

**BIKE SHARE INSTALLATION, OPERATIONS & MAINTENANCE AGREEMENT
BETWEEN
THE CITY OF TEMPE, ARIZONA
AND
CYCLEHOP, LLC**

This Agreement is made and entered into on September 8, 2016, by and between the City of Tempe, Arizona, a municipal corporation of the State of Arizona (“City”) and CycleHop, LLC DBE GRID Bike Share a Florida Limited Liability Company (“CycleHop”). City and CycleHop may be referred to individually as a “Party” and collectively as “Parties.”

RECITALS

1. CycleHop agrees to procure on the City’s behalf all equipment, install stations, and maintain and operate all the equipment required under this Agreement for the consideration as further specified herein.
2. The City agrees to obtain the services that are specifically set forth in this Agreement.
3. Because the cities of Mesa and Phoenix have already established contracts with CycleHop and in order to achieve regional interoperability, the Federal Highways Administration and Arizona Department of Transportation have made utilization of CycleHop an option to the City.

NOW, THEREFORE, it is agreed by and between the Parties as follows:

1. TERM OF AGREEMENT

- A. This Agreement shall commence on the effective date and shall continue, unless terminated pursuant to this Agreement, for a term of five years with an option to extend the term for two additional two year periods, which may be exercised at the sole discretion of the City.
- B. This Agreement shall terminate upon the earliest occurrence if any of the following:
 - 1) The end of the term and any extension exercised as set forth in 1(A);
 - 2) Termination pursuant to the provisions of this Agreement.

2. SCOPE OF WORK AND PAYMENT

CycleHop shall provide the services necessary to install, promote, operate, and maintain the City Bike Share System as described in this Agreement and more specifically described

in Exhibits A through N attached hereto and which are incorporated by reference. Such Equipment and services shall include in summary the following:

- A. Purchase of Equipment. No later than 30 calendar days of the effective date of this Agreement, the City will pay CycleHop fifty percent (50%) of the Equipment costs set forth in Schedule 1 as further set forth in Exhibit E (hereinafter, the "Equipment"). Upon receiving payment from the City, CycleHop must purchase the Equipment within 30 calendar days. Upon arrival and receipt of Equipment, the final fifty percent (50%) from the City shall be paid to CycleHop within thirty (30) calendar days. Prior to receiving payment for installation, CycleHop shall provide a statement of completion corresponding to the installation line items set forth in Schedule 1. The City shall be the owner of, and hold title to, all Equipment procured with City funds in accordance with this Agreement. The City owns all the Equipment unless in the future CycleHop, on its own discretion, purchases Equipment with CycleHop funds. CycleHop shall be the owner of, and hold title to, all Equipment and materials procured with CycleHop funds.
- B. System Installation and Launch. CycleHop will install and test the system and be paid the installation costs set forth in Schedule 1 (\$215,550) within thirty (30) calendar days of the City's receipt of (1) the statement of completion and (2) an invoice for those installation costs. The City will be responsible for identifying the station locations and densities of the stations. CycleHop will align membership fees in Tempe with the regional bike share system, which includes the cities of Phoenix and Mesa, and which fees can only be changed with concurrence of all three municipalities. CycleHop will set up and install the system as outlined in Schedule 1 and launch the system within seven months of the Agreement being signed by the City. -CycleHop will provide access to statistical information and reporting tools to the regional website (GRIDbikes.com) used by the public, to designated City personnel.
- C. Ongoing Operations and Maintenance. Subject to the funding in Section 3, CycleHop will be responsible for the day-to-day operations and maintenance of the system and will assume all liability and costs related to ongoing operations and maintenance set forth in Exhibit B, which includes:
- Operation and maintenance of kiosks/signs, bicycles, docking racks and stations.
 - Maintenance of components for kiosks/signs, bicycles and docking racks and stations.
 - Provide to City personnel monthly reports.
 - Collection and redistribution of bicycles daily to ensure even distribution tailored to ridership trends and popular locations.
 - Removal of graffiti and vandalism at stations within 24 hours of notification from the City or the public of the existence of such graffiti.

3. **SYSTEM FUNDING AND REVENUE SHARING**

CycleHop will receive 11 monthly payments of \$8,334.00 and one monthly payment of

\$8,326.00 from the City totaling \$100,000.00 beginning 30 calendar days after the launch of the system. CycleHop will invoice the City monthly and the City will pay CycleHop within 30 days of receipt of invoice. CycleHop will submit to the City monthly reports as outlined in Exhibit D. CycleHop will be entitled to retain all user fee and sponsorship revenue. Title sponsorships will be solicited by CycleHop in support of the regional system.

The following terms shall govern the share of revenue between CycleHop and the City:

- A. In each calendar year in which CycleHop earns a net profit from sponsorship revenue corresponding to the Tempe system of over \$200,000, CycleHop shall remit 50% of the net profit over \$200,000 to the City from sponsorship attributable to Tempe's pro rata share.
- B. Net profit shall be defined as all sponsorship income corresponding to the Tempe system minus operating expenses for the period January 1 through and including December 31 of each year.
- C. On or before January 31, of each year, CycleHop shall submit to the City a report which provides the calculation of how CycleHop determined the net profit for the previous year and shall remit to the City 50% of net profit over \$200,000.
- D. CycleHop shall be entitled to the first \$200,000 in net profit in each calendar year, and revenue sharing with the City will apply only to those calendar years in which the net profit exceeds \$200,000.

4. INVENTORY TRACKING

CycleHop is responsible for maintaining an inventory record of all Equipment purchased pursuant to this contract. CycleHop shall provide the City with an initial and ongoing inventory report after all purchased Equipment has been delivered and installed at the designated stations. This initial inventory report shall be submitted no later than 60 calendar days after all items are installed. On an annual basis thereafter, CycleHop shall be responsible for conducting a physical inventory and updating the report to reflect any changes. The annual updated inventory report will be due on the anniversary date of the contract award. The inventory report will include the following for each item:

- Description of item
- Make and Model
- Serial number
- Date of purchase
- Location

5. EXCLUSIVITY

The City recognizes CycleHop as the exclusive bike share contractor for the City. CycleHop will not operate a competing bike share system in the public right-of-way within the City municipal territory during the term of this Agreement and any extensions thereof.

CycleHop may work with other cities and towns in Maricopa County to introduce and expand the system.

6. USER FEES

The Parties agree that the user fees set forth in Exhibit A are hereby approved.

7. PAYMENT FOR NON-PERFORMANCE AND INCENTIVE PROVISIONS

If CycleHop fails to meet the specific performance requirements set forth in this Agreement, the City will impose payments for non-performance on CycleHop as described in Exhibit H. The Parties agree that said payments represent liquidated damages for non-performance by CycleHop. CycleHop will have 10 calendar days from receipt of the notice to make payments or to dispute the alleged non-performance.

8. REVOCABLE PERMIT

CycleHop will obtain revocable right-of-way/encroachment permits or other appropriate documents from the City for the installation and maintenance of the stations within the City right-of-way. The City will waive all permitting fees associated with CycleHop's performance under this Agreement.

9. USE OF TRADEMARK

A. Subject to the terms and conditions set forth in this Agreement, the City grants to CycleHop a non-exclusive, non-transferable, royalty-free license to use the City trademark on the terms and conditions set forth herein solely in connection with the system described in this Agreement for the system's marketing materials, press releases, advertisements, and other communications during the term of this Agreement. CycleHop agrees to provide the City with a copy of any proposed use of the City trademark for the City's approval within fifteen days of the date of planned use. CycleHop shall make no other use of the City trademark as is depicted in Exhibit J. Upon termination of this Agreement or upon written notice by City revoking the license rights granted herein, CycleHop shall immediately cease and desist from all further use of the City trademark.

B. CycleHop acknowledges and agrees that the rights granted to CycleHop by the City as a result of or in connection with this Agreement are license rights only, and nothing contained in this Agreement constitutes or shall be construed as an assignment of any or all of the City's rights in the trademark. The City trademark and all goodwill associated therewith are the exclusive property of the City. CycleHop shall not assign, sublicense, transfer, or otherwise convey CycleHop's rights or obligations under this Section 9. The City reserves the rights to review CycleHop's and its subcontractor's books regarding the use of the City trademark upon 14 calendar days prior written notice.

C. Because Tempe is a partner in the system, CycleHop may be referred to as the "Official Partner of the City of Tempe Bike Share System." CycleHop may use this designation in its marketing materials, press releases, advertisements, and in other print and digital marketing platforms throughout the United States. The entity with whom CycleHop subcontracts with for Equipment and technology for the system may be referred to as the "Official Bike Share Equipment and Technology Provider to the City of Tempe

Bike Share System,” under the same conditions given to CycleHop under this Section 9 (C).

D. Notwithstanding the foregoing, this Agreement and all rights granted hereby, including but not limited to CycleHop’s right to use the City trademark, may be terminated by the City for the following reasons:

1. CycleHop attempts to assign, sublicense, transfer or otherwise convey any of the rights granted to CycleHop by or in connection with this Section 9 of this Agreement;
2. CycleHop fails to obtain the City’s approval of CycleHop’s use of the City trademark in accordance with the terms and conditions set forth herein;
3. CycleHop uses the City trademark in a manner in violation of, or otherwise inconsistent with, the restrictions imposed by or in connection with Section 9 of this Agreement;
4. CycleHop uses the City trademark in a manner not expressly permitted by this Agreement; or
5. The City at its sole discretion may terminate this Agreement for convenience with sixty (60) days advance notice to CycleHop. CycleHop shall be reimbursed for only operations costs as provided for within the Agreement up to the termination date specified including operational expenses during the notice period.

E. The City is the owner of the City trademark and all goodwill associated therewith and nothing in this Agreement constitutes a transfer of ownership of the City trademark. CycleHop may not take any actions that would challenge or undermine the City's ownership in the City trademark.

F. All uses of the City trademark by CycleHop must be related to the system described in this Agreement. Any other uses or attempted uses will be invalid. Any intellectual property owned by City that is not listed in Exhibit J is not licensed under this Agreement.

G. The City retains the right to specify the format in which CycleHop shall use and display the City trademark, and CycleHop shall only use or display the City trademark in a format pre-approved within 15 calendar days by the City. CycleHop is required to use the circle ® symbol every time it uses the City trademark. CycleHop may not design a new version or otherwise alter the City trademark. The City trademark’s color, font, and spacing must remain consistent and no additions of images, slogans, or groupings may be made.

H. CycleHop acknowledges and agrees that the City retains, and may exercise, both during the term of this Agreement and thereafter, all rights and remedies available to the City, whether derived from this Agreement, from statute, or otherwise, as a result of or in

connection with CycleHop's breach of this Agreement, misuse of the City trademark, or any other use of the City trademark by CycleHop which is not expressly permitted by this Agreement.

I. CycleHop shall be the exclusive owner and rights holder of the GRID trademark and all associated service marks. Subject to the terms and conditions set forth in this Agreement, CycleHop grants to the City a non-exclusive, non-transferable, royalty-free license to use the GRID trademark on the terms and conditions set forth herein solely in connection with the system described in this Agreement for the City's marketing materials, press releases, advertisements, and other communications during the term of this Agreement. The City shall make no other use of the GRID trademark as is depicted in Exhibit J. The City may not design a new version or otherwise alter the GRID trademark. The GRID trademark's color, font, and spacing must remain consistent and no additions of images, slogans, or groupings may be made. CycleHop may terminate this license upon 60 days notice and, in any event, the license shall terminate upon termination or expiration of this Agreement.

10. INDEMNIFICATION OF PARTIES AGAINST LIABILITY

To the fullest extent permitted by law, CycleHop shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of CycleHop, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services. The Contractor may be legally liable in the performance of this Agreement including claims arising from CycleHop's failure to perform its contractual obligations under this Agreement including but not limited to its obligation to replace or repair sidewalks, historic pavements, or other infrastructure damaged during the course of bike share system installation. This indemnity and duty to defend and hold harmless includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of CycleHop 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 City indemnitee shall, in all instances be indemnified by CycleHop from and against any and all claims, except to the extent claims arise from the negligent or willful acts or omissions of the City or the City its agents, officers, officials and employees. CycleHop's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this contract by CycleHop or any employee of the CycleHop or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services CycleHop may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Agreement. It is agreed that CycleHop will be responsible for primary loss investigation,

defense and judgment costs where this indemnification is applicable. Further, CycleHop agrees, and shall have its insurance provider agree, to waive all rights of subrogation against the City, its officers, officials, agents and employees for all claims and for all costs and expenses for the indemnity and duty to defend and hold harmless provided hereunder.

11. INSURANCE

Prior to commencement of the services provided under this Agreement, CycleHop shall procure and maintain for the duration of this Agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by CycleHop, its agents, representatives, employees, subcontractors, or sub-contractors. CycleHop shall deliver to the City a certificate of insurance acceptable to the City in the amounts and form specified in Exhibit I. Failure of CycleHop to maintain insurance during the term of the Agreement, including renewal options, is a material breach and may result in temporary suspension and possible termination of the Agreement. Insurance requirements are subject to periodic review and reasonable adjustment by the City.

12. CONFIDENTIALITY AND DATA SECURITY

CycleHop is obligated to maintain and secure user data and the City will not have access to user financial or personal information. The City will have access only to items listed in Exhibit D.

A. All personal identifying user data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to CycleHop in connection with this Agreement is confidential, proprietary information provided, however, that confidential information does not include information which (i) is already in CycleHop's possession, (ii) is or becomes generally available to the public other than as a result of disclosure by CycleHop, (iii) is or becomes available to CycleHop on a non-confidential basis from a source other than the City, or (iv) is independently developed by CycleHop without violating any of its obligations under this Agreement. Except as specifically provided in this Agreement, CycleHop shall not disclose confidential information to any third person.

B. Personal identifying information, financial account information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. CycleHop must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices, removable storage devices or other technologies. When personal identifying information, financial account information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. Upon request, the City shall have authority to conduct an audit of CycleHop's data security procedures to ensure best practice procedures are followed. CycleHop shall adhere to the City's and the Federal Highway Administration public records retention policies.

C. CycleHop agrees that the requirements of this section shall be incorporated into all subcontractor agreements entered into by CycleHop related to this Agreement. It is further agreed that a violation of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this section may result in termination of this Agreement.

D. The obligations of CycleHop under this section shall survive the termination of this Agreement.

13. CONTACTS WITH THIRD PARTIES

Should CycleHop or its subcontractors be contacted by any person requesting information or requiring testimony relative to the services provided under this Agreement or any other prior or existing Agreement with the City, CycleHop or its subcontractors shall immediately inform the City of such request, provide the specifics of the information sought and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of CycleHop and its subcontractors under Section 12 shall survive the termination of this Agreement.

CycleHop agrees that the requirements of this section shall be incorporated into all subcontractor agreements entered into by CycleHop. It is further agreed that a violation of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this section may result in immediate termination of this Agreement.

14. AMENDMENTS

Whenever duties or obligations under this Agreement deviate from those described in this Agreement an amendment must first be approved in writing by the City and CycleHop.

15. NOTICES

All notices, requests, demands, consents, approvals, and other communication which may or are required to be served or given hereunder shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the Party or Parties to receive such notice as follows:

City of Tempe Transportation Division
Sue Taaffe, Public Works Supervisor
200 E. Fifth Street (Second Floor)
Tempe, Arizona 85281

CycleHop, LLC
Josh Squire, CEO
350 Lincoln Road
Miami Beach, Florida 33139

16. TERMINATION OR SUSPENSION OF SERVICES

A. City's Right to Termination for Breach or Default. In addition to the other causes of termination described within this Agreement, the City may terminate this

Agreement, by giving written notice of termination to CycleHop, upon the occurrence of any of the following events:

1. CycleHop materially breaches any of its obligations under this Agreement and does not cure the breach within ten (10) calendar days after the City gives written notice describing the breach in reasonable detail.
2. CycleHop dissolves or liquidates or otherwise discontinues substantially all of its business operations, ceases to carry on business as a going concern, becomes the object of voluntary or involuntary bankruptcy or liquidation, or a receiver is appointed with respect to a substantial part of its assets.
3. CycleHop engages in fraud, criminal conduct or willful misconduct in any jurisdiction or breaches the confidentiality obligations under this Agreement.
4. CycleHop defaults on any loan, financing statement or other financial agreement resulting in the foreclosure, perfection of personal property rights or otherwise loss of ownership interest by CycleHop in the Equipment or infrastructure subject to this Agreement and installed within the City at that time.
5. The City at its sole discretion may terminate this Agreement for convenience with sixty (60) days advance notice to CycleHop. CycleHop shall be reimbursed for only operation costs as provided for within the Agreement up to the termination date specified including operational expenses during the notice period.

B. Effect of Termination. If this Agreement is terminated by the City as allowed under the terms of this Agreement, CycleHop shall not be entitled to any damages, claims or remedies of any kind or nature whatsoever. Further, upon termination, CycleHop shall immediately:

1. Discontinue advancing the work in progress, or such part that is described in the notice other than continuing operations during the notice period.
2. Upon notice of termination, CycleHop shall provide a schedule and costs for removing all station amenities including bikes, docking racks, kiosks/signs, and other appurtenances, provided the schedule does not extend removal beyond sixty (60) calendar days after the termination date. The City may opt to keep all City owned Equipment in place regardless of termination of this Agreement.

C. Temporary Suspension. The City may, by written notice, direct CycleHop to suspend performance on all of services for a period of up to ten (10) consecutive calendar days, but no more than a total of thirty (30) consecutive calendar days per year. The City shall work with CycleHop in good faith to resolve any issues for which the City suspends services.

17. SYSTEM NAMING RIGHTS AND ADVERTISING

The regional bike share system is named GRID and shall be branded in accordance with materials provided to the City by CycleHop; provided that the City and CycleHop, working with all the municipalities that participate in the bike share system, agree to changes or modifications to the name, brand or sponsorship. Upon termination or expiration of the Agreement, the City shall have a non-exclusive, perpetual, royalty free, transferable license to use any artwork, copy, and other original works of authorship created by CycleHop in the performance of this Agreement related to the system's name or branding. Title sponsorships will be solicited by CycleHop in support of the regional system. Unless a system wide title sponsor is obtained, no advertising shall be permitted on the kiosks/signs, docking racks or bicycles within the City. However, a title sponsor's branding or logo may be depicted on the bike and sponsors may be recognized at the stations. Throughout the term of this Agreement, CycleHop, the City and City's permittees (such the Tempe Tourism Office) will have the right to use the program branding, names, logos, trademarks, and other service marks. CycleHop and, with CycleHop's written permission, the City may also sublicense the branding use to a third party for the purpose of promoting the bike share program.

18. CONFLICTS OF INTEREST

A. CycleHop acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Tempe City Council or any employee of the City has any financial interest in CycleHop. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

B. The City reserves the right to terminate this Agreement in the event that the City determines that CycleHop has an actual or apparent conflict of interest with the purposes of this Agreement and any of the provisions and procedures set forth in Section 20 and Exhibit I of this Agreement shall apply.

C. Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by CycleHop, or any agent or representative of CycleHop, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by ten (10) calendar days written notice to CycleHop, terminate the right of CycleHop to proceed under this Agreement, provided that the existence of the facts upon which the City made such finding shall be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City shall be entitled to the same remedies against CycleHop as could be pursued in the event of default by CycleHop.

19. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS

Unless otherwise stated herein, CycleHop waives any claims against the City and its officers, officials, agents and employees for loss of anticipated profits caused by the City

terminating this Agreement or by any suit or proceeding, directly or indirectly, involving any duty or responsibility of this Agreement.

20. INCORPORATION OF TEMPE’S STANDARD TERMS AND CONDITIONS

CycleHop agrees to, as if they were contained in this Agreement, the City’s Standard Terms and Conditions set forth in the document of the same name attached as Exhibit I, together with any necessary conforming changes.

21. APPROVED SUBCONTRACTOR

The City hereby approves CycleHop’s use of a subcontractor for procuring Equipment to be provided under this Agreement. All Equipment provided by the subcontractor must meet the specifications of this Agreement.

22. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto constitute the entire understanding and Agreement of the Parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 8th day of September, 2016.

CITY OF TEMPE, a municipal corporation

By: _____
Mark Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

CYCLEHOP, LLC.

By: _____
Josh Squire, Chief Executive Officer

SCHEDULE 1

Description	Unit	Price	Cost
3-Speed, GPS Bicycles (see Exhibit E for a detailed description)	300	\$1,500	\$450,000
Bicycle Parts Kit: includes items like kickstands, grips, bells, screws, lock bar, baskets, headlights, bolts, reflectors, etc.	300	\$100	\$30,000
Bicycle Racks and Base (see Exhibit E for a detailed description)	450	\$400	\$180,000
Medium Map Sign with Solar Lighting (see Exhibit E for a detailed description)	29	\$1,750	\$50,750
Medium Sign Base (see Exhibit E for a detailed description)	29	\$250	\$7,250
Solar payment kiosk (see Exhibit E for a detailed description)	2	\$10,000	\$20,000
Software Licensing Equipment for Five Years On-board bicycle computer software to allow for connectivity of system, back office administration and manufacture support.	300	\$1,030	\$309,000
Network Setup includes back end system set up for network software, threshold settings and geo fences in coordination with mapping systems, system area boundary set up in coordination with graphic elements, migration, cataloging and assignment of controllers to system and firmware loading onto factory controllers and unit assignment.	1	\$22,500	\$22,500
Shipping. 300 bikes from China, sign transport from California, rack transport local transport. This is a not to exceed value and will be a pass through expense only.	1	\$53,116	\$53,116
<u>Sub Total for Equipment</u>			<u>\$1,122,616</u>
Bicycle Assembly includes unpacking bike and cataloging serial numbers, installing of controllers and locking units and unit assignment, installing drive platform pedals, installing battery and taillight lens, completing 14 point tech check and safety review and filling tire to speck with nitrogen.	300	\$75	\$22,500
Rack Assembly and Install includes loading palletized racks to distribution vehicle (1,000 lbs. ea.), unloading and assembling modular racks to specified permit site, torque speck all security hardware (40 ft. lbs.), applying vinyl locking information to each rack and applying system name	450	\$145	\$65,250

vinyl to each rack.			
Medium Sign & Kiosk Assembly and Install includes unpacking signs and assembling mast, frame, panels and base, testing the solar panel and light, transporting to site for install, installing requires transport the sign from the warehouse to the site in a van or truck and a minimum of two staff members, drilling into the surface and attaching the sign. Drilling into the surface requires additional steps such as clearance from utility company prior. Concrete work is excluded.	29 medium signs & and 2 kiosks	\$800	\$24,800
Decal and Poster/System Map Design, Printing and Install includes designing decals and posters and or system maps to accommodate station location, preparing the print files, coordinating printing, applying anti-graffiti stickers to bikes, installing informational and safety stickers to bike baskets and lock box. The information posters/system maps are printed on special paper that allows for back lighting and can withstand sun and moister.	1	\$36,000	\$36,000
Marketing, Web Site, Collateral Materials includes modifying GRID website to include Tempe system and input location coordinates; design, print, and distribute brochures; and conduct (3) onsite events (Tour de Fat, Tour de Tempe, ASU Homecoming) to promote the Tempe launch.	1	\$17,000	\$17,000
Pre-launch Staffing and Implementation includes implementation planning and project management, meetings and supplier coordination, facility setup, system testing for satellite signal response, dedicated implementation manager to coordinate all activities, other staff involved in pre-launch include finance, legal, and product manager, coordinating the equipment production with multiple manufactures, planning meetings with City staff, station site visits with City staff, installation coordination with City and utility companies, setup of a local facility.	1	\$50,000	\$50,000
<u>Sub Total for Set Up & Install</u>			<u>\$215,550</u>
<u>Sales Tax</u>			<u>\$83,000</u>
<u>Tempe Annual Operations Cost Year 1 through 5</u>			<u>\$100,000</u>
<u>Tempe Annual Operations Cost Year 5 through 9</u>			<u>\$161,800</u>

CYCLEHOP BIKE RACK SYSTEM



**EXHIBIT A
SYSTEM FEES**

CycleHop, with the prior written approval from the City and the other municipalities participating in the system may modify user fees. CycleHop may submit a request no more than one time per year to the City to adjust the system fees. User fees shall be established as provided below:

SUBSCRIPTION TYPE	RATES*
Hourly (max \$25 per day)	\$7
Daily	\$25
Monthly (31 days) Basic - 60 min. riding per day	\$15
Monthly (31 days) Extended - 90 min. riding per day	\$20
Business & Community Group Annual – 60 min. riding per day	\$60
Student Six Month Semester Pass - 60 min. riding time per day	\$25

Sales tax is not included in the above rates.

ADDITIONAL FEES	
Overtime: Prorated by the Minute	\$7 per hour
Return Bike Out-of-Hub	\$2
Returning from Out-Of-Hub to GRID Hub Location	\$1 credit
Return Bike Out-Of-System Area	\$20
Lost or Stolen Bike	\$1,500

CycleHop agrees to provide discounted annual subscription and user fees at a cost of \$60 per year to low income individuals as distributed through Tempe Community Council and/or the City's Housing Department. Tempe may purchase 100 discounted subscriptions per year.

EXHIBIT B OPERATIONS

CycleHop shall be responsible for the operation and maintenance of the system. CycleHop shall execute all the necessary start-up and implementation tasks to meet the system launch date of within seven months after the Agreement is signed by the City.

A. MINIMUM SYSTEM REQUIREMENTS

- System installation, promotion, operations and maintenance plans
- Quality assurance and staffing plans
- 300 GPS-functioning bicycles
- 31 stations with docking racks and where identified by the City kiosks which include system maps and pricing schedules and/or payment kiosks
- Station signage subject to compliance with the Tempe City Code
- Computer systems and associated technology to ensure secure system registration and financial transactions
- Website with content to include cost of use, fees, return of bicycles, general system operation, etc.
- Membership incentives and other promotional discounts
- User notification of safety, helmet, traffic requirements, etc.
- User agreements including waiver/assumption of risk by user

B. STAFFING

CycleHop shall provide staff to install, promote, operate and maintain the system to ensure customer service standards are equivalent to or exceed those of other partner municipalities. Any reduction to the staffing plan shall be approved by the City.

C. GRAFFITI REMOVAL/VANDALISM

CycleHop shall remove graffiti at stations within 24 hours of notification from the City or the public. CycleHop also shall always maintain inventory of bike parts such as tires, tubes, wheels, saddles, fenders, lights, and other parts, as well as station components, in order to repair any damaged components.

D. MECHANICAL ISSUES

CycleHop shall develop signage at each station describing how to report problems with system Equipment. The reporting system shall include the ability to report problems using a mobile phone application, telephone, text, Internet or other technologies. After receiving notification that a bicycle needs repair, CycleHop shall repair the bicycle within 10 calendar days. Work orders will be addressed in the order they are received, unless directed by the City.

E. CUSTOMER SERVICE

CycleHop shall provide a customer service system that immediately addresses problems. As such, when bicycles break down and users need assistance, CycleHop shall be available for response by telephone immediately, or if an in-field response is required, within no more than 60 minutes from the time the call is placed to CycleHop.

Emergency calls, such as accidents related to the bicycles or tampering with the bicycle's security Equipment, will be dispatched immediately. In addition, these customer service response times will be equivalent or better to response times being offered in other municipalities participating in the bike share system. CycleHop will provide Tempe a report on customer service times for all municipalities participating in the system for both telephone call response and in-field responses. Service also includes operating a customer service center to operate 24 hours a day, seven days a week, 365 days a year.

CycleHop shall provide the City, all users, and the public a toll-free telephone number to report repair and other operational issues. The customer service telephone number shall appear on every bicycle and station, as well as on the website and on CycleHop's publications. CycleHop shall post alerts and station closures online, at the stations and communicate with users via email and newsletter or by telephone. Account information and billing will also be available online. CycleHop shall facilitate the replacement of lost membership information through its customer service department and online.

F. CONTACTS WITH CITY'S POLICE DEPARTMENT

CycleHop shall coordinate with the Tempe Police Department to report lost, vandalized or stolen bicycles.

G. MAINTENANCE

CycleHop shall maintain bicycles, stations, docking racks and kiosks/signs in a state of good repair. Required maintenance shall include, but is not limited to, inspecting, cleaning and removing graffiti, removing debris in and around the station, preventive maintenance and prompt repairs. At the request of the City, the maintenance schedule may be altered at any time to ensure the adequate maintenance of all system Equipment. The maintenance plan and schedule for routine maintenance shall specifically include:

1. Daily Bicycle Maintenance Inspections

CycleHop shall conduct routine bicycle maintenance daily. Routine maintenance includes minor adjustments, repairs, inspection and cleaning of the bicycles. In addition, mechanics are required to do a bi-weekly maintenance checklist for each bicycle.

2. Weekly Scheduled Maintenance

CycleHop shall track the mileage and time between maintenance for each bicycle weekly, and, using that information, identify, repair and replace the components that require maintenance.

3. Maintenance Records

CycleHop shall provide bicycles equipped with unique identification numbers and utilize software to record station visits, field maintenance activities, and preventive maintenance operations. CycleHop shall provide access to the City to all maintenance records for the system. CycleHop shall maintain software

that records maintenance visits, cleaning, and repairs. These maintenance tools shall provide a detailed history of all maintenance and cleaning visits to each bicycle and station. CycleHop shall adhere to the City's and the Federal Highway Administration public records retention policies.

4. Monthly Bicycle Refurbishment and Equipment Renewal

CycleHop will perform a comprehensive inspection and maintenance for each bicycle and station monthly. CycleHop will rebuild or replace bicycles and station Equipment and replace worn decals and other aesthetic elements on bicycles and stations where necessary.

5. Weekly Bicycle and Station Cleaning

CycleHop shall visit each station on a weekly basis to perform regular maintenance inspections of stations and bicycles. These inspections will include removal of trash and debris from and around the station, the bicycles, and each bicycle's basket.

H. SYSTEM LOSSES

CycleHop shall be responsible for all costs associated with managing and coordinating repair, tracking and repossession of bicycles that are not returned within 24 hours of check-out. CycleHop shall also assume responsibility and liability for costs, repairs and replacement for damaged stations and bicycles, regardless of cause.

I. BICYCLE REDISTRIBUTION

CycleHop shall redistribute bicycles among stations and place bicycles in operable docking racks every day and throughout the day, 365 days per year. Such redistribution shall be timed to increase the probability that each station, at all times, contains a sufficient number of empty docking racks for bicycles to be returned and occupied docking racks containing bicycles available for users. CycleHop shall deploy employees and vehicles to adequately address maintenance and distribution of bicycles in the system.

J. FACILITIES

CycleHop shall maintain warehouses and office facilities within Tempe at no cost to the City. The City shall have full access to all facilities upon request.

EXHIBIT C
BIKE SHARE STATION LOCATIONS

The City will be responsible for identifying the station locations and densities of the stations. See map on the following page of station locations Table 1 below for densities. CycleHop shall work with the City to install docking racks, kiosks/signs and bicycles for each station. The City shall make the final determination for all station locations including future stations.

CycleHop will obtain permits as may be necessary or appropriate to the installation and operation of the system on the public right-of-way. The City will waive all permitting fees associated with CycleHop’s performance under this Agreement. CycleHop will be responsible for acquiring the necessary licenses or documentation to place, operate and maintain City property on Arizona State University land.

Prior to installation, CycleHop will prepare site plans for each station, and each site plan shall include all adjacent structures, landscaping materials, dimensions of the station footprint, sidewalk, street, right-of-way, and other pertinent details.

The City may request that CycleHop provide additional stations at major events and provide support, but no more than five events per year at no additional cost to the City. CycleHop and the City will work with the event sponsor on items related to the usage and placement of the Equipment. The City will provide 15 calendar days notification to CycleHop to accommodate this activity for special events. CycleHop will not be charged event fees.

During the term of this Agreement, the City may direct CycleHop to remove or relocate a station related to accommodate changing conditions, complaints, operational or maintenance deficiencies, location issues, road work or other city work, to address security concerns among other reasons. All such removals or relocations shall be accomplished at the sole expense of CycleHop. CycleHop shall perform all necessary incidental improvements to ensure the safe placement of stations. CycleHop shall fully restore all sites to the satisfaction of the City whenever stations are removed.

TABLE 1

SITE	LOCATION	# OF BIKES	# of RACKS
1	Tempe Transportation Center	20	25
2	3rd and Mill, LRT Station	5	9
3	University and Rural, LRT Station	10	15
4	Dorsey and Apache, LRT Station	5	10
5	McClintock and Apache, LRT Station	10	15
6	Tempe Marketplace/Rio Salado and McClintock	5	10
7	Smith/Martin and Apache, LRT Station	5	10
8	Price and Apache, LRT Station	5	10
9	Center Parkway and Washington, LRT Station	5	9
10	Priest and Washington, LRT Station	5	10

11	Mill and University	15	20
12	Tempe Public Library Complex	5	10
13	College and Apache	10	15
14	College and University	10	15
15	8th and Dorsey	5	10
16	Apache and Rural	10	15
17	Rio Salado Park/Tempe Beach Park/Bike Corral	20	25
18	Marina Heights/Neil Giuliano Park	10	15
19	Kiwanis Community Park	10	15
20	Tempe Center for the Arts	10	15
21	10th St and Mill	15	20
22	AZ Mills Mall/Priest and Baseline	5	10
23	Escalante Multi-Gen Center and Park	5	10
24	Westside Multi-Gen Center and Jaycee Park	5	10
25	ASU Student Housing/University Drive Bridge	20	25
26	McAllister and Terrace	20	25
27	ASU Student Rec Center	20	25
28	Hayden Ferry Lakeside/Rio Salado and Mill	10	15
29	Rio Salado North Bank Paths/Town Lake Marina	5	9
30	Evelyn Hallman Park/Crosscut Canal MUP	5	8
31	Tempe City Hall	10	15
		300	450

TEMPE BIKE SHARE STATION LOCATION MAP · JUNE 2016



www.tempe.gov/bikeshare

EXHIBIT D REPORTING

CycleHop shall compile and provide on a monthly basis ridership, financial and customer service reports to the City along with the monthly invoice. Commencing with the month in which the system becomes operational, CycleHop shall provide a monthly report to the City that includes a summary of system operations including information such as usage statistics, origin/destination, revenues new users, total miles traveled, money saved and carbon reduced. The data shall reflect the Agreement's applicable work during the immediately preceding calendar month and, fiscal year to date (July 1-June 30), for all months. The reports shall include the information described below.

Monthly Reports:

a. Usage

- Miles traveled (direct line from station to station) during the month and fiscal year-to-date
- Total number of trips
- Average time duration per trip
- Number of existing and number of new users, by subscription type
- Number of trips originating from and arriving to each station
- Number of trips per day of the week
- Analysis of ridership trends, operational problems, and recommendations for service improvements
- Parking of bike trends such as parking numbers at non-hub clusters
- User demographics
- Average speed
- Carbon offset statistics
- Opt-in bike sharing emails sent/opened
- Mobile usage
- Walk-up users (time, route, revenues, etc.)

b. Crashes

- Number of crash reports
- Type of crash outcome (traffic violation, property damage, personal injury, hospital visit)

c. Financial

- Revenue generated from users by subscription type
- Revenue generated from user fees
- Revenue generated from other sources including advertising and sponsorships

d. Comments and Complaints

- Total number of calls received by CycleHop from users, the City, or the public at large
- Statistics regarding time-responsiveness to calls and email requests (including time of call/email request, time to answer, and duration of call)
- Customer service response report for all participating municipalities
- Web/social media analytics

e. Stations and Bicycles

- Number of bicycles in service each day
- Number of bicycles inspected by CycleHop
- Number of bicycles repaired and average repair time
- Number of bicycles lost or stolen
- Number of times stations were full or empty
- Number of bicycles in the categories of stolen, lost, damaged, and vandalized during the month and fiscal year-to-date
- Repair status of and type of work performed on (other than periodic maintenance) each damaged and vandalized bicycle and station during the month and fiscal year-to-date

f. CycleHop Performance Per Agreement

- Percent of time per month when the system operations are fully operational
- Percent of time per month when all of the stations are fully operational
- Percent of time per month when the bicycles are fully operational
- Percent of time per month when the website is fully operational
- Percent of time per month when the backend servers are fully operational
- Percent of time per month when the call center is fully operational
- Response time per month for technical issues, breakdowns
- Graffiti and cleaning levels per month
- Distribution levels of bicycles per day
- Average length of time for a technician to service a call

The City may require CycleHop to provide additional written reports that may be generated without an additional cost to the City. The City may revise the categories of data to be provided in each report described above.

EXHIBIT E EQUIPMENT

BICYCLES

CycleHop shall provide the following for the bicycles:

- Bicycles with a minimum useful lifespan of five years.
- Adjustable, non-removable seats that fit riders between heights of 4 feet, 11 inches and 6 feet, 8 inches
- 3-speeds
- Low-tube, step-over frame
- 26 inch tires made of puncture resistant Kevlar
- Integrated hand bell and handlebars
- Baskets with carrying capacity for objects weighing up to 20 pounds
- Integrated front and rear flashing lights that come on when lighting is low. The solar panel on the back of the bicycle provides real-time feedback of lighting and turns lights on when it becomes dark. Bicycle lights shall begin flashing when a reservation is made at night so the user can find the bicycle on the street.
- Rear reflectors as well as reflective sidewall tires for high visibility when riding at night in accordance with Arizona Revised Statutes § 28-817
- Gears and shifters with three or eight speed internally-geared hubs
- Enclosed shaft drive
- Integrated kickstand
- Integrated lock that works with regular bicycle parking racks
- Compatible with racks on City buses and light rail
- Light-colored seats and grips
- Easy to clean and are impervious to the elements
- Weather resistant labels with customer service phone number
- Self-report problems with connectivity, battery life or other issues related to the electronic system
- “Repair” button on the keypad interface to report mechanical problems

THEFT AND VANDAL PROOF REQUIREMENTS

CycleHop shall provide bicycles that use theft and tamper resistant parts and/or tamper resistant bolts. The bicycle’s electronics package shall have sensors to detect tampering and shall have the capability of notifying CycleHop accordingly with GPS data.

GPS REQUIREMENTS

CycleHop shall provide each bike with an integrated GPS-enabled lock that has real-time communication with a central server to transmit the location of the bicycle. This shall allow the administrators and users to track bicycle routes and the global positioning of the bicycle. Users shall be able to find bicycles on the online map through web/mobile utilizing GPS. A user/administrator can track a route utilizing GPS and gain access to data that comes off the bicycles including miles traveled, calories burned, money saved, and carbon reduced.

**FEDERAL HIGHWAY ADMINISTRATION (FHWA) “BUY AMERICA”
REQUIREMENT**

The manufacture of the bicycles shall comply with the Federal Highway Administration “Buy America” requirements as set forth in 23 CFR Part 635.410. In the case that the City desires to utilize future Federal-Aid funding for expanding the bicycle sharing system, CycleHop shall be responsible for supplying bicycles, stations, and other Equipment to comply with this provision. If FHWA does not approve of CycleHop's Equipment based on this provision, CycleHop shall provide approved bicycles, stations, and all other components at no additional cost to the City.

CycleHop shall submit to the City an original or copy of either a Certificate of Compliance or a Certificate of Analysis, as required, prior to the use of any materials or manufactured assemblies for which the specifications require that such a certificate be furnished. Certificates shall be specifically identified as either a “Certificate of Compliance: or a “Certificate of Analysis.”

The City may permit the use of certain materials or manufactured assemblies prior to, or without, sampling and testing if accompanied by a Certificate of Compliance or Certificate of Analysis, as herein specified. Materials of manufactured assemblies for which a certificate is furnished may be sampled and tested at any time, any if found not in conformity with the requirements of the plans and the specifications, will be subject to rejection, whether in place or not.

Certificates of Compliance and Certificates of Analysis shall comply with the requirements specified herein, the ADOT Materials Testing Manual, and applicable ADOT Materials Policy and Procedure Directives.

A. Certificate of Compliance

A Certificate of Compliance shall be submitted on the manufacturer’s or supplier’s official letterhead, and shall contain the following information:

- a. The current name, address, and phone number of the manufacturer or supplier of the material.
- b. A description of the material supplied.
- c. Quantity of material represented by the certificate.
- d. Means of material identification, such as label, lot number, or marking.
- e. A statement that the material complies in all respects with the requirements of the cited specifications. Certificates shall state compliance with the cited specification, such as AASHTO M 320, ASTM C 494; or specific table or subsection of the Arizona Department of Transportation Standard Specifications or Special Provisions. Certificates may cite both, if applicable.

- f. A statement that the individual identified in item 14 above has the legal authority to bind the manufacturer or the supplier of the material.
- g. The name, title, and signature of the responsible individual. The date of the signature shall also be given.

Each of the first six items specified above shall be completed prior to the signing of the certificate as defined in item seven. No certificate will be accepted that has been altered, added to, or changed in any way after the authorized signature has been affixed to the original certificate. However, notations of a clarifying nature, such as project number, contractor, or quantity shipped are acceptable, provided the basic requirements of the certificate are not affected.

B. Certificate of Analysis

A Certificate of Analysis shall include all the information required for a Certificate of Compliance and, in addition, shall include the results of all tests required by the specifications.

STATION EQUIPMENT

The stations shall have a unified look unless otherwise requested by the City. All stations shall be easily identifiable as bike share locations with GRID signage and system maps.

CycleHop shall provide modular station/docking racks that can be installed in a number of configurations depending on site requirements.

- Each station shall have, at a minimum, docking rack(s) and bicycle(s), customer service signage, and a lighted system map.
- The minimum station size shall have one docking rack (industry best practices are 1.5 to 2.0 ratio of racks per bike) and one bicycle.
- The maximum station size shall have 30 docking racks and bicycles.
- The docking racks shall be approximately 2 inches wide x 30 inches deep x 32 inches tall.
- The recommended distance between racks is 39 inches.
- Stations measure approximately 50 feet, 3 inches by 10 feet, 8 inches.
- Helmet station kiosks measure approximately 20.5 inches wide x 32 inches deep x 92 inches tall.
- Solar payment kiosks allow a user to purchase a code to rent a bicycle and may display a regional bike share system map and user fee information. These kiosks measure approximately 20 inches wide x 28 inches deep x eight feet and six inches tall.
- Medium map sign with solar panel may display a regional bike share system map and user fee information and measures approximately 16 inches wide x 8 inches deep x 10 feet and 5.5 inches tall.
- Shade and lighting shall also be provided at stations as determined by the City.

STATION POWER SUPPLY

- CycleHop shall provide power to stations 24 hours a day, 365 days a year.
- Station kiosks shall be solar powered, and no hardwired connection shall be needed to operate a station.
- The locking system for the docking rack shall be on the bicycle which shall be powered by a solar panel and a hub generator in the wheel. In the event of power failure, all components shall be designed to be fail-safe with all security mechanisms locking in the “closed” state, preventing theft of goods, and all access panels to the kiosk are locked by cylindrical locks to prevent unauthorized access.
- During a loss of network access, data shall be cached to be sent when communication is restored, though this functionality is subject to industry practice on data security.

STATION FEATURES

- Kiosk units shall be either be internally weighted for stability/anti-theft, or bolted to the ground.
- The stations/docking racks shall not be easily removed by the public and shall require tools not easily available to the public rendering them safe from tampering and vandalism.
- Station installation shall not require excavation or roadwork other than striping, road markings or other incidental work.
- Attachment points must be filled by CycleHop with acceptable methods and products as approved by the City when removed.
- Stations shall have a mechanism that indicates to CycleHop where to rebalance and where bicycles needing repair are located.

EXHIBIT F COMPUTER SYSTEMS

CycleHop shall provide Station Computer Units (SCU) that include all network (internal and external), processing and data storage elements at all station locations in Tempe, unless otherwise specified by the City. This system shall be modified to meet any specific objectives by the City for issues such as payment structures, reporting changes, user interface adjustments, etc. that shall be expected and fully supported. SCU will allow users to see where bicycles are available for rental in Tempe.

CycleHop shall provide a kiosk at stations that have a touch screen dock interface. Each dock interface shall be legible at night and in low-light and bright light/direct sunlight conditions. CycleHop shall provide all kiosks with SCU and dock interfaces to function in all weather conditions and temperatures commonly found in the City. CycleHop shall provide kiosks at stations with direct connections to the central computer system that allow users to purchase subscription registrations and payment with agreement to liability waiver. These kiosks shall allow users to notify CycleHop about malfunctioning parts, graffiti or other necessary repairs.

CycleHop shall maintain and operate a central computer that receives and saves maintenance, purchase, registration, and user records in a searchable database. Maintenance and repair records shall be used to track and manage work/maintenance orders and purchasing. All records shall be made available to the City. The City shall be given unlimited and unrestricted licenses to the data.

CycleHop shall provide a central computer system remotely that can lock all bikes and disable all walk-up registrations as needed in case of emergencies.

CycleHop shall provide systems, software, and applications that are compliant with the Payment Card Industry (PCI), Data Security Standard (DSS), Payment Application Data Security Standard (PA-DSS), and PCI P2PE (Point-to-Point Encryption) Standard. Annual Report on Compliance and a Self-Assessment Questionnaire shall be provided to the City. CycleHop shall pass a PCI compliance audit before implementing the bike share system.

EXHIBIT G
POST LAUNCH PROMOTIONS, MARKETING, SPONSORSHIPS

CycleHop and the City shall jointly develop a Marketing Plan due within 30 calendar days after program launch that will promote the bike share system. CycleHop shall take the lead in developing the marketing plan and will include regional partners (Phoenix and Mesa) where appropriate to ensure a consistent and coordinated marketing campaign. The plan, including marketing-related items in this Agreement, may be altered upon request by the City. The plan will be comprehensive for the purposes of effectively disseminating information about the system, securing sponsorships and developing local partnerships.

Marketing

The Marketing Plan shall be targeted to individuals, students, and businesses and will include the following elements:

- Conduct marketing activities for sustaining the system through social media and public relations
- Seek and establish local partnering opportunities
- Seek and establish local and national sponsorship opportunities
- Conduct subscription drives using a variety of paid and non-paid advertising to promote new membership sales and retain existing clients
- Update web content to ensure current and fresh messaging
- Promote the bike share system through print (brochures, postcards, newspaper, and posters), online (azcentral, azfamily, statepress.com) and paid broadcast media (Pandora). 10% of the gross annual regional revenue shall be dedicated to paid media.

The City shall respond to press inquiries specific to Tempe and will refer to CycleHop any press inquiries relating to the GRID System. All system promotions and communication guidelines shall be approved by the City.

The City acknowledges that the system in the future may be branded in part or completely with the sponsor's company name. Subject to any third party sponsorship agreements, CycleHop will provide the City with a perpetual, royalty free, non-exclusive license to use, and, subject to CycleHop's prior written approval, the right to grant others to use, the system name and logo in connection with the purposes of the system throughout the term of this Agreement and any subsequent extensions thereof; provided that during the term of this Agreement the City shall not grant any other provider of bike share services or Equipment with the right to use the trademark, name or logo.

The City may include information about bike share and GRID on its bikeways map, online, in print, online and broadcast mediums, news releases, social media and the like.

EXHIBIT H PAYMENTS FOR NON-PERFORMANCE

For any action not listed below, CycleHop agrees to an assessment of \$100 per day for each day that CycleHop fails to perform the services under this Agreement up to a total of \$2,500 per month. The Parties agree that the amount of the payments for non-performance represent liquidated damages and are not forfeitures or penalties for CycleHop's non-performance of or non-compliance with the Agreement requirements.

Prior to assessing any payments against CycleHop, the City shall send to CycleHop a notice that payments, in a specified amount(s), are being assessed against CycleHop for specified non-performance or non-compliance. CycleHop shall then have ten (10) calendar days to cure any non-performance. CycleHop's failure to pay the City any assessment for non-performance within ten (10) calendar days after receipt of notice shall be considered a material breach of the Agreement resulting in termination. The following payments for non-performance are agreed to by the Parties, are not subject to proration.

Operational Start-up: CycleHop shall be assessed \$500 per day if the implementation milestones are not met or the system is not operational within seven months of the Agreement being signed by the City.

Level of Operation of Bicycles: CycleHop shall be assessed \$1,000 per month for each month in which at least 5% or more of the bicycles are not operational.

Website Availability: CycleHop shall be assessed \$1,000 per month for each month in which the website is unavailable for more than 10% of all time in the month.

Graffiti: CycleHop shall be assessed \$1,000 per month for each month in which the performance standard as described in Exhibit B is met less than 95% of the time.

Cleaning: CycleHop shall be assessed \$1,000 per month for each month in which the performance standard as described in Exhibit B is met less than 95% of the time.

Reporting: CycleHop shall be assessed \$100 per week for each week after the due date thereof CycleHop fails to submit to the City the monthly report required by Exhibit D.

Distribution of Bicycles: CycleHop shall be assessed \$1,000 per month for each month in which it fails to conform to the redistribution levels as defined in Exhibit B at least 95% of the time during the month.

Call Center Availability: CycleHop shall be assessed \$1,000 per month for each month in which a call center service is unavailable for greater than two continuous hours during a 24 hour period.

System Fully Operational: CycleHop shall be assessed \$2,500 per month for each month in which the system is not fully operational (i.e. website, computer, kiosks) for greater than 92% of each month.

EXHIBIT I
CITY'S STANDARD TERMS AND CONDITIONS

1. **Applicable Law:** This Agreement shall be governed by, and the City and CycleHop shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Agreement, and all statutes or ordinances pertaining specifically to the City. This Agreement shall be governed by State of Arizona law and suits pertaining to this Agreement may only be brought in courts located in Maricopa County, Arizona.
2. **Arizona Climate Action Compliance:** CycleHop shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. §49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13 and 2005-02, with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.
3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Agreement is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Agreement. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify CycleHop of such non-allocation affecting the obligations of the Agreement and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Agreement.
4. **Certification:** CycleHop certifies:
 - A. CycleHop agrees that it will comply with section 2-603(5) of the Tempe City Code ("TCC"), and will not refuse to hire or employ or bar or discharge from employment any person or discriminate against such person in compensation, conditions, or privileges of employment because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status. CycleHop further agrees to provide a copy of its antidiscrimination policy to the City's Procurement Office to demonstrate compliance with TCC section 2-603(5), or attest in writing to its compliance in accordance with the attached Affidavit of Compliance (if less than 15 employees).
 - B. CycleHop has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in

connection with the Agreement. In addition, CycleHop may be subject to such further actions as permitted by law.

- C. CycleHop agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Agreement. Violation of this condition shall be grounds for termination by the City.
 - D. CycleHop expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. CycleHop further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.
 - E. CycleHop agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Agreement, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules and regulations. CycleHop acknowledges that a breach of this warranty is a material breach of this Agreement and CycleHop is subject to penalties for violation(s) of this provision, including termination of this Agreement. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Agreement to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of CycleHop. CycleHop hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
5. **Confidentiality of Records:** CycleHop shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Agreement. Persons requesting such information should be referred to the City. CycleHop also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of CycleHop as needed for the performance of duties under the Agreement, unless otherwise agreed to in writing by the City.
6. **Conflict of Interest:** This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

7. **Contract Formation:** This Agreement shall govern in all other matters not otherwise specified by the Contract between the parties. Any contracted vendor documents that conflict with the language and requirements of this Agreement are not acceptable and void the Contract.
8. **Contracts Administration:** CycleHop must notify the designated Procurement Officer from the City's Procurement Office for guidance or direction of matters of Agreement interpretation or problems regarding the terms, conditions or scope of this Agreement. The Agreement shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.
9. **Dispute Resolution:** This Agreement is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and CycleHop agree to negotiate with each other in good faith to resolve any disputes arising out of the Agreement. In the event of any legal action or proceeding arising out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.
10. **Termination for Convenience:** The City at its sole discretion may terminate this Agreement for convenience with thirty (30) days advance notice to CycleHop. CycleHop shall be reimbursed for all appropriate costs as provided for within the Agreement up to the termination date specified.
11. **Force Majeure:**
 - A. Except for payment of sums due, neither Party shall be liable to the other nor deemed in default under the Agreement only in the event that and to the extent that such Party's performance of the Agreement is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the Party declaring force majeure which such Party is unable to prevent by exercising reasonable diligence.
 - B. Force majeure shall not include the following occurrences:
 - i) Late delivery of Equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - ii) Late performance by a subcontractor.

C. If either Party is delayed at any time in the progress of the work by force majeure, then the delayed Party shall notify the other Party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, thereby invoking its provisions. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other Party in writing by hand delivery or certified mail when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed Party from performing in accordance with the Agreement.

12. **Interpretation of Parole Evidence:** This Agreement is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Agreement, unless the signing of a subsequent Agreement is specifically called for in this Agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of the Agreement, even though the accepting or acquiescing Party has knowledge of the nature of the performance and opportunity to object.
13. **Licenses and Permits:** CycleHop shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by CycleHop, at its sole expense.
14. **No Assignment:** No right or interest in this Agreement shall be assigned by CycleHop and no delegation of any duty of CycleHop shall be made without prior written permission of the City.
15. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Agreement. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
16. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Agreement will forthwith be physically amended to make such insertion or correction.

17. **Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§ 35-214 and -215, CycleHop shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, invoices, files and other records relating to the acquisition and performance of the Agreement for a period of five (5) years after the completion of the Agreement. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the City Attorney or City Procurement Office.
18. **Relationship of Parties:** It is clearly understood that each Party to this Agreement will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other Party. CycleHop is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to CycleHop. An employee or agent of one Party shall not be an employee or agent of the other Party for any purpose whatsoever.
19. **Rights and Remedies:** No provisions of this Agreement shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement, or by law, shall not release CycleHop from any responsibilities or obligations imposed by the Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Agreement.
20. **Safety Standards:** All items supplied under this Agreement must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.
21. **Severability:** The provisions of this Agreement are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.
22. **Specially Designated Nationals and Blocked Persons List:** CycleHop represents and warrants to the City that neither CycleHop nor any affiliate or representative of CycleHop:
 - A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 (“Order”);
 - B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);
 - C. Is engaged in activities prohibited in the Order; or,

D. Has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

23. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. CycleHop and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Agreement termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapons permit. In addition to contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.

24. **Warranties:** CycleHop expressly warrants that all materials and/or goods delivered under the Agreement shall conform to the specifications of this Agreement, and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. CycleHop expressly warrants the following:

A. All workmanship shall be finest and first-class;

B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and,

C. All services will be performed in a good and workmanlike manner. CycleHop's warranties shall survive inspection, acceptance and/or payment by the City, and shall run to the City, its successors, agents and assigns.

CycleHop agrees to make good by replacement and/or repair, at its sole expense and at no cost to the City, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should CycleHop fail to perform said replacement and/or repair to City's satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from CycleHop. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedies.

25. **Insurance:**

A. **Insurance Required:** Prior to commencing services under this Agreement CycleHop shall procure and maintain for the duration of the Agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by CycleHop, its agents, representatives, employees, subcontractors, or sub-subcontractors. If self-insured, proof of self-insurance with minimum limits expressed below must be submitted on proper forms.

Before renewal of the Agreement, all required insurance must be in force and on file with the City Procurement Office. CycleHop must submit required insurance within ten (10) calendar days after request by the City Procurement Office.

B. Minimum Limits of Coverage: Without limiting any obligations or liabilities, CycleHop, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

i. Minimum Limits of Insurance. CycleHop shall maintain limits no less than:

a. Commercial General Liability

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Agreement or the general aggregate shall be twice the required per occurrence limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as insurance service officer policy form CG2010 11/85 edition or any replacement thereof.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

CycleHop shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CycleHop employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In case services are subcontracted, CycleHop will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by CycleHop.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the contracted services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

- C. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this Agreement, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded CycleHop shall be primary insurance. This provision and the naming of the City as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).
- D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Agreement.
- E. Primary Coverage. CycleHop's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it.
- F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of CycleHop.
- H. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be disclosed by CycleHop and shall not be applicable with respect to the coverage provided to the City under such policies. CycleHop shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require CycleHop to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

- I. Certificates of Insurance. Prior to commencing work or services under this Agreement, CycleHop shall furnish the City with certificates of insurance, or formal endorsements as required by the Agreement, issued by CycleHop's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect. Such certificates shall identify this Agreement number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
- J. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise CycleHop of any deficiencies in such policies and endorsements, and such receipt shall not relieve CycleHop from, or be deemed a waiver of, the City's right to insist on strict fulfillment of CycleHop's obligations under this Agreement.

26. **Federal Debarment and Suspension:**

- A. By signature on this Agreement, CycleHop certifies its compliance, and the compliance of its subcontractor(s), present or future, by stating that any person associated therewith in the capacity of the owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
 - a. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
 - b. Does not have a proposed debarment pending;
 - c. Has not been suspended, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
 - d. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years as specified by Code of Federal Regulations 49 CFR paragraph 29 305(a)
- B. Where CycleHop or its subcontractors is unable to certify to the statement in Section a.1. above, CycleHop or its subcontractor(s) shall be declared ineligible to enter into Agreement or participate in this project.
- C. Where CycleHop or its subcontractor(s) is unable to certify to any of the statements as listed in Sections a.2., a.3. or a.4. above, CycleHop or its subcontractor(s) shall submit

a written explanation to the City. The certification or explanation shall be considered in connection with the City's determination whether to enter into Agreement with CycleHop.

D. CycleHop shall provide immediate written notice to the City if, at any time, CycleHop or its subcontractor(s), present or future, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

27. **Anti-Lobbying:** CycleHop certifies, by signing this Agreement, that to the best of his/her knowledge and belief, that:

A. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person or influencing or attempting to influence any officer or employee of the City, any State or Federal 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 any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federally appropriated funds have been paid or shall be paid to any person or influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and 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 the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).

C. 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 and entering into this transaction imposed by Section 1352, Title 31 and 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.

D. CycleHop also agrees, by signing the Agreement, that it shall require that the language of this certification be included in subcontracts with all of its subcontractors and that all such subcontractor shall certify and disclose accordingly.

E. The City shall keep the firm's certification on file as part of their original Agreement. CycleHop shall keep individual certifications from all of its subcontractors on file. Certification shall be retained for three (3) years following the completion and acceptance of any given project.

F. Disclosure forms for CycleHop and its subcontractors shall be submitted to the City Procurement Office prior to commencing this Agreement. Revised disclosure forms

shall be submitted to the City at the end of the calendar year quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. The Disclosure forms shall be submitted by the City to the FHWA for further processing.

28. **Procurement of Recovered Materials:** In accordance with § 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, CycleHop shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 246 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. CycleHop must procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless CycleHop determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the items; or (3) are only available at an unreasonable price.

Paragraph 5.23.1 of this clause shall apply to items purchased under this Agreement where: (1) CycleHop purchases in excess of \$10,000 of the items under this Agreement; or (2) during the preceding Federal fiscal year, CycleHop: (i) purchased any amount of the items for use under a contract that was funded with Federal Appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside the Agreement.

29. **Certification Regarding Boycott of Israel** Vendor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.
30. **Price Increases** The Procurement Office will review fully documented requests for price increases after the Contract has been in effect for twelve (12) months. Price increase requests must be fully documented and justified. The Procurement Office will determine whether the requested price increase, or an alternative option, is in the best interest of the City. Advanced thirty (30) day written notification by Contractor is required for any price changes. All price adjustments will be effective on the first day of the month following approval or acceptance by the Procurement Office. After the City approves a price increase the Contractor shall not be eligible to receive an additional increase until twelve (12) months from the date of the last approved price increase. Price reductions may be offered at any time and will be effective immediately upon notice.

**EXHIBIT J
TRADEMARK AND LOGO**

The relationship of the symbol to the name Tempe has a specific configuration which makes up the City's logo. There are four approved ways the name can be positioned with the symbol. The space between the symbol and the name Tempe is fixed, and any adjustment is prohibited. Changes of any kind to either the symbol or the typographic style of the name are also prohibited. Further, the symbol is never to be used in place of the letter T in the word Tempe. When reproduced in two colors, the sun in the center of the symbol must be PMS 151 with the rest of the symbol and type printed in PMS 541. This is the only way the logo can be reproduced in more than one color. The City logo can be reproduced in any one color. The logo can be reversed out to white with a solid background but should never be placed into a shape.



EXHIBIT K DEFINITIONS

Docking Racks hold the bicycles. Docking racks are approximately 2 inches wide x 30 inches long x 32 inches tall.

GRID is the name of the regional bike share system.

Equipment includes kiosks/signs, docking racks and bicycles.

Hubs are GRID station or designated stop and shop rack.

Kiosks may display regional bike share system map and user fee information and may or may not be bolted to the ground.

Services include designing, installing, operating and maintaining the GRID bike share system in Tempe.

Station is a location where a user can rent a GRID bicycle. Each station shall have, at a minimum, docking rack(s) and bicycle(s), customer service signage, and a lighted system map. Stations measure approximately 50 feet, 3 inches by 10 feet, 8 inches.

System is Tempe's for-rent public bike program meant to support greater access to more sustainable transportation options and further reduce dependency on automobiles.

Technology is machinery and Equipment developed from the application of scientific knowledge.

Trademark is a symbol, word, or words legally registered or established by use as representing a company or product.

Out of Hub is not a GRID station or designated stop and shop rack.

Out of Service is a physical location outside of the GRID operating area of Phoenix, Mesa and Tempe.

User is a person who rents a bicycle from GRID bike share.

User Fees are costs associated with renting a bicycle from GRID bike share.

Trip is the use of a bicycle from one station to another station or back to the initial station.

EXHIBIT L
AFFIDAVIT OF COMPLIANCE WITH TEMPE CITY CODE
(Applicable only to firms with less than 15 employees)



AFFIDAVIT OF COMPLIANCE WITH TEMPE CITY CODE
CHAPTER 2 ARTICLE VIII SECTION 2-603(5)

Per Tempe City Code Chapter 2 Article VIII Section 2-603(5), it is unlawful for a City vendor or City contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

City vendors and contractors shall provide a copy of their antidiscrimination policy to City to confirm compliance with this requirement or attest in writing to compliance.

- CONTRACTOR means any person who has a contract with the City.
- VENDOR means a person or firm in the business of selling or otherwise providing products, materials, or services.

CONTRACTOR/VENDOR, select one:

_____ Current copy of antidiscrimination policy attached.

OR

_____ I hereby certify _____ (contractor/vendor) to be in compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5), as well as in compliance with all City of Tempe ordinances, state and federal laws, executive orders, rules, and regulations relating to nondiscrimination.

Signature

Date: _____

Print Name

Title

Company

EXHIBIT M DISADVANTAGED BUSINESS ENTERPRISES

1.0 Policy

The Arizona Department of Transportation (hereinafter the Department or ADOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26. The Department has awarded the City of Tempe a portion of the Federal financial assistance it has received from USDOT, and as part of the award, the City of Tempe is required to comply with the Department's DBE program and 49 CFR Part 26. In this Part XV. DISADVANTAGED BUSINESS ENTERPRISES, "LPA / Sub-recipient Procurement Office" means the City of Tempe Public Works Department, Engineering Division.

It is the policy of the Department to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

- (1) To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- (2) To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
- (3) To ensure that the DBE program is narrowly tailored in accordance with applicable law;
- (4) To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
- (5) To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
- (6) To assist in the development of firms that can compete successfully in the market place outside the DBE program.

Local Public Agencies (LPA) and or Sub-recipients of Federal financial assistance will administer and manage the contracts from advertising, consultant selection, negotiation, contract execution, processing payment reports and contract modifications, audits, DBE compliance (e.g., reporting and monitoring) through contract closeout.

2.0 Assurances of Non-Discrimination

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex

or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the state deems appropriate. The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions

(A) Disadvantaged Business Enterprise (DBE): a for-profit small business concern which meets both of the following requirements:

- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(B) Socially and Economically Disadvantaged Individuals: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) “Women;”
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

(C) Joint Venture: an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

(D) Non-DBE: any firm that is not a DBE.

(E) RACE-CONSCIOUS: a measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

(F) RACE-NEUTRAL: a measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

4.0 Working with DBEs

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All bidders should contact the Department’s Business Engagement and Compliance Office at the address shown below for assistance in their efforts to use DBEs in the construction program of the Department:

Arizona Department of Transportation
Business Engagement and Compliance Office
1135 N. 22nd Avenue (second floor), Mail Drop 154A
Phoenix, AZ 85009
Phone (602) 712-7761
FAX (602) 712-8429

5.0 Applicability

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs where the contractor uses a percentage of DBEs, as defined herein, to meet the contract-specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract, is awarded a subcontract on a project without DBE goals, and is awarded a subcontract from a

prime contractor that did not consider the firm's DBE status.

The contractor shall meet the goal specified herein with DBEs, or establish that it was unable to meet the goal despite making good faith efforts to do so. Prime contractors are encouraged to obtain DBE participation above and beyond any goals that may be set for this project. The provisions are applicable to all bidders including DBE bidders.

6.0 Certification

Certification as a DBE shall be predicated on:

- (1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".
- (2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
- (3) The submission of any additional information which the Department may require to determine the firm's eligibility to participate in the DBE program.
- (4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed with the Department at any time. Both hardcopy submission and online submission is available.

For hardcopy submissions, applications for certification are available at the Department's Business Engagement and Compliance Office, 1135 N. 22nd Avenue (second floor), mail drop 154A, Phoenix, Arizona 85009, phone (602) 712-7761. Hardcopy applications may also be obtained through the internet at www.azdbe.org. Hardcopy applications must be filed through the Department's Business Engagement and Compliance Office at the above address.

For online submissions, the online application process may be accessed through the internet at www.azdbe.org.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

Arizona is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at www.azdbe.org. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification is not a representation of qualifications and/or abilities. The contractor bears all risks that the firm may not be able to perform its work for any reason.

7.0 General

Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Each contractor shall also designate a full time employee who shall be responsible for the administration of the contractor's DBE program.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

8.0 DBE Subcontractor Payment Reporting

The Department is required to collect data on DBE and non-DBE participation to report to Department of Transportation (DOT) on Federal-aid projects. LPA / Sub-recipient Procurement Office will notify the contractor that such record keeping is required by the Department for tracking DBE participation.

The contractor shall submit a report on a monthly basis indicating the amounts earned by and paid to all DBEs and non-DBEs working on the project. In addition, the contractor shall require that all DBE and non-DBE subcontractors verify receipt of payment.

The contractor shall provide all such required information for the current month by the 5th of the following month. The required information shall be submitted electronically through the Department's web-based payment tracking system (<https://arizonalpa.dbesystem.com>).

9.0 Goals

The minimum goal for participation by DBEs on this project is as follows: 0%

The percentage of DBE participation shall be based on the total bid.

10.0 Crediting DBE Participation toward Meeting Goals

10.01 General Requirements

Only the value of the work actually performed by the DBE can be credited toward DBE participation. Credit towards the contractor's DBE goal is given only after the DBE has been paid for the work performed.

The contractor bears the responsibility to determine whether the DBE possesses the proper contractor's license(s) to perform the work. If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the contractor bears the responsibility to immediately request

approval to replace the DBE with another DBE and notify the Engineer (City of Tempe Project Manager) and the Department's Business Engagement and Compliance Office.

The Department's certification is not a representation of qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

With the exception of bond premiums, all work must be attributed to specific bid items. Where work applies to several items, the DBE contracting arrangement must specify unit price and amount attributable to each bid item. DBE credit for any individual item of work performed by the DBE shall be the lesser of the amount to be paid to the DBE or the prime contractor's bid price. If the amount bid by the DBE on any item exceeds the prime contractor's bid amount, the prime contractor may not obtain credit by attributing the excess to other items.

Where more than one DBE is engaged to perform parts of an item (for example, supply and installation), the total amount payable to the DBEs will not be considered in excess of the prime contractor's bid amount for that item.

Bond premiums may be stated separately, so long as the arrangement between the prime contractor and the DBE provides for separate payment not to exceed the price charged by the bonding company.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

If a DBE performs part of an item (for example, installation of materials purchased by a Non-DBE), the DBE credit shall not exceed the lesser of (1) the DBE's contract or (2) the prime contractor's bid for the item, less a reasonable deduction for the portion performed by the Non-DBE.

When a DBE performs as a partner in a joint venture, only that portion of the total dollar value of the contract which is clearly and distinctly performed by the DBE's own forces can be credited toward the DBE goal.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE used to meet the goal must meet the requirements of a

first-tier DBE subcontract.

All DBE and non-DBE subcontracting activity must be reported by the contractor and counted toward participation. This includes lower-tier subcontracting regardless of whether or not the DBE is under contract with another DBE.

DBE prime contractors must meet the DBE participation goal or demonstrate good faith efforts. This is determined by counting the work the DBE has committed to performing with its own forces, as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

A prime contractor may credit the entire amount of that portion of a construction contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE goal only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE goal.

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

10.02 Police Officers

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

10.03 Commercially Useful Function

As a prime contractor, a DBE shall perform a significant portion of the contract work with its own work force in accordance with normal industry practices and *Arizona Department of Transportation Standard Specifications for Road and Bridge Construction* (2008), Subsection 108.01 - Subletting of Contract.

A prime contractor can credit expenditures to a DBE subcontractor toward DBE goals only if the DBE performs a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of a contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and

supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. Decisions on commercially useful function matters are subject to review by DOT, but are not administratively appealable to U.S. DOT.

10.04 Trucking

The Department will use the following factors in determining whether a DBE trucking company is performing a commercially useful function. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract on every day that credit is to be given for trucking.

The contractor will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees results in credit only for the fee or commission paid to the DBE as a result of the lease agreement.

Example: DBE Firm X uses two of its own trucks on contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE firm Z. DBE credit would only be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

10.05 Materials and Supplies

The Department will credit expenditures with DBEs for material and supplies towards the DBE goal as follows. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is credited. A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract, and of the general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Department will credit the entire amount of the fees or commissions charged by the DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted toward the DBE goal.

DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for standard industry hauling costs, and only if the DBE is owner or lessee of the equipment and trucks. Leases for trucks must be long term (extending for a fixed time period and not related to time for contract performance) and must include all attendant responsibilities such as insurance, titling, hazardous waste requirements, and payment of drivers.

11.0 Joint Checks

11.01 Requirements

A DBE subcontractor and a material supplier (or equipment supplier) may request permission for the use of joint checks for payments from the prime contractor to the DBE subcontractor and the supplier. Joint checks may be issued only if all the conditions in this subsection are met.

1. The DBE subcontractor must be independent from the prime contractor and the supplier, and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.
2. The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.
3. A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.
4. There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.
5. Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.
6. The prime contractor may act solely as the payer of the joint check, and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.
7. The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.
8. The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

11.02 Procedure and Compliance

1. LPA / Sub-recipient Procurement Office must approve the agreement for the use of joint checks

in writing.

2. After obtaining authorization for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement.
3. Copies of canceled checks must be submitted with the payment information for the period in which the joint check was issued. Certificates of payment must indicate whether or not joint checks were used.
4. The prime contractor, DBE, and supplier each have an independent duty to report to the LPA / Sub-recipient Procurement Office in the case of any change from the approved joint check arrangement.
5. Any failure to comply will be considered by the LPA / Sub-recipient Procurement Office to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, reduction or loss of prequalification, debarment, or other remedies which may prevent future participation by the offending party.

12.0 Submission with Bids

All bidders are required to certify in their bid proposal on the “Disadvantaged Business Enterprise Assurances” certificate (i.e., on ADOT form “BECO 302S”; see the Exhibits section of this Invitation for Bids) either:

- (1) The established goal for DBE participation has been met and arrangements have been made at the time of bid with certified DBEs or
- (2) The bidder has been unable to meet the goal prior to the submission of the bid and has made good faith efforts to do so.

BIDS SUBMITTED WITH ALTERED, INCOMPLETE, OR UNSIGNED CERTIFICATES WILL BE CONSIDERED NON-RESPONSIVE.

Certifications on forms other than those furnished by the LPA / Sub-recipient Procurement Office will be considered non-responsive.

13.0 Bidder Meeting DBE Goal

13.01 General

If the bidder indicates in the bid that it has met or exceeded the DBE goal, the DBE Intended Participation Affidavit, its attachments, and a written confirmation from each DBE that it is participating in the contract as provided on the affidavit shall be submitted as follows:

- (1) The DBE Intended Participation Affidavit, its attachments, and the confirmations (i.e., ADOT

forms “BECO 304S” and “BECO 305S”) must be received by the LPA / Sub-recipient Procurement Office no later than 4:00 P.M. on the fifth working day following the bid opening. Copies of this affidavit and the attachments can be found in the Exhibits section of this Invitation for Bids, or on the Internet at http://www.azdot.gov/inside_adot/CRO/LPA_SubRec.asp. This affidavit and its attachments shall indicate that the bidder has met or exceeded the DBE goal if this was indicated on the submittal with the bid.

(2) The affidavit and attachments must be accurate and complete in every detail and must be signed by an officer of the contractor(s).

(3) The DBE Intended Participation affidavit (ADOT form “BECO 305S”) must be submitted listing the DBEs used and the creditable amounts.

(4) A separate DBE Intended Participation affidavit attachment (ADOT form “BECO 304S”) must be submitted for each DBE used to meet the goal of the project. The bidder shall indicate each DBE’s name, the bid items the DBE will perform, and proposed subcontract amount. All partial items must be explained. If not, the DBE will be considered to be responsible for the entire item.

(5) A written confirmation from each DBE used to meet the goal indicating that it is participating in the contract, as provided on the affidavit, must also be submitted at this time (this confirmation is part of ADOT form “BECO 304S”).

(6) A bidder must determine DBE credit in accordance with Section 10 above, entitled “Crediting DBE Participation Toward Meeting Goals.” The affidavit will be reviewed by the LPA / Sub-recipient Procurement Office.

(7) Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) at the time of the bid opening will be considered it shall be the bidder’s responsibility to ascertain the certification status of designated DBEs.

(8) The bidder bears the risk of late delivery by the postal service or a delivery service. Late-filed affidavits will not be accepted.

13.02 Failure to Comply

If the apparent low bidder fails to submit the required information by the stated time and in the manner herein specified, or if the submitted information reveals a failure to meet the requirements of the specifications, the apparent low bidder shall be ineligible to receive award of the contract and the bid will be rejected. The proposal guarantee (bid bond) shall be forfeited if no submission is made or if the State Transportation Board finds the submission was made in bad faith.

14.0 Documented Good Faith Effort

14.01 General

If the apparent low bidder has stated in its bid proposal that it has been unable to meet the DBE

goal, that bidder must demonstrate, through detailed and comprehensive documentation, that good faith efforts have been made to solicit, assist, and use DBE firms to meet the DBE goal prior to the bid. The bidder cannot change its bid proposal after submission.

Failure to demonstrate good faith efforts to the satisfaction of ADOT will result in the rejection of the bid.

The apparent low bidder who cannot meet the DBE goal at the time bids are opened must submit its documentation of good faith effort to the Department's Business Engagement and Compliance Office. The bidder's documentation must be received by the LPA / Sub-recipient Procurement Office by 4:00 P.M. on the fifth working day after the bids are opened. Bidders are encouraged to review Appendix A of 49 CFR Part 26.

In order to be awarded a contract on the basis of good faith efforts, a bidder must show that it took all necessary and reasonable steps to achieve the DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The LPA / Sub-recipient Procurement Office will consider the quality, quantity, and intensity of the different kinds of efforts the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to make if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE goal. Mere pro forma efforts are not sufficient good faith efforts to meet the DBE contract requirements.

The contractor shall, as a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors for a given project. If the contractor cannot meet the goals using DBEs from this geographic area, the contractor, as part of its effort to meet the goals, shall expand its search to a reasonably wider geographic area.

The following is a list of types of efforts a bidder must address when submitting good faith effort documentation.

(1) Soliciting through all reasonable and available means (e.g., attendance at pre-bid meeting, advertising, written notices, and other means) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.

(2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

(3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(4) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a

portion of the work available to the DBE subcontractors and suppliers, and to select those portions of work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided from the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. However, prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other bids or quotes, must be submitted.

(5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

(6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

(7) Making efforts to assist interested DBEs in obtaining necessary equipment supplies, materials, or related assistance or services.

(8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a bidder has made good faith efforts, the LPA / Sub-recipient Procurement Office will take into account the ability of other bidders to meet the DBE goal. The bidder will not be considered to have made good faith efforts if the bidder failed to contact the LPA / Sub-recipient Procurement Office and the Department's Business Engagement and Compliance Office prior to the letting, either in writing, by e-mail, or by telephone, to inform the LPA / Sub-recipient Procurement Office and the Department's Business Engagement and Compliance Office of the firm's difficulty in meeting the DBE goals on a given project, and to request assistance. If the bidder contacts the LPA / Sub-recipient Procurement Office and the Department's Business Engagement and Compliance Office by telephone, the contact must be documented in a telephone log indicating the date and time of call, and name of the person to which he spoke. The telephone number for the ADOT Office is (602) 712-7761. The contact must be made in sufficient time to allow the Department's Business Engagement and Compliance Office to provide assistance.

The LPA / Sub-recipient Procurement Office will analyze the submittal to determine if in fact good faith efforts have been demonstrated consistent with ADOT procedures and the Federal regulations, 49 CFR 26, Appendix A and will forward their recommendation to the Department's Business Engagement and Compliance Office for determination.

The bidder may appeal the determination of the Department's Business Engagement and Compliance Office to the State Engineer. That appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. The protest must be received by the State Engineer no later than seven calendar days after the decision of the Department's Business Engagement and Compliance Office. Copies of the protest shall be sent by the protestant to every bidder, at the same time the protest is submitted to the State Engineer. Any other interested party may submit a response to the appeal no later than seven calendar days after the appeal is requested. Responses from other interested parties must also be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. Any interested party submitting such response shall also provide a copy of its response to every bidder, at the same time the protest is submitted to the State Engineer. The State Engineer shall promptly consider any appeals under this subsection and notify all bidders of the State Engineer's findings and decision.

Any interested party may protest the State Engineer's decision to the Transportation Board, pursuant to the requirements of *Arizona Department of Transportation Standard Specifications for Road and Bridge Construction* (2008), Subsection 103.10.

14.02 Failure to Comply

If the apparent low bidder fails to submit the required information by the stated time and in the manner herein specified, or if the submitted information reveals a failure to meet the requirements of the specifications, the apparent low bidder shall be ineligible to receive award of the contract and the bid will be rejected. The proposal guarantee (bid bond) shall be forfeited if no submission is made or if the State Transportation Board finds the submission was made in bad faith.

15.0 Rejection of Low Bid

If, for any reason, the bid of the apparent low bidder is rejected, there will be a new apparent low bidder. The Department will notify the new apparent low bidder, and this bidder shall submit its subsequent detailed submission as set forth in paragraph 12 or 13 above.

16.0 Time Is of the Essence

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

17.0 Contract Performance

Contract items of work designated by the contractor to be awarded to DBEs shall be performed by the designated DBE or a Department-approved DBE substitute. DBE contract work items shall not

be performed by the contractor, or a non-DBE subcontractor without prior approval by the Department's Business Engagement and Compliance Office. The DBE must perform a commercially useful function; that is, the DBE must manage, perform, and supervise a distinct element of work.

The Department reserves the right to inspect all records of the contractor and all records of the DBEs concerning this contract.

The contractor shall provide to the Engineer (City of Tempe Project Manager), at the pre-construction conference, copies of completed and signed subcontracts purchase orders, invoices, etc., with the appropriate DBEs.

Within five working days of the preconstruction conference, the contractor shall also provide electronic copies of signed subcontract agreements to the LPA / Sub-recipient Procurement Office through the Department's web-based payment tracking system (<https://arizonalpa.dbesystem.com>). As part of this submittal, contractors shall be required to log into the system and enter the name, contact information, and subcontract amounts for all subcontractors and vendors performing on the project as verification that scopes of services and commitments made through the DBE Intended Participation Affidavits are being met.

Subcontract agreements shall include all required assurances, including Form FHWA-1273, and the prompt payment and return of retention requirements specified in *Arizona Department of Transportation Standard Specifications for Road and Bridge Construction* (2008), Subsection 109.06(B). Each page of each required attachment must be dated and initialed by the DBE in order for the subcontract to be considered valid. Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes, or prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the Engineer (City of Tempe Project Manager) deems appropriate. Use of a DBE named on the DBE Intended Participation Affidavit is a condition of award. Substitution will not be allowed without written evidence from the prime contractor and DBE that the DBE is unable or unwilling to perform. Contractors may not terminate a DBE subcontract for convenience, in whole or in part, except to the extent that the Department has eliminated items of work subcontracted to the DBE. All terminations, substitutions, and reductions in scope must be approved by the Department's Business Engagement and Compliance Office.

18.0 Non-Performance by DBEs

In the event a DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the Engineer (City of Tempe Project Manager) and provide all facts surrounding the matter. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE goal on the contract. The contractor shall immediately make reasonable good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of work to the extent needed to meet the DBE goal. The substitute DBE's name, description of work, and dollar value of work shall be submitted to the Engineer (City of Tempe Project Manager) and the Department's Business Engagement and Compliance Office. Approval of the

Department's Business Engagement and Compliance Office must be obtained prior to the substitute DBE beginning work. In the event a prime contractor is unable, after a substantial good faith effort, to obtain another certified DBE, the Department's Business Engagement and Compliance Office may lower the DBE goal on the project. However, the Department's Business Engagement and Compliance Office must approve this in writing prior to a Non-DBE starting the work which had been subcontracted to the DBE.

19.0 Compliance

The contractor's achievement of the goal is measured by actual payments made to the DBEs. The contractor shall submit at the completion of the project the "Certification of Payments to DBE Firms" affidavit (ADOT form "BECO 306S") for each DBE firm working on the project. This affidavit shall be signed by the prime contract and the relevant DBE, and submitted to the Department's Business Engagement and Compliance Office. At that time, a copy of each completed affidavit shall also be submitted to the Engineer (City of Tempe Project Manager).

Acceptance and final payment to the contractor, in accordance with *Arizona Department of Transportation Standard Specifications for Road and Bridge Construction* (2008), Subsections 105.20 and 109.09, will not be made until all "Certification of Payments to DBE Firms" affidavits are received and deemed acceptable by the Engineer (City of Tempe Project Manager) and the LPA / Sub-recipient Procurement Office.

20.0 Sanctions

If the Department determines that the contractor has failed to make sufficient reasonable efforts to meet contract DBE goals, or to otherwise carry out these DBE special provisions, such failure shall constitute a breach of contract and may result in termination of the contract, or any other such remedy as the Engineer (City of Tempe Project Manager) deems appropriate.

If the Engineer (City of Tempe Project Manager) determines that such failure is not cause to terminate the contract, an amount equal to the value of the DBE goal that was not obtained will be deducted from the payment due the contractor. However, if the failure is the first by the contractor, and the Engineer (City of Tempe Project Manager) determines the failure was an unintentional error or oversight, the amount to be deducted may be reduced up to one-half (1/2) of the value of the unobtained DBE goal as determined by the Department's Business Engagement and Compliance Office. In addition to any other sanctions, willful failure of the contractor or a DBE to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in ADOT projects.

XVI. ON THE JOB TRAINING

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under this project shall be at least 0, and the required number of training hours is 0; however, the contractor shall make every possible effort to

provide additional trainees with training and shall see that all trainees are afforded every opportunity to participate in as much training as is practically possible to provide. Due to turnover and attrition of trainees in any one trainee slot, it is expected that continuous trainee replacements may be necessary during the contract work period.

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the Highways Division for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the contractor's records shall document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the Highways Division and the Federal Highway Administration. The Highways Division and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, Apprenticeship programs registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the

U.S. Department of Labor, Bureau of Apprenticeship and Training will also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Specifically, union apprenticeship programs and Associated Builders and Contractor's apprenticeship programs may be used. Additionally, in-house training programs may be approved on a case-by-case basis. Approval or acceptance of a training program shall be obtained from the Highways Division prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training may be permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Acceptance of training in such lower level management positions shall be on a case-by-case basis, and approval shall be obtained from the Highways Division prior to commencing work. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Federal Highway Administration. Some off site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for off site training indicated above may only be made to the contractor where he contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the off site training period.

No payment will be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. However, when such training opportunities are suspended or interrupted under the contract which the trainee was designated, the contractor may continue training under other ADOT contracts regardless of their funding, except that no reimbursement for such training shall be made on non-federal aid contracts, under this training special provision. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent of the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing

program will apply to all trainees being trained for the same classification who are covered by this Training Special Provision. The contractor shall furnish the trainee a copy of the program he will follow in providing the training.

The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor shall provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

The contractor shall submit a weekly training report to the Engineer. The report shall be prepared on forms obtained from the Civil Rights Office, 1135 N. 22nd Avenue (second floor), mail drop 154A, Phoenix, Arizona 85009, phone (602) 712-7761.

At the preconstruction conference, the contractor shall submit a schedule which will indicate each trainee's name, sex, race/ethnicity, the program in which the trainee is enrolled, the approximate number of hours each trainee will be trained in each phase of the work, the crafts to which the trainees belong and the estimated period of time that they will be employed as trainees. A supplemental schedule shall be submitted to the Engineer when a revision in the original schedule is necessary. At the time each trainee is scheduled to begin work, the contractor shall submit to the Engineer each trainee's name, sex, and race/ethnicity. The contractor must also submit proof that the trainee is enrolled in an approved training program.

At the conclusion of the project or at the end of each calendar year for multi-year projects, the contractor must submit to the Affirmative Action Office and to the project office, the same information described hereinbefore for each trainee that worked on the project. Additionally, the contractor must indicate if the trainee graduated from the program, was terminated due to cause, or was transferred to another project to continue his/her training.

If, at the preconstruction conference, the contractor does not provide a schedule containing the specified information, the Engineer will notify the contractor of the infraction. Failure to provide the schedule within 15 calendar days from the date of notification shall be considered as willful non-compliance. The Engineer will cause to be withheld from the contractor's monthly payments additional retainage in the amounts specified below. The amount withheld from the monthly payment shall be held until an acceptable schedule or supplemental schedule has been submitted.

The Engineer will monitor the use of trainees based on the contractor's schedule, supplemental schedules, and weekly training report. If the use of trainees is not in conformance with the schedule or supplemental information, the Engineer will cause to be withheld from the contractor's monthly payments additional retainage in the amounts specified below. Conformance with the schedule will be considered acceptable when the cumulative number of trainee hours earned to date under the Item 9230001 - PROVIDE ON-THE-JOB TRAINING is at least 90 percent of that shown on the schedule, for the work performed to date.

Additional Retainage

First and Second monthly payments following infraction

\$1,000.00 each month

Third monthly payment and thereafter

\$5,000.00 each month

The amount withheld from the monthly payment shall be held until an acceptable schedule or supplemental schedule has been submitted and until conformance with the schedule has been determined.

If, at the completion of the contract, the Department is holding additional retainage in accordance with this specification, the retainage will become the property of the Department, not as penalty but as liquidated damages.

EXHIBIT N CARGO PREFERENCE ACT

Description

The Federal Highway Administration (FHWA) in partnership with the Federal Maritime Administration has mandated the implementation of 46 CFR 381 making the requirements of the Cargo Preference Act (CPA) applicable to the Federal Aid Highway Program.

The requirements apply to items transported by ocean vessel.

The requirements of 46 CFR 381 apply to materials or equipment acquired for a specific federal-aid highway project. In general, the requirements are not applicable to goods or materials that come from inventories independent of FHWA-funded contracts.

Contract Requirements

The contractor shall comply with the requirements of the Cargo Preference Act 46 CFR 381.7(a)-(b). By executing a construction contract for this project, the contractor agrees:

- (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in the paragraph above to both the Engineer and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

- NOTE:
- A. One acceptance sample every other day of production. Minimum one IAS per 20 acceptance and one Correlation per 5 acceptance.
 - B. MAG Class A and B with design compressive strength below 4000 psi - One acceptance sample per 100 CY. MAG Class AA with design compressive strength of 4000 psi or greater, one acceptance per 50 CY. Minimum one IAS per 40 acceptance samples for MAG Class A and Class B and one IAS per 25 acceptance sample for MAG Class AA.
 - C. Class P - Five samples per lot for acceptance. Minimum one IAS per 5 acceptance lots.
 - D. Minimum one acceptance sample per shift. Minimum one IAS per 40 acceptance samples.
 - E. One sample per delivery unit. (per PPD No. 8)

REMARKS: _____

This is to certify that all materials, except those materials accepted by certification and those where no samples are required, were properly sampled and tested.

Report prepared by _____ Date _____

Resident Engineer (Signature and Date) _____ Reviewed by: _____
 Regional Materials Engineer (Signature and Date)

