

REQUEST FOR QUALIFICATIONS
FOR
FY 2020 CYMPO REGIONAL PROFESSIONAL SERVICES ON-CALL



SEPTEMBER 19, 2019

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PUBLIC NOTICE
REQUEST FOR QUALIFICATIONS
FOR
FY 2020 CYMPO REGIONAL PROFESSIONAL SERVICES ON-CALL

The Central Yavapai Metropolitan Planning Organization (CYMPO) is seeking a Statement of Qualifications (SOQ) from qualified Consultants capable of providing professional services for the FY 2020 CYMPO Regional Professional Services On-Call to form an On-Call list of Consultants to provide services to CYMPO.

Detailed SOQ requirements may be obtained by contacting the CYMPO Office at the address indicated below or may be downloaded from <https://www.cympo.org/employment-and-rfps/>. For further information, please submit questions in writing by email to Christopher.Bridges@yavapai.us no later than ten (10) working days prior to the closing date of **November 1, 2019**. Responses to questions will be posted on CYMPO's website at <https://www.cympo.org/employment-and-rfps/> no later than six (6) working days prior to the closing date of **November 1, 2019**.

SOQs will be accepted until **2:00** MST (Mountain Standard Time) on **November 1, 2019** at CYMPO, 1971 Commerce Center Circle, Suite E, Prescott, AZ 86301.

SCOPE OF SERVICES

Introduction

The purpose of this Request for Qualifications (RFQ) is to solicit Statement of Qualifications (SOQ) from Consultants to participate in forming an On-Call list to provide the Central Yavapai Metropolitan Planning Organization (CYMPO) with specialized services for CYMPO Regional Professional Services On-Call. The duration of the On-Call list will be sixty (60) months from the effective date of the contract with selected qualifying parties (hereinafter “Consultants” or “Contractors”). In addition to CYMPO, all other Council of Governments (COG) and Metropolitan Planning Organizations (MPO) in the State of Arizona may select Consultants from the final on-call list. Each COG or MPO is then responsible for initiating a professional services agreement (contract) with the selected individual Consultant firm(s). Each individual COG or MPO is responsible for meeting all applicable contractual requirements including all state and/or federal requirements that are applicable to COGs or MPOs.

The total budgeted amount available for each project will vary by project and year. The total amount available under each Task Order issued to qualified, approved Consultants under this RFQ will vary depending on the desired services. Projects include Project Assessments, including preliminary engineering and planning regarding, for example: transportation, roadways, bicycles and pedestrian facilities, road improvements, corridor studies, turn lanes and expansion of lanes and roundabouts regarding the same; regional traffic signal studies; local traffic signal timing or locations and expansion of Intelligent Transportation Systems (“ITS”); safety, crash, and traffic data analysis and recommendations; preparation of highway safety improvement program applications; and federal transportation competitive grants such as BUILD or INFRA Grants.

TASKS: A task or tasks may include some or all of a project.

Background

The Central Yavapai Metropolitan Planning Organization (CYMPO) is a Metropolitan Planning Organization (MPO) that serves as the regional agency for the central Yavapai County area. When CYMPO was formed in 2003, the elected officials recognized the need for long-range planning and policy development on a regional scale. They realized that many issues such as transportation and air quality affected residents beyond the borders of their individual jurisdictions.

CYMPO was founded in the spirit of cooperation. CYMPO members believe that by uniting, they can solve common problems, take an active role in long-range regional issues and address concerns that affect all of the surrounding communities.

CYMPO is the designated metropolitan planning organization (MPO) for transportation planning in the central Yavapai County region. CYMPO also has been designated by the Governor to serve as the principal planning agency for the region in a number of other areas, including air quality, water quality management and solid waste management. In addition, through an Executive Order from the Governor, CYMPO develops population estimates and projections for the region.

Purpose of the On-Call Consultant List

The intent of this program is to enable CYMPO staff to augment existing resources by forming a pool of qualified Consultants to provide specialized services that are required for executing tasks and projects in identified areas (“Task Orders”). To expedite the delivery of these Consultant services, CYMPO will

preselect an On-Call list of qualified Consultants to participate in the FY 20 CYMPO Regional Professional Services On-Call.

It is anticipated that the selected Consultants will utilize state-of-the-art engineering and planning tools in executing the Task Orders. All third-party software and programming languages used for the various tasks shall be agreed upon in advance. All deliverables and related information, including data and software, shall become the property of CYMPO (or the COG/MPO conducting the work).

Required Consulting Services and Anticipated Projects

Consultants may qualify for the On-Call list with the appropriate level of qualifications and experience for each firm and individual staff to be included as part of the Consultant team as detailed in this RFQ.

Areas of Expertise

Consultants may qualify in one or more of the following Areas of Expertise. Statements of Qualification (SOQs) must clearly indicate each area of expertise being offered.

A. Area of Expertise: Transportation Planning (Shall NOT Exceed 15% Design Level)

The Consultant will demonstrate expertise in all or some of the following [examples]:

- 1) Project Assessments with Preliminary Design
- 2) Traffic Data Collection and Analysis
- 3) Safety Data Collection and Analysis
- 4) Mobility Management
- 5) Transit
- 6) Intelligent Transportation Systems
- 7) Roadway
- 8) Bicycle and Pedestrian Facilities
- 9) Highway Safety Improvement Program (HSIP)
- 10) Traffic Signal Timing Analysis and Planning
- 11) Roundabout
- 12) Environmental
- 13) Public Education
- 14) Other examples see Anticipated Projects Below

B. Area of Expertise: Grant Writing

The Consultant will demonstrate expertise in all or some of the following [examples]:

- 1) Better Utilizing Investments to Leverage Development (BUILD)
- 2) Infrastructure For Rebuilding America (INFRA)
- 3) Highway Safety Improvement Program (HSIP)
- 4) Advanced Transportation and Congestion Management Technologies Deployment (ATCMTD)

Anticipated Projects

The following list provides a **sample** of the types of Task Orders that may be issued under a Task Order. The list is by no means mutually exclusive or all inclusive.

- Robert Road TI – Project Assessment (PA)
- SR69/SR169 Intersection (PA)
- SR 89/89A dual on-ramp (PA)
- Pioneer Parkway/Willow Creek Road Intersection (PA)
- SR69 Corridor Plan (Automated ITS Planning)
- SR69 Corridor Plan (Widening Walker Rd to Fain Road (PA)
- Great Western TI (PA)
- SR89A Widening SR89 to Fain Rd/SR69 (PA)
- Great Western SR89A to SR89/Chino Extension (PA)
- SR89 Road 3N to 5N (PA)
- SR169 widening SR69 to I-17 (PA)
- Willow Creek Road (ITS Improvements)
- Willow Creek Road Widening (PA)
- Willow Lake Road Widening (PA)
- Regional Traffic Signal Timing Analysis/Planning
- Glassford Hill Road (ITS Improvements)
- Glassford Hill Road Widening (PA)
- Glassford Hill Road TI Improvements (PA)
- Transit Planning
- Coordinated Public Transit/Human Services Transportation Plan Update
- Mobility Management Planning
- Traffic Data Collection and Analysis/Planning
- Safety Data Collection and Analysis/Planning
- Long Range - Regional Transportation Plan
- Highway Safety Improvement Program Project Applications
- Traffic Counting and Analysis

Funding and Payment Limits and Qualifications on Federal Procurement Rules

1. Funding available to be expended and paid for a given Project or Task is controlled and limited by the more restrictive provisions applicable to CYMPO and the individual Arizona COGs and MPOs.
2. There is no commitment to expend the full sums available for a Project or Task on such Project or Task, or to utilize a single qualified party for such Project or Task.

STATEMENT OF QUALIFICATIONS (SOQ) REQUIREMENTS AND CONTENT

It is required that the SOQ include the following items in the same order as they are listed below. Failure to provide the requested information may result in rejection of the proposal. Brief and concise submittals are encouraged. The total number of pages must not exceed **15 double-sided pages**, entirely on letter size (8.5 x 11 inches), excluding the cover letter, table of contents, résumés, tabs, appendices, and forms. Blank pages are not included in the total page count. Font size shall be 12 point or greater and side margins will be one-half (1/2) inch or greater and top and bottom margins will be one (1) inch or greater.

The outside packaging of the submittal must be clearly marked with the title "On-Call Consulting Services SOQ," the SOQ Due Date, and the name of the Consultant. The submittal must be enclosed in a sealed box or envelope, regardless of delivery method.

1. **Identification.** A cover letter or equivalent which includes:
 - a. The title of this solicitation.
 - b. Consultant's name and business address.
 - c. The name, title, mailing address, and telephone, fax numbers and email of the Consultant's contact.
 - d. Signature from a representative or officer authorized to bind the Consultant.
2. **Table of Contents.**
3. **Organization and Approach.** A brief statement describing the Consultant's organization and outlining its approach to completing the work required for the range of projects included in this solicitation. This statement should briefly illustrate the Consultant's overall understanding of specific areas of expertise and experience regarding the anticipated projects listed above and services offered under item 5 below.
4. **Background of Firm.** Background information regarding Consultant, including:
 - a. Number of employees (by type of professional expertise and managerial role in the consultation).
 - b. Length of time the Consultant has been in business.
 - c. Number of affiliated offices (if applicable).
5. **Range of Services Offered.** Identification of the specific services that the Consultant is qualified in and seeks to provide to CYMPO. Related services may be offered in addition to those referenced above in the Section titled "Areas of Expertise." The Consultant does not have to submit a response to all the required areas of expertise and anticipated projects listed to be favorably considered. This information must be provided in a spreadsheet format, clearly identifying the firm's role and the role of any Subconsultants which Consultant proposes to utilize for specified categories of work and anticipation of DBE participation if applicable. Therefore, all SOQs should include sufficient personnel resources for carrying out all types of anticipated work in each area of expertise offered.
6. **Recent Examples and References.** Consultant's recent experience in performing work similar to that anticipated herein. This description shall include the following:
 - a. Date of the project.

- b. Name and address of client organization.
 - c. Name and telephone number of the individual in the client organization that had management responsibility for the project.
 - d. Brief description of the project.
 - e. Consultant team members involved and their roles.
7. **Individuals and Expertise.** A complete listing of all individuals and the individual's qualifications and education to be included under each area of expertise, specifying their level of participation in each of the areas of expertise identified in item five (5) above. This information must be provided in a spreadsheet or tabular format with Subconsultants listed separately. Project managers on assignments that involve traffic engineering elements must be a currently registered engineer in Arizona.
8. **Résumés.** Résumés of each person listed in item seven (7) above, indicating education and experience relevant to the areas of expertise. Include abstracts of previously completed similar projects.
9. **Subconsultants.** The name, address, telephone number, and primary contact for Subconsultants Consultant would expect to utilize to provide the services under Item #5 above, particularly with regard to the Projects described in the Scope of Services. For each Subconsultant, include résumés of the individuals to be assigned to the project and at least two (2) references which include:
- a. Date of the project.
 - b. Name and address of client.
 - c. Name and telephone number of the individual in the client organization that had management responsibility for the project.
 - d. Relevance to this SOQ.
 - e. Brief description of the project.
10. **Additional Information.** Any additional information that the Consultant believes would be useful to CYMPO in evaluating the Consultant's SOQ.
11. **Rules of Professional Conduct Certification Statement.** A signed statement, located on the last page of Appendix A, certifying that Consultant will comply with, in all respects, the rules of professional conduct set forth in A.A.C. R4-30-301 (Appendix A), which is the official compilation of Administrative Rules and Regulations for the State of Arizona.
12. **Information Form.** A completed Consultant's/Proposer's Information Form (Appendix B) and, if applicable, one for each for each Subconsultant proposed for this project.

By signature on the Proposers Information Form, the Consultant certifies that:

- a. The submission of the offer did not involve collusion or other anti-competitive practices.
- b. The CONSULTANT will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
- c. The CONSULTANT has not given or offered to give and does not intend to give at any time hereafter State or Federal law including any economic opportunity, future employment, gift,

loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer.

- d. Failure to sign the offer, or the falsity of a material statement in a signed offer, shall void the submitted offer or any resulting contracts, and the CONSULTANT may be debarred.
13. **Debarment and Suspension Certification.** As required by 49 CFR 29 (Debarment and Suspension), certification of Consultant's eligibility to receive Federal funds and a copy of such certification for which may be furnished to ADOT or other government entities. A certification to this effect is included in this RFQ as Appendix C and must be submitted by Consultant for Consultant to be considered responsible and their SOQ to be considered responsive.
14. **Conflict of Interests.** Each Consultant shall document within its proposal any potential conflicts of interests. A conflict of interest shall be cause for disqualifying a Consultant from consideration. A potential conflict of interest includes, but is not limited to:
 - a. Accepting an assignment where duty to the client would conflict with the Consultant's personal interest, or interest of another client.
 - b. Performing work for a client or having an interest which conflicts with this contract.
 - c. Employing personnel who worked for CYMPO or one of its member agencies within the past three years.
 - d. All relationships with CYMPO and/or any employees of CYMPO.
 - e. **No member, officer, or employee of the CYMPO either during his or her tenure or for one (1) year thereafter shall have any interests, direct or indirect, in this contract or the proceeds thereof.**
15. **Confidential Portions Identification.** In accordance with Arizona Administrative Code R2-7-103, Consultant may designate as confidential portions of a SOQ. A summary index of any such designation must be included in the Table of Contents or cover letter in the SOQ documents. If CYMPO determines to disclose the information provided, CYMPO shall inform the Consultant in writing of such determination prior to such disclosure.
16. **Anti-Lobbying:** CYMPO complies with the provisions of Section 1352 of Title 31, U.S. Code (Public law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11 and 23 CFR 630.112(c)(5). That 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, amendments or modification of any Federal contract, grant, loan or cooperative agreement.
17. **DBE Requirements.** On-Call DBE Commitment Form 3204PS must be completed and returned with this SOQ. The form can be found at the following link:
<https://azdot.gov/business/business-engagement-and-compliance/lpasubrecipient/contract-forms-specs>

Consultant will be required to comply with all applicable DBE requirements, most particularly those set forth in Appendix E hereto.

The On-call Contract and Task Order will include any DBE Program Compliance Required Activities Number and will be subject to the requirements set forth in Appendix E.

A DBE goal of 0.00% has been established and is applicable to the FY 2020 CYMPO Regional Professional Services On-Call as a whole.

~~A DBE goal is expected to be established applicable to each Task Order and will, thus, apply to the On-call Contract.~~ The applicable DBE terms are found in Appendix E- Participation by Disadvantaged Business Enterprises. The Consultant is encouraged to obtain DBE participation above and beyond the goal in that contract. The DBE goal applies to every Task Order issued under the On-Call Agreement.

The Consultant is required to adhere to the goal/commitment made to utilize certified DBEs as indicated in the firm's Statement of Qualifications (SOQ) or the DBE Intended Participation Affidavits Form for each DBE and DBE Intended Participation Affidavits Summary Form submitted with each approved Task Order, or subsequently agreed to by the State during negotiations. The State, at its discretion and on a case-by-case basis, may waive the above limitations.

In order to be placed on the On-Call list, in addition to all other pre-award requirements, all CONSULTANTS are required to certify on the DBE Assurance On-call form provided here with that:

The Consultant will meet any established DBE goal or will make good faith efforts to meet the goal for the Task Order and that arrangements with certified DBEs have been made prior submission of the SOQ and will be in place for any Task Order cost proposal submission;

and

The Consultant will meet the established DBE goal or make good faith efforts to meet the goal on each Task Order assignment associated with the On-Call contract and that arrangements with certified DBEs have been made prior to Task Order assignments proposal submission.

Failure to affirmatively make this declaration/certification in the manner outlined in the Request for Qualifications (RFQ) furnished by CYMPO will cause a Consultant's SOQ to be considered as non-responsive.

18. **Bidders/Proposers List.** Email contact information for confirmation of completed SOQ must be included in the Consultant's SOQ.
19. **Acknowledgment of Compliance with Non-Discrimination Assurances.** Consultant agrees that Consultant will comply with all applicable terms of Appendix D-Title VI Agreement/Contract requirements in submitting its SOQ and all provisions of Appendix D are included in the On-call Contract.
20. **DBE Submission requirements for Task Order.**

Prior to Task Order execution, the Consultant is required to submit the following documents certifying that:

- a. The Consultant will meet the established Contract DBE goal for the Task Order by providing a [DBE Intended Participation Affidavit Summary Form](#) and a completed [DBE Intended Participation Affidavit](#) for each DBE Subconsultant working on each Task Order. Forms shall be submitted with the Cost Proposal for each Task Order in which the firm indicates it will meet the DBE goal.

OR

- b. The Consultant has made good faith efforts (GFEs) to meet the DBE goal for

the Task Order but did not succeed in achieving the DBE goal by providing documented good faith efforts on the [Certification of Good Faith Efforts form](#). The good faith efforts form and supporting documents shall be submitted with the Cost Proposal for each Task Order in which the firms is unable to meet the contract DBE goal.

TASK ORDERS WILL NOT BE EXECUTED IF ONE OF THE ABOVE CONDITIONS ARE NOT MET AND/OR THE CONSULTANT FAILS TO SUBMIT THE REQUIRED DBE PARTICIPATION FORMS FOR EACH TASK ORDER COST PROPOSAL.

RECEIVING GOOD FAITH EFFORT APPROVAL ON SOME TASK ORDERS DURING THE COURSE OF THE CONTRACT DOES NOT RELEASE THE CONSULTANT FROM ITS OBLIGATION TO MEET THE OVERALL DBE GOAL ON THE CONTRACT.

DBE utilization on all Task Orders coupled with Good Faith Effort approval of Task Orders must add up to meeting the overall contract goal at the end of the contract unless the Department determines that the size and scope of Task Orders and the number of Good Faith Effort approvals for various Task Orders did not make it feasible for the Consultant to meet the overall DBE goal on the contract. In order to help ensure that the overall DBE goal is met at the end of the contract, when feasible, Consultants are encouraged to maximize DBE utilization beyond the stated DBE goal on each Task Order when subcontracting opportunities makes this feasible in order to help off-set instances when Good Faith Efforts are approved on smaller or specialized Task Orders with no subcontracting opportunities

PROPOSER'S CHECKLIST

Before submitting an SOQ, please make sure all required information as specified in "Statement of Qualifications (SOQ) Requirements and Content" have been included. The requirements include the following:

1. One (1) printed hard copy and one (1) electronic PDF format submission on a compact portable drive of the SOQ with a maximum of **fifteen (15) double-sided** pages. The PDF format submission must be an exact duplicate of the hard copy submission.
2. Cover letter signed by a party authorized to bind the entity submitting the SOQ.
3. Description of the Consultant's organization and approach to work required by the solicitation.
4. Range of services offered including recent examples with references for each area of expertise the Proposer is qualified in.
5. Complete list of all individuals to be included under each area of expertise with résumés.
6. Signed certification of Consultant's compliance with the rules of professional conduct set forth in A.A.C. R4-30-301.
7. Signed Proposer's Information Form for Prime Consultant and for any proposed Subconsultants. Must be signed by a party authorized to bind the entity submitting the proposal.
8. Documentation of any potential conflicts of interest.
9. Debarment and Suspension Certification form.
10. Proposers List completed in AZ UTRACS. Email confirmation of completed Proposers must be included in SOQ.
11. SOQ submitted not later than **November 1, 2019 2:00 p.m. (MST)**.
12. Completed and signed DBE forms:

On-Call DBE Commitment Form 3204PS
13. Signed Acknowledgment of Compliance with Request for Qualifications (RFQ) Requirements and Applicable Law, attached hereto as Appendix F.

STATEMENT OF QUALIFICATIONS (SOQ) DELIVERY AND OPENING

1. One (1) printed hard copy and one (1) electronic PDF format submission on a compact portable drive of the SOQ in a sealed box or envelope must be submitted by **2:00 p.m.** Mountain Standard Time (MST), **November 1, 2019**, to the following address:

Central Yavapai Metropolitan Planning Organization
Attention: **Christopher Bridges**
1971 Commerce Center Circle
Prescott, AZ 86301

Timely receipt of SOQs shall be determined by the date and time the SOQ is received at the above address. No late submissions, facsimile, or electronic submissions shall be accepted after the time indicated. Hand delivery is therefore encouraged to assure timely receipt. SOQs received after the deadline shall be stamped for time and date and returned unopened to the Consultant.

All material submitted in response to this solicitation becomes the property of CYMPO (or the COG/MPO conducting the work) and shall not be returned. After contract award, the SOQ shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the Consultant designates a portion of its SOQ as confidential, it shall isolate and identify in writing the confidential portions in accordance with Arizona Administrative Code R2-7-103 and shall be included in the SOQ. Upon receipt of written notification, CYMPO will review any portions of the SOQ that the Consultant considers to be confidential and will then make a determination on what should be released. CYMPO will also notify the Consultant in writing of the determination and provide an opportunity for the Consultant to respond to the decision prior to releasing the SOQ.

2. Any questions regarding this RFQ should be submitted in writing to **Christopher Bridges** by email at Christopher.Bridges@yavapai.us not later than ten (10) working days prior to the closing date of **November 1, 2019**. Responses to questions submitted will be posted on the CYMPO Web site at <https://www.cympo.org> under "RFPs and RFQs" not later than six (6) working days prior to the closing date of **November 1, 2019**. Additional information regarding CYMPO activities, including Committee meeting schedules, may be found on the CYMPO web site <https://www.cympo.org>.

PHASE 1 – INITIAL SOQ EVALUATION AND SELECTION PROCESS

1. **Evaluation Criteria.** All SOQs submitted will be evaluated by a group consisting of CYMPO staff and member agencies, as well as staff from Arizona's COGs and MPOs. Evaluation criteria include, but are not limited to, the following:
 - a. Demonstration of the overall understanding of the goals and objectives of this solicitation.
 - b. Clarity of SOQ, realistic approach, technical soundness, and enhancements to elements outlined in this RFQ.
 - c. Education and relevant experience of personnel in providing similar services. Only those personnel that will be assigned to work directly on each area should be cited.
 - d. Proven track record in the areas of expertise sought. Consultant should clearly identify the principal people who worked on past projects and the amount of time they devoted to the work effort.
 - e. Availability of key personnel throughout the project effort.
 - f. Ability and commitment to deliver required products and services, meet all deadlines for submitting associated work products, and ensure quality control.
 - g. Recognition of work priorities and flexibility to deal with change and contingencies.
 - h. Demonstrated DBE Compliance.
2. **References.** As part of its final selection, CYMPO reserves the right to contact a reasonable number of references from among those provided by the Consultant.
3. **Interviews. No formal presentations by proposing Consultants are hereby solicited or required.** Based on the above evaluation criteria, selected firms submitting SOQs may be interviewed prior to the selection of a consultant. Such interviews are expected to be informal without formal presentation and are expected to be by telephone. In-person interviews may be scheduled within thirty (30) days after the RFQ Submission Deadline. It is anticipated that firms selected for interviews will be contacted approximately one (1) week prior to the in-person interview date. CYMPO strongly suggests that the project manager and key members of the Consultant team be present at the in-person interview. Additionally, CYMPO may elect to re-interview one or more selected Consultants prior to using a Task Order.
4. CYMPO may conduct discussions with Consultants who submit SOQs determined likely to be selected for the On-Call list.
5. CYMPO reserves the right to:
 - a. Cancel this solicitation.
 - b. Reject any and all SOQs and re-advertise.
 - c. Select any and all SOQs that will, in its judgment, best meet CYMPO's needs.
 - d. Negotiate a contract that covers selected parts of a proposal, or a contract that will be interrupted for a period, or canceled, for lack of funds.
 - e. Conform with the State of Arizona Public Records law(s).

6. **Contact with CYMPO or CYMPO Member Agency Employees.** Except for submissions and interviews provided herein, all firms interested in this RFQ (including the firm's employees, representatives, agents, lobbyists, attorneys, and Subconsultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process. This policy is intended to create a level playing field for all potential firms, and to protect the integrity of the selection process. All questions on this selection process should be addressed to the authorized representative at CYMPO.

PHASE 2 – QUALIFICATIONS MATRIX AND CONTRACT

1. **Qualifications Matrix.** A qualifications matrix listing all personnel that are expected to be made available for work performed under the On-Call Contract shall be provided by selected Consultants. Information to be listed on the matrix includes the name of all personnel, staff classification or job title, years of experience, and any relevant qualifications or certifications. Raw hourly rates for each personnel and overhead rates for the Consultant will also be included. Such matrixes will be updated in the event that Consultant has a change in available personnel or Subconsultants within ninety (90) days and, in any event, if the Consultant receives a request for technical and pricing proposal from CYMPO.
2. **CYMPO Contract.** Selected Consultants shall enter into a CYMPO On-Call Contract to provide services in areas for which they have been qualified.
3. **Contract Term.** The terms of any resultant On-Call Contract(s) for CYMPO shall commence on the contract effective date and may continue up to five (5) years, unless terminated, cancelled, or extended as otherwise provided herein.
4. **Contract Extension.** CYMPO reserves the right to unilaterally extend the period of any resultant contract for thirty-one (31) days beyond the stated expiration date. In addition, by mutual written agreement, any resultant contract may be extended for supplemental periods as approved by CYMPO.
5. **Insurance.** CYMPO requires that the Consultant and, if applicable, Subconsultants, maintain insurance coverages appropriate to any executed Task Orders/contracts. Insurance required by CYMPO must be met following award of a contract, and prior to Consultant and, if applicable, Subconsultants, beginning work on a task order.

PHASE 3 – PROJECT INITIATION

1. **Request for Technical and Pricing Proposal.** To initiate a project or task (a “Task”) hereunder, CYMPO will provide a brief scope of services for the Task Order and request a technical and pricing proposal to be submitted to CYMPO within two (2) weeks of receipt by applicable On-Call Consultant (a “Task Order Request”). The proposal shall include the project scope of services, required schedule, a list of deliverables, and pricing. Under CYMPO Procurement Policy, CYMPO may request such information from several qualified Consultants and, for all projects that are estimated at a minimum of \$5,000, but not to exceed \$50,000 in total cost, a minimum of three (3) qualified Consultants shall be invited to submit proposals. For projects over \$50,000 all consultants on the On-Call list will be invited to submit a proposal. Other COGs or MPOs utilizing this On-Call list follow their own procurement policies.
2. **Response.** Responses to a Task Order Request shall be in writing and submitted to CYMPO’s Project Manager designated in the Request. Pricing submitted shall be in the format specified by CYMPO and will include listing of proposed staff, staff position description (i.e., Project Manager, Systems Integrator), hourly rate according to the rate schedule for the period to be covered by the project in question, estimated number of hours, and anticipated reimbursable expenses. Items shall be totaled and unless otherwise specified by CYMPO, the total shall be a NOT TO EXCEED amount. CYMPO will finalize the scope of services and project pricing in consultation with the CONSULTANT and other stakeholder agencies with direct involvement in the project.
3. **Task Order Contract.** Upon finalization of the scope of services, cost, and project schedule, a Task Order shall be executed and the Task Order, including attachments thereto will become a portion of the On-call Contract which will be effective upon full execution of the Task Order. The On-call Contract attached hereto and by submission of a SOQ, Consultant agrees to the terms thereof including alteration or modification of the terms as necessary to comply with applicable Federal or State statutes, rules and regulations. The Consultant shall commence work upon an approval notice from the Project Manager.
4. **Task Order Duration.** Duration of services for projects to be completed under this contract may vary from a few weeks to several months and will be dependent on the scope of services of each project. The schedule and duration will be as specified in the executed Task Order for each project. The Consultant shall submit any changes to the project schedule in a format specified by CYMPO.
5. **DBE Participation.** The Consultant shall comply with the Department’s (ADOT) Disadvantaged Business Enterprise (DBE) program on a Task-Order-by-Task-Order basis if a DBE goal has been established on this contract. If no DBE goal has been set on this Contract, the Consultant is encouraged to voluntarily obtain DBE participation on this Contract to help ADOT meet its overall DBE goal. ADOT is required to collect data on all DBE participation and report to FHWA, whether or not there is a stated DBE goal on the contract. Prime Consultants should refer to the PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES section of this RFQ for information on DBE reporting requirements. Accurate reporting is needed to track DBE participation.
6. **Vendor Information.** Prior to issuance of a Task Order and subsequent payment, the selected On-Call Consultant shall have a completed Federal Form W-9 and Proof of Insurance on file with CYMPO. No payments shall be made until the forms are on file.
7. **Performance Standards.** CYMPO will rely and Consultant shall perform in accordance with the On-call Agreement for Task Order (“On-call Agreement”) attached hereto as completed and modified for the Task Order which Consultant is to perform.

The Consultant agrees that Consultant’s employees shall not divulge, or release data or information developed obtained in connection with the performance of the resulting contract,

except as the same is protected to Consultant by the provisions herein or are made public by CYMPO, ADOT, FTA or FHWA.

8. **Release of Information.** The Consultant agrees that Consultant's employees shall not divulge or release data or information developed or obtained in connection with the performance of the resulting contract, except as the same is protected to Consultant by the provisions herein or are made public by CYMPO, ADOT, FTA or FHWA.
9. **Consultant Selection from Multiple Contracts.** CYMPO makes no guarantee as to the amount of work to be assigned to any consultant and may exercise its option not to utilize the services requested herein. CYMPO is under no financial obligation to any selected Consultant unless CYMPO issues a Task Order for a specific requirement.

Experience of the Consultant, qualifications, education, and experience of the staff will be the criteria used to make a determination as to which Consultants will be contacted for consideration to perform required services. Each Consultant contacted will have the opportunity to indicate their availability and prepare a staffing plan and detailed approach for the desired work assignment. If substitution of staff is required after commencement of assignment, the replacement must possess comparable qualifications and must receive prior written approval from CYMPO.

CYMPO will select the Consultant(s) which best addresses CYMPO requirements. CYMPO will attempt to reach an agreement with the most qualified Consultant in CYMPO's opinion. If CYMPO cannot reach an agreement with the selected Consultant, CYMPO may choose to select another Consultant from the On-Call pool or rebid the required services.

10. **Changes in Services.** Changes in scope, character, or complexity of the services under the On-call Contract and Task Order will be limited as per the terms of that Contract and the purposes of the Task Order. Changes in services may result in the contract being cancelled and rebid. In this event CYMPO shall promptly provide Consultant notice of the same and this the Agreement shall be cancelled upon receipt of notice in the manner applicable to a termination for convenience.
11. **Project Administration and Project Management.** The CYMPO Project Manager is Christopher Bridges, Administrator, or such other person as CYMPO may hereafter designate. The CYMPO Project Manager will provide general direction as necessary and will be responsible for decisions pertaining to work under the contract.
12. **Payment.** The Consultant will be paid based on the negotiated scope of services, budget, schedule, and fee as provided in the On-call Agreement but will be subject to prompt payment and objection as provided in the Prompt Payment Attachment on the On-call Contract.

Progress reports and invoices shall be submitted monthly for reimbursement of costs incurred in conformance with the project budget. The progress reports shall document services by each work task, the hours worked, the hourly rate of each person, and other direct expenses. All costs incurred in preparing invoices shall be included in the overhead rate. CYMPO will provide to the Consultant the format to be used for invoices and progress reports.

13. **Travel.** Travel will be subject to State policies for Travel and only actual expenses are reimbursable, within maximum reimbursement limits as described and established by the rates for travel: A.R.S. 38-621 through 38-627, Reimbursement for Expenses; State of Arizona Accounting Manual (SAAM), Section 50.65, Vendor Travel, Section 50.95 Reimbursement Rates available at <https://gao.az.gov/publications/saam>.

14. Invoicing Requirements. Invoices shall be submitted electronically to:

Allison.McCarthy@yavapai.us or such other person as CYMPO may designate

Or delivered in person or sent by mail addressed as follows:

Central Yavapai Metropolitan Planning Organization
Attention: Accounts Payable
1971 Commerce Center Circle, Suite E
Prescott, AZ 86301

All invoices submitted must be signed. This RFQ and any SOQ are subject to the terms of the Administrative Requirements set forth in this RFQ.

ADMINISTRATIVE REQUIREMENTS

1. The Consultant agrees and understands that the On-Call Contract shall not be construed as an exclusive arrangement and further agrees that CYMPO may secure similar services with other contracted sources at any time in conjunction with, or in replacement of, the proposed services.
2. The basis for payment to the Consultant for services rendered shall be based on the negotiated scope of services, budget, approved rate schedule for the prime Consultant and/or any Subconsultants, and fee.
3. An audit examination of the Consultant's records may be required.
4. During the course of the project, a progress report is required with each invoice on a monthly basis. Each report shall include a comprehensive narrative of the activities performed during the month, an estimated percent complete for each project task, monthly and cumulative costs by task, activities of any Subconsultants, payments to any Subconsultants, a discussion of any notable issues or problems being addressed, and a discussion of anticipated activities for the next month.
5. Each Consultant selected must document any potential conflicts of interest during the contract period. A conflict of interest shall be cause for terminating a contract. A potential conflict of interest includes, but is not limited to, the following:
 - c. Accepting an assignment where duty to the client would conflict with the Consultant's personal interest or the interest of another client.
 - d. Performing work for a client or having an interest which conflicts with this contract.
 - e. Employing personnel who worked for CYMPO or one of its member agencies within the past three (3) years.

CYMPO shall be the final determining body as to whether a conflict of interest exists.

6. The Consultants selected shall be required to comply with CYMPO insurance requirements.
7. Non-Discrimination
 - f. From the publication of this RFQ forward, CYMPO, and the Consultants providing an SOQ until the Consultants request removal from the On-Call List and/or complete all Tasks Orders received, Consultant and its Subconsultants, assignees and successors shall:
 - i. 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.
 - ii. 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.
 - iii. Comply with the provisions of Executive Order 11246 and 13672 and as supplemented in Department of Labor Regulations (41 CFR Part 60), 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.
 - iv. 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.”

- v. 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.
 - vi. 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 indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
 - vii. In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
 - viii. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State as appropriate and shall set forth what efforts it has made to obtain the information.
- g. In the event of the Consultant's noncompliance with the NONDISCRIMINATION provision of this solicitation, the State shall impose such Contract sanctions as the State or FHWA may determine to be appropriate, including but not limited to:
- i. Withholding monthly progress payments;
 - ii. Assessing sanctions;
 - iii. Liquidated damages;
 - iv. Disqualifying the Consultant from submitting SOQs, or any other forms of proposals, as non-responsible; and
 - v. Cancellation, termination, or suspension of the Contract, in whole or in part.
- h. The Consultant shall include the provisions of paragraph a. I through a. viii in every subcontract with Subconsultants, DBEs and Non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.
- i. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the

Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

8. Affirmative Action

The Consultant shall take the following affirmative action steps with respect to securing supplies, equipment or services under the terms of this Contract.

- j. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.
- k. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.
- l. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.
- m. Where the requirement permits, establish delivery schedules which shall encourage participation by firms owned by socially and economically disadvantaged individuals.
- n. Use the services and assistance of ADOT DBE Supportive Services Program, the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as needed.

9. Prompt Pay and Payment Reporting Provisions

A. Prompt Payment. Consultant will abide by and comply with the prompt payment provisions applicable under Arizona Law in payment of their Subconsultants/subcontractors, applicable DBE reporting provisions and with the provisions of Appendix F- Prompt Payment Provisions and Measurement of Payments.

B. 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 supplier.

APPENDIX A – ARIZONA ADMINISTRATIVE CODE R4-30-301

CH. 30

BOARD OF TECHNICAL REGISTRATION

R4-30-301

ARTICLE 3. REGULATORY PROVISION R4-30-301. Rules of Professional Conduct

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice. Supp. 14-3 Page 24 September 30, 2014 Title 4, Ch. 30 Arizona Administrative Code Board of Technical Registration as amended by final rule making at 24 A.A.R. 1785.
5. A registrant shall not violate any state or federal criminal statute involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty. The Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.
8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
 - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
 - b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.

11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, available at www.azapls.org and from APLS, 3346 East Menadota Drive, Phoenix, AZ. The Board of Technical Registration adopted them on June 15, 2001 and incorporated them into this subsection by reference. This incorporation by reference does not include any later amendments or editions and is available at the office of the Board of Technical Registration.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
17. Except as provided below and in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
 - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
 - b. The work is exempt under A.R.S. § 32-143.
18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services that the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

COMPLIANCE WITH RULES OF PROFESSIONAL CONDUCT CERTIFICATION

I hereby certify to the best of my knowledge and belief
that

(Name of Consulting Firm)

and I _____ as the _____ shall comply with, in
(Name) (Title) all

respects, the rules of professional conduct set forth in A.A.C. R4-30-301.

(Signature)

(Print Name)

(Date)

APPENDIX B – CONSULTANT PROPOSER’S INFORMATION FORM

Consultants proposing as prime Consultants or Subconsultants on Central Yavapai Metropolitan Planning Organization' (CYMPO) projects are required to complete this form and return it with your proposal.

If you have any questions about this information form, please call the CYMPO Fiscal Services Manager, (602) 254-6300.

1. GENERAL INFORMATION:

Name of Firm: _____

Street Address: _____

City, State, Zip: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

Web address: _____ Year firm was established: _____

Is this firm a prime Consultant? Yes _____ No _____

Is this firm a Subconsultant? Yes _____ No _____

If so identify specialty: _____

Is this firm a certified DBE? Yes _____ No _____

If so, by whom? _____

Is this firm currently debarred? Yes _____ No _____

Is this firm currently the subject of debarment proceeding? Yes _____ No _____

2. FINANCIAL INFORMATION

Firm's annual gross receipts (average of last three years)

_____ <\$300,000

_____ \$300,000 - \$599,999

_____ \$600,000 - \$999,999

_____ \$1,000,000 - \$4,999,999

_____ >\$5,000,000

Information will be maintained as confidential to the extent allowed by Federal and State law. The undersigned swears that the above information is correct. Any material misrepresentation may be grounds for terminating any contract which may be awarded and initiating action under Federal and State laws concerning false statements.

[NAME, TITLE]

Date

APPENDIX C – DEBARMENT/SUSPENSION CERTIFICATION

STATE OF)

) ss.

COUNTY OF)

I, _____ of the City of _____, in the County of

_____ and the State of _____, of full age, being duly sworn according to the law of my oath depose and say that:

In accordance with the terms of U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180:

1. Consultant certifies to the best of its knowledge and belief, that it and its principals, including its first tier Subconsultants: (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from covered transactions by any Federal department or agency; (b) Have not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction; violation of any Federal or State antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property; (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; (d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Consultant certifies that it and its principals, including its first tier Subconsultants will treat each lower tier contract or lower tier subcontract under the Project that (a) equals or exceeds \$25,000, (b) is for audit services, or (c) requires the consent of a Federal official, as a covered contract for purposes of 2 CFR Part 1200 and 2 CFR Part 180, and will otherwise comply with the Federal requirements of 2 CFR Part 1200 and 2 CFR Part 180, and will assure that each lower tier participant involved in the Project is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from participation in this transaction by any Federal department or agency;
3. Consultant certifies that if, later, it or its principals, including any of its first tier Subconsultants, become aware of any information contradicting the statements of subparagraphs (1)(a) through (d) above, it will promptly provide any necessary information to CYMPO;
4. If Consultant or any of its principals, including any of its first tier Subconsultants or lower tier participants, is unable to certify to the statements within paragraphs 1, 2, and 3 above, the CONSULTANT shall indicate so on its Signature Page.
5. The Consultant further certifies that their firm is not currently debarred, suspended, or proposed for debarment or suspension by the State of Arizona, or any subdivision thereof.
6. Consultant agrees to notify CYMPO of any change in the status or facts certified above, should one occur, until such time as the Contract is actually executed by CYMPO, and thereafter during performance of the Contract.

Dated:_____

Signature of CONSULTANT

Printed/Typed Name of CONSULTANT

Corporate seal (if applicable)

Sworn to before me this ____ day of _____, 201____, in the County of _____,

State of _____

Notary Public

APPENDIX D – TITLE VI AGREEMENT/CONTRACT REQUIREMENTS

Title VI/Non-Discrimination Assurances: This Agreement is subject to the provisions of Title VI of the Civil Rights Act and the SUBRECIPIENT is herein notified of such. Additionally, the Contractor shall include the following information in each of its agreements/contracts associated with an On-Call Contract.

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 Regulations, 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, or national origin in consideration for an award."

The Contractor shall comply with all applicable non-discrimination acts, including, but not limited to, the following:

State Executive Order No. 99-4 Amending 75-5 which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities.

Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap

During the performance of this contract, the Contractor or Consultant, 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, Federal Highway Administration or the Arizona Department of Transportation, 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, the Federal Highway Administration or Arizona Department of Transportation 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, the Federal Highway Administration, or Arizona Department of Transportation, 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 or Arizona Department of Transportation, 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, the Federal Highway Administration, or Arizona Department of Transportation 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.

During the performance of this contract, the Contractor or Consultant, 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).

APPENDIX E – PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES

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

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

1. Non-Discrimination

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

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

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

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

2. DBE Compliance Required Activities:

THE FAILURE TO SUBMIT THE REQUIRED CONSULTANT'S LIST TO THE CYMPO BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE CONSULTANT BEING DEEMED INELIGIBLE FOR AWARD OF AN ON-CALL AGREEMENT.

By submitting an SOQ, Consultant agrees to perform the following minimum DBE Program Compliance Required Activities:

- 1) The Consultant must shall confirm good faith by any subcontractor or determine any action required in response to the contractor submission of a verifiable explanation of the discrepancy in the DBE System as early as practicable but in no case later than seven days after reviewing relevant documentation.
- 2) Submit DBE Certification of Final Payment Form within thirty (30) days of completing the work and submit a copy to ADOT BECO.
- 3) Cooperate with CYMPO and/or ADOT audits and site visits for DBE regulation and contract compliance; provide access to procedures; project files; and enable onsite interviews with contracting, financial, DBE compliance, and project staff.
- 4) **Each contract you sign with a subcontractor or Subconsultant and each contract your subcontractors or Subconsultants sign must include that following assurance:**
 - a) *A contractor/Consultant and subcontractor/Subconsultant (herein after referred to as "contractor") shall not discriminate on the basis of race, color, national origin, or sex in the performance of this*

contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements represents a material breach of this contract, which may result in the termination of this contract or such other remedy as the Grantee, with the Department's concurrence, deems appropriate, which may include, but is not limited to:

- i) Withholding payments;*
 - ii) Assessing sanctions;*
 - iii) Liquidated damages; and/or*
 - iv) Disqualifying the contractor from future bidding on the grounds of being non- responsible.*
- b) Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.*
- c) Each contractor shall designate a full-time employee who shall be responsible for the administration of the contractor's DBE program.*
- d) Each contractor shall prohibit agreements in which a DBE promises not to provide subcontracting quotations to other bidders.*
- e) Subcontract Payment Reporting in the DBE system:*
- i) The Arizona Department of Transportation (the Department) is required to collect data on DBE and non-DBE participation, including lower tier subcontracts, to report to FTA on Federal-aid projects. The contractor is notified that such record keeping is required by the Department for tracking DBE participation on both race neutral and race conscious projects (i.e. projects with and without DBE goals).*
 - ii) The contractor shall respond to Subrecipient payment audits reported each month electronically through the Department's web-based payment tracking system (<https://adot.dbesystem.com>), reporting its payments to all DBEs and non-DBE subcontractors working on the project. In addition, the contractor shall require that all DBE and non-DBE subcontractors, shall also respond to its audits and report lower-tier subcontractor payments in the same manner.*
 - iii) If, by the DBE system audit deadline, the contractor has not submitted the required report for work performed during the preceding month, or the submitted report failed to include all amounts earned by and paid to all DBEs and non-DBEs, including all lower-tier DBE and non-DBE subcontractors, the Project Manager will work with the ADOT MPD Program Manager to determine if sanctions should be assessed. These liquidated damages shall be in addition to all other reductions or liquidated damages provided for elsewhere in the contract.*
 - iv) The contractor shall include these provisions in all of its subcontracts and ensure that its subcontractors include these provisions in any lower-tier subcontracts.*
 - v) Any language provided in this Agreement DBE Section supersedes language provided by ProcurementPro for FTA-funded contracting requirements.*

3. DBE Goal:

The DBE goal assigned to the FY2020 CYMPO Regional Professional Services On-Call is 0.00%.

THE CONSULTANT IS ENCOURAGED TO OBTAIN DBE PARTICIPATION ABOVE AND BEYOND THE GOAL ON THIS ON-CALL CONTRACT.

DBE GOAL ATTAINMENT WILL BE REVIEWED ON A TASK ORDER ASSIGNMENT BY TASK ORDER ASSIGNMENT BASIS TO HELP ENSURE THAT THE OVERALL DBE GOAL IS MET ON THIS ON-CALL CONTRACT.

The percentage of DBE participation shall be based on the total dollar value of the On-Call contract.

A. Consultants are strongly encouraged to secure and include sufficient DBE firms on their team for multiple disciplines and work categories to ensure they can meet the DBE goal on the contract and for any Task Orders/Contract Modifications that are executed post-award. The On-Call contract DBE goal requirements are applied to extend to additional dollars added by Task Order revisions/On-Call Agreement modifications to help ensure that the overall DBE goal is met on the On-Call contract. Indicating there is insufficient DBE participation on a prime Contractor's team to meet the DBE goal on Task Orders/On-Call Contract Modifications does not meet the criteria for Good Faith Efforts in 49 CFR 26.53, and will not be accepted by CYMPO as a Good Faith Effort when Task Orders/On-Call Contract Modifications are issued. As the DBE goal is included in the Request for Qualifications (RFQ) proposers are expected to include adequate ready willing and able DBE participation in the Statement of Qualifications (SOQ) to ensure DBE goal will be met or make good faith efforts on the On-Call contract and each subsequent Task Order/On-Call Contract Modification. Firms are required to include DBEs to meet the DBE goal on each Task Order/On-Call Contract Modification. Firms may request to add additional DBEs not originally included as part of their team if necessary. CYMPO, with BECO concurrence, determines if there are qualified DBEs available to complete portions of the work of the Task Order or On-Call Contract Modification.

B. The Consultant is required to adhere to the goal/commitment made to utilize certified DBEs as indicated in the firm's Statement of Qualifications (SOQs) or a DBE Intended Participation Affidavit Form for each DBE and DBE Intended Participation Affidavits Summary Form submitted with each approved Task Order, or subsequently agreed to by CYMPO, with BECO concurrence during negotiations. CYMPO with BECO concurrence, at its discretion and on a case-by-case basis, may waive the above limitations.

C. With each new Task Order assignment request, the Consultant is required to submit the following documents certifying that:

a. The Firm will meet the established On-Call Contract DBE goal for the Task Order by providing a DBE Intended Participation Affidavit Summary Form and a completed DBE Intended Participation Affidavit for each DBE Subconsultant working on each Task Order. These forms are available from CYMPO. Forms shall be submitted with the Cost Proposal for each Task Order in which the firm indicates it will meet the DBE goal.

OR

b. The Firm has made good faith efforts (GFEs) to meet the DBE goal for the Task Order but did not succeed in achieving the DBE goal by providing documented good faith efforts on the Consultant Certification of Good Faith Efforts form. This form is available from CYMPO. The good faith efforts form and supporting documents shall be submitted with the Cost Proposal for each Task Order in which the firm is unable to meet the On-Call contract DBE goal.

TASK ORDERS WILL NOT BE EXECUTED IF ONE OF THE ABOVE CONDITIONS ARE NOT MET AND/OR THE FIRM FAILS TO SUBMIT THE REQUIRED DBE PARTICIPATION FORMS FOR EACH TASK ORDER COST PROPOSAL.

RECEIVING GOOD FAITH EFFORT APPROVAL ON SOME TASK ORDERS DURING THE COURSE OF THE CONTRACT DOES NOT RELEASE THE CONSULTANT FROM ITS OBLIGATION TO MEET THE OVERALL DBE GOAL ON THE CONTRACT.

DBE utilization on all Task Orders coupled with Good Faith Effort approval of Task Orders must add up to meeting the overall On-Call contract goal at the end of the On-Call contract unless CYMPO determines that the size and scope of Task Orders and the number of Good Faith Effort approvals for various Task Orders did not make it feasible for the Consultant to meet the overall DBE goal on the contract. In order to help ensure that the overall DBE goal is met at the end of the On-Call contract, when feasible, Consultants are encouraged to maximize DBE utilization beyond the stated DBE goal on each Task Order when subcontracting opportunities makes this feasible in order to help off-set instances when Good Faith Efforts are approved on smaller or specialized Task Orders with no subcontracting opportunities.

4. 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 Consultants and Subconsultants 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 Consultants and all Subconsultants, including DBEs listed in the SOQ must be registered in AZ UTRACS. Consultants may verify that their firm and each Subconsultant is registered using the AZ UTRACS website.

Consultants may obtain additional information at the AZ UTRACS website or by contacting CYMPO.

All Consultants 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 Subconsultants, service providers, and vendors that submitted proposals or quotes on this project regardless of the Consultant's intentions to use those firms on the project.

All Consultants must complete and submit the Bidders/Proposers List online at AZ UTRACS with SOQ. A confirmation email will be generated by the system. This email confirmation shall be submitted with the SOQ.

FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST CONFIRMATION EMAIL WITH THE SOQ BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED AND AS OUTLINED IN THE RFQ SHALL BE CAUSE FOR THE CONSULTANT'S SOQ TO BE REJECTED.

5. DBE Intended Participation Affidavits:

If the Consultant indicates in the Cost Proposal submittal for each Task Order that it has met or exceeded the DBE goal, a DBE Intended Participation Affidavit form for each DBE firm, and the DBE Intended Participation Affidavit – Summary form shall be submitted to CYMPO Procurement Office with each Task Order Cost Proposal as follows:

- (1) The DBE Intended Participation Affidavit Form – This form must be submitted for each individual DBE firm at all tiers, including direct expense vendors, that is being proposed to be used to meet the DBE goal on each Task Order. A copy of this form is available from CYMPO.
- (2) The DBE Intended Participation Affidavit Summary Form – This form must be completed by the Consultant summarizing information about all DBEs being proposed to meet the DBE goal that are listed on each DBE Intended Participation Affidavit Form. The DBE Intended

Participation Affidavit Summary form, along with the DBE Intended Participation Affidavit form for each individual DBE firm, must be submitted together with the Task Order Cost Proposal to CYMPO. All forms must be accurate and complete in every detail and must be signed by an officer of the Consultant(s). Percentages and dollar amounts must be accurate. Percentages shall be listed to two decimal places. The DBE Intended Participation Affidavit Summary must be submitted listing all the DBEs intended to be used and the creditable amounts. Copies of these forms are available from CYMPO.

- (3) The DBE Intended Participation Affidavits and the DBE Intended Participation Affidavit Summary Forms must be submitted with each Task Order cost proposal documents. The same documents must be submitted as part of the On-Call Contract Modification documentation submittals reflecting any revisions to the Task Order amounts associated with the Task Order or On-Call Contract Modification.
- (4) A Consultant must determine DBE credit for the contract in accordance with DBE Special Provision Subsection 17.0 Crediting DBE Participation Toward Meeting Goals. The affidavits will be reviewed by CYMPO.
- (5) Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) at the time of the Cost Proposal submittal will be considered for DBE credit. It shall be the Consultant's responsibility to ascertain the certification status of designated DBEs.

All DBE commitment amounts must be finalized between the DBE Subconsultant and the prime Consultant prior to affidavit submittal. Consultants shall not inflate DBE awards in order to meet Task Order/On-Call contract goals. Reduction of DBE commitments after affidavit submittal and prior to execution of the Task Order/On-Call Contract Modification without good cause may be grounds for the Consultant to be considered nonresponsive. Scheduling conflicts are not necessarily evidence of good cause as this should have been considered prior to affidavit submittal. Consultants are required to use DBEs identified in both the SOQ and/or Cost Proposal for each Task Order to meet the contract goal, so the Consultant is responsible for ensuring the DBEs listed in the SOQ and submitted with the Task Order Cost Proposal are available to meet those requirements at the time of the Task Order/On-Call Contract Modification execution.

Task Order cost proposals without affidavits shall be considered incomplete and Task Order negotiations shall not be finalized nor will the Task Order/On-Call Contract Modification be executed until affidavits are submitted and approved.

Further DBE compliance and guidelines can be found at <http://www.azdot.gov/business/business-engagement-and-compliance> and are incorporated herein by this reference.

(Consultants are encouraged to review Appendix A of 49 CFR, Part 26.)

APPENDIX F – ON-CALL CONTRACT

This On-call Contract is between The Central Yavapai Planning Organization ("CYMPO") and the Consultant designated in a signed "Task Order" ("Consultant" or "Contractor") and is effective when fully executed by CYMPO and Consultant (collectively the "Parties" and for one a "Party").

RECITALS:

CYMPO is the designated Metropolitan Planning Organization for Central Yavapai County and seeks consulting services. CYMPO has published a "Request for Qualifications, On-call Consulting services for FY 2020 CYMPO Regional Professional Services On-Call Notice of Request for Qualifications" (the "RFQ"); Consultant has submitted a Statement of Qualifications ("SOQ") in response to the RFQ and has agreed to provide services under the terms of the RFQ and this Agreement subject to the terms applicable to the Task/Project;

NOW, THEREFORE, the parties covenant condition and agree is follows:

1. Additional Definitions. In this Agreement the following words have the listed meaning, unless the context requires otherwise:

"ADOT" means the Arizona Department of Transportation.

"Agreement" means and includes this document and, when executed, the Task Order (which included the proposal and any appendices, schedules and addendums attached thereto or incorporated therein).

"FTA" means the Federal Transit Administration.

"FHWA" means Federal Highway Administration.

"State" means the State of Arizona.

"Project Manager" means Christopher Bridges and/or such other person CYMPO designates by notice to Contractor.

"Designated Representative" means that person to be designated by Contractor for the position at or prior to execution of the Task Order, which Contractor may thereafter change upon notice to CYMPO.

2. Consultant and Bound. Each Consultant submitting a SOQ agrees that by execution of a Task Order referencing this On-call Contract that Consultant is bound by all of the terms of this "Agreement" as defined above and the terms of the RFQ.

3. The Task.

a. Consultant shall provide the services to CYMPO described in the Task Order, which shall include the: scope of work; budget; timing; unit and hourly pricing and description of deliverables referenced therein, together with performance of all subordinate work and deliverables not specifically referenced in the Task Order, but necessary to the full and effective performance of the tasks specifically referenced.

b. Consultant shall provide sufficient qualified personnel and, as provided in the RFQ, updated information on the personnel to be utilized to perform all services as required herein, including but not limited to inspections and preparation of reports, as required by this Agreement and as reasonably requested by the CYMPO.

c. All services identified in this Section 1 above are hereinafter known as the "Task" and shall be completed to the satisfaction of the CYMPO and shall be performed in compliance with the Task Order.

4. Consultant's Compensation.

a. CYMPO shall pay to Consultant the "Total Contract Amount" set forth in the Task Order for completion of the entire Task and for any increases due to allowed changes, with Consultant solely responsible for any and all payment to Sub-contractors retained by the Consultant and any and all costs incurred by Consultant and Sub-consultant for the work.

b. The Consultant shall bill CYMPO pursuant to the terms and schedule set forth in the Task Order, including that each billing for hourly payment or deliverables will be consistent with the Task Order and include appropriate details and substantiation (collectively an "Invoice"). The CYMPO Procurement Office may make payments on intervals of less than 90 days and shall make monthly payments on contracts if properly Invoiced. No Invoice shall be complete or valid unless signed by Contractor's Designated Representative. Invoices will be emailed to Allisson.McCarthy@yavapai.us or such other person and address as CYMPO may hereafter designate or may be delivered in person or by mail addressed to the following address or such address as CYMPO may hereafter give notice of:

Central Yavapai Metropolitan Planning Organization
Attention: Accounts Payable
971 Commerce Circle, Suite E
Prescott, AZ 86301

c. CYMPO will review the Invoice within seven days of receipt of a Complete Invoice and payment for completed work will be made and, if applicable, a description of why less is being paid than requested in the Invoice will be made within 7 days thereafter. The payment of sums on an Invoice shall not bar CYMPO from thereafter disputing that the work was completed or satisfactory and sums may be withheld from payment of a later invoice due to prior unsatisfactory work so long as CYMPO provides a reasonably detailed explanation for withholding the sums at issue prior to payment of the later Complete Invoice. In event that CYMPO pays an billing that is deficient due to, for example, the lack of requisite details or substantiation, CYMPO may withhold of payment of reasonable sums (such as the unsubstantiated portion thereof) from payment on a future Invoice pending receipt of requisite details, substantiation or information for the prior incomplete billing.

d. Receipt of payment by Consultant shall not relieve Consultant of its obligation to complete the performance of the Task, hereto including post performance reports and updates, and record-keeping.

5. Changes in Work.

a. CYMPO designates Christopher Bridges as CYMPO Project Manager, and it may designate another person as the or a Project Manager by notice given pursuant to this Agreement. The Project Manager shall have authority to make changes in the work consistent with the purposes of the Task and, when they do not involve extra cost, there shall be no charge for such changes and the notice will so state. If the Consultant claims that any Direction involves extra cost under this Contract, it shall give the

Project Manager written notice thereof within three (3) business days after the receipt of such direction, and in any event before proceeding to execute the work. No such claim shall be valid unless so made. All Contract Amendments must be approved by the Project Manager and the CYMPO Executive Board.

b. CYMPO, without invalidating this Agreement, may order extra work, make changes by altering, or deleting any portion of the work as specified herein, or as deemed necessary or desirable by the Project Manager, as long as the additional work and changes made are consistent with the intent and purpose of the Task and do not increase the work or decrease the work or the total contract amount at issue more than ten percent (10%) and larger adjustments will require a Contract Amendment, which is required to be approved by the Board of Directors. All such work shall be performed under the conditions of this Agreement. Extra work shall be that work not included as a portion of the Task. No extra work or change shall be made unless pursuant of a written "Directive" by the Project Manager or an amendment to this Agreement. Increases or decreases in compensation will be consistent with the provisions of the Task Order, including hourly or unit prices therein and such pricing will apply.

c. Where the Adjustment is not clearly undeterminable by reference to hourly and unit pricing, the parties shall agree to the price adjustment for such changes, and CYMPO reserves the right to terminate the Contract as it applies to the items in question and/or make such arrangements as it may deem necessary to complete the desired work.

6. Contract Documents.

a. It is agreed by and between the Parties that this Agreement includes the terms and provisions of the Task Order with proposals or any Schedules attached hereto, and the following documents attached to the RFQ and this Contract: Administrative Requirements Appendixes A-F; Exhibit A hereto, Standard Patent Rights; and Exhibit B hereto, FTA Attachment. The forgoing Appendixes and Exhibits and attachments are to be interpreted in a complementary fashion. This Agreement and documents referenced herein will be interpreted in a complementary manner as one document but there shall be a priority in interpretation and enforcement as follows: this Agreement shall be interpreted consistent with applicable Statutes, Regulations and Rules which shall control in event of an inconsistency or conflict in this Agreement, and the Schedules, Appendixes hereto, and the Task Order and otherwise take priority and control will apply in the following order: (1) this Agreement; (2) the RFQ (except that provisions required by Statute, Rule or Regulation therein will still control).

7. Prompt Pay. Contractor agrees that, to the extent it is applicable, Contractor will strictly comply with the provisions of A.R.S. section 34-211 in the payment of its Subcontractors design professionals. Contractor shall include in its subcontracts provision reflecting the applicability of said statute and the Following: "A subcontractor may notify the CYMPO's Procurement Office in writing requesting that the subcontractor be notified by the CYMPO procurement Office in writing within five day from payment of each progress payment made to Contractor."

8. Independent Contractor, No Agency. It is expressly agreed and understood by and between the Parties that the Consultant is an independent Contractor, and the Consultant will conduct itself in a manner consistent with its status as an independent contractor; and will not hold itself out nor claim to be an officer or employee or agent of CYMPO.

9. Non-Assignment. CYMPO is relying on Consultant's expertise and the expertise and qualifications of it's the principals and employees and Subconsultants disclosed to CYMPO pursuant to the SOQ and

updates thereto and, thus, this Agreement is non-assignable by Consultant without CYMPO's consent which may be withheld in its unfettered discretion.

10. Work Product. Except as provided by law, all work product of the Consultant for the Task are instruments of service for the Task only and shall be and remain the property of CYMPO (or the COG/MPO conducting the study) whether the Project is completed or not. Notwithstanding the foregoing, reports, data and reporting provided to ADOT or the Federal Government including U.S. DOT and the Federal Transit Administration shall be subject to full and unfettered use, publication and republication by such entities/agencies. All plans, drawings, specifications, data maps, studies and other information, including all copies thereof, furnished by the CYMPO shall remain the property of CYMPO (or the COG/MPO conducting the study). They are not to be used on other work, and, except this Agreement, are to be returned to the CYMPO on request or at the completion of the work.

11. CYMPO Indemnification. The Consultant hereby agrees to indemnify and hold harmless CYMPO and its respective directors, officers, officials, employees and agents for, from and against any and all claims, liabilities, expenses, losses, damages or lawsuits as a result of the Consultant's negligent acts, errors, or omissions, pursuant to this Agreement, except to the extent said claims, liabilities, expenses or lawsuits arise by the negligent acts or omissions of CYMPO or its agents or employees. The Consultant further releases and discharges CYMPO, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of CYMPO, from any and all claims which the Consultant has or may have against CYMPO, its agents or employees, arising out of or in any way connected with the Consultant's activities as set forth below, other than those acts which occur due solely to the negligence or willful acts of CYMPO, its employees or agents.

12. Third Parties. CYMPO and Consultant are the only Parties to this Agreement, there are no third party beneficiaries to this Agreement except for ADOT as regards indemnification provisions and ADOT and/or the Federal Government and its agencies and departments including the Federal Highway Administration and the Federal Transit Administration and its various agencies, administrations, or divisions regarding their right to receive and review books, records, data and reports and to conduct such investigations as may be appropriate under applicable law and this Agreement.

13. Funding and Compliance. CYMPO and Consultant acknowledge that funding to pay Consultant is being provided through ADOT and include federal funds. The Parties acknowledge that this Agreement and performance hereunder must comply with all applicable provisions of Federal and State Law and that it will be so interpreted. Consultant is knowledgeable regarding such requirements and specifically agrees to comply with all applicable Federal and State statutes, laws, rules, regulations, ordinances and orders regarding this Agreement and Consultant's performance hereunder.

14. Records and Audit Rights. Each Party's work and accounting records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the other Party and by ADOT to substantiate charges and claims related to this Agreement shall be open to inspection and subject to audit and reproduction by authorized representatives of the other Party, to adequately permit evaluation and verification of the performance and cost of the work, and to conduct and prepare all audits and reports required by law. Representatives of each Party shall be afforded access, at reasonable times and places, to all of the other Party's records and personnel, pursuant to the provisions of this Section, throughout the term of this Agreement, and for a period of five (5) years after last or final payment.

15. Publications. All reports and maps completed as a part of this Agreement, jointly written under this Agreement, except copies of such documents made for the exclusive internal use of either party, shall

include an acknowledgment on the front cover or a title page, or in the case of maps, in the title block, which identifies the cooperative parties. In addition, in accordance with 23 CFR 420.117(e), all such documents shall contain the following disclaimer statement:

"This report was funded in part through grant[s] from the Federal Highway Administration and/or Federal Transit Administration, U.S. Department of Transportation. The contents of this report reflect the views and opinions of the author(s) who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily state or reflect the official views or policies of the U.S. Department of Transportation, the Arizona Department of Transportation, or any other State or Federal Agency. This report does not constitute a standard, specification or regulation".

17. **Non-Discrimination and Civil Rights.** Contractor Will Comply with Title VI of the Civil Rights Act of 1964 and Pertinent Non-Discrimination Authorities Set Forth in Appendix D, which are a part of and apply to this Agreement.

*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 Regulations, 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, or national origin in consideration for an award."*

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest 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, *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.
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.

18. Disadvantaged Business Employees. CONTRACTOR will comply with the provisions of Appendix E which are a part of and apply to this Agreement.

19. Debarments/Suspension. The federal funding in this Agreement is considered a covered transaction under 2 CFR 1200.220 for purposes of debarment and suspension considerations. Contractor and its subcontractors, suppliers, consultants or its agent or representation regarding this Agreement/transaction are subject to this requirement. Contractor represents and warrants that it has not been debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs pursuant to 2 CFR 200.212. Contractor must comply with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension Non- procurement)," and 2 CFR 200.212. The CONTRACTOR will review the Excluded Parties Listing System and assure that it and any subcontractors establish and maintain entity registration on the System for Award Management before entering into any contracts.

20. Gratuities. Any person doing business with, or who may do business with CYMPO under this Agreement may not make any offer of benefits, gifts, or favors to the CYMPO employees. Failure on the part of the CONTRACTOR or CYMPO to adhere to this policy may result in termination of this contract.

21. Conflict and Dispute Resolution Process. The affected parties to this Agreement shall, at a minimum, ensure the attempted early resolution of conflicts relating to such matters. Early resolution shall be handled by direct discussion between the following officials: for Contractor, its designee and the Director or designee of CYMPO and, should ADOT be involved, the Multimodal Planning Director.

If the conflict remains unresolved and involves ADOT, then the following applies:

The conflict shall be resolved by the following Senior Agency Officials: for ADOT - the Executive Director for Planning and Policy; and for CYMPO - the Director or designee and for Contractor, its designee.

If the conflict continues to remain unresolved and involves ADOT, the conflict shall be resolved by the following Executive Agency Officials: for ADOT - the Agency Director; and for CYMPO - the Director or designee.

If resolution is not accomplished, the parties agree to resolve all disputes through binding arbitration under the Arizona Revised Uniform Arbitration Act and, if ADOT is involved, exhausting applicable administrative review and if required by applicable law, except as may be required by other applicable statutes or regulations (49 C.F.R. 18.43 (5) (b)).

22. Suspension or Termination for Convenience or cause. CYMPO reserves the right to terminate the Agreement, in whole or in part at any time, when in the best interests of CYMPO without penalty or recourse. Upon receipt of the written notice, the CONTRACTOR shall stop all work, as directed in the notice, notify all sub-contractors of the effective date of the termination and minimize all further costs to CYMPO. In the event of termination under this paragraph, all documents, data and reports prepared by the CONTRACTOR under this Agreement shall become the property of and be delivered to CYMPO (or the COG/MPO conducting the study) upon request. 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. CYMPO shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

CYMPO shall reimburse the CONTRACTOR for those eligible expenses incurred during the Agreement period which are directly attributable to the completed portion of the work covered by this Agreement, provided that the work has been completed in a manner satisfactory and acceptable to CYMPO. The CONTRACTOR shall not incur new obligations for the terminated portion after the effective date of termination.

CYMPO may seek any remedy available at law for recovery of any funds paid to CONTRACTOR for any and all amounts for which CYMPO has made payment to the CONTRACTOR if such amounts are not directly attributable to the completed portion of the work covered by this Agreement or have been paid to the CONTRACTOR for work completed after the effective date of the termination.

In addition to the rights reserved in the Agreement, CYMPO may terminate the Agreement in whole or in part due to the failure of the CONTRACTOR to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement.

23. Indemnification of ADOT. The parties to this contract agree that the State of Arizona, its departments, agencies, boards, commissions and universities shall be indemnified and held harmless by the CONTRACTOR and CYMPO 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.

To the extent permitted by Arizona law, CYMPO and Contractor and its subcontractors, if any, agree to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, 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 CYMPO's Contractor or any of the directors, officers, agents, or employees or subcontractors of such Contractor. 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 such Contractor from and against any and all claims. It is agreed that such Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

24. Insurance Requirements. Contractor will maintain the following minimum insurance:

Commercial General Liability (CGL) – Occurrence Form. Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

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

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

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

Workers' Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$1,000,000
 - Disease – Each Employee \$1,000,000

- Disease – Policy Limit \$1,000,000

1. Policies shall be endorsed, as required by this written agreement, to include CYMPO and the State of Arizona and the Arizona Department of Transportation as additional insureds with respect to liability arising out of all activities performed by, or on behalf of the CONTRACTOR. (Workers Compensation is exempt from this requirement)

2. Policies shall contain a waiver of subrogation endorsement as required by this written agreement in favor of CYMPO and the State of Arizona and the Arizona Department of Transportation for losses arising from work performed by or on behalf of the CONTRACTOR.

Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by CYMPO or the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

Notice of Cancellation. Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to CYMPO and the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to CYMPO and the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission.

Acceptability of Insurers. Contractor's insurance shall be placed with the SSCIP pool or companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of 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.

Verification of Coverage. Contractor shall furnish CYMPO and 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.

1. All such certificates of insurance and policy endorsements must be received by CYMPO and the State before work commences. CYMPO'S or 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.

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.

3. All certificates required by this Contract shall be sent directly to CYMPO and the Department. If applicable, 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.

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.

ADOT reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

Submissions. All insurance certificates and/or endorsements shall be mailed to CYMPO at the address herein and emailed to MPD1@azdot.gov or MLB.MPD@azdot.gov. The CONTRACTOR and its Contractors/sub-Contractors shall cooperate with ADOT Risk Management as appropriate to assure insurance coverage meets applicable requirements.

25. Copyright and Patent. Indemnification: To the extent permitted by Arizona law including A.R.S. § 41-621 and § 35-154, the CONTRACTOR shall indemnify and hold harmless CYMPO and ADOT against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of this Agreement performance or use by ADOT of materials furnished or work performed under this Agreement. ADOT shall reasonably notify the CONTRACTOR of any claim for which it may be liable under this paragraph.

Pursuant to 23 CFR 420.121 (b), ADOT, CYMPO and CONTRACTOR may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA 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.

Pursuant to 23 CFR 420.121 (i), ADOT, CYMPO and CONTRACTOR are subject to the provisions of 37 CFR part 401 governing patents and inventions and this Contract is subject to 37 CFR 401.14, which is set forth in Exhibit D and incorporated herein by this reference, except for §401.14(g) is excluded. Additionally this Contract and any agreement Contractor may enter into with a subcontractor is subject to the following: Contractor will retain all rights provided for the Contractor in this clause, and CYMPO will not, as part of the consideration for awarding this Contract and applicable Task Order obtain rights in any of Contactor's inventions.

26. Anti-Lobbying. CONTRACTOR agrees to comply with the provisions of Section 1352 of Title 31, U.S. Code (Public law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11, 23 CFR 630.112(c)(5), and 49 CFR part 20 and 2 CFR 200.450. The legislation prohibits Federal appropriated 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, amendments or modification of any Federal contract, grant, loan or cooperative agreement. Certification is required to indicate compliance with 49 CFR 20.100(a). Disclosure must be made on Standard Form LLL, found at <https://www.gsa.gov/forms-library/disclosure-lobbying-activities> if any non- appropriated funds are used for such activities described herein. All disclosure statements are to be furnished to ADOT.

The CONTRACTOR agrees to complete the Lobbying Certification (Exhibit B) and, when appropriate, the Disclosure of Lobbying Activities (Exhibit C).

27. Energy Conservation. CONTRACTOR is required to comply with mandatory standards and policies, as applicable relating to energy efficiency which are contained in the State Energy Conservation Plan issued by the State of Arizona in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

28. Environmental Protection. CONTRACTOR is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grant or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to FHWA, FTA, and to the U.S.E.P.A. Assistant Administrator Enforcement (EN-329).

29. Drug Free Workplace. CONTRACTOR agrees to comply with laws governing a drug and alcohol-free workplace in compliance with the Federal Drug-Free Workplace Act of 1988 and 23 CFR 630.112(c)(3).

30. Transparency Act. CONTRACTOR warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, and in the method specified by ADOT, the CONTRACTOR will provide CYMPO information that is requested by ADOT to enable ADOT to comply with the requirements of the Act, as may be applicable.

31. Incorporation of Federal Terms. All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. All applicable clauses shown in the FTA Master Agreement apply to each Project funded by FTA. Any requirements of the Stewardship Agreement with FHWA apply to each Project funded by FHWA.

Additionally, CONTRACTOR agrees to abide by:

- a. The requirements in 2 CFR 200.326,
- b. The requirements in 2 CFR 200 Appendix II,
- c. The requirements in 2 CFR 1201,
- d. FTA funded procurements/contracts: Circular 4220.1F – Third Party Contracting Guidance or its Appendix D, as revised from time to time,
- e. Any requirements established by a particular funding stream, program, funding agency guideline, or established by ADOT.
- f. The FTA requirements, Exhibit E hereto.

32. General Provisions.

a. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Service IGA may not be modified or amended, except by a written document, signed by authorized representatives of each Party.

b. ARIZONA LAW. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

c. MODIFICATION. Except as otherwise specifically provided in this Agreement, any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only after written approval of all Parties.

d. ATTORNEY'S FEES. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default of this Agreement, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, as determined by the arbitrator or court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable, whether or not such action is prosecuted to judgment.

e. NOTICES. All notices, requests, authorizations, approvals, consents and other such

communications shall be in writing and shall be given and received as follows: in person (received or delivery), by overnight delivery by Federal Express or UPS (freight prepaid) (received signed for); by certified or registered mail, return receipt requested (received 2 business days after posting); or by email, facsimile and regular mail, postage prepaid (received when so mailed and transmitted) to the address set forth on the signature page or to such other address as a party hereafter provides notice of.

f. COUNTERPARTS. This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement shall be deemed to possess the full force and effect of the original.

g. CAPTIONS. The captions used in this Agreement are solely for the convenience of the Parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.

h. SEVERABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect, and such term or provision shall be deemed to be deleted.

i. AUTHORITY. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

33. Miscellaneous Provisions.

a. CYMPO and CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in the Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement. CYMPO shall endeavor to ensure the CONTRACTOR is notified and made aware of such applicable laws and procedures.

b. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards to conflicts of interest.

c. Each Party shall keep confidential all information, in whatever form, produced, prepared, observed, or received by the Party to the extent that such information is confidential by law.

d. To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties' or its subcontractors' employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.

e. CONTRACTOR assures that it will comply with applicable provisions of the Americans with Disabilities Act (ADA), (Public Law No. 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including 28 CFR parts 35-36, and applicable provisions of 49 CFR Parts 27, 37

and 38: Transportation for Individuals with Disabilities; Final Rule. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non- Discrimination".

f. Israel Boycott Not Permitted: Legislation has been enacted to prohibit the State from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, the CONTRACTOR warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.

Note: In *Jordahl v. Brnovich et al.*, Case No. 3:17-cv-08263 (D. Ariz.), the U.S. District Court entered a preliminary injunction that enjoins the State from enforcing A.R.S. § 35-393.01(A) (the "Anti-Israel Boycott Provision"). That statute states that: "[a] public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel." Unless and until the District Court's injunction in *Jordahl* is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. § 35-393.01(A)) is unenforceable and the State will take no action to enforce it.

g. No waiver of any term of this Agreement or right hereunder shall be effective unless the waive is in writing and signed by the Parties. The failure to enforce the breach of any covenant, term, or condition of this Agreement shall not be a waiver nor shall it be a waiver of the right to enforce the same in the future.

h. This Agreement is binding upon and inuring to the benefit of the Parties, their successors, beneficiaries, and permitted assigns.

i. Contractor shall comply with all Federal, State laws and regulations, and local ordinances, as they relate to the performance of work under this Agreement, including updates and changes to such laws, regulations and ordinances.

j. Neither CYMPO or the Contractor shall be responsible for delays due to causes beyond the control, as applicable of CYMPO or Contractor control, such as those caused by an act of God, fires floods, terrorists acts, or government intervention.

IN WITNESS WHEREOF, the Parties have approved this Agreement by resolution of their governing boards and have caused these presents to be executed by their duly authorized officers. CYMPO:

Central Yavapai Metropolitan Planning
Organization ("CYMPO")

1971 Commerce Center Circle - Suite E
Prescott, AZ 86301

Telephone: (928) 442-5730

Fax: (928) 442-5736

Email: _____

Central Yavapai Metropolitan Planning
Organization ("CYMPO")

1971 Commerce Center Circle - Suite E
Prescott, AZ 86301

Telephone: (928) 442-5730

Fax: (928) 442-5736

Email: _____

By _____
CYMPO Administrator

DATE _____.

CONSULTANT/CONTRACTOR:

Name

Address:

Tel: _____ (____)

Fax: (____)

Email _____

By _____

[Name]

DATE _____.

By _____
CYMPO Board Chair

DATE _____.

ATTEST:

Allison McCarthy, Clerk of the CYMPO Board

DATE _____.

Approval of Legal Counsel:

This agreement has, prior to its execution, been submitted to attorneys for each party, who have determined the Agreement is in the proper format and is within the powers and authority granted under the laws of this state.

Thomas P. Kack, Attorney on behalf of Musgrove

Drutz Kack & Flack, PC

Attorneys for CYMPO

Date

Exhibit A – Standard Patent Rights

(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) [Not Applicable]

(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.

EXHIBIT B-FTA ATTACHMENT

The following covenants, conditions, and agreements are binding upon the Parties to the On-call Contract (hereinafter "Contract") and to other persons and parties as specified herein, including persons and entities that work on or provide services or materials regarding the On-call Contract and an applicable Task Order (the Project") and are to be interpreted as being complementary to and in addition to other terms of the Contract.

ADDITIONAL FTA REQUIREMENTS

1. No Obligation by the Federal Government.

(1) CYMPO 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 Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statements or Related Acts

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) 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) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records

1. The Contractor agrees to provide CYMPO, ADOT, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and

records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

3. The Contractor agrees to maintain 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 CYMPO, 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.

4. The Contractor understands and agrees that apart from the more limited record access provisions of the Common Grant Rules, 49 U.S.C. Section 5325(g) provides FTA and U.S. DOT officials, the U.S. Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

4. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights


The following requirements apply to the underlying Contract in addition to any others set forth therein:

- a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such

action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. 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 FTA may issue.
 3. 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 FTA may issue.
- c. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Disadvantaged Business Enterprises (DBE)

 Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.00 %. A separate contract goal has not been established for this procurement.

- a. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ADOT deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

7. Incorporation of Federal Transit Administration (FTA) Terms

The preceding 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 4220.1F 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 CYMPO requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

8. Suspension and Debarment

This contract is a covered transaction for purposes of 13 CFR § 500.19. As such, and by signing this contract, the Contractor certifies that none of its principals or affiliates are excluded or disqualified under 13 CFR § 500.19(c) and 13 CFR § 500.19(d).

The Contractor will comply with 13 CFR § 500.19 and will include the requirement to comply with 13 CFR § 500.19 in any lower tier covered transaction it enters into.

The certification in this clause is a material representation of fact relied upon by CYMPO. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to ADOT 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 13 CFR § 500.19 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.

9. Energy Conservation

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

10. Conformance with ITS National Architecture

FTA-funded Intelligent Transportation Systems (ITS) must conform with the locally approved Regional ITS Architecture.

11. ADA Access

Contractors must comply with applicable requirements of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and USDOT/FTA implementing regulations.

12. Program Fraud and False or Fraudulent Statements and Related Acts

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) 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) on the Contractor, to the extent the Federal Government

deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

13. Patent and Rights in Data

A. Rights in Data - these following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a

copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

14. Notwithstanding anything to the contrary omitted here from, the Parties hereby agree to comply with all applicable governmental authority, including the statutes, regulations, and rules of the United States and of Arizona.