



PINAL COUNTY
WIDE OPEN OPPORTUNITY

PURCHASING DIVISION REPORT

November 1, 2023

CONTRACT AMENDMENTS:

The Board is requested to approve the following contract amendments:

1. RFP 222426 – Trauma Counseling - Recommended approval of Amendment No. 2 to exercise the optional extension period from November 18, 2023 through November 17, 2024 with E-Therapy, LLC. There are two (2) optional extensions remaining. This contract is used by the Public Health Department.
2. RFP 231527 – Vehicle and Equipment Parts, Repair, and Services - Recommended approval of an Amendment to exercise the optional extension period from October 26, 2023 through October 25, 2024 with the following suppliers:

Dreamline Collision Center	Earnhardt Chevrolet
Earnhardt Ford Sales	Houseright & Sons LLC
Napa/ Day Auto Supply	Pinal Autoglass LLC
Reparto Veloce	Robert Horne Ford, LLC
Rodeo QCC, Inc. DBA Rodeo Dodge	RWC Group
Sonsray Machinery, LLC	Watson Chevrolet

There are three (3) optional extensions remaining. This contract is used by the Fleet Department.

COMPETITION IMPRACTICABLE PROCUREMENT OVER \$100,000:

The Board is requested to approve the following purchase request per Pinal County Procurement Code section PC1-350 governing competition impracticable purchases over \$100,000:

AMOUNT: \$250,000.00
SUPPLIER: Arizona Capital Representation Project
DESCRIPTION: Capital Appeals Representation
DEPARTMENT: Public Defense Services

AMOUNT: \$120,000.00
SUPPLIER: David Kephart
DESCRIPTION: Indigent Criminal / Capital Representation
DEPARTMENT: Public Defense Services



PINAL COUNTY
WIDE OPEN OPPORTUNITY

AMOUNT: \$120,000.00
SUPPLIER: David Teel
DESCRIPTION: Indigent Defense Criminal Capital Representation
DEPARTMENT: Public Defense Services

PURCHASE ORDER CHANGES REQUIRING APPROVAL:

The Board is requested to approve the following change orders per Pinal County Procurement Code section PC1-502 governing change orders that exceed minimum thresholds.

PO NO.: 247085
SUPPLIER: Dibble & Associates
AMOUNT: Change amount of \$955,554.60 for a new total of \$1,982,860.65
ITEM: Apache Junction Regional Basins Weekes Wash Watershed
DEPARTMENT: Development Services –Public Works Division

COOPERATIVE PURCHASING AGREEMENT PROCUREMENTS \$100,000 - \$250,000:

The Board is hereby notified of the following cooperative purchases made:

PO NO.: 250604
SUPPLIER: Protiviti, Inc.
AMOUNT: \$183,356.00
ITEM: Internal Audit Services
DEPARTMENT: Clerk of the Board

COOPERATIVE PURCHASING AGREEMENT PROCUREMENTS OVER \$250,000:

The Board is requested to approve the following cooperative purchase:

REQUISITION NO.: 168919
SUPPLIER: Midway Chevrolet
AMOUNT: \$1,551,442.50
ITEMS: 18 Tahoe Patrol Black/White PCSO
DEPARTMENT: Fleet Services

REQUISITION NO.: 168921
SUPPLIER: Midway Chevrolet
AMOUNT: \$585,921.04
ITEMS: 4 Tahoes for PCSO
DEPARTMENT: Fleet Services

Leo Lew
County Manager



Himanshu Patel
Deputy County Manager

Angeline Woods
Office of Budget & Finance Director

PINAL COUNTY
WIDE OPEN OPPORTUNITY

MaryEllen Sheppard
Deputy County Manager

To: Pinal County Board of Supervisors

From: Kristen Grieco, Procurement Officer

Date: November 1, 2023

Re: Contract Amendment for RFP #222426 Trauma Counseling

It is requested the Board approve a contract term extension with E-Therapy, LLC who provide Trauma Counseling for the Public Health Department.

The County has spent approximately \$4,000 on this contract in the last year and the same is anticipated in the next year of the contract.

The current term of this contract expires on November 17, 2023. The new term, if approved, will begin on November 18, 2023, and will continue through November 17, 2024. After this extension, two (2) one-year optional extensions will remain.

It is also requested the Board authorize the Director of the Office of Budget and Finance to approve and sign resulting purchase orders and related administrative documents. All other terms and conditions remain unchanged.

Respectfully submitted,

Kristen Grieco

Kristen Grieco
Procurement Officer
(520) 866-6639
Kristen.Grieco@pinal.gov



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

Contract: 222426RFP
Amendment #2
Procurement Officer: Kristen Grieco
Kristen.Grieco@pinal.gov

Trauma Counseling

Contractor Name: E-Therapy, LLC

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to November 17, 2024.

Except as otherwise expressly modified or amended herein, all other terms, conditions, and pricing contained in the Contract shall remain in full force and effect and shall not be altered or changed by this Amendment.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X

Jeff Serdy, Chairman
Pinal County Board of Supervisors

X November 1, 2023

Date



To: Pinal County Board of Supervisors

From: Eric Zander, Procurement Officer

Date: November 1, 2023

Re: Contract Amendment for RFP #231527 Vehicle and Equipment Parts, Repair, and Services

It is requested the Board approve a contract term extension with the following suppliers who provide Vehicle and Equipment Parts, Repair and Services for the Fleet Department.

Dreamline Collision Center
Earnhardt Chevrolet
Earnhardt Ford Sales
Houseright & Sons LLC
Napa/Day Auto Supply
Pinal Autoglass LLC
Reparto Veloce
Robert Horne Ford, LLC
Rodeo QCC, Inc. DBA Rodeo Dodge
RWC Group
Sonsray Machinery, LLC
Watson Chevrolet

The County has spent approximately \$400,000 on these contracts in the last year and the same is anticipated in the next year of the contract.

The current term of this contract expires on October 25, 2023. The new term, if approved, will begin on October 26, 2023, and will continue through October 25, 2024. After this extension, three (3) one-year optional extensions will remain.

It is also requested the Board authorize the Director of the Office of Budget and Finance to approve and sign resulting purchase orders and related administrative documents. All other terms and conditions remain unchanged.

Respectfully submitted,

Eric Zander

Eric Zander, CSCP
Procurement Officer
(520) 866-6240
Eric.Zander@pinal.gov



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #1**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Dreamline Collision Center**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

<u>X</u>	<u>X</u> November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Earnhardt Chevrolet**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Earnhardt Ford Sales**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Houseright & Sons LLC**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Napa/Day Auto Supply**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Pinal Autoglass LLC**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

Contract: 231527 RFP
Amendment #2
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Reparto Veloce**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

<u>X</u>	<u>X</u> November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #1**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Robert Horne Ford, LLC**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Rodeo QCC, Inc. DBA Rodeo Dodge**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **RWC Group**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Sonsray Machinery, LLC**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date



Contract Amendment

The Office of Budget and Finance – Purchasing Division
31 N. Pinal Street, PO Box 1348
Florence, AZ 85132
(520) 866-6008

**Contract: 231527 RFP
Amendment #2**
Procurement Officer: Eric Zander
Eric.Zander@pinal.gov

Vehicle and Equipment Parts, Repair, and Services

Contractor Name: **Watson Chevrolet**

Pursuant to Paragraph 15 (Contract Changes), the referenced Contract shall be amended as follows:

1. Contract Term. Pursuant to Paragraph 2 (Contract Extension), the term of this Contract is hereby extended to October 25, 2024.

Pinal County hereby executes its right to unilaterally amend the above referenced contract on this date.

X	X November 1, 2023
Jeff Serdy, Chairman Pinal County Board of Supervisors	Date

Competition Impracticable Justification Form

(In accordance with Pinal County Procurement Code PC1 - 349-351)



Requestor and Vendor Information

Requestor Name

PAUL LOVELIS

Request Date

10/10/2023

Requestor Email

PAUL.LOVELIS@PINAL.GOV

Requestor Extension OR Phone # *

6845

Department Name

PUBLIC DEFENSE SERVICES

Requisition #

Suggested Vendor *

ARIZONA CAPITAL REPRESENTATION PROJECT

Estimated Yearly Amount *

\$250,000.00

Item/Service to be Purchased: *

Capital Appeals Representation

REQUESTOR: Reason for Requesting Competition Impracticable (Check All Applicable):

- Item or service has been determined as a County-wide standard:
- Must match existing item or service to ensure uniformity where costs to manage variations would be prohibitive:
- Use of "certified" or specifically approved vendors of service equipment is required to maintain warranty of equipment:
- Specifications of a particular item or service is such that there is not a comparable product on the market that could provide similar results or quality. Other manufacturers of this type of product or service do not meet our minimum requirements. For example, manufacturer & reason:
- Other (includes course-specific material):

Explain: *

There has been no need for Capital Appeals Attorneys in over 10 years and so no RFP has been done for this type of service. Due to the time sensitive requirement for Capital Appeals Attorneys and the unique qualifications that are required for representation in this case type, it is in the interest to appoint this firm to provide representation on this case. This firm has a contract with Maricopa County at \$135/hr and will be representing at this rate, additionally providing paralegal services at the \$45 hour rate.

Supporting Documents Attachment

FIN Purchasing Supporting Documents (Document Name - Max. 75 Characters)

Administration Approval Section

Department Director Approval

Dept Director Approval Name

CATHRYNW

Dept Director Response

Approved

Dept Director Approval Date

10/11/2023

Dept Director Approval Comments

Dept Director Denied Comments

Procurement Officer – Review & Recommendation

Procurement Officer Approval Name

ANNSY

Procurement Officer Response

Approved

Procurement Officer Approval Date

10/11/2023

Procurement Officer Review

COMPETITION IMPRACTICABLE JUSTIFICATION IS ADEQUATE AND PURCHASE TO BE AUTHORIZED WITHOUT COMPETITIVE BIDDING.

Procurement Officer Approval Comments

MARICOPA CNTY 09020-ROQ RATE FOR APPEALS ATTORNEY IS SET AT \$135/PER HR-PARALEGAL FEES REF SECK.2. THIS FIRM NOT NAMED, INDIVIDUAL ATTORNEYS COULD BE CONTRACTED. CI PROVIDES NEEDED JUSTIFICATION.

Procurement Officer Denied Comments

Procurement Manager Approval

Procurement Mgr Approval Name

TIARA PETERSON

Procurement Mgr Response

Approved

Procurement Mgr Approval Date

10/13/2023

Procurement Mgr Approval Comments

Procurement Mgr Denied Comments

Finance Director – Under \$100K

Finance Director Approval Name

Finance Director Response

Finance Director Approval Date

Finance Director Approval Comments

Finance Director Denied Comments

Procurement FINAL

Procurement FINAL Approval Name

Procurement FINAL Approval Date

Contract # - if applicable

Vendor #

Vendor Name

Execution Date

Retention Date

Denied Information Section

Procurement Officer Denied Queue Comments

Jeff Serdy, Chairman
Pinal County Board of Supervisors

November 1, 2023

Date

Competition Impracticable Justification Form

(In accordance with Pinal County Procurement Code PC1 - 349-351)



Requestor and Vendor Information

Requestor Name

PAUL LOVELIS

Request Date

10/11/2023

Requestor Email

PAUL.LOVELIS@PINAL.GOV

Requestor Extension OR Phone # *

6845

Department Name

PUBLIC DEFENSE SERVICES

Requisition #

Suggested Vendor *

DAVID KEPHART

Estimated Yearly Amount *

\$120,000.00

Item/Service to be Purchased: *

Indigent Criminal/Capital Representation

REQUESTOR: Reason for Requesting Competition Impracticable (Check All Applicable):

- Item or service has been determined as a County-wide standard:
- Must match existing item or service to ensure uniformity where costs to manage variations would be prohibitive:
- Use of "certified" or specifically approved vendors of service equipment is required to maintain warranty of equipment:
- Specifications of a particular item or service is such that there is not a comparable product on the market that could provide similar results or quality. Other manufacturers of this type of product or service do not meet our minimum requirements. For example, manufacturer & reason:
- Other (includes course-specific material):

Explain: *

We have a case where Public Defense Services has reason to believe that the case has a chance to have a Death Penalty Notice. This would require very specific qualifications per the Arizona Rules of Criminal Procedure 6.8 which is highly specific. Only a specific list of lawyers meet these qualifications and due to conflicts and ethical requirements of other attorneys, we are not able to use a lawyer on the list. Mr. Kephart will not be representing other cases on the contract and will only be taking this case. It is in the best interest of Pinal County taxpayers to have this attorney on this case.

Supporting Documents Attachment

FIN Purchasing Supporting Documents (Document Name - Max. 75 Characters)

Administration Approval Section

Department Director Approval

Dept Director Approval Name

CATHRYNW

Dept Director Response

Approved

Dept Director Approval Date

10/11/2023

Dept Director Approval Comments

Dept Director Denied Comments

Procurement Officer – Review & Recommendation

Procurement Officer Approval Name

ANNSY

Procurement Officer Response

Approved

Procurement Officer Approval Date

10/11/2023

Procurement Officer Review

COMPETITION IMPRACTICABLE JUSTIFICATION IS ADEQUATE AND PURCHASE TO BE AUTHORIZED WITHOUT COMPETITIVE BIDDING.

Procurement Officer Approval Comments

DEPARTMENT HAS PROVIDED INFORMATION TO SUBSTANTIATE THE NEED FOR A CI FOR THIS ATTORNEY.

Procurement Officer Denied Comments

Procurement Manager Approval

Procurement Mgr Approval Name

TIARA PETERSON

Procurement Mgr Response

Approved

Procurement Mgr Approval Date

10/13/2023

Procurement Mgr Approval Comments

Procurement Mgr Denied Comments

Finance Director – Under \$100K

Finance Director Approval Name

Finance Director Response

Finance Director Approval Date

Finance Director Approval Comments

Finance Director Denied Comments

Procurement FINAL

Procurement FINAL Approval Name

Procurement FINAL Approval Date

Contract # - if applicable

Vendor #

Vendor Name

Execution Date

Retention Date

Denied Information Section

Procurement Officer Denied Queue Comments

Jeff Serdy, Chairman
Pinal County Board of Supervisors

November 1, 2023

Date

Competition Impracticable Justification Form

(In accordance with Pinal County Procurement Code PC1 - 349-351)



Requestor and Vendor Information

Requestor Name

PAUL LOVELIS

Request Date

10/10/2023

Requestor Email

PAUL.LOVELIS@PINAL.GOV

Requestor Extension OR Phone # *

6845

Department Name

PUBLIC DEFENSE SERVICES

Requisition #

Suggested Vendor *

DAVID TEEL

Estimated Yearly Amount *

\$120,000.00

Item/Service to be Purchased: *

Indigent Defense Criminal Capital Representation

REQUESTOR: Reason for Requesting Competition Impracticable (Check All Applicable):

- Item or service has been determined as a County-wide standard:
- Must match existing item or service to ensure uniformity where costs to manage variations would be prohibitive:
- Use of "certified" or specifically approved vendors of service equipment is required to maintain warranty of equipment:
- Specifications of a particular item or service is such that there is not a comparable product on the market that could provide similar results or quality. Other manufacturers of this type of product or service do not meet our minimum requirements. For example, manufacturer & reason:
- Other (includes course-specific material):

Explain: *

We have a case where Public Defense Services has reason to believe that the case has a chance to have a Death Penalty Notice. This would require very specific qualifications per the Arizona Rules of Criminal Procedure 6.8 which is highly specific. Only a specific list of lawyers meet these qualifications and due to conflicts and ethical requirements of other attorneys, we are not able to use a lawyer on the list. Mr. Teel will not be representing other cases on the contract and will only be taking this case. It is in the best interest of Pinal County taxpayers to have this attorney on this case.

Supporting Documents Attachment

FIN Purchasing Supporting Documents (Document Name - Max. 75 Characters)

Administration Approval Section

Department Director Approval

Dept Director Approval Name

CATHRYNW

Dept Director Response

Approved

Dept Director Approval Date

10/11/2023

Dept Director Approval Comments

Dept Director Denied Comments

Procurement Officer – Review & Recommendation

Procurement Officer Approval Name

ANNSY

Procurement Officer Response

Approved

Procurement Officer Approval Date

10/11/2023

Procurement Officer Review

COMPETITION IMPRACTICABLE JUSTIFICATION IS ADEQUATE AND PURCHASE TO BE AUTHORIZED WITHOUT COMPETITIVE BIDDING.

Procurement Officer Approval Comments

DEPARTMENT HAS PROVIDED INFORMATION TO SUBSTANTIATE THE NEED FOR A CI FOR THIS ATTORNEY.

Procurement Officer Denied Comments

Procurement Manager Approval

Procurement Mgr Approval Name

TIARA PETERSON

Procurement Mgr Response

Approved

Procurement Mgr Approval Date

10/13/2023

Procurement Mgr Approval Comments

Procurement Mgr Denied Comments

Finance Director – Under \$100K

Finance Director Approval Name

Finance Director Response

Finance Director Approval Date

Finance Director Approval Comments

Finance Director Denied Comments

Procurement FINAL

Procurement FINAL Approval Name

Procurement FINAL Approval Date

Contract # - if applicable

Vendor #

Vendor Name

Execution Date

Retention Date

Denied Information Section

Procurement Officer Denied Queue Comments

Jeff Serdy, Chairman
Pinal County Board of Supervisors

November 1, 2023

Date



Purchase Order

Pinal County Finance Department
Purchasing Division
P.O. Box 1348
Florence, AZ 85132

PO Number
247085
This number must appear on all documents pertaining to this order.

PO Date: 4/28/2022
Page: 1 of 1

Mail Invoice to: Pinal County Finance Department P.O. Box 1348 Florence, AZ 85132 Or email invoice to: FinanceInvoices@pinal.gov	Ship to: PUBLIC WORKS- ADMIN OFFICES 85 N. FLORENCE ST 2ND FLOOR FLORENCE AZ 85132	Supplier: DIBBLE & ASSOCIATES 7878 N 16TH STREET, SUITE 300 PHOENIX AZ 85020 Phone: 602 - 957-1155 Fax: - Confirming to: DIBBLE & ASSOCIATES CONSULTING ENGINEERS
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Buyer: Maegan Queen, Buyer Phone: 520 - 866-6265 Email: maegan.queen@pinal.gov	Requested Delivery Date: 6/30/2022 Payment Terms: Net 30 Shipping Terms: FOB Destination
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The terms and conditions of the following contract apply to this Purchase Order:

Contract Entity Pinal County
Contract Number 204926ROQ
Contract Expiry 3/27/2023

Reference:
Apache Junction Regional Basins WA1 Proposal 3-2-2022

Vendor Contact: Carmen Rose carmen.rose@dibblecorp.com

Department Contact: Joshua.Plumb@pinal.gov; maria.ochoa@pinal.gov

Line	Quantity	UOM	Item Number	Item Description	Unit Cost	Extended Cost
1		LS		Weekes Wash Watershed	\$0.00	\$1,982,860.65

Total Order : \$1,982,860.65

NOTE :
Failure to send invoice to above address will result in delay of payment.
Direct all payment questions to Accounts Payable at 520-866-6397.
Direct all other inquiries to the Buyer specified above.

By accepting this Purchase Order the supplier agrees to the terms and conditions located on the [Purchasing Website](#) unless otherwise directed on this PO

Mr. Joshua Plumb, PE
Assistant County Engineer
Pinal County Flood Control District
P.O. Box 1348, Florence, AZ, 85132

September 20, 2023

**RE: Weekes Wash Regional Flood Control Facility– Work Assignment 1
Contract Number 204926ROQ
Contract Amendment #5 Rev 1 Proposal**

Dear Mr. Plumb:

Please find our proposal for additional services that are meant to be conducted prior to beginning final design activities for the Weekes Wash RFCF, formerly referred to as the Apache Junction Basin project. These services act as an extension of the ongoing activities between the City of Apache Junction (City), funding agencies, project partners, landowners, and project subconsultants. They also support the overall advancement of key project metrics. Some of these services were originally anticipated to have been completed by January 2023 but have been extended to the new State and Federal funding notification deadlines now anticipated in July 2023. Other services are new and have been added due to the general evolution of the project and from information obtained during previous project coordination efforts. The new or extended services are generally listed below. Please refer to the following Scope of Services for more information.

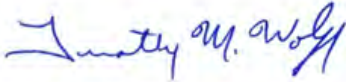
- Project Coordination
- Agency Coordination
- Arizona Department of Environmental Quality (ADEQ), Arizona Department of Water Resources (ADWR), & Arizona Dept of Transportation (ADOT) Permit/ Planning/Coordination Services,
- Granite Pit, FEMA, AZDEMA, & EHP Coordination
- City Finance Coordination
- Stakeholder Advisory Committee
- Cultural Survey Assessment Support
- Public Outreach Services
- Parks and Recreation Department Coordination
- Project Permit Coordination
- Project Schedule Refinement
- Risk Management Strategies
- Project Plan Development
- Subsurface Groundwater Modeling
- Preliminary Geotechnical Evaluations
- Project Funding Assistance
- Construction Method Support Services
- Project Survey Services
- Work Assignment 2A (early final design efforts) Scoping

The lump sum fee for the services described in this proposal are summarized below.

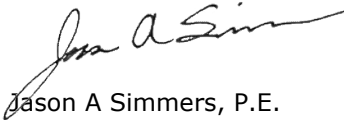
<u>Firm</u>	<u>Fee</u>
Dibble	\$74,311.70
Dibble CM	\$9,500.00
Black & Veatch	\$529,206.00
Terracon	\$137,361.32
Ethos	\$79,946.58
Vertical Mapping Resources	\$10,229.00
Allowances	\$65,000.00
<u>Optional Tasks</u>	<u>\$50,000.00</u>
Total Fee	\$955,554.60

Work Assignment 1, Contract Amendment #5 (this proposed scope of services) is anticipated to last through December 2023. It should be noted that Work Assignment 2 will potentially begin before the completion of Work Assignment 1, Contract Amendment #5 leading to an overlap in timeline between the two Work Assignments. However, with the overlap in timeline, no duplication of scope will occur.

Sincerely,



Timothy M. Wolfe, P.E.
Vice President/Business Unit Leader
Dibble



Jason A Simmers, P.E.
Senior Project Manager
Dibble



Scope of Services

Task 1 - ADDITIONAL PROJECT COORDINATION

- 1.1. **Pinal County and Apache Junction Coordination.** Dibble and Black & Veatch will continue to coordinate with Pinal County (County) and City of Apache Junction (City) to maintain the flow of important communications, document progress and action items, facilitate discussions with key agency contacts, and evaluate the proposed project working and final design schedules. Coordination will be conducted through the following means:

1. Bi-weekly virtual coordination meetings (assumes up to eighteen (18))
2. Weekly email status updates
3. As-needed virtual conference phone calls

Meeting minutes will be developed and submitted to all attendees for review and comment. Preparation and documentation efforts are included for each meeting.

- 1.2. **Continued ASLD and BLM/BOR, with the addition of SRP Coordination.** Dibble and Black & Veatch will continue stakeholder coordination efforts with the Arizona State Land Department (ASLD), the Bureau of Land Management (BLM), the Bureau of Reclamation (BOR) and The Salt River Project (SRP). SRP is a new entity requiring coordination on the withdrawn BLM lands that BOR operates. This will include further coordinating the needs for land purchases and easement acquisitions from those entities.

Black & Veatch will update the Standard Form 299 and Plan of Development (POD) for the Federal Land Policy and Management Act (FLPMA) 2804 Grant for BLM using best available information from the HMGP, EHP, and design plans as delivered on July 17, 2022 or the ongoing archaeological, cultural, environmental, biological, and geotechnical investigations. Data gaps and areas requiring further evaluation will be identified and presented to the Team for next steps toward resolution.

This will include up to ten (10) virtual individual as-needed ASLD, BLM/BOR/SRP coordination meetings.

- 1.3. **ADEQ, ADWR & ADOT Coordination.** As a subconsultant to Dibble, Black & Veatch will initiate discussions with state agencies: ADEQ, ADWR, and the Arizona Department of Transportation (ADOT). It is assumed all coordination meetings with ADEQ, ADWR, and ADOT will be virtual.

1. **ADEQ** coordination will include discussions required for water quality as it pertains to groundwater recharge. These discussions will be conducted following further discussions

with ADWR for surface water rights, groundwater storage, and groundwater recharge permitting. It is assumed two (2) meetings will be required for ADEQ coordination.

2. **ADWR** coordination will include discussions for surface water rights, groundwater storage, and groundwater recharge permitting along with discussions with dam safety as it pertains to the geotechnical investigation and design of the structure. It is assumed three (3) meetings one (1) hour in length (plus preparation will be required for ADWR coordination for surface water rights, groundwater storage, and groundwater recharge permitting. It is assumed four (4) meetings will be required for ADWR coordination for geotechnical investigation and design of the structure. A total of seven (7) meetings are assumed for ADWR coordination.
3. **ADOT** coordination will include introduction discussions for the project, construction access off State Route 88 (Apache Trail) and future planned ADOT improvements for SR 88. It is assumed two (2) meetings will be required for ADOT coordination.
- 1.4. **Treasure Chest Granite Pit Coordination.** As a subconsultant to Dibble, Black & Veatch will initiate discussions with Treasure Chest Granite Pit, LLC (Treasure Chest) for future aggregate material procurement for structure design and construction. Discussions will include the potential to trade material excavated at the site that is deemed not suitable for the structure in exchange for material mined at the site that meets the design gradation for the structure. It is assumed two (2) in-person meetings one (1) hour in length will be required for Treasure Chest coordination. The meeting will commence discussions between the City and Treasure Chest for an agreement moving forward.
- 1.5. **FEMA EHP Coordination.** As a subconsultant to Dibble, Black & Veatch will continue coordination with the Federal Emergency Management Agency (FEMA) and/or Arizona Department of Emergency and Military Affairs (AZDEMA) in matters that pertain to Environmental Planning and Historic Preservation (EHP) compliance as part of the HMGP grant application.

In the event a Request for Information (RFI) is received from FEMA or AZDEMA regarding the EHP, the Team shall evaluate and develop materials in support of providing a response, in collaboration with Pinal County (County) and the City, to support timely communications for resolution of the request(s).

This will include up to four (4) virtual individual FEMA coordination meetings.

- 1.6. **City Finance Coordination.** Dibble and Black & Veatch will coordinate with City finance staff to inform them of the project funding status through the submitted grant or revolving fund

applications: HMGP 4524, Building Resilient Infrastructure and Communities (BRIC), Flood Mitigation Assistance (FMA), Water Infrastructure Finance Authority of Arizona (WIFA), and current Engineering Opinion of Probable Cost (EOPC). Further discussion of efforts to obtain additional funding through State, and local opportunities with the City and County will be continued.

The Team will develop and submit meeting minutes for finance coordination meetings, track key action items, assigned parties, and dates for critical path items.

This will include up to three (3) virtual individual coordination meetings, to be conducted on a monthly basis.

- 1.7. **Stakeholder Advisory Committee.** Dibble and Black & Veatch will expand the stakeholder coordination efforts initiated in June 2022 to inform and solicit feedback that will advance the funding, design, and construction services of the project. Previous ASLD and BLM coordination efforts will be expanded to include:

- ADWR
- FEMA
- Salt River Project (SRP)
- ADOT
- Arizona State Historic Preservation Office (SHPO)
- Tribal Historic Preservation Office (THPO)
- Arizona State Parks
- Flood Control District of Maricopa County (FCDMC)
- City departments such as Park and Recreation, Police and Fire
- Treasure Chest Granite Pit, LLC

Coordination efforts will include:

1. Up to three (3) in-person Advisory Committee meetings to be held at City or Dibble offices.
2. Up to ten (10) virtual individual as-needed stakeholder coordination meetings.

Meeting minutes will be developed and submitted to all attendees for review and comment.

- 1.8. **Cultural Survey Assessment Support.** Black & Veatch will coordinate on behalf of the County and City with epG/Terracon (subconsultant to Dibble) in support of completion of the cultural survey assessment on the proposed Weekes Wash RFCF and collaboration with ASLD and BLM for land acquisitions.

1. Up to five (5) virtual individual as-needed coordination meetings will be conducted
2. Up to two (2) as-needed site visits will be conducted to support the cultural survey assessment

1.9. Public Outreach Services. As a subconsultant to Dibble, Black & Veatch will coordinate public outreach with the City and County. Black & Veatch will develop materials with the assistance from the City and County, and coordinate outreach meetings at the discretion of the City and County.

1. Up to two (2) in-person public outreach meetings will be conducted.

1.10. Apache Junction Parks Department Coordination. As a subconsultant to Dibble, Black & Veatch will initiate discussions regarding recreational development of the site in conjunction with construction of the facility. Black & Veatch will coordinate meetings to be held with the Parks Department, EPG/Terracon, the City, County, and Dibble.

1. Up to two (2) virtual meetings will be conducted.

1.11. Internal Design Team Coordination. As a subconsultant to Dibble, Black & Veatch will initiate and lead bi-weekly discussions with the design team including Dibble, Ethos, and Terracon/EPG. These meetings will support future design considerations and tasks in-between project progress meetings with the City and County. Meeting minutes will be developed by Black & Veatch and submitted to all attendees within one (1) calendar week for review and comment. Preparation and documentation efforts are included for each meeting.

1. Bi-weekly virtual coordination meetings (assumes up to eighteen (18) through December 2023)

Task 2 - ADEQ & ADWR Permit/Planning

2.1. Review of Surface Water Rights. As a subconsultant to Dibble, Black & Veatch prior to preparing the ADWR Groundwater Recharge Permit applications will review an online ADWR database for the existing surface water rights for the Weekes Wash watershed and downstream watercourses. Black & Veatch will determine, through coordination with ADWR, the surface water rights that can be appropriated to the City.

Black & Veatch will prepare a technical memorandum documenting the Review of Surface Water Rights and the resulting recommendation for the City to submit to ADWR.

2.2. Surface Water Appropriation Permit. As a subconsultant to Dibble, Black & Veatch will prepare the ADWR Application for Permit to Appropriate Public Water of the State of Arizona.

Required attachments will be provided through coordination between Dibble, Black & Veatch and the City. They included:

1. USGS Topographical Quadrangle map (or equivalent) showing the proposed place of use.
2. Copy of recorded deed showing land ownership. If owned by other than applicant [City], copies of all pertinent leases or a letter from the landowner authorizing the proposed appropriation will be provided.

This task includes one set of revisions resulting from City review comments. The final Application for Permit to Appropriate Public Water of the State of Arizona package will be provided to the City for submittal to ADWR.

- 2.3. **Groundwater Recharge Permits.** As a subconsultant to Dibble, Black & Veatch will prepare the ADWR Underground Storage (A.R.S. 45-811.01) and Water Storage Permits (A.R.S 45-831.01 & 45-852.01). Due to the length of the time for processing the Surface Water Appropriation Permit, approximately 450 days, the Groundwater Recharge Permits will be developed to draft form for future updates and/or submittal to ADWR.

The draft Underground Storage and Water Storage Permit packages will be provided to the City for future submittal to ADWR during Work Assignment 2. The Underground Storage and Water Storage Permits cannot be finalized until Surface Water Appropriation has been determined and allotted to the City.

This task includes one set of revisions resulting from City review comments.

Task 3 - PROJECT SCHEDULING

- 3.1. **Confirmation of the Permitting Processes.** As part of the stakeholder coordination efforts, Dibble and Black & Veatch will research and confirm the standard documentation and permitting processes, key timelines and milestones, and critical points of contact for the various agencies having jurisdiction within the project area.
- 3.2. **Visio Update.** As a subconsultant to Dibble, Black & Veatch will update the project Visio flow chart and provide an updated version to the City and County.
- 3.3. **Major Milestones / Critical Path.** As a subconsultant to Dibble, Black & Veatch will update the Microsoft Project Gantt chart on an on-going basis and identify the critical path milestones from the chart.

3.4. Risk Management Strategies.

1. As a subconsultant to Dibble, Black & Veatch will maintain a project Risk Log. At regular intervals, identification of new risks will be discussed as well as a review of the Risk Log to update the identified risks. The team will identify and record known risks, potential strategies to evaluate the magnitude of the risk (funding and schedule), identify combined or cascading risks, and offer potential mitigations measures for each.
2. As a subconsultant to Dibble, Black & Veatch will write a Risk Management memorandum will be developed to inform the development of the final design, schedule of potential mitigations, and construction pathway.
3. As a subconsultant to Dibble, Black & Veatch will maintain Decision, Action and Risk Matrix logs to be updated during coordination meetings with the Project Team.

Task 4 - Project Plan

- 4.1. **Development and Update.** As a subconsultant to Dibble, Black & Veatch will develop a final design project plan in accordance with Black & Veatch company policies. The project plan will be developed with support of the previously developed and updated (as part of this scope of services) Visio flow chart and work-back schedule.
 1. The project plan development will be a team effort requiring the project team input including but not limited to: Dibble PM, City, County, epg/Terracon, Ethos, and the Black & Veatch technical design team.

Task 5 - SUBSURFACE GROUNDWATER MODELING

- 5.1. **Data Collection and Review.** As a subconsultant to Dibble, Black & Veatch will coordinate with ADWR, the City of Apache Junction Water District, and Arizona Water in the area to gather data and documentation for bedrock, depth of wells, depth to groundwater, and general subsurface soil parameters to support groundwater modeling.

The data collection and review will focus on previously developed reports, pertinent local project plans and information, surface water flow data, local borehole and water level data, local HEC-HMS model data, Salt River Valley/Phoenix Active Management Area groundwater model, geophysical boring data, subsurface and infiltration hydraulic parameters, and information related to evapotranspiration and open surface evaporation.

No deliverables as part of this task.

- 5.2. **Development of Conceptual Water Budget.** As a subconsultant to Dibble, Black & Veatch will develop a surface water budget for the Weekes Wash project watershed. This will be developed utilizing surface water information from gages and other sources, along with HEC-

RAS and HEC-HMS results. The “flashiness” of the system and temporal nature of water storage in the impoundment area will be further evaluated.

Black & Veatch will develop a groundwater budget and underflow values for the site. This includes groundwater recharge, natural and regulatory required evapotranspiration and estimates, and with information from the review of the Salt River Valley/Phoenix Active Management Area groundwater model and previous reports.

Black & Veatch will assess the existing recharge potential at the site. This will include the evaluation and integration of hydraulic parameters with surface water data.

Black & Veatch will coordinate and host a virtual workshop for the project to further define the objectives based upon the conceptual model. The goal of the workshop will be to identify additional information required to assess the overall recharge potential and project feasibilities. The workshop will further help define the scenarios to be evaluated within Task 5.3.

5.3. Evaluation of Scenarios. As a subconsultant to Dibble, Black & Veatch will evaluate three proposed scenarios as developed from the workshop within Task 5.3. The scenarios will be based upon the previously estimated water budget (Task 5.3) for the project area and will include surface water flow, groundwater flow, and recharge components. The three scenarios currently proposed are:

1. Existing Conditions
2. Proposed conditions with current site (disturbed only by geotechnical investigation)
3. Proposed conditions with recharge galleries

For each scenario, a surface water budget will be developed, the value of the stormwater controls and protection will be assessed, the recharge potential will be estimated, and a high-level evaluation of number of groundwater recharge basins will be provided.

5.4. Technical Memorandum. As a subconsultant to Dibble, Black & Veatch will develop a summary technical memorandum with recommendations. The technical memorandum will document the assumptions made for the analyses performed, the approach and results, and provide the recommendations for further phases of investigation work.

Elements within Task 5 are meant to be a screening level assessment only. Additional investigations will be required in the future to refine the feasibility of recharge for this project.

Task 6 - PRELIMINARY GEOTECHNICAL EVALUATIONS

- 6.1. **Coordination with Ethos.** As a subconsultant to Dibble, Black & Veatch will coordinate with Ethos on the geotechnical investigations. The Black & Veatch lead geotechnical engineer and peer reviewer will review the field investigation plan and provide any updates needed.

Coordination will include support for bid reviews, recommendation development for the City, and selection of a drilling operator.

- 6.2. **Revisions to Plan based on Agency Feedback.** As a subconsultant to Dibble, Black & Veatch and Ethos shall coordinate with ADWR for review of the geotechnical investigation plan.

1. Up to two (2) coordination meetings between ADWR, Black & Veatch, and Ethos will be conducted.

An initial meeting will be held to provide an overview of the geotechnical investigation plan, solicit preliminary feedback, and answer questions from ADWR prior to their courtesy review. A second meeting to review comments provided by ADWR and resolutions on the geotechnical investigation plan will be held prior to any ground disturbing activities.

- 6.3. **Evaluation of Seismic Refraction Results.** As a subconsultant to Dibble, Black & Veatch will begin preliminary evaluation of the seismic refraction results. The coordination between Ethos and Black & Veatch will increase project efficiency so that additional field investigations are minimized in later phases of the project.

1. One (1) site visit by the Black & Veatch lead geotechnical engineer during seismic refraction investigations will be conducted.
2. Up to three (3) coordination meetings between Black & Veatch and Ethos will be conducted.

Task 7 -PROJECT FUNDING ASSISTANCE

- 7.1. **Continued Coordination with AZDEMA.** As a subconsultant to Dibble, Black & Veatch will continue coordination with AZDEMA for matters related to the ongoing HMGP grant application process, comments resolutions, and procurement of additional funding opportunities. This may include:

1. Answering or issuing requests for information
2. Evaluations of how alternative funding sources may affect the HMGP/BRIC/FMA grants
3. Other topics as needed.

7.2. **Alternative Funding Investigations.** Dibble and Black & Veatch will continue coordination to research possible additional funding sources through both the State of Arizona grant and loan programs. These may include:

1. Water Infrastructure Finance Authority (WIFA) – State Revolving Fund (SRF)
2. Partner Flood Control Districts
3. Other Sources as Identified

7.3. **WIFA-SRF Preliminary Application Support.** As a subconsultant to Dibble, Black & Veatch will support the development of preliminary application documents for WIFA-SRF funding opportunities. The support will include the following items:

1. Initial Screening Application – This is a non-binding application to get the application process started with WIFA-SRF. It is assumed this step will take 2 months, including WIFA review time.
2. Paper Application – This application will document the City’s technical and financial information to help WIFA in their determination on whether the City is credit worthy” or not. This paper application needs to be submitted two (2) months prior to a board meeting. It is assumed this step will take 5 months, including WIFA review time.
3. WIFA Board Presentation – Development and preparation for a City-led presentation to the WIFA Board for final WIFA-SRF consideration. It is assumed this step will take 2 months, including WIFA review time.

Coordination with the City’s Finance Department will be required for the development of these documents for WIFA-SRF consideration. Applications will be developed and provided to the City for consideration, review, and submission to WIFA.

Task 8 – CONSTRUCTION METHOD SUPPORT SERVICES

8.1. **Advise on Construction Delivery Method.** Dibble, Dibble CM, and Black & Veatch will review different construction delivery methods to provide a final recommendation to the City and County. The recommendation will be made to help support the grant funding schedule requirements. The three construction delivery methods being considered are:

1. Design-Bid-Build
2. Design-Build
3. Construction Manager at Risk (CMAR)

The final recommendation will include a revised EOPC for final design. An engineer’s estimate for construction and post-design services, as well as, for the preferred construction delivery

method, will be provided. The recommendations will be based on research gleaned from regional contractors skilled in this type of construction and alternative delivery methods.

Task 9 – PROJECT SURVEY SERVICES

All services under Task 9 will be provided by Dibble.

- 9.1. **ASLD and BLM Parcel ALTA Surveys.** Dibble will provide site ground survey for the ASLD and BLM parcels to support land acquisitions. An American Land Title Association (ALTA) survey will be developed to support both a legal land description for the parcels but also to support project boundary definition for both the ASLD parcel and the BLM parcel. Dibble will coordinate and obtain required title reports for the development of the ALTA surveys. Dibble will coordinate with our proposed subconsultant to complete aerial mapping for the Weekes Wash RFCF project area.
- 9.2. **Lost Dutchman Boulevard Topographic Survey.** Dibble will provide site ground survey for Lost Dutchman Boulevard in support of the future design of required roadway improvements immediately downstream of the Weekes Wash RFCF. The Lost Dutchman Boulevard survey boundary will extend from the intersection at State Route 88 (Apache Trail) to the intersection at Goldfield Road.

Task 10 WORK ASSIGNMENT 2 SCOPING

10.1. Work Assignment 2 (WA 2) Scope of Services Development. Prior to the completion of WA 1, Amendment 5 services, Dibble and Black & Veatch will develop a detailed scope of services and fee for WA 2. The intent is to submit and receive approval prior to the completion of WA 1, Amendment 5 services to reduce periods of inactivity and optimize the transition to final design, with alignment to the EHP Kick-Off Meeting. Services anticipated for within the forthcoming scope of work include, but are not limited to the following:

1. Final Engineering Analysis & Design
2. NEPA Compliance
3. Bid Phase Services
4. Construction Phase Services
5. Project Commissioning Services
6. Funding Documentation and Compliance Services
7. Continued Public and Stakeholder Information and Outreach

10.2. At-Risk Design Tasks. Dibble and Black & Veatch will identify scoping items within WA 2 that can begin prior to completion of all environmental, cultural, and geotechnical investigations. The tasks identified will not require geotechnical information to initially design to support the grant funding schedule constraints. These tasks, currently intended to be known as WA 2A, will be recommended to the City and County for consideration as they would be at-

risk and subject to potential modification following environmental, cultural, and geotechnical investigations and reporting.

Recommended at-risk Design Tasks will be discussed during a bi-weekly project coordination meeting with epg, Ethos, the City and County.

Task 11 – PREVIOUS OUT OF SCOPE TASK SERVICES

11.1. CONTRACT AMENDMENT 3 OUT OF SCOPE CONTINUING SERVICES ALREADY PROVIDED. Subconsultant Black & Veatch has continued to perform services consistent with those approved as part of Contract Amendment 3 beyond the previously approved budgets. This was done, in consultation with the City and County, to maintain project progress and in anticipation of receiving payment for the additional services as part of Contract Amendment 5. The amounts expended to date are included in the project proposed fee for Contract Amendment 5 shown on page 2. They are:

<u>Firm</u>	<u>Fee</u>
Black & Veatch	\$125,380.00
Total Fee	\$125,380.00

Task 12 – FUTURE OUT OF SCOPE TASK SERVICES (ALLOWANCE)

12.1. CONTRACT AMENDMENT 3 OUT OF SCOPE CONTINUING SERVICES PLANNED UNTIL CA5 APPROVAL. Dibble and Subconsultant Black & Veatch will continue to perform services consistent with those approved as part of Contract Amendment 3 beyond the previously approved budgets. This will be done, in consultation with the City and County, to maintain project progress and in anticipation of the approval of Contract Amendment 5. This is a \$65,000 hourly budget that can be used by Black & Veatch until the purchase order for Contract Amendment 5 has been issued. Unused funds after issuance of the PO for CA5 will not be encumbered without written by County.

Task 13 – OPTIONAL TASKS

13.1. OPTIONAL TASKS. Should Dibble or Black & Veatch believe the City or County staff, or any partner agency staff, is requesting Dibble and Black & Veatch provide work that is not within the scope of the contract documents, Dibble shall notify the City and County immediately in writing and clearly describe the work which is believed to be out of scope. Such notification shall be provided to the City and County prior to the commencement of any such out-of-scope work.

Optional Tasks are not authorized with Notice to Proceed for this Scope of Services. Tasks may only be authorized in writing by the City or County based upon specific need as determined by the City and County during this Scope of Services schedule.



REIMBURSABLE TRAVEL EXPENSES

The following reimbursable expenses are included in this proposal:

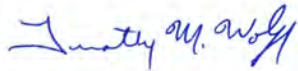
Expense	Cost
Mileage	\$906.00
Geotechnical Engineer Travel	\$1,060.00
Title Reports	\$2,000.00
Reproduction	\$1,020.00
Total Cost	\$4,986.00

FEE SCHEDULE

Weekes Wash Flood Control Facility
Contract Number 204926ROQ
Work Assignment 1
Contract Amendment 5

CONSULTANT/SUBCONSULTANT CHANGE ORDER FEE PROPOSAL SUMMARY

LABOR BREAKDOWN:						
Classification	Hours	@	Billing Rate	=	Fee	
Principal Engineer	172	@	\$ 224.62	=	\$	38,634.64
Senior Engineer	74	@	\$ 163.43	=	\$	12,093.82
Project Engineer (PE)	43	@	\$ 154.88	=	\$	6,659.84
Technician	32	@	\$ 95.48	=	\$	3,055.36
Land Surveyor (RLS)	40	@	\$ 148.94	=	\$	5,957.60
Survey Crew	28	@	\$ 200.48	=	\$	5,613.44
Subtotal	389				\$	72,014.70
DIRECT EXPENSES BREAKDOWN:						
Title Report Fees					\$	2,000.00
Reproduction					\$	-
Mileage					\$	297.00
Subtotal					\$	2,297.00
SUBCONSULTANTS:						
Dibble CM					\$	9,500.00
Black & Veatch					\$	529,206.00
Terracon					\$	137,361.32
Ethos					\$	79,946.58
Vertical Mapping Resources (Aerial Mapping)					\$	10,229.00
Subtotal					\$	766,242.90
ALLOWANCES:						
Future Out of Scope CA3 Services					\$	65,000.00
Subtotal					\$	65,000.00
BASE CONTRACT TOTAL						\$ 905,554.60
OPTIONAL TASKS						
Unidentified Optional Tasks					\$	50,000.00
TOTAL FEE INCLUDING OPTIONAL TASKS:						\$ 955,554.60



Signature

Timothy M Wolfe

Vice President/Transportation Business Unit Leader

9/20/2023

Date

DIBBLE ENGINEERING STAFF - HOUR MATRIX

Phase	WBS Task	Sub-Task	Description	\$ 224.62	\$ 163.43	\$ 154.88	\$ 95.48	\$ 148.94	\$ 200.48	Total Staff Hours	Fee
				Principal Engineer	Senior Engineer	Project Engineer (PE)	Technician	Land Surveyor (RLS)	Survey Crew		
0			PROJECT MANAGEMENT & ADMINISTRATION								
	1		Project Management and Staff Scheduling	24						24	\$5,390.88
	2		Invoicing (6)	6						6	\$1,347.72
1			ADDITIONAL PROJECT COORDINATION								
	1		Dibble, Black & Veatch, County and City Team Coordination								
		1	Weekly virtual coordination meetings (18)	18						18	\$4,043.16
		2	Weekly email status updates	9						9	\$2,021.58
		3	As-needed virtual conference phone calls (10)	5						5	\$1,123.10
	2		Continued ASLD and BLM Coordination (10 virtual mtgs)	10						10	\$2,246.20
	3		ADEQ, ADWR, ADOT Coordination								
		1	ADEQ meetings (2)								
		2	ADWR meetings (7)								
		3	ADOT meetings (2)	4						4	\$898.48
	4		Treasure Chest Granite Pit Coordination								
	5		FEMA EHP Coordination (4 virtual mtgs)								
	6		City Finance Coordination (3 virtual mtgs)	3						3	\$673.86
	7		Stakeholder Advisory Committee (3 in-person mtgs)								
		1	3 In-Person Meetings	9						9	\$2,021.58
		2	10 Virtual Meetings	15						15	\$3,369.30
	8		Cultural Survey Assessment Support (5/2 virt/in person mtgs)	2						2	\$449.24
	9		Public Outreach Services (2 in person mtgs)	6						6	\$1,347.72
	10		Apache Junction Parks Department Coordination (2 virt mtgs)	2						2	\$449.24
	11		Internal Design Team Coordination (18)	18		9				27	\$5,437.08
2			ADEQ & ADWR Permit/Planning								
	1		Review of Surface Water Rights	1						1	\$224.62
	2		Surface Water Appropriation Permit	1						1	\$224.62
	3		Groundwater Recharge Permits	1						1	\$224.62
3			PROJECT SCHEDULING								
	1		Confirmation of the Permitting Processes								
	2		Visio Update								
	3		Major Milestones/Critical Path	2						2	\$449.24
	4		Risk Management Strategies	2	4					6	\$1,102.96
4			PROJECT PLAN								
	1		Development and Update	4	4					8	\$1,552.20
5			SUBSURFACE GROUNDWATER MODELING								
	1		Data Collection and Review								
	2		Development of Conceptual Water Budget								
	3		Evaluation of Scenarios								
	4		Technical Memorandum		4					4	\$653.72
6			PRELIMINARY GEOTECHNICAL EVALUATIONS								
	1		Coordination with Ethos		2					2	\$326.86
	2		Revisions to Plan based on Agency Feedback		1					1	\$163.43
	3		Evaluation of Seismic Refraction Results		1					1	\$163.43
7			PROJECT FUNDING ASSISTANCE								
	1		Continued Coordination with AZDEMA								
	2		Alternative Funding Investigations		6	4				10	\$1,600.10
	3		WIFA-SRF Preliminary Application Support								
8			CONSTRUCTION METHOD SUPPORT SERVICES								
	1		Advise on Construction Delivery Method	10	10					20	\$3,880.50
9			PROJECT SURVEY SERVICES								
	1		Alta Survey/Legal Descriptions		4		16	26		46	\$6,053.84
	2		Topographic Survey		2			2	28	32	\$6,238.18
	3		Office Work		6		16	12		34	\$4,295.54
10			WORK ASSIGNMENT 2 SCOPING								
	1		Work Assignment 2 (WA 2) Scope of Services Development	10	20	10				40	\$7,063.60
	2		At Risk Design Tasks	10	10	20				40	\$6,978.10
11			PREVIOUS OUT OF SCOPE TASK SERVICES								
	1		Contract Amendment 3 Out of Scope Services Already Provided								
TOTAL STAFF HOURS				172	74	43	32	40	28	389	\$72,014.70

DIBBLE CM STAFF - HOUR MATRIX

Phase	WBS Task	Sub-Task	Description	\$ 210.00	\$ 195.00	\$ 170.00	\$ 138.00	\$ 188.00	\$ 118.00	\$ 198.00	Total Staff Hours	Fee
				Sr. Project Manager	Senior Engineer	Project Engineer (PE)	Asst. Proj. Eng. (EIT)	Land Survey Mgr. (RLS)	Survey Tech.	Survey Crew		
8			CONSTRUCTION METHOD SUPPORT SERVICES									
	1		Advise on Construction Delivery Method		20						20	\$3,900.00
10			WORK ASSIGNMENT 2 SCOPING									
	1		Work Assignment 2 (WA 2) Scope of Services Development		10						10	\$1,950.00
	2		At Risk Design Tasks		10	10					20	\$3,650.00
TOTAL STAFF HOURS					40	10					50	\$9,500.00

Pinal County Flood Control District, Weekes Wash Regional Flood Control Facility - Work Assignment 1, Contract Amendment 5
EXHIBIT B: COMPENSATION

TASK NO.	TASK DESCRIPTION	2023 B&V Rate Schedule												TOTAL LABOR HOURS	TOTAL COST
		\$280.00	\$271.00	\$245.00	\$220.00	\$190.00	\$180.00	\$150.00	\$140.00	\$135.00	\$115.00	\$100.00	\$85.00		
		Project Manager	Contract Manager	Groundwater Engineer	Structural Engineer	Geotechnical Engineer	Senior Engineer	Senior CADD Designer / Technician	Project Accounting	Administrative Assistant	Project Designer II	Project Designer I	Engineering Intern		
CORE SERVICES															
TASK 1	ADDITIONAL PROJECT COORDINATION	289	27	0	0	20	270	0	20	20	127	16	0	789	\$ 162,342.00
TASK 1.1	DIBBLE, BLACK & VEATCH, PINAL COUNTY, AND APACHE JUNCTION COORDINATION	54	27			10	27		20	20	45			203	\$ 39,872.00
TASK 1.2	CONTINUED ASLD AND BLM/BOR, WITH ADDITION OF SRP COORDINATION	15					29							44	\$ 9,420.00
TASK 1.3	ADEQ, ADWR, AND ADOT COORDINATION	25					32							57	\$ 12,760.00
TASK 1.4	TREASURE CHEST GRANITE PIT COORDINATION	11					12							23	\$ 5,240.00
TASK 1.5	FEMA EHP COORDINATION	17					20							37	\$ 8,360.00
TASK 1.6	CITY FINANCE COORDINATION	16					20							36	\$ 8,080.00
TASK 1.7	STAKEHOLDER ADVISORY COMMITTEE	32					19				34			85	\$ 16,290.00
TASK 1.8	CULTURAL SURVEY ASSESSMENT SUPPORT	20					30							50	\$ 11,000.00
TASK 1.9	PUBLIC OUTREACH SERVICES	20					24				12	16		72	\$ 12,900.00
TASK 1.10	APACHE JUNCTION PARKS DEPARTMENT COORDINATION	7					12							19	\$ 4,120.00
TASK 1.11	INTERNAL DESIGN TEAM COORDINATION	72				10	45				36			163	\$ 34,300.00
TASK 2	ADEQ & ADWR RECHARGE PERMIT/PLANNING	6	0	6	0	0	56	0	0	0	110	0	0	178	\$ 25,880.00
TASK 2.1	REVIEW OF SURFACE WATER RIGHTS	2		2			32				62			98	\$ 13,940.00
TASK 2.2	SURFACE WATER APPROPRIATION PERMIT	2		2			8				16			28	\$ 4,330.00
TASK 2.3	GROUNDWATER RECHARGE PERMITS	2		2			16				32			52	\$ 7,610.00
TASK 3	PROJECT SCHEDULING	18	0	0	0	0	32	0	0	0	18	0	0	68	\$ 12,870.00
TASK 3.1	CONFIRMATION OF THE PERMITTING PROCESSES														
TASK 3.2	VISIO UPDATE	2									6			8	\$ 1,250.00
TASK 3.3	MAJOR MILESTONES / CRITICAL PATH	4									12			16	\$ 2,500.00
TASK 3.4	RISK MANAGEMENT STRATEGIES	12					32							44	\$ 9,120.00
TASK 4	PROJECT PLAN	4	0	0	0	0	16	0	0	0	24	0	0	44	\$ 6,760.00
TASK 4.1	DEVELOPMENT AND UPDATE	4					16				24			44	\$ 6,760.00
TASK 5	SUBSURFACE GROUNDWATER MODELING	10	0	124	0	0	32	0	0	0	120	0	0	286	\$ 52,740.00
TASK 5.1	DATA COLLECTION AND REVIEW	2		24			10				20			56	\$ 10,540.00
TASK 5.2	DEVELOPMENT OF CONCEPTUAL WATER BUDGET	2		40			10				40			92	\$ 16,760.00
TASK 5.3	EVALUATION OF SCENARIOS	2		40			10				40			92	\$ 16,760.00
TASK 5.4	TECHNICAL MEMORANDUM	4		20			2				20			46	\$ 8,680.00
TASK 6	PRELIMINARY GEOTECHNICAL EVALUATIONS	12	0	8	0	76	16	0	0	0	0	0	0	112	\$ 22,640.00
TASK 6.1	COORDINATION WITH ETHOS	8				20	2							30	\$ 6,400.00
TASK 6.2	REVISIONS TO PLAN BASED ON AGENCY FEEDBACK	2				16	4							22	\$ 4,320.00
TASK 6.3	EVALUATION FOR SEISMIC REFRACTION RESULTS	2		8		40	10							60	\$ 11,920.00
TASK 7	PROJECT FUNDING ASSISTANCE	49	0	0	0	0	116	0	0	0	65	24	0	254	\$ 44,475.00
TASK 7.1	CONTINUED COORDINATION WITH AZDEMA	16					16							32	\$ 7,360.00
TASK 7.2	ALTERNATIVE FUNDING INVESTIGATIONS	24					40				20			84	\$ 16,220.00
TASK 7.3	WIFA-SRF PRELIMINARY APPLICATION SUPPORT	9					60				45	24		138	\$ 20,895.00
TASK 8	CONSTRUCTION METHOD SUPPORT SERVICES	48	0	0	0	32	24	0	0	0	0	0	0	104	\$ 23,840.00
TASK 8.1	ADVISE ON CONSTRUCTION DELIVERY METHOD	48				32	24							104	\$ 23,840.00
TASK 9	PROJECT SURVEY SERVICES														\$ -
TASK 9.1	ASLD AND BLM PARCEL ALTA SURVEYS														
TASK 9.2	LOST DUTCHMAN BOULEVARD SURVEY														
TASK 9.3	WEEKES WASH RFCF DESIGN SURVEY														
TASK 10	WORK ASSIGNMENT 2 SCOPING	92	0	6	6	16	100	0	0	0	0	0	0	220	\$ 49,590.00
TASK 10.1	WORK ASSIGNMENT 2 SCOPE OF SERVICES DEVELOPMENT	80		6	6	16	80							188	\$ 42,630.00
TASK 10.2	AT-RISK DESIGN TASKS	12					20							32	\$ 6,960.00
TOTAL CORE SERVICES		528	27	144	6	144	662	0	20	20	464	40	0	2055	\$ 401,137.00
REMINBURSEMENT OF PAST OUT OF SCOPE SERVICES															
TASK 112	PREVIOUS OUT OF SCOPE (CA3) SERVICES														\$ 125,380.00
ALLOWANCES															
TASK 12	FUTURE OUT OF SCOPE (CA3) SERVICES														\$ 60,000.00

Pinal County Flood Control District, Weekes Wash Regional Flood Control Facility - Work Assignment 1, Contract Amendment 5
EXHIBIT B: COMPENSATION

TASK NO.	TASK DESCRIPTION	2023 B&V Rate Schedule												TOTAL LABOR HOURS	TOTAL COST
		\$280.00	\$271.00	\$245.00	\$220.00	\$190.00	\$180.00	\$150.00	\$140.00	\$135.00	\$115.00	\$100.00	\$85.00		
		Project Manager	Contract Manager	Groundwater Engineer	Structural Engineer	Geotechnical Engineer	Senior Engineer	Senior CADD Designer / Technician	Project Accounting	Administrative Assistant	Project Designer II	Project Designer I	Engineering Intern		
OPTIONAL TASKS															
TASK 13	OPTIONAL TASK SERVICES (10%)														\$ 40,113.70
TOTAL SERVICES WITH OPTIONAL TASKS															\$ 441,250.70
REMINBURSABLE EXPENSES															
	REIMBURSABLE EXPENSES														\$ 2,689.00
	Mileage														\$ 609.00
	Travel, Hotel, Rental Car														\$ 1,060.00
	Reproduction														\$ 1,020.00
PROJECT TOTAL FEE															\$ 629,319.70
														PROJECT TOTAL FEE LESS ALLOWANCE AND OPTIONAL TASKS \$ 529,206.00	



4685 South Ash Avenue, Suite H-4

Tempe, AZ 852821

P (480) 897-8200

Terracon.com

May 9, 2023

Dibble Engineering
7878 North 16th Street, Suite 300
Phoenix, AZ 85020

Attn: Mr. Jason A. Simmers, PE
P: (602) 957-1155
Email: jason.simmers@dibblecorp.com

**Re: Proposal for Additional Environmental and Landscape Architecture Services
Apache Junction Basins 247085 Project, Apache Junction, Arizona
PCFCD Project No. 247085, Work Assignment 1, Amendment 5
Terracon Proposal No. PJT237023**

Dear Mr. Simmers:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to provide additional environmental planning, environmental assessment, cultural resource, and landscape architecture planning services to Dibble Engineering (Dibble). Our additional services for this work assignment include: Preparation of a Base Environmental Site Assessment (ESA) Phase 1; additional coordination with the United States Army Corp of Engineers (USACE) to confirm and document direction regarding potential jurisdictional waters; supporting the Bureau of Reclamation (BOR) with resource data needed for BOR to prepare a Categorical Exclusion (CE) for permitting geotechnical exploration of the project site; cultural resource support to BOR during Section 106 consultation required prior to ground disturbing activities being permitted on site; cultural monitoring support of geotechnical investigation activities on the site; existing saguaro and protected native plants inventory of the project site; and landscape architecture recreation and multi-use planning.

1.0 PROJECT INFORMATION

1.1 Project Background

Terracon continues to support Dibble and Black & Veatch in pre-development activities required for permitting and design for the proposed Regional Flood Control Facility (RFCF) to be conducted prior to beginning final design activities for the Weekes Wash RFCF, formerly referred to as the Apache Junction Basin project. These services act as an extension of the ongoing activities between the City of Apache Junction (City), federal agencies, project partners, landowners, and the project team.

1.2 Site Description

The project area, centered on Weekes Wash, is comprised of portions of three undeveloped parcels forming an approximately 190-acre, triangular-shaped area bounded by SR 88 to the northwest, Lost Dutchman Boulevard to the south, and undeveloped desert to the east. Mountain View Road runs in a generally north-south direction approximately 500 to 1,000 feet to the east of the project area. Minor evidence of former development within the area is present in the form of small concrete foundations and fence posts; however, other than these remnants, the proposed project area includes no other structures or development. One of the parcels within the project area is managed by the Bureau of Land Management (BLM) and two of the parcels are held in trust by the Arizona State Land Department (ASLD). A commercial property and low-density residential property are located to the south and undeveloped desert to the north and east of the project area. Figure 1 shows the location and vicinity of the project.



Figure 1. Project Site Graphic from Project Drainage Report, prepared by Black & Veatch and dated July 17, 2022.



1.3 Type and Location

ITEM	DESCRIPTION
Information Sources	Our understanding of the project was developed from communications and data provided by Dibble and Black & Veatch, which has been refined and advanced through coordination with representatives from the Salt River Project (SRP), BOR, BLM, ASLD, USACE, and through project team coordination meetings.
Type	The final project will include design and construction of an RFCF.
Location	The approximate center of the site is located at coordinates of 33°26'50.27"N latitude, -111°30'69.22"W longitude.
Existing topography	The site elevation ranges between approximately +/-1,870 and 1,915 feet above mean sea level.

1.4 Project Description

ITEM	DESCRIPTION
Structures	An approximately 26-foot high earthen embankment with hardened auxiliary structures and emergency spillway are anticipated. An intake structure will maintain regulated flow within Weekes Wash, allowing regulated water and sediment to continue to feed the wash while mitigating flooding from large storm events.
Grading	Grading within the project limits are anticipated to be significant with the impoundment pool excavation serving as the source for embankment fill, provided suitable material is confirmed following geotechnical evaluations.
Roadways	Controlled access maintenance roads will be developed within the limits of the project for both access and observation of the RFCF.
Multi-Use	Regional and local trails, low-impact recreation, and educational multi-use facilities will be integrated into the project.

Dibble and Black & Veatch have prepared preliminary design plans and a submittal for a Hazard Mitigation Grant (HMGP 4542) to acquire grant funding from the FEMA Hazard Mitigation Grant Program. HMGP 4524 is specific to the State of Arizona for Covid-19 relief funding. Terracon understands the HMGP 4524 grant application has been submitted with additional environmental sections to be completed, including cultural resource records review. Terracon will assist Dibble and Black & Veatch in providing additional professional services required to advance the project in anticipation of receiving federal grant funding.

Terracon's additional services include: Preparation of a Base Phase 1 Environmental Site Assessment (ESA); additional coordination with the United States Army Corp of Engineers (USACE) to confirm and document direction regarding potential jurisdictional waters; supporting the Bureau of Reclamation (BOR) with resource data needed for BOR to prepare a Categorical Exclusion (CE) for permitting geotechnical exploration of the project site; cultural resource support to BOR during Section 106 consultation required prior to ground disturbing activities being permitted on site; cultural monitoring support of geotechnical investigation activities on the site; existing saguaro and protected native plants inventory of the project site; and landscape architecture recreation and multi-use planning.

2.0 SCOPE OF SERVICES

2.1 Project Management and Coordination

2.1.1 Management and Coordination

Terracon will maintain a project manager to manage Terracon's efforts for the project. The project manager will be knowledgeable of the project and be responsible for the progress of each phase of the project. The project manager will be the point of contact for Dibble and will keep Dibble informed of all coordination on project deliverables and associated efforts. The project manager will be responsible for administrative issues, technical direction of the work, scheduling, and budgetary oversight for the project, as well as coordination and reporting with Dibble's project manager.

Project coordination will include coordination with the design team members, and managing administrative tasks associated with the project.

Prior to commencing any design work, Terracon will coordinate with Dibble to determine the project schedule. Terracon's project manager will monitor project work progress and report to Dibble the status of deliverable development and any potential issues that arise during project progress.

Terracon will submit invoices to Dibble on a monthly basis. A project progress report will be included with each invoice describing work completed during the invoiced period, percent of work completed to date, and contract amount remaining.

Terracon will assist Dibble and Black & Veatch in development of the project plan, identification and communication on project schedule and risk-management needs, and providing input on project critical path milestones as the work progresses.

2.1.2 Meetings

Terracon will participate in meetings during the duration of this project. The anticipated meetings included in the scope of work include:

- Up to eighteen (18) biweekly coordination meetings with Dibble, Black & Veatch, and other members of the project team;
- Up to ten (10) virtual individual as-needed meetings with ASLD, BLM, BOR, and/or SRP coordination meetings;
- One (1) meeting with the USACE, to be led by Terracon;
- Up to five (5) virtual individual as-needed stakeholder coordination meetings;
- Up to five (5) virtual individual as-needed cultural resource coordination meetings;
- Up to two (2) virtual meetings with the City of Apache Junction, including staff from the Parks and Recreation and Engineering departments;
- Up to two (2) in-person public outreach meetings; and
- Up to two (2) site visits for project site review and team coordination efforts. These site visits are to be in addition to site work included for the ESA and cultural resource work tasks.

Terracon will support Dibble in identifying agenda items for each meeting, review draft meeting minutes, and provide comments on the minutes for incorporation by Dibble.

2.2 Base Phase 1 ESA Services

Terracon will perform an ESA consistent with the procedures included in ASTM E1527-21, *Standard Practice for Environmental Site Assessments: Phase I Environmental Assessment Process*. The purpose of this ESA is to assist the client in developing information to identify recognized environmental conditions (RECs - as defined below) in connection with the site as reflected by the scope of this proposal. The potential for vapor migration will be addressed as part of a Phase I ESA and will be considered by Terracon in evaluation of RECs associated with the site. If modifications to the scope of services are required, please contact us to discuss proposal revisions.

REC Definition

Recognized environmental conditions are defined by ASTM E1527-21 as "(1) the presence of *hazardous substances or petroleum products* in, on, or at the *subject property* due to a *release* to the *environment*; (2) the *likely* presence of *hazardous substances or petroleum products* in, on, or at the *subject property* due to a *release* or *likely release* to the *environment*; or (3) the presence of *hazardous substances or petroleum products* in, on, or at the *subject property* under conditions that pose a *material threat* of a future *release* to the *environment*." A *de minimis* condition is not a recognized environmental condition.

Emerging Contaminants: Per- and Polyfluoroalkyl Substances (PFAS)

There are emerging contaminants that are not identified as a CERCLA hazardous substance by U.S. EPA and therefore not included within the scope of E1527-21. One of these is a family of compounds known as per- and polyfluoroalkyl substances (PFAS) which are a

significant contaminant of concern due to their mobility and longevity in the environment. PFAS have been used in many products, including fire-fighting foam, anti-stick coatings, stain and water-repellent coatings, electroplating, and paper products, among others. Consequently, while not considered a federal hazardous substance, the U.S. EPA has developed a hazardous awareness level for selected PFAS. Also, certain states have identified selected PFAS as state-level hazardous substances (or equivalent) and have established regulatory limits. It is permissible under E1527-21 to include an assessment of these substances as a non-Scope consideration, in the same manner as any other non-Scope consideration. If and when such emerging contaminants are defined to be hazardous substances under CERCLA, such substances will be evaluated within the scope of E1527-21.

Physical Setting

The physical setting for the site will be described based on a review of the applicable USGS topographic quadrangle map, USDA soil survey, and selected geologic reference information.

Historical Use Information

A review of historical resources, where reasonably ascertainable and readily available, will be conducted in an attempt to document obvious past land use of the site and adjoining properties back to 1940 or when the site was initially developed, whichever is earlier. The following minimum selected references will be obtained and reviewed for the site and adjoining properties, if available:

- Historical topographic maps
- Aerial photographs (approximate 10 to 15-year intervals)
- City directories (approximate 5-year intervals)
- Fire (Sanborn) insurance maps

The following additional historical resources will be reviewed for the site if determined by the Environmental Professional to be warranted, applicable and likely useful:

- Property tax file information
- Building department records
- Zoning records
- Prior environmental reports, permits and registrations; or geotechnical report, if provided by the client.
- Site title search information, if provided by client
- Environmental liens, if provided by client

Pursuant to ASTM E1527-21, the client should engage a title company or title professional to undertake a review of reasonably ascertainable recorded land title records (or judicial records where appropriate) for environmental liens and activity and use limitations currently

recorded against or relating to the site. Note that for ASTM E1527-21, title search information reports shall review *land title records* for documents recorded **between 1980 and the present**. If the client is unable to provide land title records (or judicial records where appropriate), an abstract firm may be contracted by Terracon to perform a review of land title records (or judicial records where appropriate) for an additional fee. Documentation of environmental liens and activity and use limitations, if recorded, will be provided in the land title records (or judicial records where appropriate). Note, however, unless specifically requested within three days of project commencement, Terracon will rely on the client to provide land title records (or judicial records where appropriate). **If land title records (or judicial records where appropriate) are not provided for review in a timely manner, Terracon may conclude that the absence of records represents a data gap, which must be evaluated and documented in the final report.**

The client and the current owner or their representative will be interviewed to provide information regarding past uses of the site and information pertaining to the use of hazardous substances and petroleum products on the site. Additionally, a reasonable attempt will be made to interview past owners, operators, and occupants of the site to the extent that they are identified within the scope of the ESA and are likely to have material information that is not duplicative of information already obtained through the assessment process.

Regulatory Records Review

Consistent with ASTM E1527-21, federal, state, and tribal databases, where applicable and within ASTM-defined minimum search distances from the nearest property boundary, will be reviewed for indications of RECs. A database firm will be subcontracted to access governmental records used in this portion of the assessment. Additional federal, state, and local databases may be reviewed if provided by the database firm. Determining the location of unmapped facilities is beyond the scope of this assessment.

In addition to the database review and if customary practice for the site location, an attempt will be made to review reasonably ascertainable and useful local lists or records such as Brownfield sites, landfill/solid waste disposal sites, registered storage tanks, land records, emergency release reports, and contaminated public wells. A reasonable attempt will also be made to interview at least one staff member of any one of the following types of local government agencies: fire department, health agency, planning department, building department, or environmental department. As an alternative, a written request for information may be submitted to the local agencies.

The scope of work proposed herein includes **up to two hours of regulatory agency file and/or records review, including client-provided reports and files**. If the results of this initial review appear to warrant a more extensive review of applicable regulatory agency files and/or records, a cost estimate will be provided to the client for pre-approval. Review of regulatory files and/or records, when authorized, will be for the purpose of identifying

RECs. Please note that all requested files may not be available from regulatory agencies within the client's requested project schedule.

Site and Adjoining/Surrounding Property Reconnaissance

A site reconnaissance will be conducted to identify RECs. The reconnaissance will consist of visual observations of the site from the site boundaries and selected interior portions of the site. The site reconnaissance will include, where applicable, an interview with site personnel who the client has identified as having knowledge of the uses and physical characteristics of the site. Pertinent observations from the site reconnaissance will be documented including:

- Site description
- General site operations
- Features, activities, uses, and conditions of the site relevant to identifying RECs

The adjoining property reconnaissance will consist of visual observations of the adjoining/surrounding properties from the site boundaries and accessible public rights-of-way.

Report Preparation

A PDF-formatted copy of the final report will be submitted that presents the results of this assessment, based upon the scope of services and limitations described herein. The final report will be signed by an environmental professional responsible for the Phase I ESA, and the report will contain an environmental professional statement as required by 40 CFR 312.21(d). Recommendations will be developed as part of the Phase I ESA scope of services.

2.2.2 Additional Services Beyond Base ESA

Additional services beyond the scope of the base Phase I ESA have not been included.

2.2.3 Additional Services Not Included

The following services, although not specifically required by ASTM E1527-21, may also be performed concurrently with ESAs and may be beneficial for the evaluation of environmental conditions and/or an evaluation of specific business environmental risks at the site. Please note that this list is not all-inclusive. If you seek additional services, please contact us for a supplemental proposal and cost estimate.

- Visual Observations for Suspect Asbestos
- Limited Asbestos Sampling
- Asbestos Survey (prior to renovation/demolition)
- Visual Observations for Microbial Growth
- Radon Records Review
- Short-Term Radon Testing

- Visual Observations for Suspect Lead-Based Paint
- Limited Lead-Based Paint Sampling
- Lead in Drinking Water Records Review
- Limited Lead in Drinking Water Sampling
- ASTM E 2600-15 Vapor Encroachment Screen
- Regulatory Agency File Review
- Review of Per- and Polyfluoroalkyl Substances (PFAS)

2.2.4 ESA Phase 1 Schedule

Services will be initiated upon receipt of the written notice to proceed. The final report will be submitted within 20 business days after receipt of your written notice to proceed, assuming Terracon has access the site within 5 business days after the notice to proceed.

To comply with the proposed schedule, please provide the following items at the time of notification to proceed.

- The completed ASTM E1527-21 User Questionnaire, supplied as an attachment to this proposal.
- Right of entry to conduct the assessment.
- Notification of any restrictions or special requirements (such as confidentiality, scheduling, or on-site safety requirements) regarding accessing the site.
- An accurate legal description and/or a diagram of the site such as a surveyor's plat map or scaled architect's drawing (if such diagrams exist).
- Current site owner, property manager, occupant information (including tenant list), and contact information for persons knowledgeable about the site history including current and historical use of hazardous substances and petroleum products on site (e.g., names, phone numbers, etc.).
- Copies of environmental reports, permits and registrations, and geotechnical reports that were previously prepared for the site.
- Information relating to known or suspect environmental conditions at the site, including commonly known or reasonable ascertainable information within the local community about the site that is material to RECs in connection with the site.
- Information about environmental liens and activity and use limitations for the site, if any.
- Specialized knowledge or experience that is material to RECs in connection with the site, if any.
- Knowledge that the purchase price of the site is significantly less than the purchase price of comparable properties.
- Land title records **between 1980 and present.**

Please note that requested regulatory files or other information may not be provided to Terracon by the issuance date of the report. Consideration of information not received by the issuance date of the report is beyond the scope of this ESA.

2.2.5 ESA Phase 1 Scope and Report Limitations

Site Access and Safety

Terracon shall coordinate with Black & Veatch, Dibble, and the City to secure necessary site-related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Terracon will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In addition, Terracon retains the right to stop work without penalty at any time Terracon believes it is in the best interests of Terracon's employees or subcontractors to do so to reduce the risk of exposure to the coronavirus. Client agrees it will respond quickly to all requests for information made by Terracon related to Terracon's pre-task planning and risk assessment processes. Client acknowledges its responsibility for notifying Terracon of any circumstances that present a risk of exposure to the coronavirus or individuals who have tested positive for COVID-19 or are self-quarantining due to exhibiting symptoms associated with the coronavirus.

The fee is valid for 90 days from the date of this proposal and is based on the assumption that all field services will be performed under safety Level D personal protective procedures and that only one site visit will be made by Terracon personnel. The lump sum fee is based on the assumptions and conditions provided at the time of this proposal.

The findings and conclusions presented in the final report will be based on the site's current utilization, the anticipated future use of the site, if provided to Terracon, and the information collected as discussed in this proposal. Please note that we do not warrant database or third-party information (such as from interviewees) or regulatory agency information used in the compilation of reports.

Phase I ESAs, such as the one proposed for this site, are of limited scope, are noninvasive, and cannot eliminate the potential that hazardous, toxic, or petroleum substances are present or have been released at the site beyond what is identified by the limited scope of this ESA. In conducting the limited scope of services described herein, certain sources of information and public records will not be reviewed. It should be recognized that environmental concerns may be documented in public records that are not reviewed. This ESA does not include subsurface or other invasive assessments, vapor intrusion assessments or indoor air quality assessments (i.e., evaluation of the presence of vapors within a building structure), business environmental risk evaluations (unless specifically requested in Section 2.2 of this proposal), or other services not particularly identified and

discussed herein. No ESA can wholly eliminate uncertainty regarding the potential for RECs. The limitations herein must be considered when the user of this report formulates opinions as to risks associated with the site. No warranties, express or implied, are intended or made.

An evaluation of significant data gaps will be based on the information available at the time of report issuance, and an evaluation of information received after the report issuance date may result in an alteration of our opinions and conclusions. We have no obligation to provide information obtained or discovered by us after the date of the report, or to perform any additional services, regardless of whether the information would affect any conclusions, recommendations, or opinions in the report. This disclaimer specifically applies to any information that has not been provided by the client.

Deliverables

- Draft and Final Base ESA Phase 1 Report

2.3 Cultural Resources

2.3.1 Cultural Section 106 Consultation Support

Terracon cultural resources staff will provide Section 106 consultation support to include in-person and web-based meetings. A minimum of one designated cultural resources management staff will be involved in this support and will be the primary point of contact for Agencies and client involved in the Section 106 consultation. This task includes weekly updates to staff, client and Agency meetings.

2.3.2 Cultural Monitoring Plan

Upon Agency acceptance of the Survey report, Terracon cultural resources staff will author a cultural monitoring plan that complies with Agency standards. The monitoring plan will be reviewed by the client and Agency staff and a timeline for ground disturbing activities will be communicated by the client to Terracon cultural resources staff.

2.3.3 Cultural Monitoring and Reporting

Terracon cultural resources staff will monitor ground disturbing activities in accordance with the Agency-approved monitoring plan. Monitoring will be coordinated with designated management staff. Terracon foresees no more than ten 8-hour days of cultural monitoring by qualified cultural resources staff and included personal mileage to and from the project area.

The results of the monitoring will be communicated weekly to the client. Upon completion of ground disturbing activities, Terracon cultural staff will submit an Agency-compliant monitoring report.

Deliverables

- Draft Cultural Monitoring Plan
- Final Cultural Monitoring Plan
- Draft Cultural Monitoring Report
- Final Cultural Monitoring Report

2.4 Environmental Planning

In continued support required to achieve the demanding project schedule obligated by the grant conditions, Terracon will assist by providing relevant information from the CIA that will be tailored to the area of geotechnical investigation.

2.4.1 BOR CatEx Support

Based on review of the Department of Interiors Department Manual on Environmental Quality Programs, it is assumed that the proposed geotechnical investigation on lands under the Bureau of Reclamation's jurisdiction would require the preparation of a Categorical Exclusion (516 DM 14.5 B(3)). Under a separate scope of work Terracon has prepared a desktop CIA and cultural resources survey for the 165-acre Flood Control Facility Project Area, which will be utilized in the preparation of the BOR's Categorical Exclusion. Terracon will provide a technical memo to assist in the preparation of the Categorical Exclusion documentation, specific to the area of the geotechnical investigation. This technical memo will include an:

- overview of the issues associated with geotechnical investigation
- description of the proposed geotechnical investigation and how it affects resource values
- summary of analysis of the potential impacts related to the geotechnical investigation
- specific details of any recommended plans or measures
- expected benefits of recommended measures

2.4.2 Waters of the United States and Surface Waters

Terracon will facilitate scheduling a meeting with the USACE and the project team to discuss the project with the USACE and reaffirm the direction from the USACE regarding likely status of potential jurisdictional Waters of the United States.

Terracon will prepare meeting minutes and provide to Dibble, Black & Veatch, the City of Apache Junction and the USACE for comment and consensus. Terracon will provide a written summary of the outcomes of that meeting.

Deliverables

- Preparation for and participation in meeting with USACE
- Technical Memo in support of Categorical Exclusion preparation
- USACE Meeting minutes and summary

2.5 Landscape Architecture Services

2.5.1 Multi-Use and Recreation Planning

Terracon will continue to support the development of a recreation concept to be integrated into the design for the RFCF in order to inform future grading and design in order to facilitate the integration of future multi-use by the City of Apache Junction.

Terracon will work with Dibble, Black & Veatch, the City of Apache Junction, and the BLM to identify a preferred recreation and multi-use master plan for the project.

- Terracon will refine three conceptual recreation layouts developed under Contract Amendment 4 to be presented to the public for input. These layouts will be in presentation format and demonstrate the approximate area required for implementation of the proposed recreational uses and their relationships to various inundation conditions associated with the RFCF. The graphic will include representative photos of the proposed uses for reference. Each graphic will be printed and mounted on a board for use in an in-person public meeting as well as provided in electronic PDF format for City use.
- Utilizing feedback from the public, Terracon will coordinate with the City on the selection of a preferred recreation master plan to be used by the design team in developing grading design for the RFCF. This will be provided to the City in PDF format as a draft for review and comment. Terracon will incorporate City comments on the draft preferred multi-use concept plan and prepare the final preferred multi-use concept plan. The final preferred multi-use concept plan will be delivered in electronic PDF format.

Deliverables

- Presentation Graphics for Three Conceptual Recreation Layouts (PDF and 24"x36" Mounted Boards)
- Draft and Final Preferred Multi-Use Concept Plan (PDF)

3.0 EXCLUSIONS AND CONSIDERATIONS

The following assumptions and considerations have been made for this proposal:

- Dibble shall secure all necessary site-related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. The consultant will be responsible for supervision and site safety measures for its own employees but shall not be responsible for the supervision or health and safety precautions for any third parties, including Dibble's contractors, subcontractors, or other parties present at the site. In addition, the Consultant retains the right to stop work without penalty at any time the Consultant believes it is in the best interests of the Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to the coronavirus. Dibble agrees it will respond quickly to all requests for information made by the Consultant related to the Consultant's pre-task planning and risk assessment processes. Dibble acknowledges its responsibility for notifying the Consultant of any circumstances that present a risk of exposure to the coronavirus or individuals who have tested positive for COVID-19 or are self-quarantining due to exhibiting symptoms associated with the coronavirus.
- Terracon's Critical Issues Analysis is limited to information that can be obtained from "desktop" resources, including local agency websites. Teleconferences are generally not included unless information can be obtained immediately and would be deemed necessary because desktop resources are unclear or lacking. This is generally limited to local agency permitting and calendar requirements. Our research does not include independent research to obtain or confirm the following:
 - ◆ Copies of leases, easements, rights-of-way, and other property related encumbrances.
 - ◆ Water rights, water usage, water district encumbrances, etc.
 - ◆ Hazardous material reports, permits, MSDS, air pollution permits, and calculation of future air emissions related to construction and operations/maintenance activities
 - ◆ Reporting or estimates of fuel use/storage during construction and operations/maintenance
 - ◆ Access rights with site and adjacent owners

4.0 ASSUMPTIONS

The following assumptions have been made in the preparation of this proposal:

- Terracon work under this amendment is assumed to support obtaining approvals required for geotechnical investigations on the site.



- Cultural resources surveys will be completed within the Area of Potential Effect, identified by Dibble and Black & Veatch during WA 1 Amendment 4.
- Potential environmental concerns will not be obstructed or obscured by materials or equipment.
- Dibble will provide notification of any restrictions or special requirements (such as confidentiality, scheduling, or on-site safety requirements) regarding accessing the site.
- Current site owner, property manager, occupant information (including tenant list), and contact information for persons knowledgeable about the site history, including current and historical use of hazardous substances and petroleum products on site (e.g., names, phone numbers, etc.), will be provided.
- Any awareness of specialized knowledge or experience that is material to potential environmental concerns at the property shall be reported to Terracon by Dibble prior to commencing work.
- Project work task schedule estimates provided by Terracon as based on recent experience with federal and local agency review times. However, these review times are highly variable and subject to change outside the control of Terracon.

5.0 SCHEDULE

We are prepared to initiate our work on this project immediately upon receipt of NTP as a continuation of current work in process. Deliverable schedules will be developed and provided in coordination with the reviewing agencies.

6.0 COMPENSATION

Our lump sum fee for the project is \$137,361.32. The fee is valid for 90 days from the date of this proposal. The lump-sum fee is based on the assumptions and conditions provided at the time of the proposal. If these assumptions are not valid, there may be additional charges.

Cost Estimate	
Task	Amount
2.1 Project Management and Coordination	\$23,267.20
2.2 Base Phase 1 ESA Services	\$3,161.92
2.3 Cultural Resources	\$99,376.20
2.4 Environmental Planning	\$6,212.00
2.5 Landscape Architecture Services	\$5,344.00



Cost Estimate	
Task	Amount
Total Estimated Cost	\$137,361.32

7.0 AUTHORIZATION

Work will be performed under the provisions of an Agreement for Services that includes this letter proposal. Terracon will begin work after execution of the Agreement referencing this proposal.

We appreciate the opportunity to provide this proposal and look forward to the opportunity of working with you.

Sincerely,

Terracon Consultants, Inc.

John Griffin, PLA, ASLA
Senior Landscape Architect/Project Manager

Brent Borchers, P.E.
Senior Principal

Dibble & Associates Consulting Engineers Inc
Weekes Wash RFCF WA1 Amendment 5
 Environmental Services Proposal

DESCRIPTION	RATE	QUANTITY	UNITS	TOTAL QUANTITY	TOTAL
2.1 Project Management and Coordination					\$23,267.20
2.1.1 Management and Coordination					
Project Manager	\$ 164.00	8.00	hours	8.00	\$1,312.00
Contract Manager	\$ 119.00	8.00	hours	8.00	\$952.00
Senior Admin	\$ 140.00	4.00	hours	4.00	\$560.00
Sub Total					\$2,824.00
2.1.2 Meetings					
Project Manager	\$ 164.00	45.00	hours	45.00	\$7,380.00
Senior Archaeologist/Project Coordinator	\$ 146.00	38.00	hours	38.00	\$5,548.00
Environmental Planning/Project Coordinator	\$ 155.00	38.00	hours	38.00	\$5,890.00
CWA Permitting Specialist	\$ 154.00	4.00	hours	4.00	\$616.00
NEPA Program Manager/APR	\$ 190.00	3.00	hours	3.00	\$570.00
Environmental Engineer	\$ 141.00	2.00	hours	2.00	\$282.00
Mileage (Travel)	\$ 0.655	240.00	miles	240.00	\$157.20
Sub Total					\$20,443.20
2.2 Base Phase 1 ESA Services					\$3,161.92
Environmental Engineer	\$ 141.00	8.00	hours	8.00	\$1,128.00
ESA APR	\$ 201.00	2.00	hours	2.00	\$402.00
Administrator	\$ 73.00	1.00	hours	1.00	\$73.00
Environmental Field Scientist	\$ 87.00	16.00	hours	16.00	\$1,392.00
Mileage (Travel)	\$ 0.655	64.00	miles	64.00	\$41.92
Regulatory Database	\$ 125.00	1.00	lump sum	1.00	\$125.00
Sub Total					\$3,161.92
2.3 Cultural Resource Services					\$99,376.20
2.3.1 Cultural Section 106 Consultation Support Services					
Senior Archaeologist/Project Coordinator	\$ 146.00	40.00	hours	40.00	\$5,840.00
Sub Total					\$5,840.00
2.3.2 Cultural Monitoring Plan					
Senior Archaeologist/Project Coordinator	\$ 146.00	80.00	hours	80.00	\$11,680.00
Sub Total					\$11,680.00
2.3.3 Cultural Monitoring and Reporting					
Senior Archaeologist/Project Coordinator	\$ 146.00	2.00	hours	2.00	\$292.00
SOI-qualified Monitor (Cultural)	\$ 97.58	80.00	hours	800.00	\$78,064.00
Cultural Resources Sr. PM	\$ 175.01	2.00	hours	20.00	\$3,500.20
Sub Total					\$81,856.20
2.4 Environmental Planning					\$6,212.00
2.4.1 BOR CatEx Support					
Environmental Planning/Project Coordinator	\$ 155.00	16.00	hours	16.00	\$2,480.00
NEPA Program Manager/APR	\$ 190.00	3.00	hours	3.00	\$570.00
Technical Editor	\$ 108.00	2.00	hours	2.00	\$216.00
GIS Analyst/NEPA Project Coordinator	\$ 134.00	8.00	hours	8.00	\$1,072.00
Senior Biologist	\$ 140.00	6.00	hours	6.00	\$840.00
Sub Total					\$5,178.00
2.4.2 Water of the United States and Surface Waters					
Environmental Planning/Project Coordinator	\$ 155.00	2.00	hours	2.00	\$310.00
CWA Permitting Specialist	\$ 154.00	4.00	hours	4.00	\$616.00
Technical Editor	\$ 108.00	1.00	hours	1.00	\$108.00
Sub Total					\$1,034.00
2.5 Landscape Architecture Services					\$5,344.00
2.5.1 Multi-Use and Recreation Planning					
Project Manager	\$ 164.00	8.00	hours	8.00	\$1,312.00
Landscape Designer	\$ 91.00	42.00	hours	42.00	\$3,822.00
Print Display Graphic (Full Color, 24"x36")	\$ 40.00	3.00	each	3.00	\$120.00
Mounting, Display Graphic (Foam Core)	\$ 30.00	3.00	each	3.00	\$90.00
Sub Total					\$5,344.00
Total					\$137,361.32

April 18, 2023

Mr. Jason Simmers, PE
Dibble Engineering
7878 North 16th Street, Suite 300
Phoenix, Arizona 85020

**SUBJECT: Change Order No. 1
Proposal for Geotechnical Engineering Services
Weekes Wash Regional Flood Control Facility (RFCF)
Apache Junction, Arizona**

Dear Mr. Simmers:

As requested, Ethos Engineering, LLC (Ethos) is pleased to present this change order consisting of our scope of work, work-hour estimate, and fee proposal for additional professional geotechnical engineering services for the referenced project to the Dibble Engineering (Dibble) design team. This work will be performed under a project specific contract with Dibble.

1.0 PURPOSE

Weekes Wash within the City of Apache Junction (City) has caused frequent and repetitive flood damage including sediment deposition requiring costly and time-consuming effort from the City's operations and maintenance staff. The City and the Pinal County Flood Control District (PCFCD) have decided to evaluate flood control infrastructure to support long-term risk reduction for residents and infrastructure. The Dibble Team is currently evaluating alternatives targeted on the northern boundary of the City where Weekes Wash crosses south of Arizona State Route (SR) 88, also referred to as the Apache Trail, and north of Lost Dutchman Boulevard before it crosses.

The Dibble Team has prepared preliminary concept plans identifying the preferred alternative consisting of a flood control structure that will mitigate the peak flows of the wash by detaining a portion of the flow, which will be released over a short period of time. In the process, the structure will also serve to capture a significant amount of the sediment and debris mitigating the impact to downstream properties and infrastructure.

The purpose of the additional geotechnical engineering services will be to continue to provide consultation to the project team with regards to geotechnical aspects of the project, engage in team meetings and with project stakeholders, participate in the development of a project schedule for the geotechnical aspects of project, further develop a geotechnical investigation plan for use in procurement of permits for the performance of the geotechnical investigations, and coordinate with subcontractors for the field investigations.



2.0 GEOTECHNICAL SCOPE OF SERVICES

Based on the information provided by Dibble, we understand that geotechnical consultation services will be needed during the ongoing preliminary design phase of the project. Due to ongoing environmental and cultural clearance processes, ground disturbing activities are not permitted at this time. Therefore, the proposed geotechnical scope of work outline below is limited to field reconnaissance and field survey type work. The geotechnical ground disturbing activities required to investigate the subsurface beneath the planned structure will be completed as part of a supplemental work assignment.

2.1 Review of Available Data

Ethos will continue to obtain and review the available data for the project. This includes the geotechnical data for the project and the surrounding area, and the information prepared by the Dibble Team for development of the alternative concepts.

2.2 Geological Field Reconnaissance and Report

Ethos will conduct a geologic field reconnaissance of the project area. This will consist of visiting the project site to observe the geologic landforms, identifying project features that could impact the geotechnical investigation and other features. The geologic reconnaissance will be incorporated into a geologic report for the site that will include a summary of the gathered information including, local geology, surficial soils, groundwater, subsidence, earth fissures, and potential depth to bedrock. Ethos will work with the Dibble Team regarding the development of figures that use geographic information system (GIS) for the report.

2.3 Geotechnical Field Investigation Plan Preparation

Ethos will continue to revise the Geotechnical Field Investigation Plan (FIP) based on feedback from various project agencies and the project team. The FIP will show intended investigation locations, equipment access, and staging locations. In addition to the investigation locations, a narrative of our planned investigation and testing, field and laboratory, will be developed. Updates to the FIP will be submitted to the Dibble Team for review and comment along with agencies and project Stakeholders.

2.4 Coordination with Drilling Subcontractors

During the development of the FIP, Ethos will coordinate with local drilling subcontractors to ensure that the proper drilling techniques are selected for the geotechnical investigation. This will include up to three (3) field meetings with prospective drilling subcontractors to discuss access conditions and constraints. Coordination at this stage will facilitate the selection of the preferred drilling firm(s) to complete this field investigation and expedite scheduling the field work to allow work to begin shortly after environmental and cultural clearance is obtained.



2.5 Permit Applications

Ethos understands the FIP will be utilized by the Dibble Team in discussions with various agencies (e.g. Arizona Department of Water Resources (ADWR) and Arizona State Land Department (ASLD)) with regards to permit needs and other project aspects. Ethos will provide geotechnical support for the application of permits and discussions with other agencies including attendance at meetings. Any permit applications will be completed by other members of the Dibble Team.

2.6 Geophysical Investigations

A preliminary geophysical investigation consisting of seismic refraction and refraction microtremor (ReMi) investigations (seismic lines) will be conducted to aid in characterizing the subsurface profile. We will perform six (6) seismic lines within the footprint of the planned structure including the impoundment area. The seismic line locations will be determined in conjunction with the Dibble Team. Ethos will subcontract the performance of the seismic lines with WSP USA Environment & Infrastructure, Inc. (WSP). Ethos will coordinate and oversee the field activities. Historically, the performance of seismic lines have been considered non-ground disturbing activities. We will prepare a description, including photographs, of the work associated with performing the seismic lines for review by the team and regulatory agencies to confirm this.

2.7 Project Meetings and Management

Our understanding is that the Ethos project manager will provide consultation to the Dibble Team with regards to geotechnical matters. In addition, we will attend up to thirty-six (36) meetings during the course of project during 2023. These coordination meetings include the following:

- ADWR (4);
- ADOT (1);
- Cultural Team (2);
- Project Meetings (8);
- Internal Coordination (16)
- Miscellaneous (5);

Ethos has assumed that six (6) of the meetings will occur in person with the remainder occurring remotely via video or teleconference.

3.0 SCHEDULE

The work for this phase of the project is expected to occur while awaiting approval of the grant proposal and the next phase of design. Grant notification is expected in June/July of 2023.



4.0 PROJECT FEES

The attached tables present the workhours for the various tasks anticipated to complete geotechnical design services for the project. The estimated time and materials cost based on the workhour estimate is **\$79,946.58**.

5.0 ASSUMPTIONS / EXCLUSIONS

The following assumptions/exclusions are summarized below:

- No field work is required.
- Permits will be prepared and submitted by other members of the Dibble Team.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions or require additional information pertaining to this proposal, we would be pleased to discuss them with you.

Sincerely,

ETHOS ENGINEERING, LLC



Daniel N. Fréchette, PhD, PE
Senior Geotechnical Engineer

Reviewed By:



Keith Dahlen, PE
Principal/Senior Geotechnical Engineer

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Attachments:

Work-hour Estimate
Derivation of Cost Summary
Mileage Estimate

DERIVATION OF COST SUMMARY

DIRECT LABOR

<u>Classification</u>	<u>Hours</u>	<u>Rate</u>	<u>Labor Costs</u>
Project Manager/ Senior Reviewer	194	\$235.00	\$45,590.00
Senior Engineer	0	\$160.00	\$0.00
Professional Engineer/ Geologist	0	\$140.00	\$0.00
EIT/GIT	96	\$110.00	\$10,560.00
CADD Drafter	8	\$85.00	\$680.00
Adminis-trative	0	\$70.00	\$0.00
Total Hours:	<u>298</u>		
		Total Direct Labor	<u>\$56,830.00</u>

DIRECT EXPENSES

Vehicle Mileage (Personal)	636 mi. @	\$0.655 /mi.	\$416.58
		Total Direct Expenses:	<u>\$416.58</u>

OUTSIDE SERVICES

	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	
WSP	L.S.	1	\$ 22,700.00	\$22,700.00
		Total Estimated Outside Services:		<u>\$22,700.00</u>

By:



Keith Dahlen, Contract Manager

TOTAL LUMP SUM COST: \$79,946.58

4/18/2023
Date

**Weekes Wash Regional Flood Control Facility
Ethos Engineering, LLC - Work-Hour Estimate**

Project Work Task	Project Manager/ Senior Reviewer	Senior Engineer	Professional Engineer/ Geologist	EIT/GIT	CADD Drafter	Adminis- trative	Total Hours
2.1 Review Available Data	16	0	0	0	0	0	16
2.2 Geological Field Reconnaissance and Report	36	0	0	44	8	0	88
2.3 Geotechnical Field Investigation Plan Preparation	12	0	0	24	0	0	36
2.4 Coordination with Drilling Subcontractors	32	0	0	8	0	0	40
2.5 Permit Applications	6	0	0	20	0	0	26
2.6 Geophysical Investigations	24	0	0	0	0	0	24
2.7 Project Meetings and Management	68	0	0	0	0	0	68
TOTAL	194	0	0	96	8	0	298



April 12, 2023
Proposal No. PA23-04-06

Daniel Frechette, PhD, PE
Senior Geotechnical Engineer
Ethos Engineering, LLC.
9180 S Kyrene Road
Suite 104
Tempe, Arizona 85284

**RE: Proposal for Seismic Refraction and ReMi Evaluation
Proposed Flood Control Facility Site
Lost Dutchman Boulevard and Highway SR 88
Apache Junction, Arizona**

Dear Dr. Frechette:

WSP USA Environment & Infrastructure Inc. (WSP) is pleased to submit this proposal to perform a seismic refraction and refraction microtremor (ReMi) evaluation to support geotechnical exploration for a flood control facility to be located east-northeast of the junction of Lost Dutchman Boulevard and SR 88 in Apache Junction, Arizona. Included in this proposal is our understanding of the project, proposed scope of services, schedule, fee estimate, and estimated lump sum cost for performance of the work.

1.0 Project Information

WSP understands that the current (initial) stage of preliminary geotechnical evaluation of this site is limited to non-ground disturbing methods. The use of surface seismic geophysical methods can provide preliminary geotechnical characterization at the site without ground disturbance. The site is accessible by vehicle, but if vehicle access is limited to the site perimeter, the seismic equipment may need to be mobilized by hand-pulled small rubber-tired cart or be hand carried for a distance up to about one-half mile.

2.0 Scope of Services

The proposed scope of work is based on information provided by Dr. Daniel Frechette with Ethos Engineering, LLC (Ethos), during a telephone call on April 6, 2023. In summary, WSP's scope of work will include field surface seismic evaluations (seismic lines) at six (6) locations across the proposed project site. Based on our understanding of the project, WSP's proposed scope of work is described in the following sections.

2.1 Field Investigation – Surface Seismic Surveys

Combined surface seismic refraction and refraction microtremor (ReMi) surveys will be performed as six (6) seismic lines at locations selected by Ethos within the proposed project footprint. Each survey will be conducted using a Geometrics Geode seismograph and a 24-geophone array, along an array length of 240 feet. The surveys will provide interpretations of the subsurface profile (geometry) at the array locations with

compression wave (p-wave) and surface wave (s-wave) velocities to characterize the depths, strengths and other characteristics of the subsurface soil and rock units that may be interpreted from the seismic data. The seismic surveys will be performed by a two-person crew; the geophysical equipment will be transported to the survey sites across the proposed project site using a small hand-pulled rubber-tired wagon, if vehicle access is not available. It is anticipated that the field work for the seismic surveys will be completed in two (2) field days.

Assumptions:

- Two (2) days will be spent on site by two (2) WSP staff to conduct field seismic surveys. The seismic crew will mobilize from the WSP Phoenix office.
- Maximum depth of investigation for the p-wave results is anticipated to be approximately 60 feet below ground surface (bgs), and a reasonable depth of investigation for the s-wave results is anticipated to be approximately 120 to 240 feet. Interpreted depths of investigation are a function of the subsurface profile geometries and material velocities, and may be shallower than anticipated depths of investigation.
- The p-wave data will be generating utilizing a 10-pound sledgehammer with a strike plate.
- The energy source for refraction microtremor method will utilize a person jumping on the ground to generate surface wave energy, and ambient ground vibrations if present, during data acquisition (s-wave only).
- The proposed seismic survey locations are accessible by vehicle or a hand-pulled wagon with a maximum distance of about one-half mile from allowable project field vehicle access.

2.2 Seismic Data Analysis

The seismic refraction and ReMi data collected in the field will be analyzed and interpreted to determine compression and shear wave velocities and profiles. Site photographs and the results of the analyses will be presented in a report and will include a brief discussion of interpreted subsurface compression and surface wave velocities and velocity profiles and provide an estimate of the depth of native soil at each seismic refraction survey, and information concerning geometries of top of bedrock and bedrock conditions at the seismic line locations. Preliminary estimates of various geotechnical parameters (unit weight/density, material strengths, potential excavation conditions, etc.) will be developed from the interpreted seismic velocities.

2.3 Reporting

Results of interpretations of the seismic data and preliminary geotechnical conditions estimates derived from the interpretations will be presented in a Draft Preliminary Geophysical Evaluation Report. Subsequent to review by Ethos and resolution of applicable comments, a Final Preliminary Geophysical Evaluation Report will be submitted.

Proposal for Seismic Refraction and ReMi Evaluation
Proposed Flood Control Facility Site
Lost Dutchman Boulevard and SR 88
Apache Junction, AZ
April 12, 2023

3.0 Schedule

We plan to mobilize for the field work within two (2) weeks after Notice to Proceed. We plan to submit the Draft Preliminary Geophysical Evaluation Report within four (4) weeks of completion of the field work. Upon receipt and resolution of draft report review comments, we plan to submit the Final Preliminary Geophysical Evaluation Report within two (2) weeks after receipt and resolution of draft report review comments.

4.0 Fee Estimate

Fees for this project will be a lump sum of **\$22,700.00**. This fee is based on the scope of work described in this proposal.

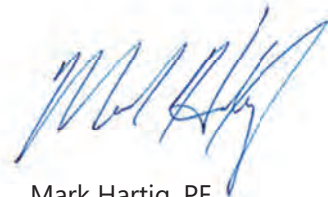
If you have any questions regarding the information provided in this proposal or if we may be of further service, please do not hesitate to contact us.

Respectfully submitted,

WSP USA Environment & Infrastructure Inc.



Michael L. Rucker, PE
Senior Geotechnical Engineer



Mark Hartig, PE
Senior Geotechnical Engineer

Quote #	Date	Expiration
Q-AZ-23-174	6/23/2023	90 days



Vertical Mapping Resources
 2220 S. Country Club Drive
 Suite 105
 Mesa, AZ 85210
 480.948.2555
 www.verticalmapping.com

QUOTATION

CONTACT: Steve Duryea
CLIENT: Dibble Engineering
ADDRESS: 3024 East Camelback Road, Suite 201
 Phoenix, AZ 85016
PHONE: (602) 957-1155

Weekes Wash Regional Flood Control

Assumptions: Dibble Engineering will provide ground control for this project. Vertical Mapping Resources will provide Dibble Engineering with a layout showing panel locations.

DESCRIPTION OF SERVICES

- Aerial Imagery Collection
- Topographic Mapping
- Optional Orthophotography

SCOPE OF SERVICES AND BRIEF METHODOLOGY

Vertical Mapping Resources will collect aerial imagery of the project site at a resolution of 3.5cm. The imagery will be collected using an Ultracam (or equivalent) digital sensor equipped with forward motion compensation. The resulting imagery will have stereo coverage at a minimum of 60% forwardlap and 30% sidelap.

VMR will perform analytical aerotriangulation using Hexagon Geospatial's ImageStation Analytical Triangulation (ISAT) software.

Topographic mapping will be collected at a scale of 1" = 20' with 1' contours. VMR will collect all discernible planimetric and topographic features utilizing digital photogrammetric workstations. All mapping will meet FGDC accuracy requirements for geospatial data.

If the option is selected, VMR will also perform digital orthorectification services for this project. Control from the aerotriangulation and ground survey will be used to tie the digital images to actual ground coordinates. The DTM collected from the stereo imagery will be used during the digital orthorectification process to adjust each image pixel into its correct position.



LAYOUT

Project limits are predetermined and are shown below. The client's requested limits are depicted with the cyan boundary. VMR will provide mapping to the magenta boundary, which is generally an additional inch at map scale. Please reference the KMZ that accompanies this quote.



Q-AZ-23-174 - Weekes Wash Regional Flood Control
 Dibble Engineering

SCHEDULE

The project timeline is estimated to require 18 working production days. Note this timeline is based on production days required to complete the project after receipt of ground control and imagery.

COST


This proposal to perform the described services becomes a contract subject to attached Terms and Conditions when signed by Vertical Mapping Resources and Dibble Engineering. Email or verbal authorization to proceed, in lieu of signed quotation, will assume the attached Terms and Conditions are accepted. This quote is valid for 90 days.

Weekes Wash Regional Flood Control / Cost Breakdown		
TASK	DESCRIPTION	COST
Control Survey	16 aerial control panels required (client supplied)	\$ -
Aerial Imagery Collection	3.5cm resolution (color digital images)	\$ 2,198.00
Mapping	1" = 20' topographic mapping (DTM & 1' contours)	\$ 7,241.00
TOTAL		\$ 9,439.00
OPTIONAL SERVICES		
Orthophotography	Orthophotography (color) with a 0.15' pixel resolution	\$ 790.00
DELIVERABLES		
PRODUCT	FORMAT	
Flight Layout w/ Control	Google Earth	
DTM	AutoCAD	
Topographic Mapping	AutoCAD	
Orthophotography	TIF	

AGREED BY:

Vertical Mapping Resources:

Dibble Engineering:



 Bret Okraski, Vice President

 Steve Duryea

6/23/2023

 Date

 Date





Purchase Order

Pinal County Finance Department
 Purchasing Division
 P.O. Box 1348
 Florence, AZ 85132

PO Number
250604
This number must appear on all documents pertaining to this order.

PO Date: 10/5/2023
Page: 1 of 1

Mail Invoice to: Pinal County Finance Department P.O. Box 1348 Florence, AZ 85132 Or email invoice to: FinanceInvoices@pinal.gov	Ship to: INTERNAL AUDIT DEPARTMENT 135 N PINAL ST FLORENCE AZ 85132	Supplier: PROTIVITI, INC. 12269 COLLECTIONS CENTER DRIVE CHICAGO IL 60693 Phone: - Fax: - Confirming to:
--	---	---

Buyer: Maegan Queen, Buyer Phone: 520 - 866-6265 Email: maegan.queen@pinal.gov	Requested Delivery Date: 10/5/2023 Payment Terms: Net 30 Shipping Terms: FOB Destination
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The terms and conditions of the following contract apply to this Purchase Order:

Contract Entity Maricopa County
Contract Number 230174RFP
Contract Expiry 8/31/2026

Reference: Department Contact: Julie Clark, julie.clark@pinal.gov, 520-866-6068
 Vendor Contact: Louis C Crum, louis.crum@protiviti.com, (602) 273-8000
 This is a Blanket Purchase Order. Blanket Purchase Orders are not a commitment and shall not be used as a basis for Supplier's planning. There is no minimum spend guarantee.
 For Period: July 1, 2023 - June 30, 2024

Line	Quantity	UOM	Item Number	Item Description	Unit Cost	Extended Cost
1		LS		BPO 23/24 Internal Audit Svcs Protiviti	\$0.00	\$183,356.00

Total Order : \$183,356.00

NOTE :
 Failure to send invoice to above address will result in delay of payment.
 Direct all payment questions to Accounts Payable at 520-866-6397.
 Direct all other inquiries to the Buyer specified above.

By accepting this Purchase Order the supplier agrees to the terms and conditions located on the [Purchasing Website](#) unless otherwise directed on this PO

Chief Procurement Officer
301 W. Jefferson St.
Suite 700
Phoenix, AZ 85003
Phone: (602) 506-3967
Fax: (602) 506-6766

August 23, 2023

RE: AUDITING AND CONSULTING SERVICES

We are pleased to notify you Maricopa County has awarded your firm a contract to supply services and/or commodities per the subject contract with an effective date of **September 1, 2023** through **August 31, 2026**.

If you have any questions regarding Serial **230174-RFP**, please contact **Brian Walsh** at **602-506-3243**.

Sincerely,



Brian D. Walsh, Sr. Procurement Officer
Office of Procurement Services

BW/mm
Attach.

cc: Office of Procurement Services
re: **Serial 230174-RFP**

SERIAL 230174-RFP AUDITING AND CONSULTING SERVICES
Contract - Protiviti

DATE OF LAST REVISION: August 23, 2023 CONTRACT END DATE: August 31, 2026

CONTRACT PERIOD THROUGH AUGUST 31, 2026

TO: All Departments
FROM: Office of Procurement Services
SUBJECT: Contract for **AUDITING AND CONSULTING SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **August 23, 2023 (Eff. 09/01/2023)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.



Kevin Tyne, Chief Procurement Officer
Office of Procurement Services

BW/mm
Attach

Copy to: Office of Procurement Services
 Mike McGee, Internal Audit
 Susan Adams, Internal Audit

(Please remove Serial 180241-RFP from your contract notebooks)



CONTRACT FOR AUDIT AND OTHER CONSULTING SERVICES 230174-RFP

C-73-24-007-X-00

This contract is entered into this 23rd day of August, 2023 by and between Maricopa County (County), a political subdivision of the State of Arizona, and Protiviti, Inc. an Arizona corporation (Contractor or Vendor) for the purchase of Audit and Other Consulting Services.

1.0 CONTRACT TERM

This contract is for a term of three years, beginning on the 1st day of September, 2023 and ending the 31st day of August, 2026.

2.0 OPTION TO RENEW

The County may, at its option and with the concurrence of the Contractor, renew the term of this contract up to a maximum of three additional year(s), (or at the County's sole discretion, extend the contract on a month-to-month basis for a maximum of six months after expiration). The Contractor shall be notified in writing by the Office of Procurement Services of the County's intention to renew the contract term at least 60 calendar days prior to the expiration of the original contract term.

3.0 CONTRACT COMPLETION

In preparation for contract completion, the Contractor shall make all reasonable efforts for an orderly transition of its duties and responsibilities to another provider and/or to the County. This may include, but is not limited to, preparation of a transition plan and cooperation with the County or other providers in the transition. The transition includes the transfer of all records and other data in the possession, custody, or control of the Contractor that are required to be provided to the County either by the terms of this agreement or as a matter of law. The provisions of this clause shall survive the expiration or termination of this agreement.

4.0 PRICE ADJUSTMENTS

Any requests for reasonable price adjustments must be submitted 60 calendar days prior to contract expiration. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey. If County agrees to the adjusted price terms, County shall issue written approval of the change and provide an updated version of the contract. The new change shall not be in effect until the date stipulated on the updated version of the contract.

5.0 PAYMENTS

5.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum(s) stated in Exhibit A – Vendor Information and Pricing.

5.2 Payment shall be made upon the County's receipt of a properly completed invoice.

5.3 INVOICES

5.3.1 The Contractor shall submit one legible copy of their detailed invoice before payment(s) will be made. Incomplete invoices will not be processed. At a minimum, the invoice must provide the following information:

- Company name, address, and contact information
- County bill-to name and contact information
- Contract serial number
- County purchase order number
- Project name and/or number
- Invoice number and date
- Payment terms
- Date of service or delivery
- Quantity
- Contract item number(s)
- Description of purchase (product or services)
- Pricing per unit of purchase
- Extended price
- Total amount due

5.3.2 Labor, services, and maintenance must be billed as a separate line item.

5.3.3 Problems regarding billing or invoicing shall be directed to the department as listed on the purchase order.

5.3.4 Payment shall only be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an electronic funds transfer (EFT) process. After contract award, the Contractor shall complete the Vendor Registration Form accessible from the County Department of Finance Vendor Registration Web Site <https://www.maricopa.gov/5169/Vendor-Information>.

5.3.5 Discounts offered in the contract shall be calculated based on the date a properly completed invoice is received by the County.

5.3.6 EFT payments to the routing and account numbers designated by the Contractor shall include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

5.4 APPLICABLE TAXES

5.4.1 It is the responsibility of the Contractor to determine any and all applicable taxes and include those taxes in their proposal. The legal liability to remit the tax is on the entity conducting business in Arizona. Tax is not a determining factor in contract award.

5.4.2 The County will look at the price or offer submitted and will not deduct, add, or alter pricing based on speculation or application of any taxes, nor will the County provide Contractor any advice or guidance regarding taxes. If you have questions regarding your tax liability, seek advice from a tax professional prior to submitting your bid. You may also find information at <https://www.azdor.gov/Business.aspx>. Once your bid is submitted, the offer is valid for the time specified in this solicitation, regardless of mistake or omission of tax liability. If the County finds overpayment of a project due to tax consideration that was not due, the Contractor will be liable to the County for that amount, and by contracting with the County agrees to remit any overpayments back to the County for miscalculations on taxes included in a bid price.

- 5.4.3 Tax Indemnification: Contractor and all subcontractors shall pay all Federal, State, and local taxes applicable to their operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to, hold Maricopa County harmless from any responsibility for taxes, damages, and interest, if applicable, contributions required under Federal and/or State and local laws and regulations, and any other costs including: transaction privilege taxes, unemployment compensation insurance, Social Security, and workers' compensation. Contractor may be required to establish, to the satisfaction of County, that any and all fees and taxes due to the City or the State of Arizona for any license or transaction privilege taxes, use taxes, or similar excise taxes are currently paid (except for matters under legal protest).

6.0 AVAILABILITY OF FUNDS

- 6.1 The provisions of this contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The County shall be the sole judge and authority in determining the availability of funds under this contract. County shall keep the Contractor fully informed as to the availability of funds.
- 6.2 If any action is taken by, any State agency, Federal department, or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this section, at least 10 days in advance.

7.0 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (SAVE)

The County is a member of the SAVE cooperative purchasing group. SAVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the SAVE Cooperative Purchasing Agreement, and with the concurrence of the successful respondent under this solicitation, a member of SAVE may access a contract resulting from a solicitation issued by the County. If contractor does not want to grant such access to a member of SAVE, state so in contractor's bid. In the absence of a statement to the contrary, the County will assume that contractor does wish to grant access to any contract that may result from this bid. The County assumes no responsibility for any purchases by using entities.

8.0 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPAs)

County currently holds ICPAs with numerous governmental entities. These agreements allow those entities, with the approval of the Contractor, to purchase their requirements under the terms and conditions of the County contract. It is the responsibility of the non-County government entity to perform its own due diligence on the acceptability of the contract under its applicable procurement rules, processes, and procedures. Certain governmental agencies may not require an ICPA and may utilize this contract if it meets their individual requirements. Other governmental agencies may enter into a separate Statement of Work with the Contractor to meet their own requirements. The County is not a party to any uses of this contract by other governmental entities.

9.0 DUTIES

- 9.1 The Contractor shall perform all duties stated in Exhibit B – Scope of Work, or as otherwise directed in writing by the procurement officer.
- 9.2 During the contract term, County may provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

10.0 TERMS AND CONDITIONS

10.1 INDEMNIFICATION

- 10.1.1 To the fullest extent permitted by law, and to the extent that claims, damages, losses, or expenses are not covered and paid by insurance purchased by the contractor, the contractor shall defend, indemnify, and hold harmless the County (as Owner), its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses (including, but not limited to reasonable attorneys' fees, court costs, expert witness fees, and the costs and reasonable attorneys' fees for appellate proceedings) directly resulted from personal injury or damage to tangible property arising from the negligent acts, or omissions of the Contractor in the performance of this contract.
- 10.1.2 Contractor's duty to defend, indemnify, and hold harmless the County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment of, or destruction of tangible property, including loss of use resulting therefrom, caused by negligent acts, errors, omissions, or mistakes in the performance of this contract, but only to the extent caused by the negligent acts or omissions of the contractor, a subcontractor, anyone directly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.
- 10.1.3 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this section.
- 10.1.4 The scope of this indemnification does not extend to the proportionate negligence of County.
- 10.1.5 Notwithstanding anything to the contrary in this Agreement, County and Contractor agree that, regardless of the legal theory asserted (including, but not limited to, breach of contract, warranty, negligence or tort): (i) Contractor's entire liability to County or any person asserting claims on behalf of or in the name of County will not exceed in the aggregate, for all claims, liability, losses, damages or expenses, the total amount of fees paid to Contractor under the Statement of Work that is the subject of the claim, provided that this subsection (i) shall not apply to Contractor's indemnification obligations under this section; and (ii) neither party shall be liable to the other party or any person asserting claims on behalf of or in the name of the other party for consequential, indirect, incidental, punitive or special damages of any nature suffered by County or Contractor (including, but not limited to, lost profits or business opportunity costs), even if the parties have been advised of the possibility of such damages, provided that this subsection (ii) shall not apply to any indemnification obligations under this section.

10.2 INSURANCE

- 10.2.1 Contractor, at Contractor's own expense, shall purchase and maintain, at a minimum, the herein stipulated insurance from a company or companies duly licensed by the State of Arizona and possessing an AM Best, Inc. category rating of B++. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

- 10.2.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this contract.
- 10.2.3 In the event that the insurance required is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this contract and either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this contract is completed.
- 10.2.4 Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.
- 10.2.5 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.
- 10.2.6 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- 10.2.7 The insurance policies required by this contract, except Workers' Compensation and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials, and employees as additional insureds.
- 10.2.8 The policies required hereunder, except Workers' Compensation and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials, and employees for any claims arising out of Contractor's work or service.
- 10.2.9 If available, the insurance policies required by this contract may be combined with Commercial Umbrella Insurance policies to meet the minimum limit requirements. If a Commercial Umbrella insurance policy is utilized to meet insurance requirements, the Certificate of Insurance shall indicate which lines the Commercial Umbrella Insurance covers.

10.2.9.1 Commercial General Liability

Commercial General Liability (CGL) insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

10.2.9.2 Automobile Liability

Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than

\$2,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services or use or maintenance of the premises under this contract.

10.2.9.3 Workers' Compensation

10.2.9.3.1 Workers' compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

10.2.9.3.2 Contractor, its subcontractors, and sub-subcontractors waive all rights against this contract and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers' compensation and Employer's Liability, or Commercial Umbrella Liability insurance obtained by Contractor, its subcontractors, and its sub-subcontractors pursuant to this contract.

10.2.9.4 Errors and Omissions/Professional Liability Insurance

Technology Errors & Omission insurance: Such insurance shall cover any and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

- Each claim \$2,000,000

In the event that the Technology Errors & Omission insurance required by this contract is written on a claims-made basis, contractor warrants that any retroactive date under the policy shall precede the effective date of this contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years, beginning at the time work under this contract is completed.

10.2.9.5 Cyber, Network Security, and Privacy Liability

Cyber, Network Security and Privacy Liability Insurance with a limit of not less than \$2,000,000 per claim. The policy shall include, but not be limited to; coverage for all directors, officers, agents and employees of the Contractor, losses with respect to network risks (such as data breaches, unauthorized access or use, and ID theft of data), invasion of privacy (regardless of the type of media involved in the loss of private information), crisis management, identity theft response costs, breach notification costs, credit remediation, and credit monitoring, defense, and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, electronic data restoration expenses (data asset protection), network business interruption, computer fraud coverage, funds transfer loss, third-party fidelity, theft, no requirement for arrest and conviction, and loss outside the premises of the named insured.

10.2.10 Certificates of Insurance

10.2.10.1 Prior to contract award, Contractor shall furnish the County with valid and complete Certificates of Insurance, or formal endorsements as

required by the contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this contract are in full force and effect. Such certificates shall identify this contract number and title.

10.2.10.2 In the event any insurance policy(ies) required by this contract is (are) written on a claims-made basis, coverage shall extend for two years past completion and acceptance of Contractor's work or services and as evidenced by annual certificates of insurance.

10.2.10.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to County 15 calendar days prior to the expiration date.

10.2.11 Cancellation and Expiration Notice

Applicable to all insurance policies required within the insurance requirements of this contract, Contractor's insurance shall not be permitted to expire, be suspended, or be canceled, for any reason without 30 days prior written notice to Maricopa County. Contractor must provide to Maricopa County, within two business days of receipt, if they receive notice of a policy that has been or will be suspended, or canceled for any reason, has expired, or will be expiring. Such notice shall be sent directly to Maricopa County Office of Procurement Services and shall be mailed, or hand delivered to 160 S. 4th Avenue, Phoenix, AZ 85003, or emailed to the procurement officer noted in the solicitation.

10.3 FORCE MAJEURE

10.3.1 Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this contract, if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes include, but are not limited to, acts of God/nature (including fire, flood, earthquake, storm, hurricane, or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, and interruption or failure of electricity or telecommunication service, and pandemic.

10.3.2 Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

10.3.3 The party asserting Force Majeure as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

10.4 ORDERING AUTHORITY

Any request for purchase shall be accompanied by a valid purchase order issued by a County department or directed by a Certified Agency Procurement Aid (CAPA) with a purchase card for payment.

10.5 PROCUREMENT CARD ORDERING CAPABILITY

County may opt to use a procurement card (Visa or Master Card) to make payment for orders under this contract.

10.6 INTERNET ORDERING CAPABILITY

It is the intent of Maricopa County to use the Internet to communicate and to place orders under this contract.

10.7 NO MINIMUM OR MAXIMUM PURCHASE OBLIGATION

This contract does not guarantee any minimum or maximum purchases will be made. Orders will only be placed under this contract when the County identifies a need and proper authorization and documentation have been approved.

10.8 PURCHASE ORDERS

10.8.1 County reserves the right to cancel purchase orders within a reasonable period of time after issuance. Should a purchase order be canceled, the County agrees to reimburse the Contractor for actual and documentable costs incurred by the Contractor in response to the purchase order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, or for shipment of product prior to issuance of purchase order.

10.8.2 Contractor agrees to accept verbal notification of cancellation of purchase orders from the County procurement officer with written notification to follow. Contractor specifically acknowledges to be bound by this cancellation policy.

10.9 BACKGROUND CHECK

Respondents may be required to pass multiple background checks (e.g., Sheriff's Office, County Attorney's Office, Courts, as well as Maricopa County general government) to determine if the respondent is acceptable to do business with the County. This applies to, but is not limited to, the company, subcontractors, and employees, and should a subcontractor or an employee fail to pass a background check, the Contractor shall promptly replace said subcontractor or employee with an alternative who passes the background check. .

10.10 SUSPENSION OF WORK

The procurement officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the procurement officer determines appropriate for the convenience of the County. No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor. No request for adjustment under this clause shall be granted unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

10.11 STOP WORK ORDER

10.11.1 The procurement officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order

during the period of work stoppage. Within a period of 90 calendar days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the procurement officer shall either:

10.11.2 cancel the stop work order; or

10.11.3 terminate the work covered by the order as provided in the Termination for Default or the Termination for Convenience clause of this contract.

10.11.4 The procurement officer may make an equitable adjustment in the delivery schedule and/or contract price, and the contract shall be modified, in writing, accordingly, if the Contractor demonstrates that the stop work order resulted in an increase in costs to the Contractor.

10.12 TERMINATION FOR CONVENIENCE

Maricopa County may terminate the resultant contract for convenience by providing 60 calendar days advance notice to the Contractor.

10.13 TERMINATION FOR DEFAULT

10.13.1 The County may, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

10.13.1.1 deliver the supplies or to perform the services within the time specified in this contract or any extension;

10.13.1.2 make progress, so as to endanger performance of this contract; or

10.13.1.3 perform a material provision of this contract.

10.13.2 The County's right to terminate this contract under these subparagraphs may be exercised if the Contractor does not cure such failure within 10 business days (or more if authorized in writing by the County) after receipt of a Notice to Cure from the procurement officer specifying the failure.

10.13.3 EXCEPT AS OTHERWISE STATED IN THIS CONTRACT, CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

10.14 PERFORMANCE

It shall be the Contractor's responsibility to comply with the purchase order specifications. If, after the notice of default and Contractor's failure to cure, Maricopa County reserves the right to obtain services on the open market in the event the Contractor fails to perform, and any price differential will be charged against the Contractor.

10.15 CONTRACTOR EMPLOYEE MANAGEMENT

10.15.1 Contractor shall endeavor to maintain the personnel proposed in their proposal throughout the performance of this contract.

10.15.2 If Contractor personnel's employment status changes, Contractor shall provide County a list of proposed replacements with equivalent or greater experience.

10.15.3 Under no circumstances shall the implementation schedule to be impacted by a personnel change on the part of the Contractor.

10.15.4 Contractor shall not reassign any key personnel identified in their proposal without the express consent of the County.

10.15.5 County reserves the right to immediately remove from its premises any Contractor personnel it determines to be a risk to County operations.

10.15.6 County reserves the right to request the replacement of any Contractor personnel at any time, for any reason.

10.16 WARRANTY OF SERVICES

10.16.1 The Contractor warrants that all services provided hereunder will conform to the requirements of the contract, including all descriptions, specifications, and attachments made a part of this contract. County's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.

10.16.2 In addition to its other remedies, County may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished hereunder.

10.17 INSPECTION OF SERVICES

10.17.1 The Contractor shall provide and maintain an inspection system acceptable to County covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to County during contract performance and for as long afterwards as the contract requires.

10.17.2 County has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. County shall perform inspections and tests in a manner that will not unduly delay the work.

10.17.3 If any of the services do not conform to contract requirements, County may require the Contractor to perform the services again in conformity with contract requirements, at no cost to the County. When the defects in services cannot be corrected by re-performance, County may:

10.17.3.1 require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

10.17.3.2 reduce the contract price to reflect the reduced value of the services performed.

10.17.4 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, County may:

10.17.4.1 by contract or otherwise, perform the services and charge to the Contractor, through direct billing or through payment reduction, any cost incurred by County that is directly related to the performance of such service; or

10.17.4.2 terminate the contract for default.

10.18 USAGE REPORT

The Contractor shall furnish the County a usage report, upon request, delineating the acquisition activity governed by the contract. The format of the report shall be approved by the County and shall disclose the quantity and dollar value of each contract item by individual unit of measure.

10.19 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST

Notice is given that, pursuant to A.R.S. § 38-511, the County may cancel any contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the County is at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or consultant to any other party of the contract with respect to the subject matter of the contract. Additionally, pursuant to A.R.S. § 38-511, the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the County from any other party to the contract arising as the result of the contract.

10.20 OFFSET FOR DAMAGES

In addition to all other remedies at Law or Equity, after Contractor is provided notice and a reasonable opportunity to cure the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from material breach or Services performed which are nonconforming to the applicable statement of work issued under this Contract.

10.21 SUBCONTRACTING

10.21.1 The Contractor may not assign to another Contractor or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. All correspondence authorizing subcontracting must reference the bid serial number and identify the job or project.

10.21.2 The subcontractor's rate for the job shall not exceed that of the prime Contractor's rate, as bid in the pricing section, unless the prime Contractor is willing to absorb any higher rates. The subcontractor's invoice shall be invoiced directly to the prime Contractor, who in turn shall pass-through the costs to the County, without mark-up. A copy of the subcontractor's invoice must accompany the prime Contractor's invoice.

10.22 AMENDMENTS

All amendments to this contract shall be in writing and approved/signed by both parties. Maricopa County Office of Procurement Services shall be responsible for approving all amendments for Maricopa County.

10.23 ADDITIONS/DELETIONS OF REQUIREMENTS

The County reserves the right to add and/or delete materials and services to a contract. If a service requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the bid price. If additional materials or services are required from a contract, prices for such additions will be negotiated between the Contractor and the County.

10.24 RIGHTS IN DATA

10.24.1 The County shall have the use of data and reports resulting from a contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to a contract and to the performance thereunder.

10.24.2 Data, records, reports, and all other information generated for the County by a third party as the result of a contract are the property of the County and shall be provided in a format designated by the County or shall be and remain accessible to the County into perpetuity.

10.25 ACCESS TO AND RETENTION OF RECORDS FOR THE PURPOSE OF AUDIT AND/OR OTHER REVIEW

10.25.1 In accordance with Section MC1-372 of the Maricopa County Procurement Code, the Contractor agrees to retain (physical or digital copies of) all books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this contract for six years after final payment or until after the resolution of any audit questions, which could be more than six years, whichever is longest. The County, Federal or State auditors and any other persons duly authorized by the department shall have full access to and the right to examine, copy, and make use of, any and all said materials. Any and all third party internal or external auditors, inspectors, or other representatives acting on County's behalf or in support of County (except governmental authorities) shall enter into a written non-disclosure agreement directly with Contractor.

10.25.2 If the Contractor's books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented. Contractor shall have a right to challenge such audit, review and/or inspection and shall be given copies of the audit report and associated work papers.

10.26 AUDIT DISALLOWANCES

If at any time it is determined by the County that a cost for which payment has been made is a disallowed cost, the County shall notify the Contractor in writing of the disallowance. The course of action to address the disallowance shall be at sole discretion of the County, and may include either an adjustment to future invoices, request for credit, request for a check, or a deduction from current invoices submitted by the Contractor equal to the amount of the disallowance, or to require reimbursement forthwith of the disallowed amount by the Contractor by issuing a check payable to Maricopa County.

10.27 STRICT COMPLIANCE

Acceptance by County of a performance that is not in strict compliance with the terms of the contract shall not be deemed to be a waiver of strict compliance with respect to all other terms of the contract.

10.28 VALIDITY

The invalidity, in whole or in part, of any provision of this contract shall not void or affect the validity of any other provision of the contract.

10.29 SEVERABILITY

The removal, in whole or in part, of any provision of this contract shall not void or affect the validity of any other provision of this contract.

10.30 RELATIONSHIPS

10.30.1 In the performance of the services described herein, the Contractor shall act solely as an independent Contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, co-employee, partnership, principal and agent, or joint venture between the County and the Contractor.

10.30.2 The County reserves the right of final approval on proposed staff. Also, upon request by the County, the Contractor will be required to remove any employees working on County projects and substitute personnel based on the discretion of the County within two business days, unless previously approved by the County.

10.31 NON-DISCRIMINATION

Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09, including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, Contractor shall not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin. (Arizona Executive Order 2009-09 can be viewed at https://apps.azsos.gov/public_services/register/2009/46/governor.pdf).

10.32 WRITTEN CERTIFICATION PURSUANT to A.R.S. § 35-393.01

If vendor engages in for-profit activity and has 10 or more employees, and if this agreement has a value of \$100,000 or more, vendor certifies it is not currently engaged in, and agrees for the duration of this agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

10.33 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

10.33.1 The undersigned (authorized official signing on behalf of the Contractor) certifies to the best of his or her knowledge and belief that the Contractor, its current officers, and directors:

10.33.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from being awarded any contract or grant by any United States department or agency or any state, or local jurisdiction;

10.33.1.2 have not within a three-year period preceding this contract:

10.33.1.2.1 been convicted of fraud or any criminal offense in connection with obtaining, attempting to obtain, or as the result of performing a government entity (Federal, State or local) transaction or contract; or

10.33.1.2.2 been convicted of violation of any Federal or State antitrust statutes or conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, making false

statements, or receiving stolen property regarding a government entity transaction or contract;

10.33.1.3 are not presently indicted or criminally charged by a government entity (Federal, State or local) with commission of any criminal offenses in connection with obtaining, attempting to obtain, or as the result of performing a government entity public (Federal, State or local) transaction or contract;

10.33.1.4 are not presently facing any civil charges from any governmental entity regarding obtaining, attempting to obtain, or from performing any governmental entity contract or other transaction; and

10.33.1.5 have not within a three-year period preceding this contract had any public transaction (Federal, State or local) terminated for cause or default.

10.33.2 If any of the above circumstances described in the paragraph are applicable to the entity submitting a bid for this requirement, include with your bid an explanation of the matter including any final resolution.

10.33.3 The Contractor shall include, without modification, this clause in all lower tier covered transactions (i.e., transactions with subcontractors or sub-subcontractors) and in all solicitations for lower tier covered transactions related to this contract. If this clause is applicable to a subcontractor or sub-subcontractor, the Contractor shall include the information required by this clause with their bid.

10.34 VERIFICATION REGARDING COMPLIANCE WITH A.R.S. § 41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS

10.34.1 By entering into the contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using E-Verify) and all other Federal immigration laws and regulations related to the immigration status of its employees and A.R.S. § 23-214(A). The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the procurement officer upon request. These warranties shall remain in effect through the term of the contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the contract and verify employee compliance using the E-Verify system and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer. I-9 forms are available for download at www.uscis.gov.

10.34.2 The County retains the legal right to inspect documents of Contractor and subcontractor employees performing work under this contract to verify compliance with paragraph 10.35.1 of this section. Contractor and subcontractor shall be given reasonable notice of the County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the contract and may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

10.35 CONTRACTOR LICENSE REQUIREMENT

10.35.1 The Contractor shall procure all permits, insurance, and licenses, and pay the charges and fees necessary and incidental to the lawful conduct of his/her

business, and as necessary complete any requirements, by any and all governmental or non-governmental entities as mandated to maintain compliance with and remain in good standing. The Contractor shall keep fully informed of existing and future trade or industry requirements, and Federal, State, and local laws, ordinances, and regulations which in any manner affect the fulfillment of a contract and shall comply with the same. Contractor shall immediately notify both Office of Procurement Services and the department of any and all changes concerning permits, insurance, or licenses.

10.35.2 Contractor furnishing finished products, materials, or articles of merchandise that will require installation or attachment as part of the contract shall possess any licenses required. Contractor is not relieved of its obligation to obtain and possess the required licenses by subcontracting of the labor portion of the contract. Contractors are advised to contact the Arizona Registrar of Contractors, Chief of Licensing, to ascertain licensing requirements for a particular contract. Contractor shall identify which license(s), if any, the Registrar of Contractors requires for performance of the contract.

10.36 INFLUENCE

10.36.1 As prescribed in MC1-1203 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct, may be grounds for disbarment or suspension under MC1-902.

10.36.2 An attempt to influence includes, but is not limited to:

10.36.2.1 A person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type of valuable contribution or subsidy that is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.

10.36.3 If a person attempts to influence any employee or agent of Maricopa County, the chief procurement officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.

10.36.4 ABSOLUTELY NO CONTACT BETWEEN THE RESPONDENT AND ANY COUNTY PERSONNEL, OTHER THAN THE OFFICE OF PROCUREMENT SERVICES, IS ALLOWED DURING THE SOLICITATION PROCESS UNLESS THE COMMUNICATION IS IN REGARD TO PRE-EXISTING BUSINESS WITH THE COUNTY. ANY COMMUNICATIONS REGARDING THE SOLICITATION, ITS PARTICIPANTS, OR ANY DOCUMENTATION PRIOR TO THE CONTRACT AWARD MAY BE GROUNDS FOR DISMISSAL OF THE RESPONDENT FROM THE EVALUATION PROCESS.

10.37 CONFIDENTIAL INFORMATION

10.37.1 Any information obtained in the course of performing this contract may include information that is proprietary or confidential to the County. This provision establishes the Contractor's obligation regarding such information.

10.37.2 The Contractor shall establish and maintain procedures and controls that are adequate to assure that no information contained in its records and/or obtained from the County or from others in carrying out its functions (services) under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. The Contractor's procedures and controls, at a minimum, must be the same procedures and controls

it uses to protect its own proprietary or confidential information. If, at any time during the duration of the contract, the County determines that the procedures and controls in place are not adequate, the Contractor shall institute any new and/or additional measures requested by the County within 15 business days of the written request to do so.

10.37.3 Any requests to the Contractor for County proprietary or confidential information shall be referred to the County for review and approval, prior to any dissemination.

10.38 PUBLIC RECORDS

Under Arizona law, all offers submitted and opened are public records and must be retained by the County at the Maricopa County Office of Procurement Services. Offers shall be open to public inspection and copying after contract award and execution, except for such offers or sections thereof determined to contain proprietary or confidential information by the Office of Procurement Services. If an offeror believes that information in its offer or any resulting contract should not be released in response to a public record request, under Arizona law, the offeror shall indicate the specific information deemed confidential or proprietary and submit a statement with its offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise from disclosure. The records manager of the Office of Procurement Services shall determine whether the identified information is confidential pursuant to the Maricopa County Procurement Code.

10.39 INTEGRATION

This contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, expressed, or implied.

10.40 UNIFORM ADMINISTRATIVE REQUIREMENTS

By entering into this contract, the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, Part 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 *et seq.*

10.41 GOVERNING LAW

This contract shall be governed by the laws of the State of Arizona. Venue for any actions or lawsuits involving this contract will be in Maricopa County Superior Court, Phoenix, Arizona.

10.42 FORCED LABOR

10.42.1 By submitting a bid for this solicitation and/or entering into a contract as a result of this solicitation, contractor agrees to comply with all applicable portions of Arizona Revised Statutes Section 35-394. Contracting; procurement; prohibition; written certification; remedy; termination; exception; definitions.

10.42.2 Contractor certifies that it does not currently, and agrees for the duration of the contract, that it will not use:

10.42.2.1 The forced labor of ethnic Uyghurs in the People's Republic of China.

10.42.2.2 Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

10.42.2.3 Any contractors, subcontractors or suppliers that use the forced labor or any good or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

10.42.3 If contractor becomes aware during the term of the agreement that contractor is not in compliance with this paragraph, the contractor shall notify the County within five business days after becoming aware of the noncompliance. If the contractor fails to provide a written certification to the County that the contractor has remedied the noncompliance within 180 days after notifying the County of its noncompliance, then the agreement terminates, except that if the agreement termination date occurs before the end of the 180-day period, the agreement terminates on the agreement termination date.

10.43 PRICES

Contractor warrants that prices extended to County under this contract are no higher than those paid by any other government entity within Arizona for these or similar services.

10.44 ORDER OF PRECEDENCE

In the event of a conflict in the provisions of this contract and Contractor's license agreement, if applicable, the terms of this contract shall prevail.

10.45 INCORPORATION OF DOCUMENTS

10.45.1 The following are to be attached to and made part of this Contract:

10.45.1.1 Exhibit A – Vendor Information and Pricing

10.45.1.2 Exhibit B – Scope of Work

10.45.1.3 Exhibit C – Office of Procurement Services Contractor Travel and Per Diem Policy

10.46 NOTICES

All notices given pursuant to the terms of this contract shall be addressed to:

For County:

Maricopa County
Office of Procurement Services
301 W. Jefferson St., Suite 700
Phoenix, Arizona 85003

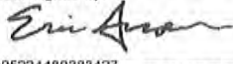
For Contractor:

Protiviti, Inc.
4127 E. Van Buren St., Ste. 210
Phoenix, AZ 85008

10.47 "Deliverables" means literary works or other works of authorship (such as documentation, reports and similar works) that Contractor is required to deliver to County as part of the Services, in each case as specifically set forth in the Statement of Work as Deliverables. All Deliverables will be prepared solely for the use of County's management, employees, and directors. The Deliverables may not be relied upon for any purpose by any third party without the prior written consent of Contractor subject to Arizona law.

IN WITNESS WHEREOF, this contract is executed on the date set forth above.

CONTRACTOR

DocuSigned by:


095224480383427

AUTHORIZED SIGNATURE

Eric Groen Managing Director

PRINTED NAME AND TITLE

4127 East Van Buren Street, Suite 210, Phoenix, AZ 85008

ADDRESS

8/18/2023

DATE

MARICOPA COUNTY


CHAIRMAN, BOARD OF SUPERVISORS

SEP 11 2023
DATE

ATTESTED


CLERK OF THE BOARD

SEP 11 2023
DATE

APPROVED AS TO FORM:


DEPUTY COUNTY ATTORNEY

09/07/2023
DATE

**EXHIBIT A
VENDOR INFORMATION AND PRICING**

SERIAL 230174-RFP
 NIGP CODE: 91858
 COMPANY NAME: Protiviti, Inc.
 DOING BUSINESS AS (DBA) NAME: _____
 MAILING ADDRESS: 4127 E. Van Buren St., Ste. 210, Phoenix, AZ 85008
 REMIT TO ADDRESS: _____
 TELEPHONE NUMBER: (602) 272-8000
 FACSIMILE NUMBER: _____
 WEB SITE: protiviti.com
 REPRESENTATIVE NAME: Eric Groen
 REPRESENTATIVE PHONE NUMBER: (480) 215-5660
 REPRESENTATIVE E-MAIL: eric.groen@protiviti.com

	<u>YES</u>	<u>NO</u>	<u>REBATE</u>
WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT:	[X]	[]	_____
WILL ACCEPT PROCUREMENT CARD FOR PAYMENT:	[X]	[]	_____
PAYMENT TERMS: NET 30 DAYS			

1.0 PRICING				
	Year 1	Year 2	Year 3	
1.1 PARTNER/MANAGING DIRECTOR	\$375	\$380	\$385	PER HR
1.2 MANAGER	\$220	\$225	\$230	PER HR
1.3 SUPERVISOR/SENIOR CONSULTANT	\$185	\$190	\$195	PER HR
1.4 CONSULTANT / SUBJECT MATTER EXPERT	\$145	\$150	\$155	PER HR
1.5 INFORMATION TECHNOLOGY AUDITOR/CONSULTANT LEVEL	\$145	\$150	\$155	PER HR
1.6 SENIOR AUDITOR/SUPERVISOR	\$185	\$190	\$195	PER HR
1.7 AUDITOR/CONSULTANT	\$145	\$150	\$155	PER HR
1.8 SENIOR MANAGER	\$240	\$245	\$250	PER HR
1.9 ASSOCIATE DIRECTOR	\$265	\$270	\$275	PER HR
1.10 DIRECTOR	\$320	\$325	\$330	PER HR
1.11 SENIOR DIRECTOR	\$360	\$365	\$370	PER HR
HOURLY RATES ARE TO INCLUDE GENERAL OFFICE SUPPLIES, FAXES, LOCAL TRAVEL (Defined as a 50-mile radius within the address of 301 W. Jefferson St., Phoenix, Arizona 85003) EXPENSES AND GENERAL ADMINISTRATIVE FUNCTIONS.				

EXHIBIT B SCOPE OF WORK

1.0 INTENT:

Maricopa County (County) has entered into an agreement with the contractor to provide, assurance and/or consulting services on an “as-needed” basis. Specific projects will be awarded by Task Orders (i.e., project specific solicitations). The County will establish a list of qualified contractors from which individual tasks will be assigned. Contractors will be notified when a need or work arises, and they will be allowed to respond to a Task Order with the proposed work plan, staff, and pricing. The contractor that best meets the need of the County will be awarded the Task Order. Award of this contract does not guarantee award of any Task Order. The contract will be divided into categories of service, and a contractor may be assigned to one or more of the following five categories: General Audit Services, Law Enforcement Audit Services, Construction Audit Services, Information Technology Audit Services, and Other Consulting Services.

The County reserves the right to select any qualified contract under this contract for Task Orders under \$25,000 without completion of any other procurement action when the Procurement Officer determines that it is in the County’s best interest.

The County reserves the right to add additional contractors, at the County’s sole discretion, in cases where the currently listed contractors are of an insufficient number or skill-set to satisfy the County’s needs or to ensure adequate competition on any project or task order work.

2.0 SCOPE OF WORK:

2.1 GENERAL AUDIT SERVICES

- 2.1.1 Audit work may include various areas within the County.
- 2.1.2 Perform relevant audit work and provide documentation, which may include risk assessment, audit program (audit steps/procedures), work papers, lead sheets, and audit reports.
- 2.1.3 Present or assist in presenting audit results and related information to the audited County agency and County management as applicable.
- 2.1.4 Provide other audit services as needed and requested by the County.
- 2.1.5 Qualifications will vary depending on the audit scope and will be tailored to the specific Task Order; however, the following general qualifications apply to all engagements:
 - 2.1.5.1 For individuals performing audit work, a minimum of three years relevant accounting/audit/consulting experience is required.
 - 2.1.5.2 For individuals directing audit work, supervising staff, and reviewing work papers, a minimum of four years relevant audit experience and one year supervising audit projects is required.
 - 2.1.5.3 Certified Public Accountant (CPA), Certified Internal Auditor (CIA), and/or comparable training is preferred.
 - 2.1.5.4 Knowledge of the Institute of Internal Auditors (IIA) and International Professional Practices Framework (IPPF) is required; familiarity with generally accepted auditing standards and professional practices is preferred.
 - 2.1.5.5 Prior government and County audit experience is preferred.

2.2 CONSTRUCTION AUDIT SERVICES

2.2.1 This area involves the analysis of key construction and renovation business processes and procedures in place to manage County risks, including testing processes and operational effectiveness, assessing business, financial, and change order controls, verifying contract compliance, reviewing contractor cost records and charges, and evaluating project management. The audit areas may include, but are not limited to the following:

2.2.1.1 Construction projects from preconstruction services to completion and close out.

2.2.1.2 Construction contracts/procurement including intergovernmental agreements.

2.2.2 Perform relevant audit work and provide audit documentation including risk assessment, audit work program (audit steps/procedures), work papers, lead sheets, and audit reports.

2.2.3 Present or assist in presenting audit results and related information to the audited County agency and County management as applicable.

2.2.4 Some qualifications may be tailored to the specific task order; however, the following general qualifications apply to all firms providing construction audit services:

2.2.4.1 For individuals performing audit work, a minimum of three years relevant accounting/audit/consulting experience is required.

2.2.4.2 For individuals directing audit work, supervising staff, and reviewing work papers, a minimum of four years relevant audit experience and one year supervising audit projects is required.

2.2.4.3 For individuals serving as subject matter experts, minimum of five years of construction contract audit experience, two years in a government construction environment is required.

2.2.4.4 Appropriate professional certification such as Certified Public Accountant (CPA), Certified Internal Auditor (CIA), and Certified Construction Auditor (CCA) is preferred.

2.2.4.5 Extensive knowledge of the construction industry, governmental contracts and projects, and audit standards is preferred.

2.2.4.6 Prior experience with major public projects and public works organization is preferred.

2.3 INFORMATION TECHNOLOGY (IT) AUDIT SERVICES

2.3.1 This area involves the analysis of the various information systems and technologies in use at the County, and the internal controls and risk levels associated with each. Many IT audits are performed in conjunction with performance audits at a specific County agency. Other IT audits are performed as County wide engagements and may encompass many County agencies. The audit areas may include, but are not limited to, the following:

- 2.3.1.1 IT General Controls and Application controls testing to support contracted application audits.
- 2.3.1.2 Network and Cyber Security audits. Network security audits may include examination of data centers, web applications, wireless networks, and mobile devices. Cyber security audit and consulting may include analysis of network vulnerabilities, awareness training, asset management, and incident response.
- 2.3.1.3 Pre and Post Implementation Reviews. Evaluate critical project controls before and after large IT project implementations.
- 2.3.1.4 IT Risk Assessment. Inventory and risk analysis of the County's critical IT resources (systems and applications). These engagements may also include assistance with analysis of strategic change and IT governance, along with evolving areas of risk such as data management, enterprise architecture, and digital and mobile risk.
- 2.3.2 Perform relevant audit work and provide audit documentation including risk assessment, audit work program (audit steps/procedures), work papers, lead sheets, and audit reports.
- 2.3.3 Present or assist in presenting audit results and related information to the audited County agency and County management as applicable.
- 2.3.4 Some qualifications may be tailored to the specific task order; however, the following general qualifications apply to all firms providing IT audit services:
 - 2.3.4.1 For individuals performing IT audit work, a minimum of three years IT accounting/audit/consulting experience is required.
 - 2.3.4.2 For individuals directing IT audit work, supervising staff, and reviewing work papers, a minimum of four years IT audit experience and one year supervising IT audit projects is required.
 - 2.3.4.3 For individuals serving as subject matter experts, minimum of five years of applicable IT experience required;
 - 2.3.4.4 Certified Information Systems Auditor (CISA) is required for one or more team members.
 - 2.3.4.5 Working knowledge of **Control Objectives for Information and Related Technologies (COBIT)**, Federal Information System Controls Audit Manual (FISCAM), Information Technology Infrastructure Library (ITIL), NIST Cybersecurity Framework, and NIST 800 special publication series as appropriate audit criteria.
 - 2.3.4.6 Prior experience with auditing decentralized IT function in a government setting is preferred.

2.4 OTHER CONSULTING SERVICES

With our risk management and internal audit heritage, we have gained unique perspectives on the challenges faced by our clients. We use these perspectives not only to solve regulatory, risk and compliance problems, but also to help our clients become more effective and productive. We and our clients recognize that the information required for effective risk management also provides powerful insights about business that can drive enhanced performance.

We provide end-to-end advisory and support services leveraging our six value-added solution families, each of which brings fully dedicated, global teams and has industry-specific expertise:

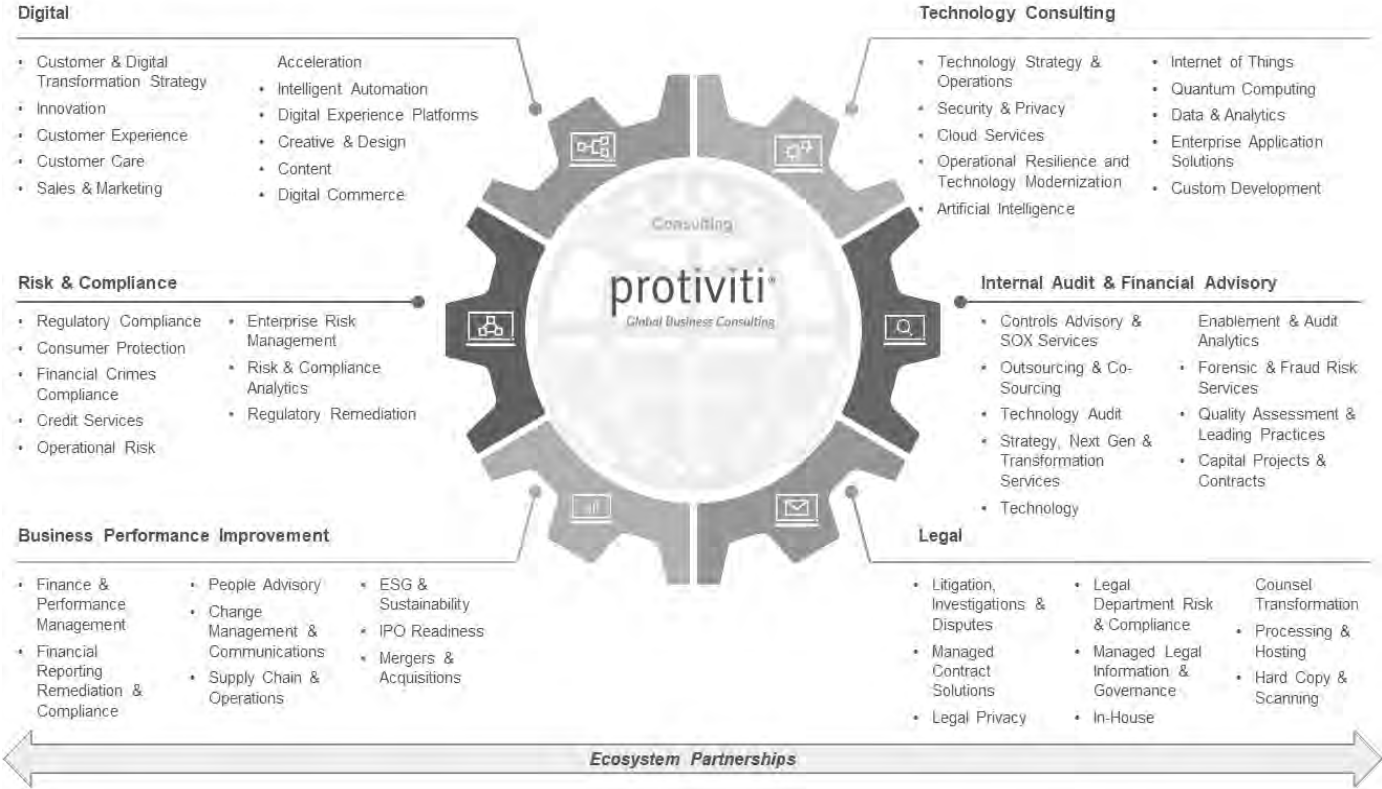


EXHIBIT C
OFFICE OF PROCUREMENT SERVICES CONTRACTOR TRAVEL AND PER DIEM
POLICY

- 1.0 All contract-related travel plans and arrangements shall be prior-approved by the County contract administrator.
- 2.0 Lodging, per diem, and incidental expenses incurred in performance of Maricopa County/Special District (County) contracts shall be reimbursed based on current U.S. General Services Administration (GSA) domestic per diem rates for Phoenix, Arizona. Contractors must access the following internet site to determine rates (no exceptions): www.gsa.gov.
 - 2.1 Additional incidental expenses (i.e., telephone, fax, internet, and copying charges) shall not be reimbursed. They should be included in the contractor's hourly rate as an overhead charge.
 - 2.2 The County will not (under any circumstances) reimburse for contractor guest lodging, per diem, or incidentals.
- 3.0 Commercial air travel shall be reimbursed as follows:
 - 3.1 Coach airfare will be reimbursed by the County. Business class airfare may be allowed only when preapproved in writing by the County contract administrator as a result of the business needs of the County when there is no lower fare available.
 - 3.2 The lowest direct flight airfare rate from the contractor's assigned duty post (pre-defined at the time of contract signing) will be reimbursed. Under no circumstances will the County reimburse for airfares related to transportation to or from an alternate site.
 - 3.3 The County will not (under any circumstances) reimburse for contractor guest commercial air travel.
- 4.0 Rental vehicles may only be used if such use would result in an overall reduction in the total cost of the trip, not for the personal convenience of the traveler. Multiple vehicles for the same set of travelers for the same travel period will not be permitted without prior written approval by the County contract administrator.
 - 4.1 Purchase of comprehensive and collision liability insurance shall be at the expense of the contractor. The County will not reimburse a contractor if the contractor chooses to purchase this coverage.
 - 4.2 Rental vehicles are restricted to sub-compact, compact, or mid-size sedans unless a larger vehicle is necessary for cost efficiency due to the number of travelers. (NOTE: Contractors shall obtain pre-approval in writing from the County contract administrator prior to rental of a larger vehicle.)
 - 4.3 County will reimburse for parking expenses if free, public parking is not available within a reasonable distance of the place of County business. All opportunities must be exhausted prior to securing parking that incurs costs for the County. Opportunities to be reviewed are the DASH, shuttles, etc. that can transport the contractor to and from County buildings with minimal costs.
 - 4.4 County will reimburse for the lowest rate, long-term, uncovered (covered or enclosed parking will not be reimbursed) airport parking only if it is less expensive than shuttle service to and from the airport.
 - 4.5 The County will not (under any circumstances) reimburse the contractor for guest vehicle rental(s) or other any transportation costs.

- 5.0 Contractor is responsible for all costs not directly related to the travel except those that have been pre-approved by the County contract administrator. These costs include, but are not limited to, the following: in-room movies, valet service, valet parking, laundry service, costs associated with storing luggage at a hotel, fuel costs associated with non-County activities, tips that exceed the per diem allowance, health club fees, and entertainment costs. Claims for unauthorized travel expenses will not be honored and are not reimbursable.
- 6.0 Travel and per diem expenses shall be capped at 15 percent of project price unless otherwise specified and approved by the County in individual contracts.
- 7.0 Contractor shall provide, (upon request) with their invoice(s), copies of receipts supporting travel and per diem expenses, and, if applicable, with a copy of the written consent issued by the County contract administrator. No travel and per diem expenses shall be paid by County without copies of the written consent as described in this policy and copies of all receipts.

PROTIVITI INC, 4127 E VAN BUREN ST STE 210, PHENIX, AZ 85008

PRICING SHEET: NIGP CODE 91858

Terms:	NET 30 DAYS
Vendor Number	VC0000001188
Certificates of Insurance	Required
Contract Period:	To cover the period ending August 31, 2026.



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Entity Information

PROTIVITI INC Active Registration

Unique Entity ID CAGE/NCAGE
EYUDGJ9VNFU9 587Y2

Expiration Date

Jan 25, 2024

Physical Address
**1285 Avenue Of The Americas
 New York, New York
 10019-6031, United States**

Mailing Address
**1290 Avenue Of The Americas
 New York, New York
 10104-101, United States**

Purpose of Registration
All Awards

Version

Current Record

BUSINESS INFORMATION

Doing Business As (blank)	URL http://www.protiviti.com
Division Name (blank)	Division Number (blank)
Congressional District New York 12	State/Country of Incorporation Delaware, United States

Registration Dates

Activation Date Jan 27, 2023	Initial Registration Date Oct 20, 2008
Submission Date Jan 25, 2023	

Owner	CAGE	Legal Business Name
-------	------	---------------------

Immediate Owner	3FZR0	ROBERT HALF INTERNATIONAL INC.
Highest Level Owner	(blank)	(blank)

Entity Dates

Entity Start Date May 22, 2002	Fiscal Year End Close Date Dec 31
--	---

Executive Compensation

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

SAM SEARCH AUTHORIZATION

I authorize my entity's non-sensitive information to be displayed in SAM public search results:

Yes

ENTITY TYPES

Business Types

Entity Structure	Corporate Entity (Not Tax Exempt)
Entity Type	Business or Organization
Profit Structure	For Profit Organization
Organization Factors	(blank)

Socio-Economic Types

Check the registrant's Reps & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the SBA's Dynamic Small Business Search if the entity completed the SBA supplemental pages during registration.

FINANCIAL INFORMATION

Payments

Accepts Credit Card Payments
No

Debt Subject To Offset [?](#)
No

ACCOUNT DETAILS

EFT Indicator **0000**
CAGE Code **587Y2**

POINTS OF CONTACT

Electronic Business

Carol Beaumier

Address
888 Seventh Avenue
Protiviti - 13TH Floor
New York, New York 10019
United States

CAROL beaumier

Address
1290 Avenue Of The Americas
Protiviti - 5TH Floor
New York, New York 10104
United States

Government Business

Carol Beaumier

Address
888 Seventh Avenue
Protiviti - 13TH Floor
New York, New York 10019
United States

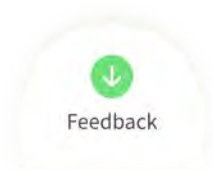
CAROL beaumier

Address
1290 Avenue Of The Americas
Protiviti - 5TH Floor
New York, New York 10104
United States

Past Performance

CAROL Beaumier

Address
1290 Avenue Of The Americas
Protiviti - 5TH Floor
New York, New York 10104
United States



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Purchase Requisition

Req. Number
168919

Req. Date: 10/10/2023
Page: 1 of 2

Department Contact: FUENTES, ANGELICA D Phone: - Branch Plant: FL-MOTOR POOL Fund Source: GENERAL FUND	Ship to: FLEET SERVICES 900 S. PINAL PARKWAY FLORENCE AZ 85132	Supplier: MIDWAY CHEVROLET 2323 W BELL RD PHOENIX AZ 85023 Phone: 602 - 866-0102 Fax: 602 - 942-4837
---	--	--

Buyer: Diane Mendoza, Buyer Phone: 520 - 866-6269 Email: Diane.Mendoza@pinal.gov	Requested Delivery Date: 10/11/2023 Payment Terms: Net 30 Shipping Terms: FOB Destination
--	--

The terms and conditions of the following contract apply to this Purchase Order:

Contract Entity State of Arizona
Contract Number CTR59320
Contract Expiry 3/16/2024

Reference: Quote # 101123
 Vendor Contact: Greg Ball (602)733-2251 gball@vtaig.com

Department Contact: Jeremy Stalter 520-866-7927 jeremy.stalter@pinal.gov | Angelica Fuentes 520-866-7932 angelica.fuentes@pinal.gov

Line	Quantity	UOM	Item Number	Item Description	Unit Cost	Extended Cost
1.00	18.00	EA		2024 Tahoe patrol black/white PCSO	\$53,935.00	\$970,830.00
2.00	18.00	EA		solar tint glass state max	\$195.00	\$3,510.00
3.00	18.00	EA		contract discount	(\$11,326.35)	(\$203,874.30)
4.00	18.00	EA		paint black and white	\$2,125.00	\$38,250.00
5.00	18.00	EA		emergency equipment mhq upfit 117978	\$27,635.16	\$497,432.88
6.00	18.00	EA		2024 model adjustment	\$6,850.00	\$123,300.00
7.00	18.00	EA		delivery	\$135.00	\$2,430.00
8.00		LS		sales tax	\$0.00	\$119,473.92
9.00	18.00	EA		tire tax PO issued for quantity of 18 2024 black and white PCSO patrol Tahoe's as needed in support of PCSO Reference: quote attached requested by: Jeremy Stalter x-7927 contact: Jeremy Stalter x-7927 or Angelica Fuentes x-7932 vendor name: Midway Chevrolet, vendor # 31485 vendor contact info listed on quote*	\$5.00	\$90.00

Total Order: \$1,551,442.50

Req. Number

168919

Req Date: 10/10/2023

Page: 2 of 2



ARIZONA STATE CONTRACT VEHICLE QUOTE

STATE CONTRACT # CTRO59320 New Vehicle Purchases
 CRT041811 Med Duty & Cab Chassis
 ADSP017-166122 Administration

QUOTE SENT TO: Jeremy Pinal County

CONTRACT VEHICLE 2024 Tahoe PPV CC10706
 Patrol B&W

QUOTE DATE: 10/10/2023

CONTRACT PRICE PER ATTACHED SPECS MSRP \$ 53,935.00

Additional Options

Solar Tint Glass State Max %	Dealer	\$ 195.00
Contract Discount	21% Base MSRP	\$ (11,326.35)
Paint Black and White	Dealer	\$ 2,125.00
Emergency Equipment	MHQ	\$ 27,635.16
2024 Model Adjustment	GM Fleet Operations	\$ 6,850.00
Delivery		\$ 135.00

Sub Total		\$ 79,548.81
Sales Tax (8.3 %)		\$ 6,602.55
City of Phx 2023 Tax		\$ 34.89
Tire Tax		\$ 5.00
Plates		
Extended Warranty		

Capital Total Each Unit		\$ 86,191.25
-------------------------	--	--------------

Quoted By: Gregg Ball Approximate Lead Time
 Midway Chevrolet Nissan Isuzu Truck TBD

2323 W. Bell Rd.
 Phoenix, Az. 85023

gball@vtaig.com

Cell 602-733-2251

Stock quotes subject to prior sale

Please call with any questions or concerns.

Thanks for the opportunity!

2024 quotes are subject to GM publishing official pricing

Please ask for your Order Confirmation if a PO is generated from this quote!

Your order is not confirmed without the Factory conformation. Thank You



ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Contract Amendment Summary

CONTRACTOR: Midway Chevrolet	AMENDMENT NO.: Five (5)
DESCRIPTION: Medium and Heavy Duty Cabs, Chassis and Buses	

Pursuant to the Uniform Terms and Conditions, Section 5, Contract Changes, the above referenced contract is amended. Summary of changes is as follows:

1. Amendment Five (5) to mutually extend this contract from January 18, 2023 through January 17, 2024 unless terminated, canceled or extended as otherwise provided in the contract.
2. All other terms, conditions and provisions of this contract remain unchanged.



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Entity Information

MIDWAY CHEVROLET CO Active Registration

Unique Entity ID CAGE/NCAGE
QVAGZKUJ8KL1 51LT7

Expiration Date
Dec 22, 2023

Physical Address
**2323 W Bell RD
Phoenix, Arizona
85023-3202, United States**

Mailing Address
**2323 W Bell RD
Phoenix, Arizona
85023-3202, United States**

Purpose of Registration
All Awards

Version
Current Record

BUSINESS INFORMATION

Doing Business As (blank)	URL (blank)
Division Name Midway Chevrolet	Division Number (blank)
Congressional District Arizona 06	State/Country of Incorporation Arizona, United States

Registration Dates

Activation Date Dec 26, 2022	Initial Registration Date Apr 3, 2008
Submission Date Dec 22, 2022	

Owner	CAGE	Legal Business Name
Immediate Owner	(blank)	(blank)
Highest Level Owner	(blank)	(blank)

Entity Dates

Entity Start Date Jan 1, 1966	Fiscal Year End Close Date Dec 31
---	---

Executive Compensation

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

SAM SEARCH AUTHORIZATION

I authorize my entity's non-sensitive information to be displayed in SAM public search results:

Yes

ENTITY TYPES

Business Types

Entity Structure	Corporate Entity (Not Tax Exempt)
Entity Type	Business or Organization
Profit Structure	For Profit Organization
Organization Factors	(blank)

Socio-Economic Types

Check the registrant's Reps & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the SBA's Dynamic Small Business Search if the entity completed the SBA supplemental pages during registration.

FINANCIAL INFORMATION

Payments

Accepts Credit Card Payments
Yes

Debt Subject To Offset [?](#)
No

ACCOUNT DETAILS

EFT Indicator **0000**
CAGE Code **51LT7**

POINTS OF CONTACT

Electronic Business

PAM FINKEN, CONTROLLER

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States

GREGG BALL

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202

United States

Government Business

GREGG BALL, GOV FLEET

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States

GREGG BALL

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States

Past Performance

GREGG BALL, GOV FLEET

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States

GREGG BALL

Address
2323 W Bell RD
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United States



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Purchase Requisition

Req. Number
168921

Req. Date: 10/10/2023
Page: 1 of 1

Department Contact: FUENTES, ANGELICA D Phone: - Branch Plant: FL-MOTOR POOL Fund Source: GENERAL FUND	Ship to: FLEET SERVICES 900 S. PINAL PARKWAY FLORENCE AZ 85132	Supplier: MIDWAY CHEVROLET 2323 W BELL RD PHOENIX AZ 85023 Phone: 602 - 866-0102 Fax: 602 - 942-4837
---	--	--

Buyer: Diane Mendoza, Buyer Phone: 520 - 866-6269 Email: Diane.Mendoza@pinal.gov	Requested Delivery Date: 10/10/2023 Payment Terms: Net 30 Shipping Terms: FOB Destination
--	--

The terms and conditions of the following contract apply to this Purchase Order:

Contract Entity State of Arizona
Contract Number CTR59320
Contract Expiry 3/31/2024

Reference: Quote: dated 10/10/23
 Vendor Contact: Greg Ball, (602) 733-2251, gball@vtaig.com

Department Contact: Jeremy Stalter, (520) 866-7927, Jeremy.Stalter@pinal.gov | Angelica Fuentes, (520) 866-7932, Angelica.Fuentes@pinal.gov

Line	Quantity	UOM	Item Number	Item Description	Unit Cost	Extended Cost
1.00	4.00	EA		2024 pcso cib tahoe black color	\$53,935.00	\$215,740.00
2.00	4.00	EA		2024 pcso cib tahoe silver color	\$53,935.00	\$215,740.00
3.00	8.00	EA		solar tint glass state max % dealer	\$195.00	\$1,560.00
4.00	8.00	EA		contract discount 21% base msrp	(\$11,326.3 5)	(\$90,610.80)
5.00	8.00	EA		emergency equipment mhq upfit 117986	\$17,801.60	\$142,412.80
6.00	8.00	EA		2024 model adjustment gm fleet operations	\$6,850.00	\$54,800.00
7.00	8.00	EA		delivery	\$135.00	\$1,080.00
8.00		LS		sales tax	\$0.00	\$45,159.04
9.00	8.00	EA		tire tax	\$5.00	\$40.00

Total Order: \$585,921.04

ARIZONA STATE CONTRACT VEHICLE QUOTE



STATE CONTRACT #	CTRO59320	New Vehicle Purchases	
	CRTO41811	Med Duty & Cab Chassis	
	ADSP017-166122	Administration	
QUOTE SENT TO:	Jeremy	Pinal County	
CONTRACT VEHICLE	2024 Tahoe	PPV CC10706	
		CIB No Paint	
QUOTE DATE:	10/10/2023	4 Black 4 Silver	
CONTRACT PRICE		PER ATTACHED SPECS	MSRP \$ 53,935.00

Additional Options

Solar Tint Glass State Max %	Dealer	\$ 195.00
Contract Discount	21% Base MSRP	\$ (11,326.35)
Emergency Equipment	MHQ #117986	\$ 17,801.60
2024 Model Adjustment	GM Fleet Operations	\$ 6,850.00
Delivery		\$ 135.00

Sub Total		\$ 67,590.25
Sales Tax (8.3 %)		\$ 5,609.99
City of Phx 2023 Tax		\$ 34.89
Tire Tax		\$ 5.00
Plates		
Extended Warranty		

Capital Total Each Unit	\$ 73,240.13
-------------------------	---------------------

Quoted By: Gregg Ball
 Midway Chevrolet Nissan Isuzu Truck
 2323 W. Bell Rd.
 Phoenix, Az. 85023
gball@vtaig.com
 Cell 602-733-2251

Approximate Lead Time
TBD

Stock quotes subject to prior sale

Please call with any questions or concerns.

Thanks for the opportunity!

2024 quotes are subject to GM publishing official pricing

Please ask for your Order Confirmation if a PO is generated from this quote!
 Your order is not confirmed without the Factory conformation. Thank You

Please respond to the following items according to the instructions below. Each response should demonstrate the Offeror's ability to satisfy the Specifications requirements. Failure to respond may negatively impact the option to award.

1.1. The Contractor shall provide the goods/services described in any or all of the contract categories. Indicate the categories that apply to your offer:

X Category One: Phase One (1) Vehicle Purchases

x Category Two: Phase Two (2) Vehicle Purchases

x Category Three: FTA Funded Vehicles

1.2 **PHASE ONE (1) Pricing for New Vehicle Purchases: Price List:** (Any manufacturer available by Offeror shall be written in below which includes all optional equipment) Price shall be a fixed percentage off MSRP. The detailed price list for each available model will be sent to the Procurement Officer as they become available during the contract term. If multiple level discounts apply for that specific category, you may provide the minimum percentage. *Detailed price lists will not be required at the time of Proposal submittal.* Do not provide pricing on any other format other than what is provided below:

Phase One (1) Manufacture/Category (i.e. Silverado, F150, RAM 1500, Focus, Cruze, Dart etc.) Per Minimum Specifications	Percentage (%) Off of Manufacture Retail Price (MSRP)
Bolt	5%
Bolt EUV	5%
Camaro	3%
Malibu	20%
Spark	9%
Trax	4%
Trailblazer	15%
Equinox	18%
Blazer	17%

1.3 **PHASE TWO (2) Pricing for New Vehicle Purchases:** (Any manufacturer available by Offeror shall be written in below which includes all optional equipment) Price shall be a fixed percentage off MSRP. The detailed price list for each available model will be sent to the Procurement Officer as they become available during the contract term. If multiple level discounts apply for that specific category, you may provide the minimum percentage. *Detailed price lists will not be required at the*

time of Proposal submittal. Do not provide pricing on any other format other than what is provided below:

Phase One (1) Manufacture/Category (i.e. Silverado, F150, RAM 1500, Focus, Cruze, Dart etc.) Per Minimum Specifications	Percentage (%) Off of Manufacture Retail Price (MSRP)
Traverse	23%
Tahoe	21%
Suburban	20%
Colorado	3%
Silverado 1500	17%
Silverado 2500	22%
Silverado 3500	19%
Express Passenger	30%
Express Cargo	30%
Electric Silverado	TBA
Versa	7%
Kicks	8%
Sentra	8%
Altima	12%
Maxima	11%
Leaf	13%
Frontier	9%
Titan	14%
Rogue	9%
Murano	11%
Pathfinder	7%

**Offer Response Form for New Vehicle Purchases
Revision Two (2)**

1.4 Delivery Fees: If the contractor offers delivery for the following counties, they must be indicate and include any delivery fee associated with those areas as applicable.

County	Delivery Fee \$	County	Delivery Fee \$	County	Delivery Fee \$
<input type="checkbox"/> Apache	185.00	<input type="checkbox"/> Greenlee	185.00	<input type="checkbox"/> Pima	135.00
<input type="checkbox"/> Cochise	185.00	<input type="checkbox"/> La Paz	185.00	<input type="checkbox"/> Pinal	135.00
<input type="checkbox"/> Coconino	135.00	<input type="checkbox"/> Maricopa	N/A	<input type="checkbox"/> Santa Cruz	185.00
<input type="checkbox"/> Gila	135.00	<input type="checkbox"/> Mohave	185.00	<input type="checkbox"/> Yavapai	135.00
<input type="checkbox"/> Graham	185.00	<input type="checkbox"/> Navajo	185.00	<input type="checkbox"/> Yuma	185.00

1.5 Evaluation Pricing: The Contractor shall submit pricing for the following Vehicles. The vehicles listed which is representative of the scope of work that will be performed under this Contract, and therefore constitutes a fair method for determining price fair and reasonable:

1.5.1 Phase One (1) Evaluation Pricing:

<u>Estimated Usage Quantity</u>	<u>PHASE ONE (1) Base Model Vehicle</u>	<u>Base Price for Phase One (1)</u>	<u>Additional Information</u>
75	Sports Utility Vehicle (SUV) (<i>base model</i>) Per Minimum Specifications	\$20,326	2023 Trailblazer LS 1TR56
25	One (1) Ton Cargo Van (<i>base model</i>) Per Minimum Specifications	\$25,926	2023 Express Cargo CG33405
50	1/2 Ton Truck Regular Cab (<i>base model</i>) Per Minimum Specifications	\$26,647 Best Estimate.	GM as of this date has not published actual information for this 2023 Silverado.

**Offer Response Form for New Vehicle Purchases
Revision Two (2)**

1.5.2. Phase Two (2) Evaluation Pricing:

<u>Estimated Usage Quantity</u>	<u>PHASE TWO (2) Base Model Vehicle</u>	<u>Base Price for Phase TWO (2)</u>	<u>Additional Information</u>
25	Sports Utility Vehicle (SUV) (<i>base model</i>) Per Minimum Specifications	\$20,847	Plus transportation and dealer added accessories
15	One (1) Ton Cargo Van (<i>base model</i>) Per Minimum Specifications	\$26,597	Plus transportation and dealer added accessories
25	1/2 Ton Truck Regular Cab (<i>base model</i>) Per Minimum Specifications	\$27,572 Best Estimate	Same as above plus transportation and dealer added accessories



OFFER AND ACCEPTANCE

OFFER

TO THE STATE OF ARIZONA:

The undersigned hereby offers and agrees to perform in compliance with all terms, conditions, specifications and amendments of this solicitation and any written exceptions in the offer. Signature also acknowledges receipt of all pages indicated in the Table of Contents.

Midway Chevrolet Company

Offeror (Company) Name

2323 W. Bell Rd.

Address

Phoenix Arizona 85023

City State Zip

gball@vtaig.com

Email Address

gball@vtaig.com

Company Email Address

Signature of Person Authorized to Sign Offer

Gregg Ball

Printed Name

Date

Fleet Manager

Title

602-733-2251

Phone Number

602-760-3377

Fax Number

By signature in the Offer section above, the Offeror certifies that the submission of the Offer did not involve collusion or other anticompetitive practices.

ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR059320 including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until contractor receives a purchase order document.

State of Arizona

Effective this 17th day of March 2022

DocuSigned by:


Procurement Officer

3/10/2022

Awarded Date



Procurement

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson St., Ste. A
Phoenix, AZ 85007

REQUEST FOR PROPOSAL

SOLICITATION NUMBER: BPM004157

DESCRIPTION: New Vehicle Purchases

QUESTIONS: Inquiries regarding the solicitation are to be submitted online through the State's e-Procurement system, Arizona Procurement Portal (APP) (<https://app.az.gov/>) using the Discussion Forum tab.

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Thomas Kornell
Procurement Officer
Phone: 602-712-8520
Email: Tkornell@azdot.gov

This solicitation is issued in accordance with A.R.S. §41-2534 and A.A.C. R2-7-C301 et seq., Competitive Sealed Proposals.

"An Equal Opportunity Agency"

The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Americans with Disabilities Act (ADA), hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.

Persons that require a reasonable accommodation based on language or disability should contact ADOT's Procurement Office by phone (602) 712-2089. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.

Las personas que requieran asistencia (dentro de lo razonable) ya sea por el idioma o discapacidad deben ponerse en contacto con ADOT (602) 712-2089.

<u>SECTION</u>	<u>PAGE</u>
Notice	1
Table of Contents	2
Scope of Work	3
Special Terms and Conditions	7
Uniform Terms and Conditions	19
Federal Provisions	29
 <u>EXHIBITS</u>	
1 - Title VI/Non-Discrimination Assurances Appendix A	73
2 - Title VI/Non-Discrimination Assurances Appendix E	74
3- Usage Report Exhibit 3	75
4- On-site Manufacturer inspection Compliance Certification Exhibit 4	76
5- Pre-Award Audit and Certification Exhibit 5	77
6- Purchaser's Pre-Award Requirements Certification Exhibit 6	78
7- Post-Award Certification and Requirements Exhibit 7	79
8- Purchaser's Post-Award Requirements Certification Exhibit 8	81

1. Statement of Need

- 1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement for New Vehicle Purchase.

2. Introduction and Background

2.1 The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures.

2.2 Background: The State and its Eligible Agencies currently spend an estimated twenty-one million dollars in the purchase of new vehicles annually.

2.3 The following are the Three Categories covered in this Scope of Work:

- **Category One: Phase One (1) Vehicle Purchases**
- **Category Two: Phase Two (2) Vehicle Purchases**
- **Category Three: FTA Funded Vehicles**

3 General Requirements

3.1 Vehicles shall be new and supplied with all equipment and accessories indicated as standard equipment in the manufacturer's published literature (or website). Optional equipment necessary to meet the minimum requirements shall be included.

3.2 All vehicles ordered through Phase 1 (off the line) shall be Manufacturer's current year models in production throughout the term of this contract and shall be serviced completely by the vendor before delivery and ready in all respects for use. For the initial contract period; vehicles shall be new model year 2022 or greater.

3.3 Vehicles ordered through Phase 2 (on the lot) shall have less than 100 original odometer miles and be new (have never been previously owned) unless pre-approved in writing by the Eligible Agency.

3.4 All vehicles shall meet requirements of applicable Arizona Motor Vehicle laws and all other applicable Federal Motor Vehicle Safety Standards (including the Federal Bridge Formula), whether or not such requirements are specified in detail.

3.5 For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.

SCOPE OF WORK

- 3.6 Delivery location shall be identified on the issuing agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the ordering agency of such delays along with a revised delivery estimate from the factory immediately after it becomes known. If the manufacturer has a website available to check order status, this information will be shown in space provided on Offer Response Form.
- 3.7 All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M. The Contractor shall be required to give the using agency a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.
- 3.8 All vehicles shall be delivered with four (4) entrance tools and a full tank(s) of fuel, less delivery fuel.
- 3.9 The following documents shall be provided upon delivery of the vehicle(s):
 - 3.9.1 M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
 - 3.9.2 Warranty Document
 - 3.9.3 Manufacturers unaltered invoice
 - 3.9.4 Delayed warranty / in service start request form (if requested by ordering entity)
 - 3.9.5 Level 1 Inspection if applicable, completed before delivery
- 3.10 For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

4 Specific Requirements

- 4.1 The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency.
- 4.2 As new model year vehicles become available, vendor shall submit pricing at either the same rate as the previous model, or submit a request for an increase or decrease based only on the manufacturer's increase or decrease. Documentation must be submitted to the Procurement Officer within 30 days of the effective date of change. New model year vehicles cannot be offered without approval from the Procurement Officer.
- 4.3 The following fuel types are allowable under this contract are to include but are not limited too.
 - 4.3.1 Flexible Fuel Vehicles (FFV) also called Ethanol or E85
 - 4.3.2 Diesel

4.3.3 Gasoline

4.3.4 Compressed Natural Gas (CNG): CNG systems must be O.E.M. or O.E.M. approved

4.3.5 Hybrid-Electric Vehicles (HEV)

4.3.6 Plug-in Hybrid Electric Vehicles (PHEV)

4.3.7 Electric Vehicles (EV) also called Battery Electric Vehicles (BEV)

4.3.8 Fuel Cell Vehicles (FCV)

4.4 Vehicle Up-fit / Modifications

4.4.1 The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency.

4.4.2 The Eligible Agency will supply all up-fit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the up-fit/modification on a quotation to the Eligible Agency for review before any work commences.

4.5 Minimum Vehicle Requirements: All prices shall include the following equipment:

4.5.1 All standard factory equipment

4.5.2 Automatic transmission [maximum towing/payload capacity shall be provided upon request]

4.5.3 Bluetooth capabilities

4.5.4 AM/FM radio

4.5.5 Cruise Control

4.5.6 Power Door Locks/Power Windows

4.5.7 Power Mirrors when available

4.5.8 Four (4) entrance tools (in any combination allowed; keyless entry remotes, integrated or smart keys, standard cut keys) per vehicle.

a. Type of keys to be provided shall be indicated on quote.

4.5.9 Air conditioning

a. Rear air conditioning on all vehicles, when available

4.5.10 Cloth seats

4.5.11 Rear view mirrors including on driver and passenger doors

a. FOR TRUCKS: Rear view mirrors on driver front and passenger front doors, largest available without upgrading vehicle options package.

b. Back up Camera

4.5.12 Spare tire

a. Full size standard steel wheel with matching Original Equipment Manufacturer spare tire identical to standard equipment with the trim level of the delivered vehicle.

b. If full spare is not available due to space or manufacturer standards, an alternative shall be provided and noted on quote provided.

4.5.13 Floor Mats

a. O.E.M. floor mat sets installed in all seating rows where the vehicle comes with carpeted floors.

b. Fixed driver floor mat

4.5.14 Arizona legal tinted glass

4.5.15 Minimum of 2 USB charging Ports

4.6 Specific Requirements for Trucks (when available)

4.6.1 Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW.

4.6.2 Skid plate package and anti-slip differential for four-wheel drive vehicles

4.6.3 Front tow hooks

5 Contractor's Responsibilities

Contractor shall be responsible for processing the registration, licensing, title and plating of all new vehicles ordered only if requested by the Eligible Agency.

6 Department's Responsibilities

The Eligible Agencies will provide final acceptance and approval of any equipment and services delivered

1. CONTRACT TERM

The term of any resultant contract shall commence on the effective day of award and shall continue for a period of twelve months (12) thereafter, unless terminated, cancelled or extended as otherwise provided herein.

2. CONTRACT EXTENSION

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

3. ELIGIBLE AGENCIES

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant contract, a university, political subdivision or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes §41-2632.

4. NON-EXCLUSIVE CONTRACT

This contract shall be for the sole convenience of the Department. The Department reserves the right to obtain like goods or services from another source when necessary. The Off-Contract Purchase Authorization and subsequent procurement shall be consistent with the Arizona Procurement Code.

5. ORDERING PROCESS

The Department shall issue a purchase order to the Contractor. Each purchase order must cite the contract number. This purchase order shall be the only document required for the Department to order and the Contractor to deliver the material and/or service.

Any attempts to represent any material and/or service not specifically awarded as being under contract is a breach of the contract and a violation of the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of but not limited to contract cancellation, suspension and/or debarment of the Contractor.

6. SHIPPING TERMS

Delivery shall be F.O.B. Destination to the location designated herein. Contractor shall retain title and control of all goods until they are delivered. All risk of transportation and related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The Department will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

7. DELIVERY

Contract prices shown for each vehicle include delivery cost within a sixty (60) mile radius of Phoenix. For the purpose of this contract, the address used for mapping the radius within Phoenix will be as follows:

Equipment services shop/ADOT
2225 S 22nd Ave, Phoenix, AZ 85009

Delivery costs for each county outside of the Phoenix area shall be indicated on Offer Response form.

This will be an added cost to the contract price.

Deliveries shall be completed in accordance with the requirements of the contract.

Delivery of the product does not constitute acceptance.

8. INSPECTION AND ACCEPTANCE

Each item delivered shall be subject to a complete inspection by the Department within 10 days after delivery. Inspection criteria shall include, but not be limited to, conformity to the specifications, workmanship, quality and materials.

If the delivered product is not accepted and returned for corrective action, an additional fifteen (15) calendar days shall be allowed for inspection of the corrected or replacement product.

The Contractor shall be responsible for the transport of the material to and from the Department for the correction of items or workmanship not in compliance with the specifications.

Product returned for corrective action may delay payment. Invoices will be processed for payment only after the product is accepted.

9. INVOICING and PAYMENT

Contractor shall submit all billing notices or invoices to the Eligible Agency or Co-Op Buyer at the address indicated on the applicable Order document.

Separate invoices are required for each shipment of product or delivery of service and shall include at a minimum:

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number
- Invoice Number and Date
- Date the items were shipped to the Department
- Applicable payment terms
- Contract Line Item Number
- Line Item Description or Item or Service
- Quantity Purchased

- Line Item Unit of Measure
- Price per Unit and Total per Unit
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes (as a separate invoice line item)
- Applicable Shipping/Freight Charges etc. (as a separate invoice line item) Materials only.
- Total Invoice Amount Due

Invoices not sent to the proper address, or not containing the necessary and required information may delay payment. A Contractor whose payments are delayed due to improper invoicing shall make no claim against the Department or the State for late or finance charges.

The Department will make every effort to process payment for the purchase of product within thirty (30) calendar days after the Department has conducted the necessary reviews, inspections and acceptance as described herein.

The department acceptance date will be the valid date for starting the thirty (30) calendar day payment period.

Payment due dates, including discount periods, will be computed from the date of acceptance or date of correct invoice (whichever is later) to the date the Department's warrant is mailed.

10. ESTIMATED USAGE

The Department anticipates considerable usage under this contract. The Department reserves the right to increase or decrease actual quantities ordered as circumstances may require. No guarantees are made concerning actual purchases under this contract.

11. PRICING

- 1 Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.
 - a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.
 - b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
 - c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
 - d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
 - e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.
 - f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

SPECIAL TERMS AND CONDITIONS

- g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order.

2 CONTRACTOR’S BEST PRICING: Supplier warrants that, for the term of the Contract, the prices and discounts set out in the Pricing Documents, including any subsequent agreed amendment to it (the “Contract Pricing”), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.

2.1 That price-plus-discount equivalence (“Contractor’s Best Pricing”) is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.2 If Contractor’s Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor’s Best Pricing for all sales related to the Contractor made after the date when the Contractor’s Best Pricing was first better than the Contract Pricing.

2.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor’s Best Pricing had been applied when it should have been) has been settled.

3 PRICING-ALL-INCLUSIVE: Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor’s offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor’s Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

4 LARGE VOLUME DISCOUNT PRICING: An Eligible Agency may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible Agency for large volume purchases.

5 A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice through a written contract amendment.

12. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be

clearly identified and justified. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The Department will determine whether the requested price increase or an alternate option, is in the best interest of the State. All pricing should reflect the minimum percentage of MSRP.

13. SAFETY STANDARDS

Items supplied under this contract shall comply with all current applicable safety standards and regulations including the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

14. WARRANTY

The Contractor warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.
2. At a minimum all equipment supplied under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum period of thirty-six (36) months from the date vehicle is placed in service.
3. This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot.
4. Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the state agency or political subdivision.
5. The written warranty shall be included with the delivered vehicles to the Eligible Agency. The warranty terms shall be stated on Attachment 3-A, where indicated. Failure to provide this general information may result in the offer being rejected.
6. Hybrid / Electric Vehicle Warranty: Hybrid-related components including catalytic convertor, electronic control unit, onboard emissions diagnostic device, high voltage battery, transmission, DC/DC convertor for hybrid vehicles shall be covered for 8 years/100,000 miles, battery for electric vehicles shall be 8/years/100,000 miles and bidder shall indicate limitation of warranty due to voltage and amps. The warranty terms shall be stated where indicated on Attachment 3-A. Failure to provide this general information may result in the bid being rejected.

15. CURRENT PRODUCTS

All products supplied under this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in the contract.

16. PRODUCT DISCONTINUANCE

In the event that a product or model is discontinued by the manufacturer, the Department at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request authorization to substitute a new product or model and provide the following:

1. A formal announcement from the manufacturer that the product or model has been discontinued.
2. Documentation from the manufacturer that names the replacement product or model.
3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.
4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
5. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

17. CONTRACT ADMINISTRATION

The Contractor shall contact the assigned Procurement Officer for guidance or direction in matters of contract interpretation or questions regarding the terms, conditions or scope of the contract.

18. NOTICES

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called “Notices”), shall be in writing and shall be sent by certified United States mail, return receipt requested, or by any other method that provides evidence of receipt, addressed to the party or parties to receive such notice as follows:

A. If intended for the State, to:

Arizona Department of Transportation, Procurement Group
1739 W. Jackson Street, MD 100P
Phoenix, Arizona 85007-3276

B. If intended for the Contractor, to the address as identified in the Contractor’s electronic vendor profile. Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt. Furthermore, such notice may be given by delivering personally such notice, if intended for the State, to the Arizona Department of Transportation, Procurement Officer and, if intended for the Contractor, to the person named on the Offer & Contract Award of this contract, or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

19. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY

This contract may be cancelled if Contractor or any subcontractors or others in the employ or under the supervision of the Contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on ADOT property.

Further, if the Contractor or any subcontractors or others in the employ or under the supervision of the Contractors or subcontractors are asked by an ADOT official to leave the ADOT property, they are advised that failure to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, "Criminal trespass in the third degree; classification."

20. INDEMNIFICATION CLAUSE

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor 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 Contractor 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. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

21. INSURANCE REQUIREMENTS

21.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

21.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way

warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

21.3 Minimum Scope and Limits of Insurance Contractor shall provide coverage with limits of liability not less than those stated below.

21.3.1 Commercial General Liability (CGL) – Occurrence Form

The Contractor shall furnish Certificate(s) of Insurance inclusive of the following requirements to the Department. Certificate(s) shall be received within 10 calendar days of notification of contract award by the Procurement Officer.

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving

not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

21.7 Verification of Coverage Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

21.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

21.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

21.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

21.8 Subcontractors Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

21.9 Approval and Modifications the Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

21.10 Exceptions In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

22. USAGE REPORT

The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

23. CONTRACT ORDER OF PRECEDENCE

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

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

24. LICENSES, PERMITS, CERTIFICATIONS

Contractor, at their expense, shall maintain in current status without any violations, complaints, or suspensions during the term of this contract all Federal, State and Local licenses, permits and certifications required for the operation of a business conducted by the Contractor.

25. CO-OP USAGE

Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

SPECIAL TERMS AND CONDITIONS

Contractor shall sell to Co-Op Buyers at the same price, and with the same lead times and other terms and conditions under which it sells to Eligible Agencies. With the sole exception of any legitimate additional costs for extraordinary shipping, or delivery requirements, if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

26. POST AWARD MEETING

At the discretion of the Department, the Contractor, at their expense, shall attend and participate in post award meetings as scheduled by the Procurement Officer.

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *“Attachment”* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *“Contract”* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *“Contract Amendment”* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *“Contractor”* means any person who has a Contract with the State.
- 1.5. *“Days”* means calendar days unless otherwise specified.
- 1.6. *“Exhibit”* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *“Gratuity”* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *“Materials”* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. *“Procurement Officer”* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *“Services”* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *“Subcontract”* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *“State”* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *“State Fiscal Year”* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona

Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- Federal Provisions
 - Special Terms and Conditions
 - Uniform Terms and Conditions
 - Statement or Scope of Work
 - Specifications
 - Attachments
 - Exhibits
 - Special Instructions to Offerors
 - Uniform Instructions to Offerors
 - Other documents referenced or included in the Solicitation
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the

State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.
- 3.11. Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. Applicable Taxes.
- 4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if

applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- 4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
 - 4.5.1. Accept a decrease in price offered by the contractor;
 - 4.5.2. Cancel the Contract; or
 - 4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') 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/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

- 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
- 7.2.2. Fit for the intended purposes for which the materials are used;
- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5. Compliance With Applicable Laws. The materials and services supplied under this

Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the

materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The

Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The following provisions include, 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 FTA Circular 4220 available at: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance> 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 Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

The Federal Terms and Conditions under this Contract shall be incorporated in any sub-contractor, or lower-tier agreement for any federally-funded task assignment / project awarded under this Contract.

2. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Department 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 Department, 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 Federal Funding Agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project.

Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) (5323(l)) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS AND REPORTS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor shall - provide the Purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also , pursuant to 49 C. F. R. 633.15, provide authorized FTA representative including any PMO Contractor access to Contractor's records and construction sites pertaining to a capital project, defined at 49 U.S.C. 5302(a)1, which is receiving assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Contractor shall provide the Purchaser, authorized FTA representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which receives FTA assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.00.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non- profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor shall provide the Purchaser, FTA, the US Comptroller General or their authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor shall retain, and shall require its subcontractors at all tiers, all books, records, accounts and reports required under this contract for a period of not less than five years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. TERMS OF THE MASTER AGREEMENT AND COMPLIANCE

Contractor shall at all times comply with all applicable Federal Funding Agency laws, regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, available at https://www.transit.dot.gov/funding/grantee-resources/sample-fta_agreements/fta-grant-agreements, between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment to this Master Agreement or the Underlying Agreement. To assure compliance the Recipient must take measures to assure that other participants in its Underlying Agreements (*e.g.*, Third Party Participants) comply. Contractor's failure to so comply shall constitute a material breach of this contract.

All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. In the event of additional funding provided by FHWA, the applicable requirements of the Stewardship Agreement, available at <https://www.fhwa.dot.gov/federalaid/stewardship>, between the Department and FHWA are incorporated by reference.

6. CIVIL RIGHTS REQUIREMENTS

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 Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Equal Employment Opportunity

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex(including sexual orientation and gender identity), age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements Federal Funding Agency 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, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.
3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided, modified only if necessary to identify the affected parties.

7. TERMINATION

Termination of the contract shall be in accordance with the Uniform Terms and Conditions, Section 9., paragraph 9.1 through 9.6.

8. DEBARMENT OR SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department, 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 49 CFR 29, 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.

8.1 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The Contractor agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and

(c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

(1) Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and

If the Department suspends, debars, or takes any similar action against a Third Party Participant or individual, the Department will provide immediate written notice to the:

- (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
- (b) FTA Project Manager if the Project is

- administered by an FTA Headquarters Office,
or
(c) FTA Chief Counsel.

9. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER

POLLUTION CONTROL ACT Clean Water

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Clean Air

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

10. BUY AMERICA

In any task assignment / project for construction, acquisition of goods, or rolling stock valued at more than \$150,000, the contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 65% domestic content for FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed a certification shall be rejected as

nonresponsive. This requirement does not apply to lower tier subcontractors.

11. BREACHES AND DISPUTE RESOLUTION

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Department. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the Department. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Department and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Department or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12. LOBBYING

The Contractor agrees to comply with the provisions of Title 31, U.S. C 1352 as

amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. 1601, et seq.] and (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits Federal funds from being expended by a recipient or any lower tier sub-recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to the Department.

Contractors who apply or propose/bid for an award of \$100,000 or more in value shall file the attached Lobbying Certification {01Lobbying Certification document} required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13. FLY AMERICA

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

14. ENERGY CONSERVATION

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

15. CONFLICTS OF INTEREST / EMPLOYMENT OF FEDERAL PERSONNEL

Contractors will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the Department or the Federal funding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent, any member of his immediate family, His or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. Department officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

16. COPYRIGHT AND PATENT

To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless ADOT against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of this contract performance or use by ADOT of materials furnished or work performed under this contract. ADOT shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

Copyrights pursuant to 23 CFR 420.121 (b): The Department, as a State DOT may copyright any books, publications, or other copyrightable materials developed in the course of the project, and does herein exercise that right. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patents pursuant to 23 CFR 420.121 (i): The Department, as a State DOT is subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

Standard Patent Rights required pursuant to 37 CFR 401.14:

(a) Definitions

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C.

2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(8) The term contractor means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

(b) Allocation of Principal Rights

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention

throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

(1) The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under

paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

(d) Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

(3) In any country in which the contractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Contractor and Protection of the Contractor Right to File

(1) The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic

subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest

(1) The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a

post-issuance submission, and supplemental examination.

(4) The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor.. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither

it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Contracts with Nonprofit Organizations

If the contractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the contractor;

(2) The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Federal agency may review the contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

17. RECOVERED MATERIALS

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

18. SAFE OPERATION OF MOTOR VEHICLES

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(1) Adopting and promoting 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, and

(2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.

b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:

(1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),

(2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, and

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(a) Safety. The Recipient 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 Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,

(b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

(c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

19. CERTIFICATION AND ASSURANCES

The FTA Certifications and Assurances are incorporated herein by reference. Upon award or contract renewal, the Contractor must agree to comply with the most current FTA Certifications and Assurances by signing and submitting the signature page provided by the Department. In the event FTA issues new Certifications and Assurances, the Department reserves the right to require submission of a new signature page agreeing to comply; to be added to the terms and conditions by Amendment. All such requests are a condition of continued award.

20. DISADVANTAGED BUSINESS ENTERPRISES

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program; and
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein, in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;

3. Liquidated damages;
4. Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding; and/or
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Commercially Useful Function (CUF): Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.

(B) Disadvantaged Business Enterprise (DBE): a for-profit small business concern which meets both of the following requirements:

(1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(C) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(D) Non-DBE: any firm that is not a DBE.

(E) Race-Conscious (RC): a measure or program focused specifically on assisting only DBEs, including women-owned DBEs.

(F) Race-Neutral (RN): a measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

(G) Small Business Concern (SBC): a business that meets all of the following conditions:

(1) Operates as a for-profit business registered to do business in Arizona;

(2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes

or use of American products, materials, or labor;

- (3) Is independently owned and operated;
- (4) Is not dominant in its field on a national basis; and
- (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(H) Socially and Economically Disadvantaged Individuals: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) "Women;"
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business

Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction. All proposers should contact the Department’s Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction industry. BECO contact information is as follows:

Arizona Department of
Transportation Business
Engagement and Compliance
Office 1801 W. Jefferson St.,
Ste. 101, Mail Drop 154A
Phoenix, AZ 85007
Phone (602) 712-7761
FAX (602) 712-8429
Email: contractorcompliance@azdot.gov Website: www.azdot.gov/bec

4.01 Mentor-Protégé Program:

The Department has established a Mentor- Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime contractors to provide certain types of assistance to certified DBE subcontractors. ADOT encourages contractors and certified DBE subcontractors to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling requirements of 49 CFR Part 23. For guidance regarding this program refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities. The program does not diminish the DBE rules or regulations, and participants may not circumvent these rules.

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the contractor uses a percentage of DBEs, as defined herein, to meet the contract specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract

on a prime contract that does not carry a DBE contract goal.

Prime contractors are encouraged to obtain DBE participation even if a DBE goal was not established on a contract.

The DBE provisions are applicable to all contractors including DBE contractors.

6.0 Certification and Registration:

6.1 DBE Certification:

Certification as a DBE shall be predicated on:

- (1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".
- (2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
- (3) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm's eligibility to participate in the DBE program.
- (4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at <http://www.azutracs.com>.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at <http://www.azutracs.com/>. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for

DBE certification as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that DBE firms selected by the contractor are able to perform the work.

6.2 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization of goals on projects, ADOT strongly encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The contractor may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward DBE participation.

SBCs can register online at the AZ UTRACS website.

The Department's registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that SBC firms selected by the contractor are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime contractors to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward DBE participation.

The Department encourages prime contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. In circumstances where the Department's offices are closed for all or part of the last day, the period extends to the next day on which the Department's offices are open.

10.0 Contractor and Subcontractor Requirements:

10.1 General:

Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

10.2 DBE Liaison:

The contractor shall designate a DBE Liaison responsible for the administration of the contractor's DBE program. The name of the designated DBE Liaison shall be included in the DBE Intended Participation Affidavit Summary.

11.0 DBE Goals

The Department has not established contract goals for DBE participation in this contract.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The contractor is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

11.1 Race Neutral Contract (With No DBE Goal)

The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts.

NO CONTRACT DBE GOAL HAS BEEN ESTABLISHED FOR DBE PARTICIPATION ON THIS CONTRACT.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The consultant is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at <http://www.azutracs.com/> a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime contractors and all subcontractors, including DBEs listed in the offer must be registered in AZUTRACS. Proposers may verify that their firm and each subcontractor is registered using the AZUTRACS website.

Proposers may obtain additional information at the AZ UTRACS website or by contacting BECO.

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subcontractors, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer's intentions to use the those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Offer submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Offer.

13.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with below.

Subcontracts:

- a. Sub-Contract Terms:

1. The Contractor agrees to execute a written Contract with all Subcontractors for work to be completed under this Contract. The executed Contract shall include Subcontractor's Scope of Work and all the Uniform Terms and Conditions set forth in this Contract.
 2. The Contractor shall provide electronic copies of signed subcontract agreements with all Subcontractors to ADOT Business Engagement and Compliance Office (BECO) by uploading them to the BECO's online DBE Contract & Labor Compliance Management System (**DBE System**) at <https://adot.dbesystem.com>. Subcontract agreements shall include all required assurances and required clauses as outlined in this Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.
 3. The Contractor may be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department.
- b. Sub-Contract Payments
1. Retention: If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the Department may retain under the prime contract. Retainage shall be paid to the subcontractor within 7 days of satisfactory completion of the work performed by the subcontractor.
 2. No Set-offs Arising from Other Contracts: If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.
 3. Partial Payment: The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the Department. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.
 4. Final Payment: The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.
 5. Payment Reporting: For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any

tier with a DBE material or service supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the Department's web-based DBE System. The DBE System can be accessed from the Department's BECO website. No later than fifteen calendar days after the Notice to Proceed is issued, the contractor shall log into the Department's web-based DBE System and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter them in the system. Reportable contracts shall be entered into the system no later than five calendar days after approval by the Department.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract by the last day of the month and the contractor shall actively monitor the Department's DBE System to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the DBE System between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract activity is reported to the Department. This includes all lower-tier Reportable Contracts, regardless of whether a DBE is involved or not.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the DBE System.

The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the DBE System.

For each Reportable Contract on which the contractor fails to submit timely payment information the Department will retain \$1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages

shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

Payment reporting requirements apply to all contracts, federal and non-federal funded.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the Department will retain \$1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

6. Completion of Work: A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the Department.
7. Disputes: If disputes arise regarding payment of subcontractors, the contractor shall immediately provide the ADOT Project Manager with a written, verifiable explanation if:
 - The contractor does not pay the full amount of any invoice from a subcontractor within seven days of receipt of a progress payment from the Department, or
 - The monthly estimate does not include all work claimed by a subcontractor to have been performed.

The Department will determine whether the contractor has acted in good faith concerning any such explanations. The Department reserves the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether termination requirements were met. The contractor shall implement and use the dispute resolution process outlined in the subcontract, as described in Uniform Terms and Conditions Paragraph, to resolve payment disputes.

8. Non-Compliance: Failure to make prompt partial payment or prompt final payment including any retention, within the time frames established in this contract, will result in remedies, as the Department deems appropriate, which may include, but are not limited to:
 - Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the

contract.

- (i) The Department will withhold two times the disputed dollar amount not paid to each subcontractor.
 - (ii) If full payment is made within 30 days of the Department's payment to the contractor, the amount withheld by the Department will be released.
 - (iii) If full payment is made after 30 days of the Department's payment to the contractor, the Department will release 75 percent of the funds withheld. The Department will retain 25 percent of the monies withheld as liquidated damages.
- Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more contracts within 24 months, the Department may, in addition, invoke the following remedies:
 - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors and vendors subject to the requirements outlined under "Liquidated Damages" above,
 - (ii) Terminate the contract for default in accordance with this Contract, and/or
 - (iii) Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding temporarily or permanently, depending on the number and severity of violation.
 - (iv) Reflect the contractor's performance in submitting payment reports and making subcontractor payments utilizing the Department's Vendor Performance Report.

14.0 Crediting DBE Participation:

14.01 General Requirements:

To count toward DBE participation, the DBE firms must be certified at the time of Offer submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

Credit is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation.

The contractor bears the responsibility to determine whether the DBE possesses the

proper contractor’s license(s) to perform the work and, if DBE credit is requested, that the DBE subcontractor is certified for the requested type of work.

The Department’s certification is not a representation of a DBE’s qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

A prime contractor may credit the entire amount of that portion of a contract that is performed by the DBE’s own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards DBE participation only if the DBE’s subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

14.02 DBE Prime Contractor:

When a certified DBE firm proposes on a contract/Task Assignment all the work that is performed by the DBE contractor or any other DBE subcontractors and DBE suppliers will count toward DBE participation.

14.03 Effect of Loss of DBE Eligibility:

For On-Call Task Assignment contracts, if a DBE is deemed ineligible (decertified) or suspended by ADOT or one of its UCP Partner Agencies in accordance with 49 CFR 26.87 and 26.88, the DBE may not be count toward DBE participation on a new Task Assignment, but may be considered for the contract/Task Assignment DBE participation if a subcontract or contract modification for the work to be completed on the Task Assignment was executed before the DBE suspension or decertification is effective.

A subcontract or contract modification for work on the task assignment means, any subcontract or agreement for the task assignment, which includes a specific ADOT TRACS/Project Number, defined scope, duration and budget for the work to be completed under the Task Assignment that is duly signed by the contractor/contractor and subcontractor/subcontractor.

When the contractor/contractor intends to use an ineligible DBE firm or ADOT made a commitment to use an ineligible DBE prime contractor/contractor, but a subcontract or Contract Modification for the work to be completed on the Task Assignment has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward DBE participation. When a subcontract or contract modification is executed with the DBE firm for the work to be completed on the Task Assignment before ADOT notified the firm of its ineligibility, the DBE's work on the Task Assignment may continue to be credited toward DBE participation for the firm's work.

14.04 Notifying the Contractor of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.05 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually

performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The Department will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the Department's decision.

Decisions on CUF may be appealed to the Chief Procurement Officer (CPO). The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the CPO. The appeal must be received by the CPO no later than seven calendar days after the decision of BECO. BECO's decision remains in place unless and until the CPO reverses or modifies BECO's decision. CPO will promptly consider any appeals under this subsection and notify the contractor of CPO's findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The BECO may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the BECO's staff will make every effort not to disrupt work on the project.

15.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such

remedy as the deemed appropriate as outlined in DBE Subsection 2.0 of these DBE provisions.

The Department reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The Contractor shall provide electronic copies of subcontract agreements with all Subcontractors by uploading them within 15 calendar days of an executed contract to the ADOT DBE System. Subcontract agreements shall include all required assurances and clauses as outlined in DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits of the Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

The Contractor shall be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department

16.0 Certification of Final DBE Payments:

DBE participation on the contract is measured by actual payments made to the DBEs. The contractor shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the Engineer no later than 30 days after the DBE completes its work.

The contractor will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the Engineer and BECO.

17.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

21. NONDISCRIMINATION

1. During the performance of this Contract, the Consultant, for itself, its Subconsultants, assignees and successors shall:

a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, disqualification from proposing on other Contracts or other remedy as the State deems appropriate.

b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.

c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

d. Post in conspicuous places available to employees and applicants for employment, the following notice:

"It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the- job training. Also, it is the policy to ensure and maintain a working environment free of harassment, intimidation and coercion."

e. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter USDOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

f. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or

22. AFFIRMATIVE ACTION

Contractor shall take the following affirmative action steps with respect to securing supplies, equipment, or services under the terms of this contract:

- a. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.
- b. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.
- c. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.
- d. Where the requirement permits, establish delivery schedules which will encourage participation by firms owned by socially and economically disadvantaged individuals.
- e. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration, as required.

23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed

with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

24. FEDERAL CHANGES

The Contactor and its sub-contractors shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

25. PROMPT PAY

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

26. FULL AND OPEN COMPETITION

In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be

conducted in a manner that provides full and open competition.

27. PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

28. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

29. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

30. NOTIFICATION OF FEDERAL PARTICIPATION

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

31. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

32. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General’s list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General’s list of ineligible contractors (<https://www.sam.gov/SAM/>) for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

33. OTHER CONTRACT REQUIREMENTS

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient’s Procurement Guidelines, available upon request from the Department.

34. COMPLIANCE WITH FEDERAL REGULATIONS

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT- required contractual provisions, as set forth in FTA Circular 4220, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

35. REAL PROPERTY

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

36. ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP)

Beneficiaries,” 70 Fed. Reg. 74087, December 14, 2005.

37. ENVIRONMENTAL JUSTICE

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42

U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

38. ENVIRONMENTAL PROTECTIONS

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

39. GEORGRAPHIC INFORMATION RELATED TO SPATIAL DATA

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

40. GEOGRAPHIC PREFERENCE

Pursuant to 2 CFR 200.319(b), all procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract).

41. ORGANIZATIONAL CONFLICTS OF INTEREST

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:

- (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:
 - (a) To that Third Party Participant or another Third Party Participant performing the Project work, and
 - (b) That impairs that Third Party Participant's objectivity in performing the Project work, or
- (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,
- (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:
 - (a) Any instances of organizational conflict of interest, or
 - (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and
- (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

42. VETRANS PREFERENCE

As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

43. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

44. AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

45. BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

46. 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.

44. BUS TESTING

The operator of the bust testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus

model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the Agency during the point in the procurement process specified by the Agency, but in all cases before final acceptance of the first bus by the Agency. The complete bus testing report requirements are provide in 49 C.F.R. § 665.11.

45. CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

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

46. E-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

EXHIBIT 1
Title VI/Non-Discrimination Assurances
Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- 1. Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the *Federal Highway Administration*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 4. Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration*, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration*, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
- 6. Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that **if** the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

EXHIBIT 2
Title VI/Non-Discrimination Assurances
Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin): and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 *et seq.*).

EXHIBIT 4
ON-SITE MANUFACTURER INSPECTION
COMPLIANCE CERTIFICATION

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)

As required by 49 CFR Part 663 Subpart C, the

_____ (Recipient's name)

Certifies that a resident inspector,

_____ (Name of inspector)

Was at

_____ (the manufacturer's)

manufacturing site during the period of manufacture of the buses,

_____ (description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)

As required by 49 CFR Part 663 Subpart C, the

_____ (Recipient's name)

Certifies that a resident inspector,

_____ (Name of inspector)

Was at

_____ (the manufacturer's)

manufacturing site during the period of manufacture of the buses,

_____ (description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

Signature _____ Date ____/____/____

Title _____

EXHIBIT 5 PRE-AWARD AUDIT AND CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
PRE-AWARD AUDIT (before issuing purchase order)		
Pre-award audit requirements. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.		Master Agreement; 49 CFR §663.21
49 CFR 661.13 Grantee Responsibility (a) The grantee shall adhere to the Buy America clause set forth in its grant contract with FTA Section 16. Preference for United States Products and Services. a. Buy America. Domestic preference procurement requirements of: (1) 49 U.S.C. § 5323(j), as amended by FAST Act, and (2) FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with FAST Act,		49 CFR §663.13
49 CFR §663.23 Description of pre-award audit. A pre-award audit under this part includes— (a) A Buy America certification as described in §663.25 of this part; (b) A purchaser's requirements certification as described in §663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in §663.41 or §663.43 of this part.		49 CFR §663.23
Met? Y/N (if NO 1a, 1 REQ'D)	(1) A Buy America certification: a) There is a letter from FTA which grants a waive OR	49 CFR §663.25
Met? Y/N (if NO 1a, 2 REQ'D)	b) ADOT reviewed documentation provided by the manufacturer which lists— 1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.	
Met? Y/N (2 REQ'D)	(2) A purchaser's requirements certification: a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's	49 CFR §663.27
Met? Y/N (1 REQ'D)	(3) A manufacturer's Federal Motor Vehicle Safety certification or Certification that Federal motor vehicle standards do not apply. a) If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	49 CFR §663.41
	a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.	49 CFR §663.43

**EXHIBIT 6
PURCHASER'S PRE-AWARD REQUIREMENTS
CERTIFICATION**

Subrecipient	
Description	
Program/Phase/Amount s	
Purchaser's Pre-Award Requirements Certification 49 CFR §663.27	
I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and	
I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's	
	Signature
	Date Signed

EXHIBIT 7 PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis* (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
(a) A post-delivery Buy America certification as described in §663.35 of this part;		
§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—		
(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended, or		
(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—		
(1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and		
(2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.		
(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; and		
Met? Y/N (3 REQ'D)	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall—	
	(1) Provide accurate records of all vehicle construction activities; and	
	(2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of:	
	(1) Ten or fewer buses; or	
	(2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or	
	(3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 7 PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis' (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
(a) A post-delivery Buy America certification as described in §663.35 of this part;		
§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—		
(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or		
(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—		
(1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and		
(2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.		
Met?/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; and	
	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall—	
	(1) Provide accurate records of all vehicle construction activities; and	
	(2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of:	
	(1) Ten or fewer buses; or	
	(2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or	
	(3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met?/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 8 PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		
Description		
Program/Phase/Amount s		
Purchaser's Post-Award Requirements Certification 49 CFR §663.37		
<p>I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and</p>		
<p>I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's</p>		
	Signature	
	Date Signed	



ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: One (1)
DESCRIPTION: New Vehicles Purchase	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. The solicitation due date has been changed from January 17, 2022 at 3:00 PM MST to January 19, 2022 at 3:00 PM MST.
2. All other terms, conditions and provisions of this solicitation remain unchanged.

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Two (2)
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. Specifications

The following sections are hereby modified to read:

- a. **Paragraph 2.1** “The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures.”
- b. **Paragraph 3.3.1, 3.5.1 and 3.5.2** is hereby removed.
- c. **Paragraph 4.1:** “The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency.”
- d. **Paragraph 4.1.1** is hereby removed.
- e. **Paragraph 4.4.1:** “The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency. “
- f. **Paragraph 4.6.1:** “ Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW.”

2. Special Terms and Conditions

The following sections are hereby modified to read:

- a. **Paragraph 11.1, (a-g):** “Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer’s rebates and any additional discounts available for that model/power-train combination.
 - a. Contractor shall provide a copy of manufacturer’s invoice to the ordering agency upon request. The manufacturer’s invoice shall be unaltered to include original pricing from the manufacturer.

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Three (3)
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. Specifications

The following sections are hereby modified to read:

- a. **Paragraph 3.5** “For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.”
- b. **Paragraph 3.10:** “For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer’s VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.”

- 2. All other terms, conditions and provisions of this solicitation remain unchanged.

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Two (2)
DESCRIPTION: New Vehicles Purchases	

- b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
- c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
- d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or “on the lot”.
- e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.
- f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.
- g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order. “

b. Paragraph 22 is hereby replaced with the following: “The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>”

c. Paragraph 25: Co-op administrative fee has hereby been removed.



ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Two (2)
DESCRIPTION: New Vehicles Purchases	

3. **Offer Response Form** is hereby replaced with Revision Two (2) attachment.
4. All other terms, conditions and provisions of this solicitation remain unchanged.

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	AMENDMENT NO.: Three (3)
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. Specifications

The following sections are hereby modified to read:

- a. **Paragraph 3.5** “For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.”
- b. **Paragraph 3.10:** “For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer’s VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.”

2. All other terms, conditions and provisions of this solicitation remain unchanged.



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Oct 10, 2023



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Oct 3, 2023



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< [Core Data](#)



Entity Information

MIDWAY CHEVROLET CO Active Registration

Unique Entity ID CAGE/NCAGE
QVAGZKUJ8KL1 51LT7

Expiration Date

Dec 22, 2023

Physical Address
**2323 W Bell RD
Phoenix, Arizona
85023-3202, United States**

Mailing Address
**2323 W Bell RD
Phoenix, Arizona
85023-3202, United States**

Purpose of Registration
All Awards

Version

Current Record

BUSINESS INFORMATION

Doing Business As (blank)	URL (blank)
Division Name Midway Chevrolet	Division Number (blank)
Congressional District Arizona 06	State/Country of Incorporation Arizona, United States

Registration Dates

Activation Date Dec 26, 2022	Initial Registration Date Apr 3, 2008
Submission Date Dec 22, 2022	

Owner	CAGE	Legal Business Name
-------	------	---------------------

Immediate Owner	(blank)	(blank)
Highest Level Owner	(blank)	(blank)

Entity Dates

Entity Start Date Jan 1, 1966	Fiscal Year End Close Date Dec 31
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Executive Compensation

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

SAM SEARCH AUTHORIZATION

I authorize my entity's non-sensitive information to be displayed in SAM public search results:

Yes

ENTITY TYPES

Business Types

Entity Structure	Corporate Entity (Not Tax Exempt)
Entity Type	Business or Organization
Profit Structure	For Profit Organization
Organization Factors	(blank)

Socio-Economic Types

Check the registrant's Reps & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the SBA's Dynamic Small Business Search if the entity completed the SBA supplemental pages during registration.

FINANCIAL INFORMATION

Payments

Accepts Credit Card Payments
Yes

Debt Subject To Offset [?](#)
No

ACCOUNT DETAILS

EFT Indicator **0000**
CAGE Code **51LT7**

POINTS OF CONTACT

Electronic Business

PAM FINKEN, CONTROLLER

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States

GREGG BALL

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202

United States

Government Business

GREGG BALL, GOV FLEET

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States

GREGG BALL

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States

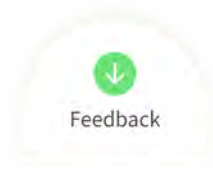
Past Performance

GREGG BALL, GOV FLEET

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States

GREGG BALL

Address
2323 W Bell RD
Phoenix, Arizona 85023-3202
United States



Our Website

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- [Our Community](#)
- [Release Notes](#)
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