

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF BISBEE AND
THE CITY OF DOUGLAS FOR BISBEE PUBLIC TRANSIT SERVICE**

This agreement is made and entered into this _____ day of _____, 2024, by and between the City of Bisbee, a municipal corporation of the State of Arizona, hereinafter referred to as the “City”, and the City of Douglas, a municipal corporation of the State of Arizona, herein after referred to as “Douglas”.

WHEREAS, pursuant to Arizona Revised Statutes, Section 11-952, which allows contracts/agreements between public agencies for cooperative actions, Douglas desires to enter into an Intergovernmental Agreement whereby City agrees to allow the use of certain facilities and services, as stipulated in this agreement.

WHEREAS the City needs certain transit services performed, as more particular specified in the Statement of Work, attached as Exhibit A which is incorporated herein by reference, and

WHEREAS Douglas offered to perform certain transit services within the terms of this Intergovernmental Agreement;

THEREFORE, in consideration of the mutual promises contained in this agreement, and of the mutual benefits to result there from, parties agree as follows:

1. Douglas agrees to perform the work and to provide the services as described in the “Statement of Work and Special Instructions to Douglas”, and “Special Instructions”, attached as Exhibit A which is incorporated herein by reference, and made part of the agreement. This work shall be provided in compliance with Federal Transportation Administration (FTA), Grant Agreement Bisbee-00025 Exhibit B) with ADOT, Title VI compliance requirements, Limited English Proficiency (LEP) compliance requirements, Disadvantaged Business Enterprises (DBE) compliance requirements, and with the Americans with Disabilities Act (ADA).

2. Douglas further agrees to provide all services required by this Agreement in a complete and acceptable form, as is customarily provided according to normal professional standards applicable in the transit industry.

3. This Agreement shall remain in effect for a period of 2 years, with an option of up to two (2) one (1) year renewals if agreed to in writing by both parties. This Agreement may be renewed for an additional period upon the mutual agreement of the parties. The effective date of this IGA shall be October 1, 2024.

4. The City will compensate Douglas for its performance, and Douglas agrees to accept as complete payment for such full performance, a sum not to exceed \$237,036 on year 1 and \$256,856 on year 2 of the grant cycle. The City shall have the right to reject all or any work or work product submitted under this Agreement which does not meet the required specifications.

In the event of any such rejection, Douglas agrees to promptly remedy any and all deficiencies. No compensation shall be due for any rejected work until such deficiencies have been corrected, and are to be corrected at Douglas' sole cost.

5. Payment shall be made by the City to Douglas on the basis of invoices. Douglas' billing period shall be on a monthly basis, or as otherwise specified in the Statement of Work documents. Invoices shall be submitted within 15 days after the end of the billing period. The City shall make every effort to process payment within twenty-one (21) calendar days after the date of the invoice. Douglas shall provide periodic reports and updates on the progress being made in connection with the work included within each billing period payment requests, sufficient for the City to determine that satisfactory progress is being made.

6. All notices, invoices and payment shall be made in writing and may be given by personal delivery, mail or email. The names and addresses of the designated recipients for such notices, invoices and payments are as follows:

TO DOUGLAS:
City of Douglas
Attn: Transit Division
425 E. 10th Street
Douglas, AZ 85607

TO CITY:
City of Bisbee
Attn: Public Works
76 Erie Street
P.O. Box 4601
Bisbee, AZ 85603

OTHER TERMS

7. **NON-DISCRIMINATION.** The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

8. **CONFLICT OF INTEREST.** This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.

9. **NO BOYCOTT OF ISRAEL.** In accordance with A.R.S. § 35-393.01, the parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

10. **COMPLIANCE WITH IMMIGRATION LAWS.** The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. §

23-214(A) (together the “State and Federal Immigration Laws”). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

11. **INSPECTION AND AUDIT.** The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

12. **PUBLIC RECORDS LAW.** Notwithstanding any other provision of the agreement, the parties understand that all of the other parties are public entities and, as such, are each subject to Arizona's public records law, A.R.S. § 39-121 et. seq.

13. **JURISDICTION AND APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.

14. **AGREEMENT SUBJECT TO APPROPRIATION.** The performance by each Party to this Agreement of its respective obligations under the Agreement is subject to actual availability of funds appropriated by each Party for such purposes. Each Party to the Agreement shall be the sole judge and authority in determining the availability of funds under the Agreement and each Party shall keep the other Party fully informed as to the availability of funds for its obligations. The obligation of each Party to fund any obligation pursuant to the Agreement is a current expense of such Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Party. If the Council or Governing Board of a Party fails to appropriate money sufficient to meet its obligations as set forth in the Agreement during any immediately succeeding fiscal year, the Agreement shall terminate at the end of the then-current fiscal year and the Parties shall thereafter be relieved of any subsequent obligation under the Agreement.

15. **GRATUITIES.** Either Party may, by written notice to the other Party, cancel this Agreement if it is found by a Party that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the other Party or any agent or representative of the Party to any officer, agent or employee of the Party for the purpose of securing this Agreement.

16. **INDEMNIFICATION.** Each Party (each, an “Indemnitor”) agrees, to the extent permitted by law, to indemnify, defend and hold harmless the other Party (each, an “Indemnatee”) for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any Indemnatee may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Indemnitor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

17. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS,
ARIZONA, this 13th day of November 2024

ATTEST:

CITY OF DOUGLAS

Alma Andrade
City Clerk

Donald C. Huish
Mayor

APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE,
ARIZONA, this ____ day of _____ 2024

ATTEST:

CITY OF BISBEE

Ashlee Coronado
City Clerk

Ken Budge
Mayor

In accordance with the requirements of A.R.S. § 11 952, the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Attorney for City of Douglas

Attorney for City of Bisbee

By:
Denis Fitzgibbons, Fitzgibbons Law

By:
Joseph D. Estes, Gust Rosenfeld, PLC

Date:

Date:

EXHIBIT A

STATEMENT OF WORK

Douglas shall provide operations management, dispatch, driver's trainings, substance abuse monitoring, and operation of the transit service. The City will provide public transit vehicles (buses), maintenance of the transit vehicles; Douglas will assist the City in the requirements of the preventative maintenance schedule and delivery of the vehicles to and from the maintenance facilities. A deviated flex route service is proposed. This service will operate much like a fixed route with deviation system, except that the vehicle will not be required to return to the route near the point at which it left the route. Rather, fixed service will be provided to a series of "hub stops" located at key activity centers and residential areas throughout the community. Between the hub stops, the vehicle driver will be able to deviate as necessary to serve door-to-door transportation needs. This service type provides more flexibility than traditional route deviation, and thus can better serve all passengers with greater efficiency.

Currently the City provides a flex service with thirty (30) designated stops made on a scheduled basis. The present schedule is Monday through Friday, 5:50 a.m. through 6:30 p.m. with ten (10) runs per day. Saturday service begins at 9:30 a.m. through 4:00 p.m. with four (4) runs with the same thirty (30) designated stops. The bus does not currently operate on Sundays or major holidays.

Because of the configuration of the City of Bisbee, one (1) route has been selected. Each run has sufficient time built into the trip for deviations. The route begins at the top of Tombstone Canyon, through Old Bisbee to the Lowell area, to the Warren town-site and continues on Highway 92 past Briggs Addition to the San Jose Area. After servicing the San Jose area including the Safeway Plaza and the Bisbee Senior Center, the route diverts south to Naco, Arizona six (6) times each weekday (all routes on Saturday), and returns to the Bisbee Senior Center and Safeway Plaza. The route reverses itself to the Warren town-site and continues through Saginaw back to the Lowell area and returns through historic Old Bisbee to the top of Tombstone Canyon.

Principal hub stops served by the system will be Copper Queen Plaza/Lyric, City Hall, D.E.S., Safeway, Copper Queen Hospital, and the Senior Center. In Naco, AZ the principal hub stop is the Turquoise Valley Golf Course and the stop at Martinez/Towner.

Changes to fares, routes, schedules, and the schedule of activities may not be made without prior written approval from the City in consultation with the City's Transit Advisory Committee (TAC) and the ADOT. Such changes can be made without requiring a written amendment to this agreement.

The present fee schedule is as follows:

General Public:	\$1.00 per ride
Students (7 – 18):	\$0.25 per ride
Senior Citizens:	\$0.50 per ride
Disabled Persons:	\$0.50 per ride
Deviations:	\$0.50 per person (requires advance notice)

In addition, monthly passes will be available, at the following prices:

General Public:	\$25.00
Students:	\$ 7.50
Senior Citizens:	\$15.00
Disabled Persons:	\$15.00

Monthly passes will be available through the City of Bisbee and Douglas.

With these on-going transit services, some adjustments may be needed during the year in order to provide more effective service or to meet rider's requests. Should City mandate a change in service levels thereby occasioning an increase in operating costs, Douglas shall be compensated, for the increase in operating costs through a prompt renegotiation process to be completed within one monthly billing cycle of the mandated change in service.

A Transportation Advisory Committee (TAC) has been established and the facilitator of that committee is the City of Bisbee. The purpose of the TAC is to advise the transit system on any matter concerning the operation and administration of the system. Douglas will become a member of the TAC committee, attend and provide ridership stats, maintenance updates, and other reports relevant to the program.

The City currently operates three (3) buses; two buses are used in the daily route and one is the designated back up.

Service Levels

Service shall be provided Monday through Friday, with minimum hours of operation being from 5:50 a.m. until 6:30 p.m., Monday through Friday, and Saturdays from 9:30 a.m. until 4:00 p.m. No service will be provided on Sundays or on City of Douglas holidays.

Dispatching/Office Staff

Douglas shall establish an office where business is to be conducted, which includes but not limited to a space to hold driver and dispatch trainings and meetings. All furnishings, equipment and supplies are the responsibility of Douglas. Personnel with dispatch capabilities will be on call and/or staff the Douglas office from 5:50 a.m. through 6:30 p.m., Monday through Friday and 9:30 a.m. to 4:00 p.m. on Saturday. Dispatcher and/or Transit Manager shall be available on call if not in the office in the event driver assistance is required. Compliance with this provision may be attained by having an office anywhere within Douglas' regional transit service area.

Deviations

Douglas shall receive service requests from elderly, disabled, and general public transit riders for door-to-door and door-to-hub stop service. Requests for service for door to the door or for changes in standing order trips must be made with a prior days' notice before service is needed in order to allow time to prepare the driver schedules. A will-call return trip will be scheduled only for normal flex service hours, and the pickup will be accomplished on the next regularly scheduled route. An answering service shall be available after hours to inform callers how to obtain bus information.

Transit Revenues

Douglas drivers shall collect the fares and remit the full amount to the City on a daily basis. The City of Bisbee encourages Douglas to pursue advertising as a means of enhancing revenues. The City reserves the right to approve the advertising methods used by Douglas.

Douglas shall provide a secure method of collecting fares and accounting for same. A description of this method shall be included as part of the proposal. Douglas is not required to make change for riders. Douglas is responsible for developing and issuing a system to regulate monthly passes. Douglas and its employees are prohibited from soliciting or accepting tips or gifts of any kind.

Personnel

Douglas shall be solely responsible for the provision and satisfactory performance of all Douglas employees as described by this Request for Proposal. Douglas shall be solely responsible for payment of all employee and/or subcontractor compensation and benefits. Without any additional expense to the City, Douglas shall comply with the requirements of employee liability, Worker's Compensation, employment insurance, Social Security, and all other applicable laws. The City of Bisbee shall have the right to demand removal from the project, for reasonable cause, any personnel furnished by Douglas. Douglas agrees to compensate all personnel with wages and benefits comparable to normal transit industry standards and provide regular evaluations and reviews of all employees. Each of Douglas' employees shall, at all times while on duty in the performance of the services required herein, be neatly and cleanly dressed and maintain a courteous and cooperative attitude in their contact with the public.

Transit Manager:

Douglas shall designate a Transit Manager who shall oversee the day-to-day operation of the service. Douglas shall provide a job description for this position in the proposal package including compensation amount. Due to the Transit Manager's critical role, the City requires that this person be identified, that a detailed resume be furnished by Douglas, and that this person be available to be interviewed by the City.

Administrative/Financial Staff:

Douglas shall supply a sufficient number of employees to staff the office at all required times and perform all necessary tasks associated with the service. Douglas shall be responsible for training these employees and making sure that all program policies and procedures are understood.

Drivers & Dispatchers:

Douglas shall supply a sufficient number of properly qualified personnel to operate the equipment and to provide the services required. Douglas shall provide a list of their proposed drivers and dispatchers, their qualifications, and salaries. Drivers are required to wear appropriate uniforms.

Ridership Tracking App.

City of Douglas will provide a Ridership Tracking App to Bisbee Drivers including training so they can electronically record ridership, statistics, pre/post inspections, GPS, Electronic passes and mileage using a mobile device. The tablet that the City provides to the Drivers will be only for City business related purposes. Employees are responsible for the general care of the tablet and associated equipment issued by the Douglas. Employees are expected to protect mobile devices used for work-related purposes from loss, damage, or theft. It is the responsibility of the Driver to ensure the City-provided tablet is kept in a reasonable and safe condition. Employees are expected to refrain from using their tablets while driving. Regardless of the circumstances, including slow or stopped traffic, employees are required to pull off to the side of the road and safely stop the vehicle before entering ridership. Employees are responsible for notifying the supervisor of any issues related to the operation of the tablet.

Attendants:

Douglas will not supply attendants, but must allow a disabled passenger to bring an attendant, if so requested. Douglas shall not charge a fare for personal care attendants, in compliance with the Americans with Disabilities Act. Personal care attendants must be authorized and will not be counted as passengers.

Safety/Inspection

Douglas shall require drivers to perform written and signed daily safety inspections of vehicles in accordance with Federal Motor Vehicle Regulations at the beginning (Pre-trip) and end (Post-trip) of each day's service. All defects identified in the inspection shall be noted in writing, the Transit Program Manager shall be notified of the defect, and the vehicle will be scheduled for repair at the City's garage 940 Tovreaville Road, Bisbee, Arizona or a designated repair facility. Unless an emergency, all repair appointments must be scheduled 24 hours in advance. Vehicles failing the daily inspection shall not be used in service until the reason for failure is corrected. The maintenance record must reflect the date the vehicle was submitted for repair and when the repair has occurred.

Douglas reserves the right to ensure that vehicles are being maintained properly and are in safe operating condition. Douglas may inspect vehicles and maintenance/inspection records at any reasonable time and may remove a vehicle from service until problem(s) are corrected.

Accident/Incident Investigation

Douglas shall establish a policy on accident/incident investigations in accordance to the current Section 5311 Guidebook and ADOT Grant Agreement which includes but is not limited to a specific timeframe for investigation, reporting responsibilities, and a statement that the City Transit Program Manager shall be notified immediately, following the reporting to the appropriate authorities, of any accidents. A description of this plan shall be submitted to the City.

Maintenance

All vehicles used in performance of this IGA shall be maintained, at a minimum, according to the manufacturer's specifications for routine and preventive maintenance and in accordance with Federal Motor Carrier Regulations, the City's Preventative Maintenance Plan applicable ADOT regulations, the cost of which shall be borne by the City. Douglas will work directly with the City mechanics or staff regarding maintenance issues. The buses are housed outdoors at the City Garage/Yard located at 940 Tovreaville Rd in Bisbee, Arizona. Douglas shall bear the cost of drivers required to transport vehicles for repair. Douglas shall be required to keep vehicles clean, inside and out. Service records must be kept for all vehicles and must be available for City inspection during normal office hours.

Passenger comfort and safety are necessary vehicle maintenance requirements. Safety exits shall be clearly marked and easy to use. Air conditioning is required to be operational throughout the year. Adequate heating shall also be maintained in working condition and available when needed. Douglas shall remove from service any vehicle with faulty air conditioning and/or heating and schedule them for repair at the City's garage or a City agreed upon vehicle maintenance provider.

Insurance Requirements

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

The Insurance Requirements herein are minimum requirements for the IGA and in no way limit the indemnity covenants contained in the ADOT Grant Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect Douglas from liabilities that arise out of the performance of work under the IGA by Douglas, its agents, representatives, employees and/or subcontractors, and Douglas is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE

Douglas shall provide coverage with limits of liability not less than those stated below. Deductible(s), Self-Insurance, and Self-Insured Retention (SIR) amounts are subject to review and approval by ADOT Safety and Risk Management.

Commercial Automobile Liability and Physical Damage Coverage

The policy shall contain Bodily Injury and Property Damage coverage for any owned, leased, hired, and/or non-owned vehicles used in the performance of the IGA.

Combined Single Limit Auto Liability (CSL)

- \$1,000,000 Vehicles carrying four (4) or fewer passengers
- \$2,000,000 Vehicles carrying five (5) up to fifteen (15) passengers
- \$5,000,000 Vehicles carrying sixteen (16) or more passengers

Physical Damage Coverage

- \$5,000 Maximum Comprehensive Deductible
- \$5,000 Maximum Collision Deductible

The policy shall be endorsed, as required by written agreement, to name the “The State of Arizona and/or ADOT” as loss payee(s) as their interests may appear.

The policy shall be endorsed, as required by written agreement, to include the “The State of Arizona, ADOT/MVD and its officers, officials, agents, and employees”, “The City of Bisbee”, “SEAGO”, “Arizona Department of Economic Security” to be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Douglas involving automobiles owned, leased, hired or borrowed by Douglas.

The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of Douglas.

Douglas’ policies shall stipulate and/or be endorsed that the insurance afforded Douglas shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as prescribed by A.R.S. § 41-621 (E).

Commercial General Liability – Occurrence Form (AS APPLICABLE)

The policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability – Written and Oral	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

The policy shall be endorsed, as required by written agreement, to include the “The State of Arizona, ADOT/MVD and its officers, officials, agents, and employees”, “The City of Bisbee”, “SEAGO”, “Arizona Department of Economic Security” shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Douglas.

The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, the Department and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of Douglas.

Douglas’ policies shall stipulate and/or be endorsed that the insurance afforded to Douglas shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as prescribed by A.R.S. § 41-621 (E).

Workers’ Compensation and Employers’ Liability (AS APPLICABLE)

Workers' Compensation	Statutory Limits
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Employers' Liability

Each Accident	\$500,000
Disease – Each Employee	\$500,000
Disease – Policy Limit	\$1,000,000

The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of Douglas.

This requirement shall not apply to an agency or subcontractor exempt under A.R.S. § 23-901, if such agency or subcontractor executes the ADOT Workers’ Compensation Waiver for Sole Proprietors and Independent Contractors form.

ADDITIONAL INSURANCE REQUIREMENTS

Douglas’ policies, as applicable, shall stipulate that the insurance afforded the Company shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and non-contributory insurance, as prescribed by A.R.S. § 41-621 (E).

Insurance provided by Douglas shall not limit Douglas’ liability assumed under the indemnification provisions of this Agreement.

NOTICE OF CANCELLATION

With the exception of ten (10)-day notice of cancellation for non-payment of premium, any changes material to compliance with the Agreement in the insurance coverages above shall require sixty (60) days written notice to

the State of Arizona. Such notice(s) shall be sent directly to the ADOT Risk Management, Insurance & Indemnification Section and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS

Douglas' insurance shall be placed with insurance companies duly licensed in the State of Arizona or which hold approved non-admitted status on the Arizona Department of Insurance's List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or be duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect Douglas from potential insurer insolvency.

VERIFICATION OF COVERAGE

Douglas shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by the ADOT Grant Agreement. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates required by the ADOT Grant Agreement shall be sent directly to the ADOT Risk Management, Insurance and Indemnification Unit by email to mvd1@azdot.gov. The MPD program description, grant and/or agreement number. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by the ADOT Grant Agreement at any time.

All insurance certificates and endorsements are to be received and approved by the State of Arizona before work commences under the IGA.

Insurance coverages must be in effect at or prior to commencement of work under the IGA and must remain in effect for its duration. Failure to maintain the required insurance coverages or provide timely evidence of coverage renewal is a material breach of the ADOT Grant Agreement and IGA.

All certificates required by this Contract shall be uploaded to the Arizona Grant Management System. 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, certified copies of all insurance policies required by the grant agreement at any time.

SUBCONTRACTORS

Douglas' certificate(s) shall include all subcontractors as insureds under its policies, or Douglas shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

APPROVAL

Any modification or variation from the insurance requirements in this Agreement shall be made in consultation with ADOT, Safety & Risk Management Division. Such action will not require a formal amendment to this Agreement, but may be made by administrative action.

EXCEPTIONS

In the event Douglas or its sub-contractor(s) is/are a public entity, then the above- referenced insurance requirements shall not apply. Such public entity shall instead provide the Department with a copy of its Certificate of Self-Insurance. If Douglas or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above insurance requirements shall apply.

INDEMNIFICATION

To the fullest extent permitted by law, Douglas shall indemnify, defend, and hold harmless the State of Arizona, ADOT MVD and its officers, officials, agents and employees (hereinafter referred to in this section 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 Douglas or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of Douglas 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 Douglas from and against any and all claims. It is agreed that Douglas will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this IGA, Douglas agrees to waive all rights of subrogation against the State of Arizona, ADOT MVD and its officers, officials, agents and employees for losses arising from the work performed by Douglas under this Third Party Authorization Agreement.

This indemnity clause shall not apply if Douglas or its subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

REPORTING

All passenger and vehicle-related accidents involving any property damage or personal injury resulting from service provided under this agreement must be reported verbally to the City immediately after they occur. A complete report on the accident shall be forwarded within 24 hours of notice of the accident. The bus driver involved in the accident shall be driven to the testing facility within the required amount of time.

Marketing Plan

The City and Douglas shall promote the service to ensure the general public is aware of the program and to increase ridership. Acceptable marketing media include, but are not limited to: distribution of flyers; posting of signs and posters in public gathering places; radio and television announcements; press releases in local organizational newspapers, bulletins and newsletter, and printed route maps and schedules. Vehicles used for this service shall carry placards or decals. All promotional efforts must contain the program name: “City of Bisbee Public Transit Service.” Douglas may provide the City with copies or examples of promotional materials to be used. The City reserves the right to approve these materials.

As part of the annual marketing plan, the City shall conduct market analysis to determine what improvements can be made to the program to better serve the general public. Douglas shall have the Transit Manager ride the bus for at least a complete cycle at least two (2) times per year to evaluate the program. . All associated direct marketing costs shall be the City’s responsibility and budget for as part of its 5311 grant award.

Records and Reports

Douglas shall keep separate books and records of its operations in accordance with generally recognized accounting procedures. Douglas shall permit the authorized representatives of the City, the Arizona Treasurer's Office, Arizona Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of Douglas relating to its performance under this IGA. The ADOT Grant Agreement requires the records to be produced at any reasonable time. The records must clearly show revenues collected, and hours and costs of operation. Such records shall be maintained for a period of seven (7) years. Douglas shall, at his own expense, have a third-party financial audit performed on an annual basis, a full copy of which shall be submitted to the City.

The City shall require Douglas to maintain records necessary to monitor the performance of the transit system. These will include the following types of records:

- Driver Logs of all trips taken and passengers carried;
- Daily Service Report listing total passenger trips by type and fare, unserved trips, service hours, total miles, service miles, and any road calls or accidents. Records shall be summarized for a monthly report.
- FTA 5311 (formally Section 18) Operations Revenue Reports.
- Maintenance records including Pre/Post Trip daily inspection, defects reported and when repaired, preventive and unscheduled maintenance, and amount of fuels and lubricants.
- Monthly Disadvantaged Business Enterprise (DBE) Report which identifies all expenditures made with qualified DBE firms. Register and report in the DBE system. In addition to reporting revenues received by the City of Bisbee regarding payment.
- Quarterly management report encompassing the following:
 - Accomplishments and goals – administration, transportation, maintenance
 - Existing and anticipated problems with recommendation for resolution
- Incident Report filed within 24 hours of reportable accident
- Drug and Alcohol Compliance Program Statistical Report
- Manager, Staff, Dispatcher and Driver Training records

All records and reports shall be available for review by the City Transit Program Manager. Douglas shall work with the City to assist in the preparation of annual reports for ADOT which may include, but not be limited to, the following:

- Five (5) year Transit Plan
- Marketing Plan
- Private sector policies
- Accessibility Plan
- Annual Disadvantaged Business Enterprise (DBE) report
- Financial reports
- Safety, Security and Emergency Preparedness Plan (SSEPP)
- RU 20 Annual Transit Report NTD
- Douglas shall conduct an annual rider survey and assist the City in distributing and collecting an independent City Ridership Survey.

Coordination for Stopping Points

The City shall coordinate with the City to secure and establish bus stops. Douglas may assist when necessary or required.

Other Assistance

Douglas shall assist and advise the City in managing the transit services including, but not limited to: safety, accident investigation, Title VI investigations, agency liaison, general administration, triannual Site Reviews, and procurement of capital items (e.g., fare boxes, bus shelters, benches, video equipment, etc.).

The Transit Manager shall assist in writing the 5311 ADOT Rural Transportation Grant application. The Transit Manager shall also assist in writing the Safety, Security and Emergency Preparedness Plan (SSEPP).

DEFINITION OF KEY WORDS:

ACCOMPANYING CHILD: Any child or children younger than six (6) years of age traveling with a fare-paying passenger, accompanying children shall not be charged a fare. Children must use a seatbelt.

ADOT: The Arizona Department of Transportation

BUS STOPS AND SHELTERS: City shall maintain the bus stops and shelters including updating the schedule, signs, and notify the City of any damages to the shelter.

CHILD: No one under the age of eight (8) is allowed to ride the bus without an adult.

CITY: The City of Bisbee, Arizona, 76 Erie Street, Bisbee, AZ 85603

DBE: Refers to the Disadvantaged Business Enterprise.

DEADHEAD: The time or distance required for the transit vehicle to travel to and from the storage or layover location and the beginning or end of a flex route when it is not available to carry passengers.

DES: Refers to the Arizona Department of Economic Security.

ELDERLY: Persons over the age of 60, as defined by the Older Americans Act of 1965.

FTA: Refers to the Federal Transit Administration.

DEVIATEDFLEX ROUTE SERVICE: Transportation of persons over prescribed fixed routes according to published schedules that repeat on a daily basis with deviation in routes to provide service to disabled, elderly persons, and general public.

GRANT CYCLE: The City of Bisbee Transit Program is funded through the Formula Grants for Rural Areas (CFDA#20.509), FTA/ADOT 5311 Grant Program and is dependent upon continued funding from the 5311 transit program. The Annual Cycle begins October 1 through September 30.

LAYOVER: A break in regularly scheduled flex route service exceeding thirty (30) minutes in duration, when the vehicle is not available to carry passengers.

MAY: Indicates something that is not mandatory but permissible.

PASSENGER: A person, other than the driver, traveling in the transit vehicle, including an accompanying child. Employees of Douglas traveling as part of duties necessitated by service under the IGA (e.g., relief drivers, instructors, inspectors, and mechanics) are not considered to be passengers.

PASSENGER TRIP: Transportation provided to a passenger from a point of origin (boarding) to a specific destination point (deboarding.)

PICKUP TIME: Actual time the transit vehicle arrives at a scheduled stop for fixed route transit, or the passenger's point of origin for demand responsive or route deviation service.

RIDER'S BROCHURE: The most recent brochure published by the City, containing the official route schedule, map and fare information.

ROUTE DEVIATION: Departure from the fixed route to pick up or drop off a disabled, elderly passenger, or the general public who could not otherwise get to the nearest bus stop location. A route deviation to pick up a passenger shall only be provided as a pre-scheduled trip.

SERVICE HOURS: The time period during which a vehicle shall be considered to be in service and available to transport passengers under the terms of this IGA. For flex route service, this means commencing at the beginning of the scheduled route and ending at the end of the route. A vehicle is considered to be in continuous service if the time between the end of one route and the beginning of the next route is thirty (30) minutes or less.

SERVICE MILE: The actual distance traveled, calculated to the nearest one-tenth of one mile, while the vehicle is considered to be in service under the terms of the IGA.

SHALL, MUST: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of the proposal as non-responsive.

SHOULD: Indicates something that is recommended but not mandatory; if the Bidder fails to provide recommended information, the City may, at its sole option, ask the Bidder to provide the information or evaluate the proposal without the information.

STUDENT: A passenger between the ages of 8-18.

TRAVEL REIMBURSEMENT: Travel and reimbursement is based on State Reimbursement Rates.

DOT: Refers to the United States Department of Transportation

WILL: Indicates an expression of intent, but is not binding.

WILL CALL RETURN TRIP: A trip for which a passenger requests transportation but is unable to provide an exact return time, due to the nature of an appointment. The passenger is then required to call for a vehicle when he/she is ready for pickup. The passenger must call during normal business hours for a pickup which must be accomplished during normal flex route-deviation hours.

EXHIBIT B

ADOT GRANT AGREEMENT

City of Bisbee

5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement

CAR Agreement Number	
AG Contract Number	P0012013003419
AFIS Payment Number and Address Code	IV0000009893 10003
Unique Entity ID	LMH1JE4K3D61
Program / Phase Number	Please Refer to Exhibit A
Eligible From Date	
Eligibility Expiration Date	
Project Details	

GRANT AGREEMENT
BETWEEN
THE ARIZONA DEPARTMENT OF TRANSPORTATION
MULTIMODAL PLANNING DIVISION
acting for and on behalf of
THE STATE OF ARIZONA
AND
Bisbee, City of

This GRANT AGREEMENT, established pursuant to Arizona Revised Statutes (A.R.S.) § 28-334, is entered into between the ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) MULTIMODAL PLANNING DIVISION (MPD) acting for and on behalf of THE STATE OF ARIZONA herein referred to as the STATE, and Bisbee, City of a City agency herein referred to as the SUBRECIPIENT. The STATE and the SUBRECIPIENT are collectively referred to as the "Parties", and individually as STATE, SUBRECIPIENT, and "Party".

I. RECITALS

- 1) STATE is authorized to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of STATE.
- 2) SUBRECIPIENT has obtained appropriate action by ordinance or resolution or otherwise pursuant to the laws or other rules and regulations applicable to it and its governing bodies and is authorized to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of SUBRECIPIENT.
- 3) The Governor of the STATE of Arizona, in accordance with a request by the Federal Transit Administration, hereinafter referred to as FTA, has designated the Arizona Department of Transportation as the responsible agency to evaluate and select proposed projects and to coordinate grant applications. The current State Management Plan, Program Guidebook, FTA Master Agreement, and the Program Application, incorporated herein by reference, prescribe the STATE's Administrative Policies and Requirements for the Program.

02/21/2024

Page 6 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

- 4) Exhibit A: Project Award Description provides the Project Award Description, Eligibility Dates, Funding Participation, and Match Requirements.
- 5) Exhibit B: Program Description and Communication and Contact Information provides the statutory reference and describes rules, regulations, and requirements specific to the program(s) awarded in this Agreement and provides contact information relevant to this Agreement.
- 6) Exhibit C: Responsibility Matrix delineates key requirements specific to roles.
- 7) Exhibit D: Procurement and Third Party Contract Provisions provides rules specific to SUBRECIPIENT procurement in this Agreement and provides a table of federal clauses required for procurement agreements.
- 8) Exhibit E: Discrimination & Title VI Requirements provides mandatory Title VI requirements.
- 9) Exhibit F: Disadvantaged Business Enterprise (DBE) Requirements provides mandatory DBE requirements.
- 10) Exhibit G: Insurance (Risk Management) Requirements provides mandatory insurance requirements.
- 11) Exhibit H: Language Modifications provides exceptions, exemptions, and language variations for Agreements with Tribes, Nations, or Native Indian Communities
- 12) The STATE and the SUBRECIPIENT desire to secure the Project as described in Exhibit A through the expenditure of FTA grant funds and to use said funding to provide services for eligible Program participants of the STATE of Arizona within the SUBRECIPIENT's service area, and carried out according to this Agreement and under the applicable sections of 49 USC Chapter 53 as described in Exhibit B.
- 13) The STATE and the SUBRECIPIENT desire defining their respective responsibilities related to the expenditure and reimbursement of up to the amount of funds described in Exhibit A and referred to as the PROJECT within the authority granted by the Program described in Exhibit B.
- 14) SUBRECIPIENT qualified local match and fees for the PROJECT to be procured by the STATE is due upon demand and prior to procurement. Match for PROJECT to be procured by SUBRECIPIENT shall be indicated in and deducted from request for reimbursement. All other match is due over the life of the award or as otherwise detailed in Exhibit A.
- 15) The APPLICATION for this Agreement does not constitute the AWARD amount. The AWARD will be demonstrated in Exhibit A of this Agreement, incorporated into the document at the time of execution and/or as updated from time-to-time by mutual consent.

02/21/2024

Page 7 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

- 16) The State has the authority to re-distribute Award if the signed Agreement or subsequent Amendment is not received by the program required deadline, or if applicable cash Match (if required) is not received by the established due date.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE

- 1) SUBRECIPIENT shall provide specific public transportation services or activities related to eligible funding, herein called the PROJECT, to eligible Program participants, in accordance with the SUBRECIPIENT'S application(s), incorporated herein as referenced and as allowable under the relevant section of 49 U.S.C. Chapter 53 as described in Exhibit B and the PROJECT description and Award described in Exhibit A.
- 2) PROJECT expense and cost awards will be detailed in Exhibit A. Awards may consist of any combination of expense or cost categories eligible in the associated grant program such as equipment or capital categories to be procured by ADOT, equipment or capital categories to be procured by SUBRECIPIENT, operating, intercity, administrative, planning, mobility management, or others. Generally allowable and unallowable expenses/costs are described in 2 CFR 200.400-.476. The Program will determine permissibility of individual cost elements not specifically described in regulation.
- 3) PROJECT Award is limited to the quantity and description of the items identified in Exhibit A. For those items with estimated amounts pending procurement that is to be completed by the SUBRECIPIENT, the estimated pricing shall be considered not-to-exceed pricing specific to the quantity and description of identified items. Any needed or desired variation from quantity, description, or pricing must be requested in writing and approved by the ADOT Transit Program Manager prior to procurement. Approvals will result in a modified Exhibit A being issued with updated approved not-to-exceed award, pricing, and match indicated. For PROJECT Award items being procured by ADOT, actual pricing that exceeds the estimate on Exhibit A will be confirmed with the SUBRECIPIENT prior to purchase.
- 4) SUBRECIPIENT eligible PROJECT expenditures or incurrence of costs may not occur prior to the "Expenses Eligible from Date" and must occur prior to the "Eligibility Expiration Date" established in Exhibit A. All support documentation must be dated within that established data range to be considered eligible. The SUBRECIPIENT may not incur any costs for work outlined in any subsequent amendments prior to receiving an executed Modified Exhibit A signed by the ADOT Transit Program Manager or ADOT Transit Manager. Any costs incurred prior to receiving such written document shall be treated as pre-award costs and shall not be eligible for reimbursement in accordance with 2 CFR 200.458.

02/21/2024

Page 8 of 70

5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement

- 5) PROJECT-appropriate expenses and costs associated with the PROJECT Award, supported by receipts and other suitable and appropriate documentation pursuant to 2 CFR 200 Subpart E - Cost Principles (2 CFR 200.400-476), and ADOT, as appropriate, and incurred within the Exhibit A established date range are eligible for reimbursement upon execution of this Agreement. Final reimbursement requests must be received no later than 45 days after the Eligibility Expiration Date occurs to be eligible for reimbursement unless an extension has been granted by the ADOT Transit Program Manager.
- a. Certifications Required: As required pursuant to 2 CFR 200.415 to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets. Mark the check box in the E-Grants Reimbursement which confirms this requirement/certification.
- 6) The SUBRECIPIENT must exercise the State's tribal consultation and coordination protocol. The purpose for this provision is to ensure compliance with ADOT's MGT-16.01 DEPARTMENT-WIDE NATIVE NATION/TRIBAL GOVERNMENT CONSULTATION POLICY found in the transit program guidebook and Arizona Revised Statute Section 41-2051, Subsection C - Responsibilities of state agencies located at: <https://www.azleg.gov/viewdocument?docName=https://www.azleg.gov/ars/41/02051.htm>. An ADOT Tribal Transportation Consultation Online Training Course and Handbook are available to the SUBRECIPIENT on the Arizona Tribal Transportation website at: <https://aztribaltransportation.org/training>.

III. RESPONSIBILITIES

- 1) ADOT will:
- a. Review PROJECTS for compliance with statutory requirements, oversight requirements, and program guidance.
- b. Review documentation supporting PROJECT expenditures for eligibility and ensure program match requirements are met.
- c. Review invoices, when appropriate to the Grant Award, from SUBRECIPIENT and reimburse SUBRECIPIENT within 30 calendar days after receipt and approval of invoices, in a total amount not to exceed the lesser of the approved invoiced costs or the Grant Award.
- d. Communicate with SUBRECIPIENT and FTA as necessary to facilitate program compliance and procedural efficiency.
- e. Monitor all activities performed by its SUBRECIPIENTS to assure that the work is being managed and performed satisfactorily and that time schedules are being met in

02/21/2024

Page 9 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

accordance with 2 CFR 200.329.

- f. Administer FTA funds allocated to the SUBRECIPIENT and ensure that such funds are expended for eligible costs, purpose and activities in accordance with 49 CFR 601-674, that are allowable per 2 CFR 200.400-.476 as adopted or otherwise modified pursuant to 2 CFR 1200-1299.

2) SUBRECIPIENT will:

- a. Administer the grant from award to closeout.
- b. Take necessary steps to ensure compliance with program or Agreement stipulated deadlines.
- c. Develop and have in place prior to use of award internal policies and systems that ensure effective management of awards and compliance with grant requirements.
- d. Implement strong internal controls for accounting and compliance with grant terms and conditions and ensure that SUBRECIPIENT financial management system and any other system used for documentation or compliance is appropriate to implement the Project. The financial management systems must comply with all the requirements of 2 CFR 200.302.
 - 1. Pursuant to 2 CFR 200.303, the SUBRECIPIENT shall establish and maintain effective internal control over the Federal award that provides reasonable assurance that the SUBRECIPIENT is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
 - 2. The SUBRECIPIENT shall comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.
 - 3. The SUBRECIPIENT shall evaluate and monitor the SUBRECIPIENTs compliance with statutes, regulations and the terms and conditions of Federal awards.
 - 4. The SUBRECIPIENT shall take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
 - 5. The SUBRECIPIENT shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or ADOT designates as sensitive or the SUBRECIPIENT considers

02/21/2024

Page 10 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

6. The SUBRECIPIENT shall establish separate accounts for each work element of the Project Budget, to be maintained within its existing accounting system or set up independently. Such accounts are referred to herein collectively as the Project Account. The Project Account and supporting documentation as set forth in 2 CFR 200 et seq., shall be made available upon request for examination by ADOT, FTA, or the Comptroller General of the United States in accordance with the requirements of 2 CFR 200.337.
 7. Documentation shall be collected and stored as designated in 2 CFR 200.336; whenever practicable, in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements.
 8. The SUBRECIPIENT shall record in the Project Account all payments received by it from ADOT pursuant to this article and all other funds provided for, accruing to, or otherwise received on account of the Project, which ADOT Payments and other funds are herein collectively referred to as Project Funds.
 9. The SUBRECIPIENT shall charge to the Project Account all eligible costs of the Project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of ADOT and FTA shall not be considered eligible costs. Determination of eligible costs shall be in accordance with the requirements of 2 CFR 200.402 to 2 CFR 200.414 and 2 CFR 200.420 to 2 CFR 200.475.
- e. Establish a budget of the costs required to perform the Project and a method for monitoring actual costs against the budget.
- f. Submit payment of Grant required MATCH upon demand by the STATE and/or as indicated in Exhibit A. Administrative fees and local match must be remitted from funds as qualified under the applicable 49 USC regulations. Match is defined as monies from non-federally funded sources used for matching or cost sharing requirements as defined and allowed under 2 CFR 200.306 and 2 CFR 200 Subpart E Cost Principles (2 CFR 200.400-.476). Local match must be remitted from funds of the program for which it was awarded as qualified under the applicable 49 USC regulations. Most federally-funded programs cannot use federal funds to provide match but 49 USC may provide certain exceptions to that stipulation under the specific funding section\title. The SUBRECIPIENT will ensure that matching funds qualify under the appropriate section\title of 49 USC as appropriate to the awarded PROJECT(s) indicated in Exhibit A.
- g. Comply with all terms of the Grant Program in accordance with the SUBRECIPIENT application(s) and the current Program Guidebook in effect at the time of application or

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

subsequently revised in writing and by notice, incorporated herein as referenced.

- h. Obtain prior written concurrence of the State before assigning any portion of the work to be performed under this Agreement or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement.
- i. Communicate contractual requirements to contractors and subcontractors and ensure all the requirements of this Agreement are incorporated by means of a contract or other legally binding documents stipulating the contractor and/or subcontractor's responsibility to comply with this Agreement.
- j. In the event of an accident involving any equipment funded under this Agreement, the SUBRECIPIENT shall, within 48 hours, notify the ADOT Transit Program Manager and the MPD Transit Group Manager (see Exhibit titled **PROGRAM DESCRIPTION AND COMMUNICATIONS AND CONTACT INFORMATION**) electronically via email. The SUBRECIPIENT agrees to request from and adhere to guidance from the ADOT Transit Program Manager regarding insurance proceeds. For insurance proceeds provided to ADOT, ADOT shall follow the requirements of FTA Circular 5010. The SUBRECIPIENT shall never return funds directly to FTA.
- k. Communicate with STATE and FTA as necessary to facilitate program compliance and procedural efficiency.
- l. Provide all required reports as prescribed by the current Program Guidebook or as requested by ADOT in a timely manner and as required by the STATE.
- m. Ensure users of PROJECT equipment and/or services meet applicable federal and state regulations and statutes.
- n. Review documentation supporting PROJECT expenditures for eligibility and ensure program match requirements are met.
- o. Comply with Performance Measure requirements as established by FTA and designated by the STATE for its compliance.
- p. Comply with Cross-Cutting requirements for transit asset management plans and reporting of asset inventory and condition information as established by FTA and designated by the STATE for its compliance.
- q. Demonstrate that funds are expended for eligible and allocable activities; track receipts, disbursements, assets, liabilities, and balances; and track and report program income.

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

r. Report to the STATE as required by the program but at a minimum request reimbursement quarterly in E-Grants, for categorized reimbursable Project costs/expenses awarded as detailed in Exhibit A, as authorized and allowable under the federal grant requirements, and supported as required with vendor invoices, original receipts, or other suitable and appropriate documentation.

In the event that no expenditures occurred during a calendar quarter, submit a zero dollar invoice.

A system-generated expense or general ledger report and program-required forms must be submitted with the reimbursement request. Detailed support documentation shall be maintained by the SUBRECIPIENT and shall not be submitted to ADOT unless and until requested.

In the event a system-generated expense or general ledger cannot be provided, it is acceptable to use a manually-created or spreadsheet ledger. However, in this case, all support documentation must also be submitted.

The State implemented an invoicing module within the Arizona E-Grants Transit Grant Management System (E-Grants). All invoices shall be submitted electronically. Paper invoicing will no longer be accepted. The SUBRECIPIENT agrees that all invoices and supporting documentation shall be submitted electronically through E-Grants.

To be eligible for reimbursement, costs must meet the following general criteria:

- Be a direct cost. Indirect costs are eligible for reimbursement only with an indirect cost plan approved by the SUBRECIPIENTs federal cognizant agency and accepted by ADOT as indicated on Exhibit A.
- Be necessary and reasonable for proper and efficient performance and administration of the Project;
- Be an eligible expense under federal and state statutes and program regulations;
- Be treated consistently. A cost may not be assigned to the grant as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a grant as an indirect cost;
- Be determined in accordance with generally accepted accounting principles;
- Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, nor will it be used as such in future periods;

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

- Be the net of all applicable credits; and
- Be adequately documented to include a system generated financial summary, or Excel spreadsheet accompanied by appropriate backup documentation (i.e. invoices, payroll, etc.), disclosing an expense amount that matches the invoice amount.

Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and incomes.

As defined in 2 CFR 1201.80, program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. (See 2 CFR 200.1 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a grantee and subgrantee, and interest earned on any of them.

All costs charged to the Project, including any approved services contributed by the SUBRECIPIENT or others, shall be supported as required by 2 CFR 200.302 (b)(3) and 2 CFR 200 et seq. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contracts and sub-grant award documentation, etc.

In accordance with 2 CFR 200 et seq. where the records must be supported by a system of internal control which provides reasonable assurances that the charges are accurate, allowable, and properly allocated; be incorporated into the official records of the SUBRECIPIENT; reasonably reflect the total activity or expense; encompass both federally assisted and all other activities on an integrated basis; and comply with the established accounting policies and practices of the SUBRECIPIENT; and include distribution among cost objectives where federal and non-federal or multiple federal distributions occur or between direct and indirect cost activities.

Submit an Indirect Cost Plan that has been approved by the SUBRECIPIENT cognizant agency if and only if indirect costs will be billed for reimbursement.

5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement

FTA Circular 5010 requires all grantees who intend to seek payment for indirect costs to prepare a Cost Allocation Plan (CAP).

Indirect Cost Rate Proposals must be approved by the applicable Cognizant Federal agency. Pursuant to 2 CFR 200.1, the cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. This is not necessarily the same as the cognizant agency for audit purposes. For assignments of cognizant agencies see the following:

1. For IHEs: Appendix III to Part 200-Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph C.11.
2. For non-profit organizations: Appendix IV to Part 200-Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Non-Profit Organizations, paragraph C.12.
3. For state and local governments: Appendix V to Part 200-State/Local Government-wide Central Service Cost Allocation Plans, paragraph F.1.
4. For Indian tribes: Appendix VII to Part 200-States and Local Government and Indian Tribe Indirect Cost Proposal, paragraph D.1.

Pursuant to 2 CFR 200.414 (f) any non-Federal entity (excluding state and local governments and Indian Tribes) that has never received a negotiated indirect cost rate may elect to charge a de minimis rate of up to 10% of modified total direct costs which may be used indefinitely. State, Local Governments, and Indian Tribes must comply with Appendix VII to 2 CFR 200.

Costs must meet the specified general criteria in order to be allowable under Federal awards and must be reasonable and not exceeding that which would be incurred by a prudent person at the time the decision was made to incur the cost. Detailed explanation of general provisions, basic considerations for costs, and explanation of classifying costs as either direct or indirect is located in 2 CFR Part 200 Subpart E: Cost Principles (<https://www.ecfr.gov/current/title-2/part-200/subpart-E>).

Pursuant to 2 CFR 200.414 (g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted, the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

ADOT will not reimburse indirect costs if an Indirect Cost Allocation Plan or if a documented de minimis rate certification is not in place.

Indirect costs, as defined in 2 CFR 200 et seq. are costs that are:

1. incurred for a common or joint purpose benefiting more than one cost objective;
2. not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved; and
3. originating in the grantee's department as well as those incurred by other departments in supplying goods, services, and facilities to the grantee department.

Cognizance may have multiple meanings. OMB has assigned cognizant audit agencies for State and Local governments. See Federal Register (51 FR 552, Jan 6, 1986). For all other purposes, cognizant agency is defined in federal regulations.

Cognizant agency for audit: The Federal agency designated to carry out the responsibilities described in 2 CFR 200.513 Responsibilities, paragraph (a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the Federal Audit Clearinghouse Web site.

If an indirect cost plan approved by a Federal cognizant agency has not been received by the time of execution of this Agreement, indirect costs will not be permitted. Subsequent submission of an approved plan will not grant retroactive eligibility of indirect costs; only costs incurred subsequent to ADOT receipt and written acknowledgement of the approved plan will be eligible for indirect costs.

In the event that the applying agency primarily receives FTA funds but is not a direct recipient of those funds, ADOT will function as the cost plan approver as delegated by FTA. If ADOT will function as the approver, the indirect cost plan must be in compliance with 2 CFR 200 Appendix V, VI, or VII as applicable and must be received with the signed original of this Agreement. Subsequent requests for ADOT approval within the effective period of this Agreement award will not be accepted.

s. Submit program required reports of procurement activities according to the Exhibit labeled: **PROCUREMENT AND THIRD PARTY CONTRACT PROVISIONS** and submit reports of contract activities as requested by the ADOT Transit Program Manager or the MPD Contracts Program Manager.

t. As required by 2 CFR 200.337, grant access to and allow review of work records, technical reports, annual reporting, and all data prepared by the SUBRECIPIENT related

5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement

to the programs under this Agreement. If the State or FTA finds that the work performed fails to comply with any requirement (e.g. tasks are not conducted in accordance with approved programs or tasks are found to be inconsistent with federal or state guidelines), the State or FTA may use enforcement actions contained in 2 CFR 200.339 to remedy the situation and any other appropriate remedies available at law. Right of access lasts as long as the records are retained (2 CFR 200.337(c)).

- u. As required by 2 CFR 200.336, whenever practicable, the SUBRECIPIENT shall collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The SUBRECIPIENT must always provide or accept paper versions to include not more than an original and two copies of Federal award-related information upon request. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.
- v. As required by 2 CFR 200.113, the SUBRECIPIENT shall disclose, in a timely manner, in writing to ADOT, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in 2 CFR 200 Appendix XII are required to report certain civil, criminal, or administrative proceedings to SAM. (Previously known as the Federal Award Performance and Integrity Information System, FAPIIS reports are now called Responsibility/Qualification records and are part of the SAM.GOV entity information). Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. (See also 2 CFR part 180.)
- w. As required by 2 CFR 200.111, where a significant portion of the SUBRECIPIENTs employees who are working on a federally funded project are not fluent in English, the SUBRECIPIENT must provide the information about the federal award in English and in the language(s) with which employees are more familiar. In the event of inconsistency between any terms and conditions of the award and any translation into another language, the English language meaning will control.

IV. MISCELLANEOUS PROVISIONS

- 1) **Term Incorporation:** This Agreement is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in this Agreement are incorporated by reference as a part of this Agreement. It is SUBRECIPIENT responsibility to ensure that any Agreement between SUBRECIPIENT and its CONTRACTORS for use of grant funds shall incorporate the provisions contained herein.

02/21/2024

Page 17 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

- 2) **Duration:** This Agreement shall become effective upon signature by the parties hereto and shall remain in force and effect until PROJECT satisfaction and completion which means that the work assigned under a contract has been completed, all finance transactions are processed, and all required reporting has been completed.

Duration of awarded expense/cost Projects are established in Exhibit A. Reimbursements may be requested no earlier than the spend-down of the awarded funds through the Eligibility Expiration Date established in Exhibit A unless extended by amendment or as otherwise provided herein plus an additional forty-five (45) days for submission of the final invoice for costs through the last authorized expenditure date of the Agreement.

In the event the award under this Agreement includes capital and/or rolling stock as part of the PROJECT, the life of this Agreement shall continue through the useful life of the PROJECT and until the federal interest has been extinguished and released by ADOT and/or FTA.

This Agreement may be canceled at any time prior to the commencement of performance under this Agreement, upon thirty (30) days written notice to the other party.

- 3) **Amendments:** This Agreement may be amended upon mutual agreement of the Parties at any time when in the best interest of FTA, STATE, or SUBRECIPIENT. Modifications to Exhibit A describing the details of the approved PROJECT may be modified without adopting a formal amendment to this Agreement; acceptance of the modification shall be indicated on the modified Exhibit A by an authorized signatory from the SUBRECIPIENT.
- 4) **Matching and Federal Funding:** PROJECT award amounts and match requirements are indicated in Exhibit A. The SUBRECIPIENT will provide the Match amount and fees required from eligible sources as prescribed in 49 USC Chapter 53 as described in Exhibit B appropriate to the Award(s) in Exhibit A. Most federally-funded programs cannot use federal funds to provide match but certain exceptions exist to that stipulation. The SUBRECIPIENT is responsible for ensuring that match is obtained from sources eligible for the relevant funding source on each Project. The SUBRECIPIENT shall maintain records of verifiable matching funds and verifiable third party in-kind contributions as required by 2 CFR 200.306 and 2 CFR 200.302. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the SUBRECIPIENT records or cost-type contractors. These records must explain and demonstrate how the value placed on each third party in-kind contribution was derived. ADOT requires match to be applied to specific budget line items. In-kind contributions shall be identified and be accompanied by a narrative description of the service being provided in addition to identification of the organization that will be providing the service. The SUBRECIPIENT shall initiate and complete all actions necessary to provide its share of the PROJECT costs at or prior to the time that such funds are requested and/or required by the STATE.

For those match amounts that are estimated pending procurement of the awarded PROJECT

02/21/2024

Page 18 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

equipment, if procured by the STATE, the STATE will notify the SUBRECIPIENT regarding final match requirements, which will be due upon receipt of said notice. The notice will include a modified Exhibit A, which shall be accepted by signature and inserted into this executed Agreement without requiring contract amendment. Match for Project Equipment procured by SUBRECIPIENT shall be indicated in and deducted from the request for reimbursement.

For those items with estimated amounts pending procurement that are to be completed by the SUBRECIPIENT, the estimated pricing shall be considered not-to-exceed pricing specific to the quantity and description of identified items including the prescribed match requirements. Any needed or desired variation from quantity, description, or pricing must be requested in writing and approved by the ADOT Transit Program Manager prior to procurement. Approvals will result in a modified Exhibit A being issued with updated approved not-to-exceed award, pricing, and match indicated. Without advance approval, SUBRECIPIENT is responsible for all of the increased price or quantity procured.

In the event that this Agreement is terminated after matching and/or administrative funds have been issued to and deposited by the STATE, there is no guarantee of timeframe for refund of match funds, and refund shall not occur prior to the reassignment of the PROJECT award to another eligible agency and payment by that agency of any required matching funds. Remitted administrative fees are non-refundable except when this Agreement is terminated by ADOT or the STATE at no fault of the SUBRECIPIENT. In circumstances where the designated SUBRECIPIENT cannot accept delivery of the Project Equipment or where surrender of equipment is required, said equipment will be reassigned. Refund of capital match will be based on current fair-market value at the time of surrender less the cost of any repairs or modifications required to affect reassignment to another recipient and/or program.

- 5) **Availability of Funds:** Every payment obligation of STATE under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by STATE at the end of the period for which the funds are available. No liability shall accrue to STATE in the event this provision is exercised, and STATE shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- 6) **Liens on Equipment:** The purchase of PROJECT equipment shall be undertaken by the STATE on behalf of the SUBRECIPIENT unless otherwise indicated in Exhibit A. The PROJECT equipment shall be titled in the name of the SUBRECIPIENT. To the extent of financial assistance provided, the STATE shall hold a first lien on all rolling stock acquired under this agreement in the amount of the federal share of the equipment cost. The lien placed on vehicle equipment shall remain in effect through the useful life of the vehicle, as explained in the current Program Guidebook unless this agreement is otherwise terminated under terms of this Agreement.
- 7) **Property and Equipment, Use, Inventory, and Disposal:** Title to real property under a grant will vest under acquisition in the SUBRECIPIENT or their CONTRACTOR as applicable. The procurement, use, and disposition of real property and equipment shall be consistent with the

02/21/2024

Page 19 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

program-approved use and in accordance with the requirements of 2 CFR 1201.313, 2 CFR 200.313, and Federal Property Management Standards which is herein incorporated by reference and made a part of this Agreement. The SUBRECIPIENT agrees to inventory, to maintain records of, and to insure the proper use, control, and disposal of all property, equipment, computer hardware, and furniture, acquired pursuant to funding under this Agreement. Except as otherwise provided by statute, property and equipment shall be used for the originally authorized purposes as long as needed for that purpose. SUBRECIPIENT shall comply with all requirements and guidance during the course of the lien period, including but not limited to: maintenance of the equipment, annual reporting to the STATE of administrative and vehicle performance data, annual vehicle inspections, timely accident/incident reporting and situation resolution, and other requirements as specified in the State Management Plan and current Program Guidebook. When no longer needed for the originally authorized purpose, the SUBRECIPIENT and/or their CONTRACTOR will request disposition instructions from the ADOT Transit Program Manager.

- 8) **Modifications and Other Changes to Grant Equipment:** Prior to any substantive modifications or other changes made or elimination, reduction, or addition to grant equipment, written approval from the ADOT Transit Program Manager must first be obtained. Examples include but are not limited to the elimination of wheelchair positions and additions of ambulatory seating, reduction in number or addition of passenger assist stanchions, rails, steps, secondary manufacturer and aftermarket vehicle components provided by the STATE, and other devices requiring or otherwise exposing or altering mechanical or structural modification to the vehicle.
- 9) **Statutory Compliance:** All parties shall comply with all applicable federal, state and local requirements including all applicable provisions of Title 49 (United States Department of Transportation) and other applicable Codes of Federal Regulations where and when relevant.
- 10) **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 this Agreement. With the exception of the requirements of the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this Agreement, the provision of the Federal statutes or regulations govern, including, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450-458ddd-2. This provision shall be incorporated in any SUBRECIPIENT, subcontractor, or lower-tier agreement for which funds from this Agreement shall be used for payment. The Federal Transit Administration Master Agreement can be viewed in its entirety at the link provided on the Exhibit titled: **PROGRAM DESCRIPTION AND COMMUNICATIONS AND CONTACT INFORMATION**. In addition to other clauses required throughout this Agreement or by State law, the SUBRECIPIENT will include applicable contract provisions in every third-party contract / purchase order using federal funding summarized (but not limited to) the following:

- a. The requirements in 2 CFR 200.326,

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

- b. The requirements in 2 CFR 200 Appendix II,
 - c. FTA funded procurements/contracts: Circular 4220 – Third Party Contracting Guidance and summarized in its Appendix D, as revised from time to time
 - d. Any requirements established by a particular funding stream, program, or in funding agency guidelines.
- 11) **Conflict of Interest:** Pursuant to 2 CFR 1201.112, the SUBRECIPIENT shall disclose in writing any potential conflict of interest to the State, who shall inform the Federal awarding agency in accordance with applicable Federal awarding agency policy. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of STATE employees.
 - 12) **Recordkeeping:** All SUBRECIPIENTS and/or their CONTRACTORS and the parties shall retain all data, books, and other records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the STATE at reasonable times as set forth in A.R.S. 35-214, A.R.S. 35-215, 2 CFR 200.334, and applicable FTA circulars.
 - 13) **Audit:** The administration of resources awarded by ADOT to the SUBRECIPIENT may be subject to audits and/or monitoring by ADOT, as described in this section.

Monitoring: In accordance with 2 CFR 200.329, ADOT shall monitor all activities performed by its staff or by subrecipients of FTA funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met. Therefore, in addition to reviews of audits conducted in accordance with 2 CFR 200 Subpart F, et seq. (2 CFR 200.500-.521), monitoring procedures may include, but not be limited to: on-site visits by ADOT staff or designees, limited scope audits as defined by 2 CFR 200 Subpart F, et seq., as revised, and/or other procedures. By entering into this Agreement, the SUBRECIPIENT agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by ADOT. In the event ADOT determines that a limited scope audit of the SUBRECIPIENT is appropriate, the SUBRECIPIENT agrees to comply with any additional instructions provided by ADOT staff to the SUBRECIPIENT regarding such audit. The SUBRECIPIENT further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the ADOT's Office of Audit and Analysis, ADOT's Office of the Inspector General (OIG) and ADOT's Financial Management Services. It is the responsibility of the SUBRECIPIENT to monitor their sub-recipients.

Federally funded: Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in 2 CFR 200 Subpart F, et seq., as revised) are to have audits done annually using the following criteria:

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

- a. In the event that the SUBRECIPIENT or their sub-recipient expends \$750,000 or more in Federal awards in its fiscal year, the SUBRECIPIENT and their sub-recipient must have a Single Audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq., as revised. In determining the Federal awards expended in its fiscal year, the SUBRECIPIENT and their sub-recipient shall consider all sources of Federal awards, including Federal resources received from ADOT. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR 200 Subpart F, et seq., as revised. An audit of the SUBRECIPIENT conducted by the Arizona Auditor General or an independent auditor in accordance with the provisions 2 CFR 200 Subpart F, et seq., as revised, will meet the requirements of this part. In connection with the audit requirements the SUBRECIPIENT shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508, et seq.
- b. If the SUBRECIPIENT expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq., as revised, is not required. However, if the SUBRECIPIENT elects to have an audit conducted in accordance with the provisions of 2 CFR 200 Subpart F, et seq., as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from SUBRECIPIENT resources obtained from other than Federal entities). If the SUBRECIPIENT is exempt from the Federal audit requirements, pursuant to 2 CFR 200.501(d), records must be available for review or audit by appropriate officials.
- c. Federal awards are to be identified using the Assistance Listing Title and Number, award number and year, name of the awarding federal agency, and percentage of federal participation.
- d. In compliance with 2 CFR 200.512(a), et seq., the audit shall be completed and the report must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

The SUBRECIPIENT shall follow up and take corrective action on audit findings. Preparation of summary schedule of prior year audit findings, including corrective action, a timetable for resolution, and current status of the audit findings are required to be submitted to ADOT. Current year audit findings require corrective action, a timetable for resolution, and status of findings will also be reported to ADOT.

If the SUBRECIPIENT fails to take corrective action, ADOT will:

- a. make a determination to make financial adjustments to the allocated Federal funding as determined appropriate, up to and including repayment by the SUBRECIPIENT of disallowed costs, or

5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement

b. take other action as determined appropriate.

If the SUBRECIPIENT has not completed corrective action, a timetable for follow-up should be provided.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to ADOT and the Arizona Auditor General. This section does not limit the authority of ADOT to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

Audit Report submission: Copies of reporting packages for audits conducted in accordance with 2 CFR 200 Subpart F, et seq., and required by this section titled AUDIT shall be submitted when required by 2 CFR 200 Subpart F, et seq., as revised, directly to each of the following:

a. SingleAudit@azdot.gov

b. The Federal Audit Clearinghouse (FAC) designated in 2 CFR 200.512 et seq., at <https://harvester.census.gov/facweb/>

c. Other Federal agencies and pass-through entities in accordance 2 CFR 200 Subpart F, et seq. as revised. Pass-Through Entity is defined as a non-Federal entity that provides a subaward to a SUBRECIPIENT to carry out part of a Federal program (2 CFR 200.1).

Copies of written communication between the SUBRECIPIENT and the independent auditor in compliance with the Statement on Auditing Standards No 114 and as required by this section titled AUDIT of this agreement shall be submitted by or on behalf of the SUBRECIPIENT directly to:

a. SingleAudit@azdot.gov

b. Any written communication required to be submitted to ADOT pursuant to this agreement shall be submitted timely in accordance with 2 CFR 200 Subpart F, et seq.

c. SUBRECIPIENTS, when submitting financial reporting packages to ADOT for audits done in accordance with 2 CFR 200 Subpart F, et seq. should indicate the date that the reporting package was delivered in correspondence accompanying the reporting package.

If the amount of FTA funds granted to a particular **SUBRECIPIENT** does not trigger the requirement for an audit pursuant to 2 CFR 200.501, the State may still request a review.

14) **Dispute Resolution / Arbitration:** In the event of any controversy, the Parties agree that it is in their mutual best interest to promptly meet with the purpose of resolving said Dispute. In the event

5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement

that the Parties cannot resolve their dispute informally, the parties hereto agree to abide by required arbitration as set forth for in Arizona Revised Statutes Section 12-1518.

- 15) **Third Party Antitrust Violations:** The SUBRECIPIENT assigns to the STATE any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the SUBRECIPIENT toward fulfillment of this Contract.
- 16) **Immigration:** 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 subcontractor employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.
- 17) **Termination for Convenience:** Either Party has the right to terminate the Agreement, in whole or in part at any time, when in the best interests of the FTA, SUBRECIPIENT, or STATE without penalty or recourse. If terminated for convenience, the SUBRECIPIENT agrees to follow ADOT's instructions regarding equipment or other products / services procured through this Agreement. This Agreement may be terminated by either party provided that a termination shall not be effective until 30 calendar days after a Party has served written notice upon the other Party. This Agreement may be terminated by mutual consent of both Parties or unilaterally by either Party without cause.
- 18) **Termination for Default:** STATE reserves the right to terminate this Agreement in whole or in part due to failure of SUBRECIPIENT to carry out any term, promise, or condition of the Agreement. STATE will issue a written ten (10) day cure notice to SUBRECIPIENT for failure to adequately perform, or if there is reason for STATE to believe that the SUBRECIPIENT cannot or will not adequately perform the requirements of the Agreement. If SUBRECIPIENT does not submit a Corrective Action Plan to the satisfaction of STATE within the ten (10) day period, then STATE may pursue action in accordance with the Agreement Article titled: *Arbitration*.
- 19) **Transparency Act:** Because ADOT receives federal funds, ADOT is required to comply with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments. ADOT is required to report awards to subrecipients when they exceed \$25,000 in funding. ADOT is not currently aware of reporting requirements that might become required from SUBRECIPIENTS. Should requirements be stipulated wherein information is required from SUBRECIPIENTS, such information will be requested. The SUBRECIPIENT herein agrees that in a timely manner, and in the method specified by the STATE, the SUBRECIPIENT will provide information that is requested by the STATE to enable the STATE's compliance with the

02/21/2024

Page 24 of 70

5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement

requirements as may be applicable.

- 20) **Federal Certifications and Assurances for FTA Assistance Programs:** Pursuant to 49 U.S.C. 5323(n), the FTA consolidated the certifications and assurances required by Federal law or regulations for its programs. On an annual basis, any agency with an active FTA capital or formula project must provide an affirmation by SUBRECIPIENT's attorney pertaining to the SUBRECIPIENT's legal capacity. The SUBRECIPIENT must agree to comply with all categories applicable to ADOT, who is considered to be the APPLICANT and SUBRECIPIENT of the funds by FTA, regardless of current applicability of the initial award under this Agreement. This is to ensure that should the category become applicable during the life of the Agreement, the SUBRECIPIENT will comply. The FTA Certifications and Assurances will be provided to the SUBRECIPIENT under separate packet as they are released by the FTA and subsequent to ADOT filing agreement. Continuation of this Agreement shall be contingent on completion and submission of that packet within the deadline expressed at time of distribution. The FTA Certifications and Assurances, as modified and accepted each year shall be considered incorporated into this Agreement by reference.

The Parties understand and agree that not every provision of these Certifications and Assurances will apply to every Applicant or every Project. The type of Project and SUBRECIPIENT will determine which Certifications and Assurances apply.

SUBRECIPIENT also understands and agrees that these Certifications and Assurances are pre-award requirements, generally required by Federal law or regulation, and do not include all Federal requirements that may apply. Our FTA Master Agreement, available at the link provided on the Exhibit titled: **PROGRAM DESCRIPTION AND COMMUNICATIONS AND CONTACT INFORMATION** contains a list of most of those requirements.

SUBRECIPIENT is ultimately responsible for compliance with the Certifications and Assurances that apply to it or its Project, even if a SUBRECIPIENT or other Third Party Participant may be involved in your Project, except as FTA determines otherwise in writing. For this reason, we strongly encourage SUBRECIPIENT to take the appropriate measures, including, but not limited to, obtaining sufficient documentation from each SUBRECIPIENT and other Third Party Participant to assure the validity of applicable Certifications and Assurances.

SUBRECIPIENT understands and agrees that when applying for funding on behalf of a consortium, joint venture, partnership, or team, SUBRECIPIENT must identify the activities each member will perform and the extent to which each member of that consortium, joint venture, partnership, or team will be responsible for compliance with the Certifications and Assurances, except as FTA determines otherwise in writing.

The FTA Certification and Assurances required of ADOT and its SUBRECIPIENTS are issued annually subsequent to ADOT signing the same. Completion and Signing of this FTA Certification and Assurances document is a requirement and a condition to receive federal funding through

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

ADOT and does not relieve the SUBRECIPIENT of any obligation of other certifications or assurances required in any application or contracting process, and should be treated as an addition to such certifications and assurances.

- 21) **Entire Agreement:** This Agreement may be amended, modified, or waived only by an instrument in writing signed by both Parties. Should the PROJECT awarded under this Agreement be completed at a lower cost than the amount awarded, or for any other reason should any of these funds not be expended, or expended in other than in strict accordance with the terms and conditions of this Agreement, a proportionate amount of the funds provided shall be reimbursed to the STATE. Except as identified in the PROJECT the SUBRECIPIENT shall not assign any portion of the PROJECT or execute any agreement, contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the STATE.
- 22) **Israel Boycott Not Permitted:** The SUBRECIPIENT warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.
- 23) **Duplicate Funding Not Permitted:** The SUBRECIPIENT agrees that if it receives Federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or any other Federal agency, or insurance proceeds for any portion of a project activity approved for funding under its Grant Agreement, the SUBRECIPIENT shall provide written notification to ADOT, and reimburse ADOT for any funding share that duplicates funding provided by FEMA, another agency, or an insurance company. The SUBRECIPIENT shall notify the ADOT program/project manager and shall refund ADOT within sixty (60) calendar days from the date duplicate funds are received. As the Recipient of the funding, ADOT is responsible for refunding the awarding federal agency as applicable.
- 24) **Trafficking in Persons:** Private Entity SUBRECIPIENTS agree that it and its employees that participate in the Recipients Award, may not: Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect, Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or Use forced labor in the performance of the Recipient's Award or subagreements thereunder. FTA defines Private Entity as any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).
- 25) **Forced Labor of Ethnic Uyghurs Ban:** Pursuant to Arizona Revised Statutes § 35-394, the SUBRECIPIENT warrants and by signing this Agreement so certifies that it does not currently, and agrees for the duration of the contract that it will not use the forced labor of ethnic Uyghurs in the People's Republic of China, any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, or any contractors, subcontractors or suppliers that

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the SUBRECIPIENT becomes aware during the term of this Agreement that the SUBRECIPIENT is not in compliance with this certification, the SUBRECIPIENT shall notify ADOT within five business days after becoming aware of the noncompliance, and within 180 days after notice, provide written certification that the SUBRECIPIENT has remedied the noncompliance. This item does not apply to not-for-profit organizations or organizations with fewer than ten (10) full-time employees.

V. SECURITY AGREEMENT

- 1) In consideration of the funded PROJECT equipment identified in Exhibit A, including all added Secondary Manufacturer and Aftermarket Components, and conveying title thereto, the SUBRECIPIENT hereby grants ADOT a security interest in the PROJECT equipment in the amount indicated as the Federal Portion in Exhibit A.
 - a. If the SUBRECIPIENT by itself or any agent sells, transfers, offers or attempts to sell or transfer, in whole or in part, the PROJECT equipment, the SUBRECIPIENT shall remit the remaining Federal interest value, payable to ADOT, upon demand.
 - b. If the PROJECT equipment is totally destroyed or is lost, stolen or otherwise disappears, the SUBRECIPIENT shall remit the remaining Federal interest value, payable to ADOT, upon demand.
 - c. If this Agreement is terminated, the SUBRECIPIENT shall remit the remaining Federal interest value, payable to ADOT, upon demand.
 - d. If the property is seized or repossessed by the STATE, the SUBRECIPIENT shall remit the remaining Federal interest value, payable to ADOT, upon demand.
- 2) In the event the PROJECT equipment is totally destroyed, lost, stolen, or disappears, the obligation herein may be extinguished by assigning to ADOT the proceeds of insurance covering such an event, provided the assignment and the ultimate payment is equal to the fair market value of the PROJECT equipment on the date of occurrence of such event.
- 3) Secondary Manufacturer and Aftermarket Components, In addition to the original equipment manufacturer (OEM) components (as supplied by the manufacturer or vendor to the STATE or ADOT) or their equivalent as delivered by ADOT to the SUBRECIPIENT or authorized for post-delivery installation as part of the award are considered to be included in the lien. Addition of aftermarket components not designated as part of the original award must be approved by the ADOT Transit Program Manager. Approved aftermarket components shall be considered part of the PROJECT equipment and shall not be removed without approval by the ADOT Transit Program Manager, and in no case if the PROJECT equipment cannot be returned

02/21/2024

Page 27 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

to its originally awarded state.

- 4) This security agreement and its terms shall not inure to the benefit of any assignee, purchaser for value, or any other person acquiring an interest herein, and this security interest herein created shall not be extinguished until and unless the STATE receives the remaining Federal interest of the PROJECT equipment on the date of assignment, purchase, or acquisition of other interest.

VI. COMPLIANCE WITH MANUFACTURER'S MAINTENANCE SCHEDULE

By signing this Agreement, the SUBRECIPIENT of Project Rolling Stock award(s) agrees to abide by the vehicle manufacturer's schedule of maintenance, at a minimum, during the period the vehicle is operated in conjunction with the Arizona Department of Transportation, or its successor agency.

The Manufacturer's Maintenance Schedule shall be incorporated in the SUBRECIPIENT'S Fleet Maintenance Plan, and the SUBRECIPIENT shall document completion of all maintenance activities. Additionally, the ADA requires that:

Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make them readily accessible to and usable by, individuals with disabilities. These features include but are not limited to, lifts and other means of access to vehicles, securement devices, signage and systems to facilitate communications with persons with impaired vision or hearing.

Accessibility features must be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

A system of regular and frequent maintenance checks of lifts is required. If a lift fails to operate when in service, the ADA requires the vehicle be taken out of service before the beginning of the vehicle's next service day. The lift must then be repaired before the vehicle returns to service. If a contract operator is used for ADA-related service, the SUBRECIPIENT must ensure the contractor notifies the SUBRECIPIENT immediately of any failure of the lift to operate in service.

If there is no spare vehicle to take the place of a vehicle with an inoperable lift, the SUBRECIPIENT may keep the vehicle in service for no more than five days if it serves an area of 50,000 or less population, or three days if it serves an area of 50,000 or more population.

VII. GENERAL ASSURANCES

- 1) The SUBRECIPIENT is an agency that has been designated as eligible for the Award(s) described in the Application and/or Exhibit A pursuant to the program relevant section of 49 USC.

02/21/2024

Page 28 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

- 2) The SUBRECIPIENT assures that it has the legal, financial, and technical capacity to carry out its proposed Project described herein, including safety and security aspects of that program.
- 3) The SUBRECIPIENT will have satisfactory continuing control over the use of project equipment and facilities.
- 4) The SUBRECIPIENT has or will have prior to procurement, sufficient funds to provide the local match and any required fees for the equipment purchased under this contract and to operate and maintain the vehicles or equipment purchased under this project.
- 5) The SUBRECIPIENT assures affirmative compliance with Title VI of the Civil Rights Act of 1964 – Nondiscrimination in the Provision of Service (FTA C 4702.1; FTA C 9040.1E; and FTA C 9070.1E).
- 6) The SUBRECIPIENT assures that the transportation needs of elderly persons and persons with disabilities have or will be addressed by the SUBRECIPIENT, pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794).
- 7) The SUBRECIPIENT has demonstrated and will continue to demonstrate efforts to achieve coordination with other transportation providers, including social service agencies capable of purchasing service. The SUBRECIPIENT has participated in the development of a local coordinated public transit human services transportation plan for the area(s) in which project vehicles will be used.
- 8) The SUBRECIPIENT assures that private transit and paratransit operators and the public have been afforded a fair and timely opportunity to participate to the maximum extent feasible in the provision of the proposed transportation services by the SUBRECIPIENT.
- 9) The SUBRECIPIENT assures that it will comply with applicable provisions of the Americans with Disabilities Act (ADA) of 1990, (Public Law No. 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including FTA C 4710.1, 28 CFR parts 35-36, and applicable provisions of 49 CFR Parts 27, 28, 37 and 38. 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".
- 10) The SUBRECIPIENT will comply with the applicable provisions of the guidelines relative to charter bus service (Title 49 CFR Part 604) and school bus operations (Title 49 CFR Part 605; Title 49 USC 5323(f)).
- 11) The SUBRECIPIENT assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The SUBRECIPIENT agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The SUBRECIPIENT recognizes that Federal laws and regulations may be modified from time to time

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

and those modifications may affect project implementation. The SUBRECIPIENT understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the SUBRECIPIENT or its project. The SUBRECIPIENT agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

- 12) The SUBRECIPIENT agrees that reimbursement of any cost in accordance with the indicated payment methods for its Award does not constitute a final FTA decision about the allowability of that cost and does not constitute a waiver of any violation by the SUBRECIPIENT of the terms of its Award. If the Federal Government or the STATE determines that the SUBRECIPIENT is not entitled to receive any part of the federal assistance requested, the Federal Government or the STATE will notify the SUBRECIPIENT stating the reasons. Close out of the Award will not alter the SUBRECIPIENT's obligation to return any federal assistance due to FTA as a result of later refunds, corrections, or other transactions. Nor will close out of the Award alter FTA's right to disallow costs and recover federal assistance on the basis of a later audit or other review. Unless prohibited by law, FTA may offset any federal assistance to be made available under its Award necessary to satisfy any outstanding monetary claims that FTA may have against the SUBRECIPIENT. Exceptions pertaining to disallowed costs are set forth in FTA directives or in other written federal guidance.

VIII. DRUG FREE WORKPLACE

ADOT requires each SUBRECIPIENT to maintain a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 41 USC 701 et. seq. and 49 CFR Part 32 et seq. for all employees and to have an anti-drug policy and awareness program. Grant direct recipients must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR Part 32 et seq. The STATE requires compliance by SUBRECIPIENTS. The SUBRECIPIENT certifies that it will provide a drug-free workplace by:

- 1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the SUBRECIPIENT's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- 2) Establishing an ongoing drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The SUBRECIPIENT's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations in the workplace.
- 3) Making it a requirement that each employee to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);

02/21/2024

Page 30 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

- 4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant or cooperative agreement, the employee will:
 - a. Abide by the terms of the statement;
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
- 5) Notifying the STATE in writing, within ten calendar days after receiving notice under subparagraph (4.b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee is working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant or cooperative agreement.
- 6) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (4.b), with respect to any employee who was convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b. Requiring such employees to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.

IX. CERTIFICATION ON RESTRICTIONS ON LOBBYING

The SUBRECIPIENT 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.

02/21/2024

Page 31 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

The SUBRECIPIENT agrees to require all lower tier subcontractors who have agreements exceeding \$100,000.00 to complete Lobbying Certification (Exhibit B) and when appropriate, the Disclosure of Lobbying Activities (Exhibit C).

Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements

Pursuant to 49 CFR 20, Subpart F, Appendix A

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

X. DEBARMENT, SUSPENSION, RESPONSIBILITY MATTERS FOR PRIMARY AND LOWER TIER COVERED TRANSACTIONS

The SUBRECIPIENT shall establish and maintain an entity registration on the federal System for Award Management website: <https://sam.gov/content/entity-information>. This registration will be used by ADOT to confirm eligibility to receive federal funds.

02/21/2024

Page 32 of 70

**5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement**

The federal funding in this Agreement is considered a covered transaction under 2 CFR 1200.220 for purposes of debarment and suspension considerations. Thus both sub-recipient pass-through agreements and agreements for contractors, subcontractors, suppliers, consultants or its agent or representation in any transaction is subject to this requirement. The SUBRECIPIENT is prohibited from making any award or permitting any award at any tier to any party which has not established and maintained its entity registration on the federal System for Award Management or one that is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs pursuant to 2 CFR 200.214.

The SUBRECIPIENT agrees to comply, and assures the compliance of each SUBRECIPIENT, contractor, and subcontractor, 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 200.214. The CONTRACTOR agrees to and assures that its subcontractors will review the Exclusions available at <https://sam.gov/content/entity-information> and assure that its subrecipients establish and maintain entity registration on the System for Award Management before entering into any contracts.

XI. ARIZONA ELECTRONIC TRANSIT GRANT MANAGEMENT SYSTEM (E-Grants)

The STATE implemented an electronic transit grant management system, titled "E-GRANTS". The SUBRECIPIENT agrees to submit all related documents through that system as required and requested by the STATE. The SUBRECIPIENT further agrees that any scanned documents attached in E-Grants shall comply with minimum 300 dpi scanning requirements, be clearly legible, and in PDF format. The STATE certifies that the electronic signatures comply with ARS 41-132 and ARS 44-7031. The SUBRECIPIENT agrees that pursuant to ARS 41-132, any electronic signature processed through E-GRANTS has the same force and effect as a written signature and shall be considered a valid original pursuant to ARS 11-487.02. For further instructions on using the E-Grants system, please refer to the [E-Grants Subrecipient User Guide](#) posted on the ADOT Transit Planning web site, under ==> **More Information** and also in the E-Grants system under the menu **My Training Materials**. SUBRECIPIENT shall maintain an active E-Grants profile with current email, address, and phone contact information.

XII. COPYRIGHT AND PATENT

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

Copyright: The State DOTs and their subrecipients may copyright any books, publications, or other

5311 Application 2024
Organization: Bisbee, City of
5311-2024-City of Bisbee-00025
Grant Agreement

copyrightable materials developed in the course of the work performed through funding under this Agreement . The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patent: The State DOTs and their subrecipients are subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, incorporated herein as Exhibit D, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs and their subrecipients must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

02/21/2024

Page 34 of 70