

AGREEMENT NO. _____

GRANT PASS-THRU AGREEMENT

**BETWEEN
THE CITY OF PHOENIX
AND
CITY OF MESA**

Federal Award Identification Number (FAIN) No. AZ-2022-012

(MAP-21 Section 20005(b) Funds)

This Grant Pass-Thru Agreement (“**Agreement**”) is made and entered into this 1st day of July, 2022 (“**Effective Date**”), by and between the City of Phoenix (“**PHOENIX**”), a municipal corporation duly organized and existing under the laws of the State of Arizona, and City of Mesa (“**SUBRECIPIENT**”), a municipal corporation duly organized and existing under the laws of the State of Arizona. PHOENIX and SUBRECIPIENT are sometimes referred to collectively as “**PARTIES**” and individually as a “**PARTY.**”

RECITALS

- A. PHOENIX’s City Manager is authorized and empowered by the City Charter’s provisions to execute contracts.
- B. PHOENIX has statutory and charter authority to provide transit services and enter into agreements with other entities within the Phoenix Urban Area for providing transit services. See A.R.S. Section 11-951, et seq.; Phoenix City Charter Chapter 2, Section 2, Subsections (c)(i) and (l).
- C. As a political subdivision of the State of Arizona, PHOENIX may contract and enter into stipulations of any nature to do acts necessary and convenient for the exercise of its powers. The laws of the State of Arizona authorize municipalities to: (1) engage in any business or enterprise that may be engaged in by persons by virtue of a franchise from the municipal corporation (see A.R.S. Section 9-511(A)); (2) appropriate and spend public monies on activities that “will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of [its] inhabitants” (see A.R.S. Section 9-500.11); and (3) be vested with all the powers set forth in Title 9 for incorporated towns, in their respective charters, and in other provisions of law (see A.R.S. Section 9-499.01).
- D. SUBRECIPIENT has statutory authority to exercise all of the powers granted to municipal corporations and to cities by the Constitution and laws of the State of Arizona, together with all of the implied powers necessary to carry into execution all the expressed powers granted therein and the power to enter into

intergovernmental agreements with other governmental entities. See A.R.S. Section 11-951, et seq.

- E. Transit activities are one of the types of activities authorized pursuant to the aforementioned statutory and Charter authority and such powers do not conflict with any of the provisions of SUBRECIPIENT's authorizations.
- F. Section 5338(a)(2)(B) of chapter 53, title 49, United States Code (formerly the Federal Transit Act of 1964, as amended) makes MAP-21 Section 20005(b) financial aid available to government entities for Transit-Oriented Development (TOD) planning associated with eligible projects.
- G. PHOENIX successfully applied to the Federal Transit Administration ("**FTA**") for a grant of MAP-21 Section 20005(b) funds, which was awarded as FAIN No. **AZ-2022-012** ("**Grant**").
- H. SUBRECIPIENT shall receive funds from said Grant and perform the project(s) ("**Project(s)**") described in **Exhibit A-1** as attached to this Agreement and incorporated by reference.
- I. PHOENIX and SUBRECIPIENT have been authorized by their respective formal authorities to enter into this Agreement.

AGREEMENT

IT IS HEREBY AGREED, by and between the PARTIES, as follows:

1. Agreement Term.

The Agreement's term begins on its Effective Date. The Project(s) led by SUBRECIPIENT must be completed and reimbursement must be requested by the 31st day of December, 2024. Funding for any uncompleted and unbilled Projects may be reassigned at the discretion of PHOENIX, as needed to close out the Grant. This Agreement will terminate after all federal and PHOENIX requirements have been met and PHOENIX has closed out the Grant.

2. Reimbursement From Grant.

A. PHOENIX agrees to reimburse SUBRECIPIENT for its share of federal funding allocated from the Grant for the purchase of items/services provided in the "Project Description" box of **Exhibit A-1**. SUBRECIPIENT shall comply with all requirements in 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," which are incorporated by reference.

B. Before receiving reimbursement for any allowable and eligible indirect costs

awarded by and charged to the Grant, SUBRECIPIENT shall either: provide a cost allocation plan/indirect cost rate approved by the SUBRECIPIENT's cognizant federal agency; or charge a de minimis rate of 10% of modified total direct costs ("**MTDC**") in accordance with 2 CFR Part 200.414. Reimbursement shall not exceed the federal funds allocated to SUBRECIPIENT, unless approved in writing by PHOENIX.

- C. The total federal funds allocated to SUBRECIPIENT under this Agreement shall not exceed **\$920,000**. No reimbursements shall be made unless all required reports, as described below, have been submitted.

3. Local Share.

SUBRECIPIENT shall provide the required local match for the Project(s), and that local match is currently estimated to be **\$230,000**, as detailed in **Exhibit A-1**. SUBRECIPIENT shall be responsible for the full amount of any costs that exceed the awarded Project(s) amount, such as price increases and applicable taxes.

4. Application for Reimbursement.

- A. SUBRECIPIENT shall submit an electronic copy of its application for reimbursement of the federal share to:

City of Phoenix Public Transit Department
Management Services Division, Grants Section
Email: ptdgrants@phoenix.gov

- B. The cover letter must identify the PHOENIX contract number and the period for which the application is submitted.
- C. For any applicable reimbursements, SUBRECIPIENT shall submit its application with the reimbursement request form shown in **Exhibit B**, which is attached to this Agreement and incorporated by reference.
- D. The application for reimbursement must be accompanied by detailed backup documentation for all eligible expenses. At a minimum, the documentation shall include the following:
 - 1. A listing of all invoiced costs with vendors and payment dates;
 - 2. Copies of paid invoices received from vendors for purchases of supplies and services and corresponding proof of payment such as cancelled checks or bank statements;
 - 3. Either an approved cost allocation plan on file with SUBRECIPIENT'S cognizant federal agency or an acknowledgement in writing that

SUBRECIPIENT will use of the 10% De Minimis Rate (in accordance with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards") for all allowable indirect costs that are eligible for reimbursement; and

4. Such other documentation as PHOENIX or FTA may require, including any reports mandated by **Exhibit C**, which is attached to this Agreement and incorporated by reference.
5. SUBRECIPIENT Performance.
 - A. SUBRECIPIENT shall complete the Project(s) for which the Grant's funds have been awarded in a proper and timely manner. SUBRECIPIENT is responsible for complying with all federal, state, and local requirements imposed under the Grant, including the requisites identified in **Exhibit D, Exhibit E, and Exhibit F**, which are attached to this Agreement and incorporated by reference.
 - B. SUBRECIPIENT must comply with all of the terms and conditions set forth in the "FTA Master Grant Agreement" currently in effect and any subsequent revisions, which are publicly available at transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements and incorporated into this Agreement by reference. SUBRECIPIENT must also comply with all conditions required for the Grant under the "Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements" currently in effect and any subsequent revisions, which are publicly available at transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances and incorporated into this Agreement by reference.
 - C. SUBRECIPIENT's failure to comply with all applicable requirements may result in the withholding of funds to SUBRECIPIENT under the Grant.

6. Insurance.

SUBRECIPIENT shall have adequate insurance to cover the Project(s) in the event of damage or complete loss.

7. Indemnification.

Each PARTY (as "**Indemnitor**") agrees to indemnify, defend, and hold harmless the other PARTY (as "**Indemnitee**") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "**Claims**") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the

act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

8. Notice.

- A. Any notice, consent, or other communication (“**Notice**”) required or permitted under this Agreement shall be in writing and either delivered in person, sent by email, deposited in the United States mail (postage prepaid, registered or certified mail, and return receipt requested), or deposited with any commercial air courier or express service addressed as follows:

If intended for SUBRECIPIENT:

Jodi Sorrell, Transit Services Director
City of Mesa
200 E. 6th Street
Mesa, Arizona 85211
Telephone: (480) 644-5541
Email: Jodi.Sorrell@mesaaz.gov

If intended for PHOENIX:

Jesús E Sapien, Public Transit Director
City of Phoenix Public Transit Department
302 N. 1st Avenue, Suite 900
Phoenix, Arizona 85003
Telephone: (602) 495-0418
Email: jesus.sapien@phoenix.gov

with electronic copy to:

City of Phoenix Public Transit Department
Management Services Division, Grants
Section
Email: ptdgrants@phoenix.gov

- B. Notice shall be deemed received: (a) at the time it is personally served; (b) on the **day** it is sent by email; (c) on the **2nd business day** after its deposit with any commercial air courier or express service; or (d) on the **10th calendar day** after its deposit in the United States mail (postage prepaid, registered or certified mail, and return receipt requested). Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either PARTY may change its mailing address, email address, or the person to receive Notice by providing the other PARTY with a Notice of that change.

- C. Notice sent by email shall also be sent by regular mail to the recipient at the

above address. This requirement for duplicate Notice is *not* intended to change the effective date of the original Notice sent by email.

9. Summary of Exhibits.

As noted above, the following exhibits are attached to this Agreement and incorporated by reference:

Exhibit A-1 Federal Grant Pass-Thru Agreement Detail Summary

Exhibit B Federal Grant Reimbursement Form

Exhibit C Required Reports

Exhibit D Required Federal Provisions

Exhibit E Partial List of Applicable Laws

Exhibit F Required Local Provisions

The PARTIES executed this Agreement on the day and year first above written.

CITY OF PHOENIX

Jeffrey Barton, City Manager

By _____
Jesús E. Sapien
Public Transit Director

ATTEST:

City Clerk - PHOENIX

APPROVED AS TO FORM:

Cris Meyer, City Attorney

Carolina Potts
Assistant Chief Counsel

APPROVED BY PHOENIX CITY COUNCIL BY FORMAL ACTION ON AUGUST 25, 2021.

CITY OF MESA

By _____

Printed Name: _____

Title: _____

APPROVED AS TO FORM:

Attorney for CITY OF MESA

APPROVED BY _____ BY FORMAL ACTION

ON _____.

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and (2) that, 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 PHOENIX

Attorney for CITY OF MESA

EXHIBIT A-1

**FEDERAL GRANT PASS THRU AGREEMENT
DETAIL SUMMARY**

FAIN NUMBER: AZ-2022-012				
CFDA NUMBER: 20.500				
GRANT RECIPIENT: CITY OF PHOENIX				
GRANT SUBRECIPIENT'S NAME: CITY OF MESA				
GRANT SUBRECIPIENT'S ADDRESS: 200 E. 6th Street Mesa, Arizona 85211				
GRANT SUBRECIPIENT'S DUNS NUMBER: 020141404				
TOTAL ELIGIBLE PROJECT COST for federal grant purposes (TEPC):		\$1,150,000		
• Federal Share of TEPC:		\$ 920,000		
• Local Share/Match of TEPC:		\$ 230,000		
PROJECT(S) DESCRIPTION:				
ALI Code:	Project(s) Description:	Local:	Federal:	Total:
44.26.15	Task 1 – Community Profile & Existing Conditions Analysis	\$30,000	\$120,000	\$150,000
44.26.15	Task 2 – Public Engagement Plan, Implementation Mitigation Plan	\$30,000	\$120,000	\$150,000
44.26.15	Task 3 – TOD Vision, Illustrative Master Plans, Station Area Snapshots	\$50,000	\$200,000	\$250,000
44.26.15	Task 4 – TOD Overlay Zone, Zoning Amendments	\$80,000	\$320,000	\$400,000
44.26.15	Task 5 – Financing Plan, Investment Strategies	\$40,000	\$160,000	\$200,000

EXHIBIT B

FTA Grant Expenditure Reimbursement Request Application

The information provided will be used by the City of Phoenix Public Transit Department (“PTD”) to monitor SUBRECIPIENT expenditures for FTA-funded projects and disburse FTA funds for eligible costs. No further FTA funds may be disbursed unless this report is completed and submitted as required.

SUBRECIPIENT ORGANIZATION NAME AND ADDRESS	GRANT AGREEMENT NUMBER		REQUEST NO.
	REPORTING PERIOD (Dates)		
	FROM:		TO:
	TOTAL	LOCAL MATCH	FTA SHARE
TOTAL ELIGIBLE PROJECT COSTS	\$ -	\$ -	\$ -
TOTAL PREVIOUS PAYMENTS	\$ -	\$ -	\$ -
CURRENT REIMBURSEMENT REQUESTED	\$ -	\$ -	\$ -
REMAINING FUNDING	\$ -	\$ -	\$ -

REQUIRED SIGNATURES

This document must be signed by the SUBRECIPIENT's Transit Manager and Chief Financial Officer or their designated representative(s).

CERTIFICATION

We certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures, have been incurred compliant with all applicable Federal laws and regulations, have not been previously requested, and have met all matching requirements. In addition, we understand that any discovery of a violation of a federal law or regulation, or any failure to follow applicable Federal directives, may result in withdrawal of federal participation.

SIGNATURE OF TRANSIT MANAGER OR DESIGNEE	DATE
TYPED OR PRINTED NAME AND TITLE	TELEPHONE
SIGNATURE OF CHIEF FINANCIAL OFFICER OR DESIGNEE	DATE
TYPED OR PRINTED NAME AND TITLE	TELEPHONE

Instructions

1. Keep a copy of all documents submitted.
2. All project records, including financial records, must be maintained for **three years** beyond the later of vehicle/asset disposal or final close-out of the Grant with FTA.

For PTD use only

Date request received:	Approved for funds availability (signature/date)
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EXHIBIT C

Required Reports

SUBRECIPIENT agrees to submit reports and statements or plans as now or hereafter required by PHOENIX or the FTA. Quarterly reports are due on or before the 15th of the month following the end of the quarter, i.e., October 15, January 15, April 15 and July 15; and annual reports are due ninety days (except NTD Report, which shall be due 120 days) after the end of the fiscal year (July 1 - June 30). Drug and Alcohol Reports are due January 31 for the previous calendar year.

REPORT	FREQUENCY	DESCRIPTION
DBE Reports	As required by PHOENIX	DBE participation, utilization, annual goal setting, progress, and information reports
Grant Status Report	Quarterly	Status of each project by grant number
NTD Report – Close Out Letter	Annually	Copy for information only
Fixed Assets Status Report	Annually	Inventory of all FTA-funded assets
Single Audit Report	Annually	Copy of federally required audit
Title VI Annual Report	Annually	Subrecipient to provide all Title VI complaints and related information annually
Drug and Alcohol Reports	Annually	FTA drug and alcohol testing
Contract Change Orders Above \$100,000	Quarterly	Subrecipient to provide list of any federally-funded contract change orders for any amount \$100,000 or greater
Claims/Settlements	Quarterly	Subrecipient to provide list of any federally-funded projects with Claims/Settlements pending or closed within the quarter
Vehicle Record Inventory Form	Reimbursements with vehicles	Provide a vehicle record inventory form for each vehicle purchased with FTA funds
Capital Asset Purchase Form	Reimbursements with capital asset	Provide a capital asset purchase form for each capital asset purchased with FTA funds

Staff Time Documentation	Reimbursements with staff time	All reimbursements for staff time must include verification of all hours billed, including copies of all applicable timecards or other time reporting documentation
<u>5310 FTA Grants</u>		
Grant Performance Information	Annually or as required by FTA	Evaluation of Grant Accomplishments

The reports and required submissions listed above may be increased, revised, reorganized, deleted or changed as required by FTA guidelines. **All reports must be current before any FTA funds will be disbursed by PHOENIX.**

EXHIBIT D

Required Federal Provisions

1. SUBRECIPIENT shall permit the authorized representatives of PHOENIX, the United States Department of Transportation (“**USDOT**”), and the Controller General of the United States to inspect and audit all data, books, records, and reports relating to this Agreement and SUBRECIPIENT’s performance hereunder. PHOENIX’s audit shall be at SUBRECIPIENT’s sole cost and expense. All required records shall be maintained for a minimum of **three years** after the Grant has been formally closed. The obligations of SUBRECIPIENT under this provision survive the termination or expiration of this Agreement.
2. Both PARTIES warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and, further, that no member or delegate to Congress or City Council, or any employee of PHOENIX or SUBRECIPIENT, has any interest, financial or otherwise, in this Agreement.
3. SUBRECIPIENT shall fully comply with the Disadvantaged Business Enterprise (“**DBE**”) regulations of USDOT, 49 CFR Part 26. SUBRECIPIENT shall abide by all stipulations, regulations, and procedures set forth in PHOENIX’s FTA-approved DBE Program Plan. The Transit Civil Rights Officer of PHOENIX’s Public Transit Department and representative(s) of PHOENIX’s Equal Opportunity Department will meet annually with SUBRECIPIENT to cooperatively determine DBE participation for all FTA-assisted projects.
4. In performing the services for which federal funding is provided under this Agreement, SUBRECIPIENT agrees to comply with all laws, rules, regulations, standards, orders, or directives applicable to: (a) this Agreement; (b) the services provided pursuant to this Agreement; and (c) PHOENIX, as the designated recipient of FTA funding. These laws, rules, regulations, standards, orders, and directives include federal, state, and local laws and those items set forth here in **Exhibit D** and below in **Exhibit E**.
5. The PARTIES acknowledge that federal funds are being used for the work, services, and operations provided under this Agreement. In that regard, PHOENIX, as the designated grant recipient, is obligated to accept and comply with all of the terms and conditions set forth in the Federal Transit Administration (“**FTA**”) Master Grant Agreement. In order for SUBRECIPIENT to receive funding under this Agreement with PHOENIX, SUBRECIPIENT is required to similarly accept and comply with all such terms and conditions, and SUBRECIPIENT does hereby specifically agree to be bound thereby. A copy of the Master Grant Agreement and any subsequent revisions are publicly available at transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements and incorporated into this Agreement by reference. SUBRECIPIENT

is solely responsible for complying with all the terms and conditions of the Master Grant Agreement and any subsequent revisions.

6. SUBRECIPIENT understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 (“**IRCA**”) and agrees to comply with the IRCA in the performance of this Agreement.
7. SUBRECIPIENT shall fully comply with Equal Employment Opportunity (“**EEO**”) regulations of the USDOT Urban Mass Transportation Administration (“**UMTA**”) Circular 4704.1. SUBRECIPIENT shall provide an EEO Program Plan when they employ **50 or more** transit-related employees and requests or receives: (a) planning assistance under Section 8 or 9 of the Urban Mass Transportation (“**UMT**”) Act (or any combination thereof) in excess of **\$250,000** in the previous federal fiscal year; or (b) capital or operating assistance under Section 3, 4(i), or 9 of the UMT Act, 23 U.S.C. 142 (a)(2), or 23 U.S.C. 103(e) (or any combination thereof) in excess of **\$1 million** in the previous federal fiscal year. SUBRECIPIENT shall fully comply with EEO regulations as they pertain to subcontractors. Any subcontractor with **50 or more** transit-related employees shall provide an EEO Program Plan.
8. Section 319 of Public Law 101-121 prohibits recipients of federal contracts from using appropriated funds for lobbying U.S. Federal Agencies or the United States Congress in connection with a specific covered federal action and requires all persons to disclose lobbying if they request or receive a covered federal action.

By signing this agreement, SUBRECIPIENT certifies that:

- A. SUBRECIPIENT shall require that the language of this section be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that SUBRECIPIENT shall certify and disclose accordingly.
- B. No federally appropriated funds have been paid or will be paid, by or on behalf of SUBRECIPIENT, 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 the: (1) award of any federal contract; (2) grant of any federal loan; (3) provision of any federal grant; (4) entrance into any cooperative agreement; and (5) extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- C. If any funds other than federally 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, SUBRECIPIENT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered. 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.

EXHIBIT E

Partial List of Applicable Laws

- A. Federal Codes. SUBRECIPIENT shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to U.S.C. 2000d-4 (“**Title VI**”) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964” (“**Nondiscrimination Regulations**”) and other pertinent directives so that no person in the United States shall, on the grounds of race, color, sex or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which SUBRECIPIENT receives federal financial assistance, directly or indirectly, from the Department of Transportation, including the Federal Transit Administration. SUBRECIPIENT hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by Subsection 21.7(a)(1) of the Nondiscrimination Regulations.

More specifically and without limiting the above general assurance, SUBRECIPIENT hereby gives the following specific assurances with respect to the Project(s):

1. SUBRECIPIENT shall insert the following notification in all solicitations for bids for work or material subject to the Nondiscrimination Regulations and made in connection with a project under 49 U.S.C. chapter 53 and, in adapted form, in all proposals for negotiated agreements:

CONTRACTOR, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation,” issued pursuant to such Act, hereby notifies all bidders and proposers that it will affirmatively ensure that in regard to any contract or procurement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids and proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration for an award.

2. If SUBRECIPIENT carries out a program of training under Section 5312 of Title 49, United States Code chapter 53, the assurance shall obligate SUBRECIPIENT to make selection of the trainee or fellow without regard to race, color, sex, or national origin.

3. Where SUBRECIPIENT receives federal financial assistance to carry out a program under Title 49, United States Code chapter 53, the assurance shall obligate SUBRECIPIENT to assign transit operators and to furnish transit operators without regard to race, color, sex, or national origin.
 4. Where SUBRECIPIENT carries out a program under Title 49, United States Code chapter 53, routing, scheduling, quality of service, frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, sex, or national origin.
 5. This assurance obligates SUBRECIPIENT for the period during which federal financial assistance is extended to the Project(s).
 6. SUBRECIPIENT shall provide for such methods of administration for the program as are found by PHOENIX to give reasonable guarantee that it, its contractors, subcontractors, transferees, successors-in-interest and other participants under such program will comply with all requirements imposed pursuant to 49 U.S.C. chapter 53, the Nondiscrimination Regulations, and this assurance.
 7. SUBRECIPIENT agrees that PHOENIX has a right to seek judicial enforcement regarding any matter arising under 49 U.S.C. chapter 53, the Nondiscrimination Regulations, and this assurance.
- B. Compliance with FTA Regulations. During the performance of this Agreement, SUBRECIPIENT, for itself, its assignees and successors-in-interest agrees as follows:
1. SUBRECIPIENT shall comply with the Nondiscrimination Regulations, as they may be amended from time to time, which are incorporated by reference and made a part of this Agreement.
 2. With regard to the work performed by it during the Agreement, SUBRECIPIENT shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement and leases of equipment.
 3. In all solicitations, either by competitive bidding or negotiation, made by SUBRECIPIENT for work to be performed under a subcontract—including procurement of materials or leases of equipment—each potential subcontractor or supplier shall be notified by SUBRECIPIENT of the subcontractor's obligations under this Agreement and the Nondiscrimination Regulations.

EXHIBIT E, Page 2

4. SUBRECIPIENT shall provide all information and reports required by the Nondiscrimination Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by PHOENIX or FTA to be pertinent to ascertain compliance with such Nondiscrimination Regulations, orders, and instructions. Where any information required of SUBRECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, SUBRECIPIENT shall so certify to PHOENIX or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. If SUBRECIPIENT fails to comply with the nondiscrimination provisions of this Agreement, then PHOENIX shall impose such contract sanctions as it or FTA may determine to be appropriate, including: (a) withholding of payments to SUBRECIPIENT under the grant award until SUBRECIPIENT complies; and (b) cancellation, termination, or suspension of this Agreement, in whole or in part.
6. SUBRECIPIENT shall include the FTA provisions included above in paragraphs 1 through 5 of **Exhibit E**, section B, in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Nondiscrimination Regulations or governing directives issued. SUBRECIPIENT shall take such action with respect to any subcontract or procurement as PHOENIX or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance. If SUBRECIPIENT becomes involved in, or is threatened by litigation with a subcontractor or supplier as a result of such direction, then SUBRECIPIENT may request that PHOENIX enter into such litigation to protect the interests of PHOENIX, and SUBRECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.
7. SUBRECIPIENT hereby adopts the Title VI investigation and tracking procedure developed by PHOENIX. SUBRECIPIENT agrees that PHOENIX personnel shall conduct Title VI investigations. The determinations made by PHOENIX of Title VI complaints shall be binding upon SUBRECIPIENT. SUBRECIPIENT shall maintain a list of any active Title VI investigations conducted by any governmental entity, including PHOENIX, and shall maintain a Title VI complaint log of closed investigations for **three years**. SUBRECIPIENT shall provide information to the public concerning its Title VI obligations and apprise the public of protections offered by Title VI. The obligations of SUBRECIPIENT under this provision survive the termination or expiration of this Agreement.

EXHIBIT E, Page 3

8. SUBRECIPIENT avows that, where applicable, it is and will provide fair and equitable labor protective arrangements, as reflected in Section 5333(b) of Title 49 U.S. Code, as amended (formerly Section 13(c) of the Federal Transit Act of 1964, 49 U.S.C. 1609). SUBRECIPIENT shall fully cooperate with PHOENIX in meeting the legal requirements of the labor protective provisions of Section 5333(b) and the Labor Agreements and side letters currently in force and certified by the United States Department of Labor. Changes, including changes in service and any other changes that may adversely affect transit employees, shall be made only after due consideration of the impact of such changes on Section 5333(b) protections granted to employees.
9. SUBRECIPIENT shall comply with the following statutes and regulations:
 - 18 U.S.C. 1001
 - Section 5301 of 49 U.S.C. chapter 53
 - Section 5309(i) of 49 U.S.C. chapter 53
 - Section 5310 of 49 U.S.C. chapter 53, which provides—among other things—for the planning and design of mass transportation facilities to meet the special needs of senior persons and persons with disabilities
 - Section 5323(d) and (f) of 49 U.S.C. chapter 53
 - Section 5326 of 49 U.S.C. chapter 53
 - Section 5329 of 49 U.S.C. chapter 53
 - Section 5332 of 49 U.S.C. chapter 53, which prohibits—among other things—discrimination on the basis of race, color, creed, national origin, sex, or age
 - Section 5333 of 49 U.S.C. chapter 53, which requires compliance with applicable labor requirements
 - Section 5337 of 49 U.S.C. chapter 53
 - Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, which prohibits—among other things—discrimination on the basis of race, color or national origin by recipients of federal financial assistance.
 - Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, which prohibits—among other things—discrimination in employment
 - Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, which prohibits—among other things—discrimination on the basis of disability
 - 49 CFR Part 600 et seq. regulations promulgated by FTA
 - 49 CFR Parts 21, 23, 25, 26 and 27 regulations promulgated by the Department of Transportation governing Title VI, minority business enterprise (DBE/women's business enterprise), relocation and land acquisition, and nondiscrimination based on disability, respectively
 - 46 CFR Part 381 regulations promulgated by the Maritime Administration governing cargo preference requirements

EXHIBIT E, Page 4

- 36 CFR Part 800 regulations promulgated by the Advisory Council on Historic Preservation
- 31 CFR part 205 regulations promulgated by the Department of the Treasury governing letter of credit
- 40 CFR Part 15 regulations promulgated by the Environmental Protection Agency pertaining to administration of clean air and water pollution requirements
- 29 CFR Parts 5 and 215 regulations promulgated by the Department of Labor pertaining to construction labor and transit employee protections

C. Drug and Alcohol Testing. SUBRECIPIENT shall have in place, maintain, and implement a plan and a program for compliance with U.S. DOT Drug and Alcohol regulations, as specified in 49 CFR 40, 49 CFR 653, and 49 CFR 654. That plan and program shall be modified to incorporate and comply with such other regulations as were adopted by the USDOT and published in the Federal Register as of February 14, 1994 and any subsequent changes thereto.

EXHIBIT F

Required Local Provisions

1. Assignability; Successors and Assigns. This Agreement and any rights or obligations hereunder shall not be transferred or assigned, in whole or in part, by SUBRECIPIENT without the prior written consent of PHOENIX. Any attempt to assign without such prior written consent shall be void.
2. Employment and Organization Disclaimer. This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the PARTIES, and the rights and the obligations of the PARTIES shall be only those expressly set forth herein. Neither PARTY (nor any employee of either PARTY) is the agent of the other PARTY or otherwise authorized to act on behalf of the other PARTY for any purpose. SUBRECIPIENT shall be liable to PHOENIX for any financial liability arising from any finding to the contrary by any forum of competent jurisdiction.
3. Entire Agreement; Modification (No Oral Modification). This Agreement and any Exhibits, Attachments, or Schedules attached hereto constitute the full and complete understanding and agreement of the PARTIES. This Agreement supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. There shall be no oral alteration or modification of this Agreement. This Agreement and its terms may not be modified or changed except in writing signed by both PARTIES.
4. Invalidity of Any Provisions. This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof. This Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.
5. Applicable Law and Litigation. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the PARTIES arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.
6. Inspection and Audit. The provisions of A.R.S. Section 35-214 shall apply to this Agreement. PHOENIX shall perform the inspection and audit function specified therein.

7. Compliance with Laws and Permits. SUBRECIPIENT shall comply with all applicable laws, ordinances, regulations, and codes of federal, state and local governments. Further, SUBRECIPIENT shall be solely responsible for obtaining all approvals and permits necessary to perform the work called for under this Agreement.
8. Non-waiver. If PHOENIX fails or delays in exercising or enforcing any right, power, privilege, or remedy under this Agreement, such failure or delay shall not be deemed a waiver, release, or modification of the requirements—or any other terms or provisions—of this Agreement.
9. Contract Cancellation. The PARTIES acknowledge that this Agreement is subject to cancellation by PHOENIX, or cancellation by SUBRECIPIENT if it is a government entity, pursuant to the provisions of A.R.S. Section 38-511.
10. Legal Worker Requirements. PHOENIX is prohibited by A.R.S. Section 41-4401 from awarding a contract (agreement) to any SUBRECIPIENT who fails, or whose contractors fail, to comply with A.R.S. Section 23-214(A). Therefore, SUBRECIPIENT agrees that:
 - A. SUBRECIPIENT and each contractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A).
 - B. A breach of warranty under paragraph A will be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement.
 - C. PHOENIX retains the legal right to inspect the papers of SUBRECIPIENT or any contractor employee who works on the Agreement to ensure that the SUBRECIPIENT or any contractor is complying with the warranty under paragraph A.