

# Staff Summary Report



**Council Meeting Date:** September 18, 2008

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Approval of an Intergovernmental Agreement with the City of Phoenix for reimbursement to the City of Tempe of construction costs for the East Valley Bus Operations and Maintenance Facility with local matching funds provided by the City of Tempe.

**DOCUMENT NAME:** 20080918PWdj03 **TRANSPORTATION PLANNING (1101-01)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** The amount of reimbursement is \$1,304,160 or less; City of Tempe match is \$326,040.

**PREPARED BY:** Dana Janofsky, Management Assistant, 858-2269

**REVIEWED BY:** Carlos de Leon, Deputy Public Works Manager, 350-8205

**APPROVED BY:** Glenn Kephart, Public Works Manager, 350-8527

**LEGAL REVIEW BY:** Teresa Voss, Assistant City Attorney, 350-8814

**FISCAL NOTE:** Grant #AZ-04-0005 will provide Tempe with \$1,304,160 in federal assistance.

**RECOMMENDATION:** Approve the Intergovernmental Agreement with the City of Phoenix.

**ADDITIONAL INFO:** The Federal Transit Administration designated the City of Phoenix as recipient of grant funds for the Phoenix metropolitan region. Each year grant funds pass through the City of Phoenix for capital projects and maintenance. Grant agreement AZ -04-0005 authorizes the City of Phoenix to distribute federal grant monies not to exceed \$1,304,160 to Tempe for construction costs associated with the East Valley Bus Operations and Maintenance Facility. The local share match, which is provided by the transit fund, is \$326,040.

AGREEMENT NO. \_\_\_\_\_

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF PHOENIX  
AND  
THE CITY OF TEMPE**

**(Grant Pass-through Agreement)  
(Grant No. AZ-04-0005)**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Phoenix, a municipal corporation duly organized and existing under the laws of the state of Arizona (hereinafter referred to as "PHOENIX") and City of Tempe, a municipal corporation, duly organized and existing under the laws of the state of Arizona (hereinafter referred to as "SUB-RECIPIENT").

**RECITALS**

WHEREAS, the City Manager of PHOENIX, is authorized and empowered by provisions of the City Charter to execute contracts; and,

WHEREAS, PHOENIX has Charter authority to provide transit services and Charter and statutory authority to enter into Agreements with other entities within the Phoenix Urban Area to provide transit services [A.R.S. Section 11-951, et seq.; Chapter 2, Section 2, Subsections (c)(i) and (l), Charter of the City of Phoenix, 1969]; and,

WHEREAS, SUB-RECIPIENT has broad Charter and statutory authority to engage in all of the activities and endeavors allowed under the laws of the state of Arizona and to enter into intergovernmental agreements with other governmental entities (Article I, Section 1.01 and Article I, Section 1.03, Charter of the City of Tempe; A.R.S. Section 11-951, et seq.); and,

WHEREAS, the laws of the state of Arizona authorize municipalities to: (1) "engage in any business or enterprise which may be engaged in by persons by virtue of a franchise from the municipal corporation . . ." [A.R.S. Section 9-511 (A)]; (2) to "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 . . ." (A.R.S. Section 9-500.11); and, (3) to "be vested with all of the powers of incorporated towns as set forth in title 9, in addition to all powers vested in them pursuant to their respective charters or other provisions of law . . ." (A.R.S. Section 9-499.01); and,

WHEREAS, 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 SUB-RECIPIENT's charter; and,

WHEREAS, Chapter 53 of 49 United States Code (formerly the Federal Transit Act of 1964, as amended), makes financial aid available to municipalities and local units of government showing a substantial effort toward the preservation, improvement and operation of mass transit systems; and,

WHEREAS, PHOENIX successfully applied to the Federal Transit Administration (FTA) for a FTA grant for the purpose of repayment construct operating facility (East Valley) and same was awarded as Grant No. AZ-04-0005; and,

WHEREAS, SUB-RECIPIENT shall receive funds from said Grant and perform the work as required therein all as set forth in Exhibit "A" hereto which Exhibit is, by this reference, incorporated herein as though fully set forth; and,

WHEREAS, PHOENIX and SUB-RECIPIENT have been authorized by their respective Councils to enter into this Agreement; NOW, THEREFORE,

### AGREEMENT

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

1. Grant Reimbursement. PHOENIX agrees to reimburse SUB-RECIPIENT for the federal share of the purchase of items/services shown in the "Project Description" box on Exhibit "A." Reimbursement shall not exceed the federal funds allocated to SUB-RECIPIENT, unless approved in writing by PHOENIX. The federal funds allocated to SUB-RECIPIENT under this Agreement shall not exceed \$1,304,160. SUB-RECIPIENT shall provide the required local match for these projects. No reimbursements shall be made unless all required reports have been submitted. To be eligible for reimbursement, projects must be completed and reimbursement must be requested within thirty (30) months of the grant award by the FTA, i.e., the FTA obligation date. Funding for uncompleted and unbilled projects will be reassigned at the discretion of PHOENIX, as needed to close out the grant.

A. Application for reimbursement of federal share.

SUB-RECIPIENT shall submit their application for reimbursement of federal share to:

City of Phoenix  
Public Transit Department  
Fiscal Services Division, Accounts Payable Section  
302 North First Avenue; Suite 900  
Phoenix, AZ 85003

The cover letter must identify the City of Phoenix contract number and the period for which the application is submitted.

B. Backup Documentation.

The application for reimbursement must be accompanied by detailed backup documentation for all eligible expenses. At a minimum the documentation shall include, but is not limited to, 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.
3. All purchases of vehicles shall be accompanied with "Vehicle Inventory Record" form.
4. All other asset purchases shall be accompanied with a "Capital Asset Purchase" form.

2. Exhibits and Incorporation by Reference. Attached hereto are the following Exhibits each of which is, by this reference, incorporated herein as though fully set forth.

- Exhibit A Federal Grant Pass Thru Agreement Detail Summary
- Exhibit B Required Reports
- Exhibit C Required Federal Provision
- Exhibit D Partial List of Applicable Laws
- Exhibit E Master Grant Agreement, Table of Contents
- Exhibit F Required Local Provisions

3. Sub-recipient Performance. SUB-RECIPIENT shall complete the project for which grant funds have been awarded in a proper and timely manner.

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

If intended for SUB-RECIPIENT:

Greg Jordan  
Transit Administrator  
City of Tempe  
P.O. Box 5002  
Tempe, Arizona 85280  
Telephone: (480) 858.2094  
FAX: (480) 858.2097

If intended for PHOENIX:

Debbie Cotton  
Public Transit Director,  
Public Transit Department  
City of Phoenix  
302 North First Avenue, Suite 900  
Phoenix, Arizona 85003  
Telephone: (602) 262.7242  
FAX: (602) 495.2002

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided. 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, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice sent by facsimile transmission 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 notice sent by facsimile transmission.

5. Effective Date: This Agreement shall be in full force and effect upon approval of the Councils of PHOENIX and SUB-RECIPIENT when executed by their duly authorized officials, and when filed with the County Recorder pursuant to A.R.S. § 11-952(G).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF PHOENIX, ARIZONA  
Frank Fairbanks, City Manager

By \_\_\_\_\_  
Debbie Cotton  
Public Transit Director

ATTEST:

\_\_\_\_\_  
City Clerk - PHOENIX

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting City Attorney - PHOENIX

APPROVED BY PHOENIX CITY COUNCIL BY FORMAL ACTION ON 3/19/2008

CITY OF TEMPE, ARIZONA  
A Municipal Corporation

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk – City of Tempe

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney – City of Tempe

APPROVED BY SUB-RECIPIENT'S GOVERNING BODY BY FORMAL ACTION ON:

\_\_\_\_\_

**INTERGOVERNMENTAL AGREEMENT DETERMINATION**

In accordance with the requirements of Section 11-952(D), Arizona Revised Statutes, 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 PHOENIX

\_\_\_\_\_  
Attorney for SUB-RECIPIENT

EXHIBIT "A"

2007  
FEDERAL GRANT PASS THRU AGREEMENT

AGREEMENT NUMBER:				
GRANT NUMBER: AZ-04-0005				
GRANT RECIPIENT: CITY OF PHOENIX				
GRANT SUB- RECIPIENT'S NAME: CITY OF TEMPE				
GRANT SUB- RECIPIENT'S ADDRESS: City of Tempe P.O. Box 5002 Tempe, Arizona 85280				
TOTAL ELIGIBLE PROJECT COST (TEPC): \$1,630,200				
• Federal Share of TEPC: \$1,304,160				
• Local Share/Match of TEPC: \$326,040				
PROJECT(S) DESCRIPTION:				
<u>ALI CODE</u>	<u>PROJECT DESCRIPTION</u>	<u>LOCAL</u>	<u>FEDERAL</u>	<u>TOTAL</u>
11.43.03	Repayment construct operating facility (East Valley)	\$326,040	\$1,304,160	\$1,630,200

EXHIBIT "A"

## EXHIBIT "B"

### Required Reports

SUB-RECIPIENT 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 150 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 Report	Quarterly	Utilization of Disadvantaged Business Enterprise (DBE)
Grant Status Report	Quarterly	Status of each project by grant number
NTD Report	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
Drug and Alcohol Reports	Annually	FTA Drug and Alcohol Testing

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 "B"

## EXHIBIT "C"

### Required Federal Provisions

1. SUB-RECIPIENT shall permit the authorized representatives of PHOENIX, the United States Department of Transportation, and the Controller General of the United States to inspect and audit all data, books, records and reports relating to this Agreement and SUB-RECIPIENT's performance hereunder. PHOENIX's audit shall be at SUB-RECIPIENT's sole cost and expense. All required records shall be maintained for a minimum of three years, after the grant has been formally closed.
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, the City Council or any employee of PHOENIX or SUB-RECIPIENT, has any interest, financial or otherwise, in this Agreement.
3. SUB-RECIPIENT shall fully comply with the Disadvantaged Business Enterprise (DBE) Regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26 and with the FTA-approved goal and program submitted annually by PHOENIX as the recipient on behalf of the region. The Transit Civil Rights Officer of the City of Phoenix Public Transit Department and representative(s) of the City of Phoenix Equal Opportunity Department will meet annually with SUB-RECIPIENT to cooperatively determine DBE participation for all FTA assisted projects.
4. In performing the services for which federal funding is provided under this Agreement, SUB-RECIPIENT agrees to comply with all laws, rules, regulations, standards, orders or directives (hereinafter "Laws") applicable to this Agreement, to the services provided pursuant to this Agreement, and to PHOENIX as the designated recipient of FTA funding. The Laws referred to above include federal, state and local laws, and include, but is not limited to, those items set forth in Exhibit "D."

EXHIBIT "C," page 2

5. The parties acknowledge that federal funds are being used for the work, services and/or operations provided under this Agreement. In that regard the City of 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 SUB-RECIPIENT to receive funding under this Agreement with the City of Phoenix, SUB-RECIPIENT is required to similarly accept and comply with all such terms and conditions and SUB-RECIPIENT does hereby specifically agree to be bound thereby. A copy of the Master Grant Agreement has been provided to SUB-RECIPIENT and additional copies are available from the City of Phoenix. The Master Grant Agreement for FY2007 and any subsequent revisions are, by this reference, incorporated herein as though fully set forth. Further, a summary of some of the terms of the Master Grant Agreement, as set forth its Table of Contents, are attached hereto as Exhibit "E" and are, by this reference, incorporated herein. The items listed in Exhibit "E" are illustrative only and are set forth in the Exhibit for SUB-RECIPIENT's ease of reference; SUB-RECIPIENT is solely responsible for complying with all of the terms and conditions of the Master Grant Agreement and any subsequent revisions whether or not they are set forth in Exhibit "E".
  
6. SUB-RECIPIENT 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.

**EXHIBIT "D"**

**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 (hereinafter referred to as the Act) 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 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations and other pertinent directives, 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, and 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 Regulations.

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

1. SUB-RECIPIENT shall insert the following notification in all solicitations for bids for work or material subject to the 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, non-discrimination 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 Enterprise 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 SUB-RECIPIENT carries out a program of training under Section 5312 of Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to make selection of the trainee or fellow without regard to race, color, sex or national origin.
3. Where SUB-RECIPIENT receives federal financial assistance to carry out a program under Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to assign transit operators and to furnish transit operators without regard to race, color, sex or national origin.
4. Where SUB-RECIPIENT 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 SUB-RECIPIENT for the period during which federal financial assistance is extended to the project.
6. SUB-RECIPIENT shall provide for such methods of administration for the program as are found by PHOENIX to give reasonable guarantee that it, its contractors, sub-contractors, transferee's, successors in interest and other participants under such program will comply with all requirements imposed or pursuant to 49 U.S.C. chapter 53, the Regulations and this assurance.
7. SUB-RECIPIENT agrees that PHOENIX has a right to seek judicial enforcement with regard to any matter arising under 49 U.S.C. chapter 53, the Regulations and this assurance.

B. Compliance with FTA Regulations. During the performance of this Agreement, SUB-RECIPIENT, for itself, its assignees and successors in interest agrees as follows:

1. SUB-RECIPIENT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by this reference and made a part of this contract.
2. With regard to the work performed by it during the contract, SUB-RECIPIENT shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of sub-contractors, including procurement and leases of equipment.
3. In all solicitations, either by competitive bidding or negotiation, made by SUB-RECIPIENT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by SUB-RECIPIENT of the sub-contractor's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin.
4. SUB-RECIPIENT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by PHOENIX or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of SUB-RECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, SUB-RECIPIENT shall so certify to PHOENIX, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. In the event of SUB-RECIPIENT's noncompliance with the nondiscrimination provisions of this contract, PHOENIX shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
  - a) Withholding of payments to SUB-RECIPIENT under the grant award until SUB-RECIPIENT complies; and/or,
  - b) Cancellation, termination or suspension of this Agreement, in whole or in part.
  
6. SUB-RECIPIENT shall include the FTA provisions included in paragraphs 1 through 5 of Section B, in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. SUB-RECIPIENT shall take such action with respect to any sub-contract or procurement as PHOENIX or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that, in the event SUB-RECIPIENT becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, SUB-RECIPIENT may request that PHOENIX enter into such litigation to protect the interests of PHOENIX, and, in addition, SUB-RECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.
  
7. SUB-RECIPIENT shall comply with the following Statutes and Regulations:
  - 18 U.S.C. 1001
  - Section 5323(d) of 49 U.S.C. chapter 53
  - Section 5323(f) of 49 U.S.C. chapter 53
  - Section 5307(k) of 49 U.S.C. chapter 53

Section 5309(h) of 49 U.S.C. chapter 53

Section 5301 of 49 U.S.C. chapter 53

Section 5333 of 49 U.S.C. chapter 53 which requires compliance with applicable labor requirements.

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 5332 of 49 U.S.C. chapter 53 which, among other things, prohibits discrimination on the basis of race, color, creed, national origin, sex or age.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d which, among other things, prohibits 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, among other things, prohibits discrimination in employment.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 which, among other things, prohibits discrimination on the basis of disability.

49 CFR Part 600 et seq. regulations promulgated by FTA.

49 CFR Parts 21, 23, 25 and 27 regulations promulgated by the Department of Transportation governing Title VI, Minority Business Enterprise (Disadvantaged Business Enterprise/ Women's Business Enterprise), Relocation and Land Acquisition and Nondiscrimination on the basis of disability, respectively.

46 CFR Part 381 regulations promulgated by the Maritime Administration governing cargo preference requirements.

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. SUB-RECIPIENT 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. Said plan and program shall be modified to incorporate and comply with such other regulations as were adopted in the USDOT and published in the Federal Register as of February 14, 1994 and any subsequent changes thereto.

## EXHIBIT "E"

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by  
49 U.S.C. chapter 53, Title 23, United States Code (Highways),  
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act  
for the 21<sup>st</sup> Century, as amended,  
the National Capital Transportation Act of 1969, as amended,  
or other Federal laws that FTA administers.

FTA MA(14)  
October 1, 2007  
<http://www.fta.dot.gov/documents/14-Master.pdf>

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## EXHIBIT "F"

### Required Local Provisions

1. Transactional Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party pursuant to the provisions of A.R.S. Section 38-511.
2. Assignability; Successors and Assigns. This Agreement, and any rights or obligations hereunder, shall not be transferred or assigned by SUB-RECIPIENT without the prior written consent of PHOENIX. Any attempt to assign without such prior written consent shall be void.
3. 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 is the agent of the other and neither party is authorized to act on behalf of the other party. SUB-RECIPIENT shall be liable to PHOENIX for any financial liability arising from any finding to the contrary by any forum of competent jurisdiction.
4. 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. It 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.
5. 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.

6. Compliance with Laws, Permits and Indemnity. SUB-RECIPIENT shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments. Further, SUB-RECIPIENT shall be solely responsible for obtaining all approvals and permits necessary to perform the work called for under this Agreement. In addition, SUB-RECIPIENT shall indemnify, defend, save and hold harmless PHOENIX from all loss, cost and damage by reason of any violation of the provisions of this paragraph and from any liability including, but not limited to, fines, penalties and other costs arising therefrom.
7. 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.
8. Inspection and Audit. The provisions of Section 35-214, Arizona Revised Statutes, shall apply to this Agreement. CITY shall perform the inspection and audit function specified therein.
9. Non-waiver. Should PHOENIX fail or delay 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 of this Agreement or of any of the terms or provisions thereof.
10. Labor Protective Provisions. SUB-RECIPIENT shall fully cooperate with PHOENIX in meeting the legal requirements of the labor protective provisions of Section 5333(b) of Title 49 U.S. Code [formerly Section 13(c) of the Federal Transit Act of 1964, as amended (49 U.S.C. 1609)] 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. SUB-RECIPIENT shall defend and indemnify PHOENIX from any and all claims and losses due, or alleged to be due, in whole or in part, to the consequences of changes made by SUB-RECIPIENT, that were not requested by PHOENIX which result in grievances, claims and/or liability.