representatives, notice of the same to be provided to the other party, who shall be jointly responsible for developing procedures to be utilized in fulfilling this AGREEMENT and providing other administrative services as necessary.

Either party may perform an inspection of the other party's books and records upon reasonable notice in order to verify that monies spent on the services as described were done so in accordance with this AGREEMENT. The records shall be kept for a period of five (5) years after completion of this AGREEMENT.

**SECTION 10: DISPUTE RESOLUTION**

Any disputes arising under this AGREEMENT shall be referred to the COB City Manager and the SEAGO Executive Director for joint resolution. Disputes that cannot be resolved at this level may be subjected to arbitration pursuant to A.R.S. §12-133 et. seq. If either party is unwilling to participate in such arbitration, they may notify the other party of their intent to terminate this AGREEMENT pursuant to SECTION 5 of this AGREEMENT.

**SECTION 11: NOTICES**

Unless otherwise specified herein, any notice or communication required or permitted under this AGREEMENT shall be in writing and sent to the address given below for the party to be notified.

**SEAGO:**  
Chris Vertrees  
Executive Director  
1403 W. Highway 92

**Bisbee:**  
Stephen Pauken  
City Manager  
118 Arizona Street

Bisbee, Arizona 85603  
Phone: (520) 432-5301 ext. 209

Bisbee, AZ 85603  
(520) 586-2245

#### SECTION 12: ASSIGNMENT

Neither party shall assign the rights nor duties under this AGREEMENT to a third party without the written consent of the other party. Any such assignment in violation of this AGREEMENT may become grounds for termination of the AGREEMENT.

#### SECTION 13: APPROVAL BY PARTIES

Before this AGREEMENT becomes effective and binding upon the parties, the appropriate governing authorities of each party must approve it, unless the governing authorities have delegated the authority to enter into such agreements to the organization's chief executive officer. In the event that such appropriate authority or officer fails or refuses to approve this AGREEMENT, it shall be null and void with no effect whatsoever.

#### SECTION 14: REVISIONS

Procedural and administrative changes to this AGREEMENT may be made upon mutual written agreement between the COB City Manager and the SEAGO Executive Director.

#### SECTION 15: CONDUCT OF OPERATIONS

COB and SEAGO agree to be responsible for the conduct of its operations, performance of contract obligations and the actions of its own personnel while performing services under this AGREEMENT, and each party shall be solely responsible for supervision, daily direction, control of payment of salary (including withholding payment of taxes and social security), workers' compensation and disability benefits. In addition, both parties agree to maintain adequate professional and general liability insurance coverage at all times while this AGREEMENT is in effect. Prior to commencing work or services under the contract, SEAGO shall furnish the COB with certificates of insurance or formal endorsements as evidence that adequate coverage, conditions and limits are in full force and effect.

#### SECTION 16: INDEMNIFICATION

To the fullest extent permitted by law, each party to this AGREEMENT agrees (as indemnitor) to indemnify, defend and hold harmless the other party, its officers, officials, agents, employees or volunteers, (as indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorneys' fees) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious or derivative liability to the indemnitee, are caused by the act, omission or negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

#### SECTION 17: NON-DISCRIMINATION

To the extent applicable, the parties shall comply with all laws and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order 2009-09 which mandates all persons, regardless of race, religion, handicap, color, age, sex, political affiliation or national origin shall have equal access to employment opportunities. All parties shall comply with 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, with all federal regulations regarding equal employment opportunity, with relevant orders issued by the U.S. Secretary of Labor and with all applicable provisions of the Americans with Disabilities Act, Public Act 101-336, 42 U.S.C. Sections 12101-12213, and all applicable Federal Regulations under the Act, including 28 C.F.R. Parts 35 & 36.

SECTION 18: MANDATORY PROVISIONS

All provisions required by law to be incorporated into this AGREEMENT shall be a part of this AGREEMENT as if fully written out herein.

SECTION 19: RIGHTS OF PARTIES

The provisions of this AGREEMENT are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall create any rights or duties of any nature or kind in favor of any third party.

SECTION 20: SEVERABILITY

The provisions of this AGREEMENT are severable to the extent any provision or application held to be invalid shall not affect any other provision or application of the AGREEMENT, which may remain in effect without the invalid provision, or application.

SECTION 21: GOVERNING LAW

This AGREEMENT shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing intergovernmental agreements and mandatory contract provisions of state agencies required by statute or executive order. All statutes and regulations referenced in this AGREEMENT are incorporated herein as if fully stated in their entirety in the AGREEMENT. Each Party agrees to comply with and be responsible for the provisions, the statutes, and the regulations set out in this AGREEMENT.

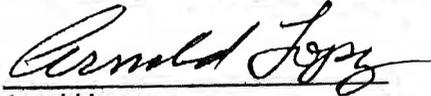
SECTION 22: ASSISTANCE LISTING NUMBER (ALN)

The Assistance Listing provides a full listing of Federal programs that are available to organizations, government agencies (state, local, tribal), U.S. territories, and individuals who are authorized to do business with the government. ***The Assistance Listing for the FTA Funding being used which is #20.505 (Metropolitan Transportation & State Planning)***. SEAGO will include the Assistance Listing Number on each invoice submitted.

***[Signatures on following page]***

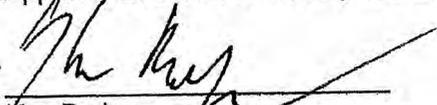
IN WITNESS WHEREOF, two (2) identical counterparts of this AGREEMENT, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named on the date and year first below written.

Approved by the South Eastern Arizona Governments Organization Executive Board at its meeting on the 2<sup>nd</sup> day of October 2025

  
Arnold Lopez,  
Executive Board Chair, SEAGO

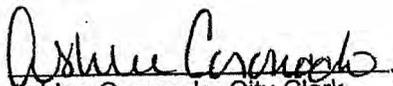
October 23, 2025  
Date

Approval on behalf of the City of Bisbee at its meeting on the 7<sup>th</sup> day of October, 2025

  
Ken Budge,  
Mayor, City of Bisbee

10-7-25  
Date

ATTEST:

  
Ashlee Coronado, City Clerk

Pursuant to A.R.S. § 11-952, this AGREEMENT has been reviewed by legal counsel for SEAGO to determine it is in proper form and is within the power and authority granted under the laws of the State of Arizona to the respective client agency.

APPROVED AS TO FORM:

  
Legal Counsel for SEAGO

Pursuant to A.R.S. § 11-952, this AGREEMENT has been reviewed by legal counsel for the City of Bisbee to determine if it is in proper form and is within the power and authority granted under the laws of the State of Arizona to the respective client agency.

APPROVED AS TO FORM:

  
Legal Counsel for City of Bisbee

# EXHIBIT A

## Scope of Services

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### Project Services

The primary service provided under this IGA is the provision of Technical Assistance in the restructuring of the Administrative Duties as they pertain to the Bisbee Bus program of the City of Bisbee.

Technical Assistance will be provided on an as needed basis for the administrative categories listed below, assisting the City of Bisbee in gaining a compliant, effective, and efficient transit system. The Public Works Director and the TA Provider will work together to determine the level of assistance required, keeping in mind the system changes that must be made for the purpose of compliance with funding sources and the time allowed within this agreement. The scope below is not exhaustive, nor does it guarantee completion by the TA provider. It does identify administrative tasks that the TA provider is prepared to assist with.

**1. Budget Development**

- a. Revise 2026 budget as needed for ADOT approval
- b. Assist in developing a draft 2027 budget for use in 5311 application

**2. Administrative Protocols**

- a. Review existing transit system files
- b. Establish new electronic file system

**3. Transit Manager Hire**

- a. Assist in developing a Transit Manager Job Description
- b. Serve on interview team
- c. Assist in developing appropriate transit related interview questions

**4. Operations RFP**

- a. Review previous RFP documents and processes
- b. Assist in developing RFP documents

**5. Administrative systems strategies**

- a. Review current systems
- b. Develop revised strategies for Transit Manager role
- c. Develop revised strategies for Finance role

**6. ADOT Reimbursements**

- a. Review current COB system for reimbursements
- b. Review current ADOT reimbursement requirements
- c. Restructure reimbursement systems as needed

**7. ADOT Application**

- a. Assist in developing 5311 application when cycle opens

**8. AAA Reimbursements**

- a. Review reimbursement process and make recommendations for system changes

**9. Transit Asset Management**

- a. Assist in updating TAM with ADOT

**10. Overhead Cost Allocation**

- a. Assist Finance in identifying indirect costs that can be allocated as direct costs to the Bisbee Bus budget

**11. Cochise County and Sherrif's Funding**

- a. Assist in collecting data on the number of County and Jail Riders for the year
- b. Assist in developing strategies and talking points to solicit financial support from the County and Sherrif

**12. Marketing**

- a. Assist in developing a marketing plan
- b. Assist in revising Rider Guide
- c. Assist in updating bus schedule and map

**13. Bisbee Bus TAC**

- a. Assist in creating a yearly schedule
- b. Assist in soliciting new members from seniors and ridership

**14. Cochise Mobility Coordination Council**

- a. Revise Coordination Plan priorities, fleet, and other entries

**15. NTD report**

- a. Verify reporting methods and assist in updating system for NTD reporting

**16. Title VI**

- a. Review Title VI policy for compliance
- b. Update policies and protocols as needed

**17. Data Collection**

- a. Review data collection processes
- b. Revise processes as needed

**18. Compliance Monitoring**

- a. Review ADOT and AAA compliance requirements
- b. Assist in developing a compliance checklist

**19. ADOT Triennial Review**

- a. Assist in preparing for review

**20. Operations overview**

- a. Review and revise fare collection protocols

**21. Emergency Response Plan**

- a. Review SEAGO emergency planning study for transit operators
- b. Determine policy needs
- c. Assist in developing emergency policies and protocols

## EXHIBIT B

### Project Budget Proposal

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#### Total Project Budget

Total cost of services shall not exceed thirty-one thousand two hundred dollars (\$31,200).

#### Assumptions

Hourly Rate	\$60.00
Hours per Week	20
Total Service Weeks	26
Total Cost of services	\$31,200

## EXHIBIT C FEDERAL CLAUSES

### ACCESS TO RECORDS AND REPORTS

a. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.

b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

#### 1. Federal Equal Employment Opportunity (EEO) Requirements

These include, but are not limited to:

a) **Nondiscrimination in Federal Public Transportation Programs:** U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b) **Prohibition against Employment Discrimination.** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2. **Nondiscrimination on the Basis of Sex:** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age:** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C. F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4. Federal Protections for Individuals with Disabilities:** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

## **CIVIL RIGHTS AND EQUAL OPPORTUNITY**

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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 agrees to comply with any Implementing requirements FTA may issue.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

**5. Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **DEBARMENT AND SUSPENSION**

a. **Applicability:** This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. parts 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C. F. R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C. F. R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

#### **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA preapproval.

#### **ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex,

sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs ( 1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such

provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **FEDERAL CHANGES**

49 CFR Part 18 Federal Changes- 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 Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract.

## **FLY AMERICA**

a) Definitions. As used in this clause-

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers: International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR§ 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

Incorporation of Federal Transit Administration (FTA) Terms- The provisions within includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 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 this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **PATENT RIGHTS AND RIGHTS IN DATA**

### ***Intellectual Property Rights***

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract.

Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal

Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

- a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
  3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
  6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

#### **NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

### **PROMPT PAYMENT**

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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, 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 the Agency.

### **SAFE OPERATION OF MOTOR VEHICLES**

#### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

#### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

### **TERMINATION**

**Termination for Convenience (General Provision):** The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. 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 the Agency to be paid to the Contractor. If the Contractor has any property in its possession belonging to the Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

**Termination for Default Breach or Causal (General Provision):** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

**Opportunity to Cure (General Provision):** The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**Waiver of Remedies for any Breach:** In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**Termination for Convenience (Professional or Transit Service Contracts):** The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**Termination for Default (Transportation Services):** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and

preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

**EXHIBIT D**  
**(From ADOT Grant Agreement)**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**  
**(REV 12/24/2020)**

The SUBRECIPIENT receiving DOT-assisted transportation funds through ADOT must adopt and implement ADOT’s DBE Program Plan, ADOT’s DBE policy, DBE contract specifications and forms as a condition of receiving federal funds. ADOT SUBRECIPIENTS/Subgrantees of federal funds must comply with ADOT DBE Plan and may not have a plan independent from ADOT.

The ADOT DBE Program Plan and LPA/SUBRECIPIENT DBE Guidelines are located online at <http://www.azdot.gov/business/business-engagement-and-compliance> and are herein incorporated by reference.

**Non-Discrimination**

The SUBRECIPIENT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

In compliance with the ADOT DBE Program Plan, the SUBRECIPIENT/SUBGRANTEE shall not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program. The SUBRECIPIENT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

The SUBRECIPIENT shall take all necessary actions required under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

By executing this Agreement, the SUBRECIPIENT, agrees to perform the following minimum DBE Program Compliance Required Activities:

FHWA Funded Projects	FTA Funded Projects	Item Number	Item / Requirement
✓	✓	1	Designate a Disadvantaged Business Enterprise Liaison Officer (DBELO), responsible for adopting and implementing ADOT’s DBE Program Plan; acting as the single point of contact for DBE compliance.
✓	✓	2	Adhere to the ADOT DBE Program Plan and concomitant procedures.
✓	✓	3	Follow ADOT’s guidelines and procedures, and use the forms developed by ADOT to implement its DBE program.
✓	✓	4	Participate in training conducted by ADOT related to DBE requirements and program regulations.
✓	✓	5	Require firms that work on DOT-assisted contracts to register in AZ UTRACS.
✓	✓	6	Encourage small firms to register as an SBC (Small Business Concern) via the AZ UTRACS web portal.
✓	✓	7	Utilize certified DBEs found in the AZ UTRACS web portal.

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| ✓ | ✓ | 8  | Include the DBE contract goal as provided by ADOT BECO for FHWA-funded (and Race-Neutral Agency Voluntary Participation Goal for FTA-funded) contract bid advertisement, bid package, statement of qualification, request for proposal or other solicitation documents.  |
| ✓ | ✓ | 9  | Include applicable DBE contract specifications as provided by ADOT in all DOT-assisted contract bid advertisements, bid packages, statements of qualification, requests for proposal or other solicitation documents.  |
| ✓ | ✓ | 10 | The SUBRECIPIENT shall confirm good faith by the contractor or determine any action required in response to the contractor submission of a verifiable explanation of the discrepancy in the DBE System as early as practicable but in no case later than seven days after reviewing relevant documentation.                                |
| ✓ | ✓ | 11 | No later than 15 calendar days after Notice of Procurement Award to a Vendor/Contractor, the SUBRECIPIENT shall enter the name, contact information, and subcontract amounts for all Contracts with federal funding participation associated with this Grant Agreement.  |
| ✓ | ✓ | 12 | No later than 15 days after the end of each month, report payments to prime contractors within the ADOT Local Public Agencies DBE Reporting System located at <a href="https://arizonalpa.dbesystem.com/">https://arizonalpa.dbesystem.com/</a> .  |
| ✓ | ✓ | 13 | Submit contract data in support of monthly, semi-annual and annual federal reporting submission made by ADOT. SUBRECIPIENTS/Subgrantees, Certification Acceptance Agencies and LPAs are required to use the ADOT Local Public Agencies DBE System, via <a href="https://arizonalpa.dbesystem.com/">https://arizonalpa.dbesystem.com/</a> . |
| ✓ | ✓ | 14 | Monitor and enforce that contractors enter and report subcontractor payments by the last day of each month in the LPA DBE System and that Prompt Payment of DBEs and other subcontractors are monitored and enforced. Monitoring is accomplished through the LPA audit process and its notifications.                                      |
| ✓ | ✓ | 15 | Monitor and ensure Contractor compliance with DBE policies and regulations, including with the ADOTs concurrence, deems appropriate, which may include, but is not limited to:   |

Withholding payments;

Assessing sanctions;

Liquidated damages; and/or

Disqualifying the contractor from future bidding on the rounds of being non-responsible.

FHWA Funded Projects	FTA Funded Projects	Item Number	Item / Requirement
✓	✓	16	ADOT may conduct project site visits to ensure all DBEs are meeting a Commercially Useful Function (CUF) on each DOT-assisted contract. Any DBE determined to not be performing a commercially useful function will be notified by the SUBRECIPIENT within seven calendar days of the decision. In the event that the DBE appeals the decision to ADOT's Business Engagement and Compliance Office, the decision remains in effect unless and until ADOT BECO reverses or modifies Grantee decision. ADOT BECO will promptly consider any appeals and notify the contractor of the ADOT BECO findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.
✓	✓	17	Implement monitoring and enforcement mechanisms to enforce the terms of the contract, including application of applicable sanctions, as needed, for payment reporting, prompt payment, DBE termination/substitution and not meeting the DBE contract goal.
✓	✓	18	Follow DBE contract specification to notify ADOT BECO and ADOT PM in writing to secure ADOT BECO's approval prior to any termination, substitution, or reduction of work of a committed DBE firm used to meet the contract goal.

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| ✓ | ✓ | 19   | Monitor DBE utilization on projects and notifying ADOT BECO as soon as SUBRECIPIENT/Subgrantee is aware of a potential issue that may affect DBE commitments made at award.  |
| ✓ | ✓ | 20   | Ensure that all DBE Certification of Final Payment Forms are submitted by contractors within 30 days of subcontractor completing the work and submit a copy to ADOT BECO.  |
| ✓ | ✓ | 21   | Ensure timely contract closeout by ensuring all subcontractor payments are reported in the DBE System, closeout contracts in the LPA DBE reporting system, and complete all mandatory reporting requirements in the LPA DBE system by April 1st and October 1st of each year.  |
| ✓ | ✓ | 22   | Part of the proposal submission during a formal procurement (RFP, IFB, etc.), the Grantee must incorporate receipt of a bidder's list into the responsiveness / susceptible for award determination. FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST TO THE GRANTEE PROCUREMENT OFFICE BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE BIDDER BEING DEEMED INELIGIBLE FOR AWARD OF THE CONTRACT.  |
| ✓ | ✓ | 23   | Cooperate with ADOT or DOT audits and site visits for DBE regulation and contract compliance; providing access to procedures; project files; and enabling onsite interviews with contracting, financial, DBE compliance, and project staff.  |
| ✓ | ✓ | 24   | Each contract you sign with a contractor or consultant and each subcontract a prime signs with a subcontractor must include the following assurance:   |
| ✓ | ✓ | 24.a | <i>A vendor/contractor/consultant/subcontractor/subconsultant (herein after referred to as "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 USDOT assisted contracts. Failure by the contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Grantee, with the Department's concurrence, deems appropriate, which may include, but is not limited to:</i> |
|   |   |      | <i>Withholding payments;</i>   |
|   |   |      | <i>Assessing sanctions;</i>  |
|   |   |      | <i>Liquidated damages; and/or</i>  |
|   |   |      | <i>Disqualifying the contractor from future bidding on the grounds of being non-responsible.</i>   |

FHWA Funded Projects	FTA Funded Projects	Item Number	Item / Requirement
✓	✓	24.b	<i>Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.</i>
✓	✓	24.c	<i>Each contractor shall designate a full time employee who shall be responsible for the administration of the contractor's DBE program.</i>
✓	✓	24.d	<i>Each contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.</i>
✓	✓	24.e	<i>Subcontract Payment Reporting in the DBE system:</i>
✓	✓	24.e.1	<i>The Arizona Department of Transportation (the Department) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to FTA on Federal-aid projects.</i>

The contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).

- ✓ ✓ 24.e.2 The contractor shall respond to SUBRECIPIENT payment audits reported each month electronically through the Department's web-based payment tracking system (<https://arizonalpa.dbesystem.com/>), reporting its payments to all DBEs and non-DBE subcontractors working on the project. In addition, the contractor shall require that all DBE and non-DBE subcontractors, shall also respond to its audits and report lower-tier subcontractor payments in the same manner.
- ✓ ✓ 24.e.3 If, by the DBE system audit deadline, the contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the Project Manager will work with the ADOT MPD Program Manager to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the contract.
- ✓ ✓ 24.f The contractor shall include these provisions in all of its subcontracts, and ensure that its subcontractors include these provisions in any lower-tier subcontracts.
- ✓ ✓ 24.g Any language provided in this Agreement DBE Section supersedes language provided by ProcurementPro for FTA-funded contracting requirements.
- ✓ 25 Submit all FHWA DOT-assisted contracts to ADOT to be assessed for a DBE goal.
- ✓ 26 Notify the ADOT PM and ADOT Business Engagement and Compliance Office (BECO) in writing immediately following DOT-assisted project a) bid opening of architect & engineering, design, or construction low bidder or b) selected professional services when the contractor and/or consultant indicates on the DBE Assurance Form that the DBE contract goal cannot be met.
- ✓ 27 Submit all Good Faith Effort documentation to ADOT BECO for review and concurrence prior to awarding of DOT-assisted contracts.
- ✓ 28 Collect DBE Affidavits (FHWA-funded contracts only), bidder/proposer list confirmation email and all other ADOT required forms and submit to ADOT BECO in accordance with the applicable FHWA Compliance Checklist MPOs and COGs available at website <http://www.azdot.gov/beco>.
- ✓ 29 Ensure the receipt of Bid Verification Notice from ADOT BECO prior to contract award.
- ✓ 30 Prior to final payment on any Project with a designated DBE goal, the SUBRECIPIENT shall determine whether the consultant met the designated DBE goal. Where the goal was not met, the SUBRECIPIENT must forward the written determination document and a copy of the final invoice to the ADOT MPD Liaison/Project Manager, who will work with the BECO compliance office to determine if a sanction is required. In the event a sanction is required, the SUBRECIPIENT will reduce the final payment on the Project by the fee, copying the vendor with the sanction notice provided by ADOT.