



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA  
MEMO NO. CA12-127**

**1. Agenda Item Number:**  
**25**  
**2. Council Meeting Date:**  
March 22, 2012

**TO: MAYOR & COUNCIL**  
**THROUGH: CITY MANAGER**

**3. Date Prepared:** March 1, 2012

**4. Requesting Department:**  
Transportation & Development

**5. SUBJECT:** Approve a design contract to Y.S. Mantri & Associates, LLC for the Ray, Dobson and Elliot Fiber Optic Design, Project No. ST1201-201, in an amount not to exceed \$168,975.

**6. RECOMMENDATION:** Staff recommends that Council approve a design contract to Y.S. Mantri & Associates, LLC for the Ray, Dobson and Elliot Fiber Optic Design, Project No. ST1201-201, in an amount not to exceed \$168,975.

**7. BACKGROUND/DISCUSSION:** This project will design the fiber optic communications cable installation along Ray Road from 54<sup>th</sup> Street to Dobson Road, Dobson Road from Ray Road to Elliot Road, and Elliot Road from Dobson Road to Arizona Avenue. This fiber will replace the existing twisted copper on Ray Road and Dobson Road and add an additional two miles of fiber optic communication on Elliot Road to provide more reliable and higher speed video and data transmission between field controllers and the Traffic Management Center. The City has received federal Congestion Mitigation and Air Quality (CMAQ) funds for the design of this fiber optic communication system in the amount of \$150,000 for FY2011 and will use \$18,975 of HURF funding for the design. The City will receive continuing CMAQ funding for construction and installation in the amount of \$814,134 in FY2014. The design contract time is based on 270 calendar days for final completion.

**8. EVALUATION:** This consultant was selected in accordance with the City's selection process. The design fees have been evaluated by City staff and are comparable to historical design rates for similar projects.

**9. FINANCIAL IMPLICATIONS:**

Original Design Contract: \$168,975

Fund Source:

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
217.3310.6516.0000.6ST323	CMAQ Grant	Signal System Communication Intertie	Yes	\$150,000
215.3310.6516.0000.6ST323	HURF	Signal System Communication Intertie	Yes	\$ 18,975

**10. PROPOSED MOTION:** Move that Council approve a design contract to Y.S. Mantri & Associates, LLC for the Ray, Dobson and Elliot Fiber Optic Design, Project No. ST1201-201, in an amount not to exceed \$168,975.

**ATTACHMENTS:** Location Map, Contract

**APPROVALS**

**11. Requesting Department**

*[Signature]* *FOR*

Daniel W. Cook, Transportation Manager

**13. Department Head**

*[Signature]*

R.J. Zeder, Transportation & Development Director

**12. City Engineer**

*[Signature]*

Sheina Hughes, City Engineer

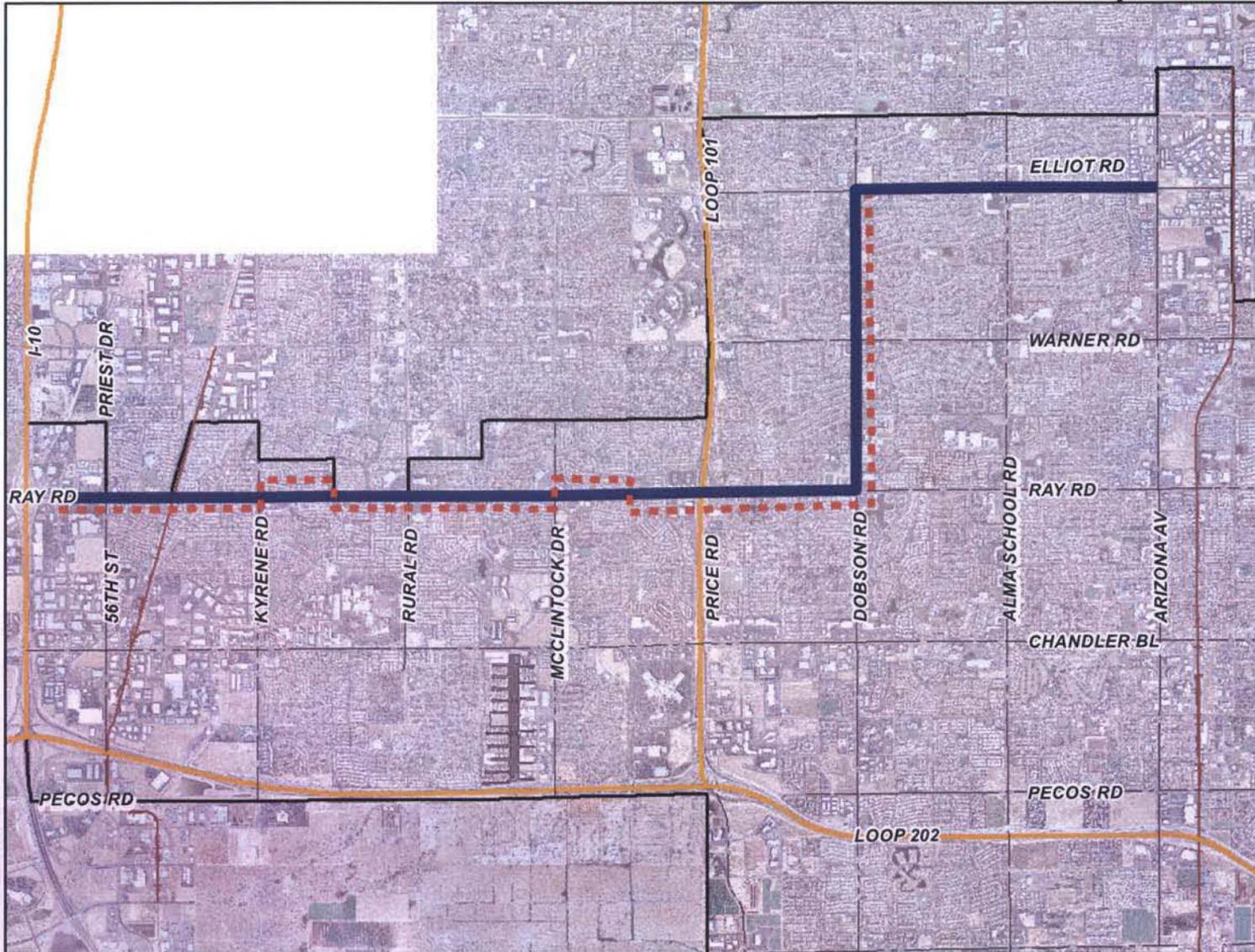
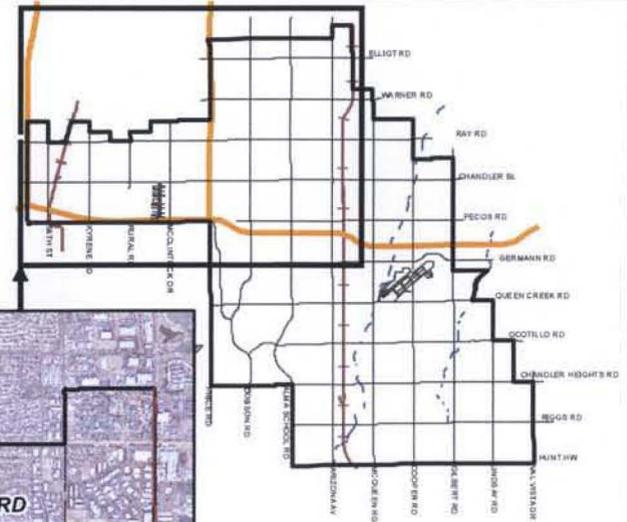
**14. City Manager**

*[Signature]*

Rich Dlugas



# RAY, DOBSON AND ELLIOT FIBER DESIGN PROJECT NO. ST1201-201



**MEMO NO. CA12-127**

- EXISTING CONDUIT
- PROJECT SITE



**DESIGN CONSULTANT SERVICES CONTRACT**

PROJECT TITLE: **Dobson-Ray-Elliot Fiber**  
PROJECT NO: **ST1201-201**

This contract is made and entered into by and between the City of Chandler, Arizona, a municipal Corporation, hereinafter called the CITY, and **Y.S. Mantri & Associates, LLC, a Limited Liability Company, licensed in the State of Arizona**, hereinafter called DESIGN CONSULTANT.

WHEREAS, DESIGN CONSULTANT represents DESIGN CONSULTANT has the expertise and is qualified to perform the services described in this agreement; and

WHEREAS, the Mayor and City Council/City Manager of the City of Chandler are authorized and empowered by the provisions of the City Charter to execute contracts for Professional Services;

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter contained, it is agreed by and between the CITY and DESIGN CONSULTANT, as follows:

1. DESCRIPTION OF PROJECT

Fiber design project (apx. 9.5 miles) along Ray Road from 54<sup>th</sup> Street to Dobson Road, Dobson Road from Ray Road to Elliot Road, and Elliot Road from Dobson Road to Arizona Avenue. The Project is more specifically described in Exhibit A attached hereto and incorporated herein by reference

2. DEFINITIONS:

Words used in this Agreement which are defined in CITY's General Conditions for Construction Contracts shall have the meaning stated therein. DESIGN CONSULTANT is the Project Designer as defined in said General Conditions.

3. SCOPE OF WORK

DESIGN CONSULTANT shall provide those services described in Exhibit A attached hereto and made a part hereof by reference.

4. PAYMENT SCHEDULE

For services described in paragraph 3 of this Agreement, the CITY shall pay DESIGN CONSULTANT a fee based on the fee schedule attached hereto and made a part hereof by reference Exhibit B not to exceed the sum of **One Hundred Sixty Eight Thousand Nine Hundred Seventy Five** dollars (\$168,975). Payment will be made monthly on the basis of progress reports. An Application and Certification for Payment Sheet must be provided. In addition, the following must also be included: a clear, detailed invoice reflecting items being billed for, a summary sheet showing percentage of work completed to date, amount/percent billed to date and current status of all tasks within a project; any/all backup documentation supporting the above items. Work schedule updates will be included in the monthly progress payment requests.

5. PERIOD OF SERVICE

DESIGN CONSULTANT shall complete all services described in paragraph 3 within **Two Hundred Seventy (270)** calendar days after "Notice to Proceed" is issued by the CITY. In the event delays are experienced beyond the control of DESIGN CONSULTANT, the completion date may be extended as mutually agreed upon by CITY and DESIGN CONSULTANT.

6. OPINIONS OF PROBABLE COSTS (ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by DESIGN CONSULTANT are made on the basis of information available to DESIGN CONSULTANT and on the basis of DESIGN CONSULTANT's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since DESIGN CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, DESIGN CONSULTANT does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost DESIGN CONSULTANT prepares.

## 7. APPROVALS

All work shall be subject to the approval by the City Engineer.

DESIGN CONSULTANT agrees to exercise the skill and care which would be exercised by comparable professional engineer performing similar services at the time and in the locality such services are performed. If the failure to meet these standards results in faulty work, DESIGN CONSULTANT shall undertake at its own expense, the corrective adjustments or modifications.

## 8. REPORTING

Written monthly reports, along with updated work schedules, will be made by DESIGN CONSULTANT in the format prescribed by the CITY. These reports will be delivered to the CITY per schedule. When requested by the CITY, DESIGN CONSULTANT will attend Council meetings and provide finished documents including correspondence for Council action, supporting charts, graphs, drawings and colored slides of same.

## 9. STANDARDS OF PERFORMANCE:

A. This design contract has been awarded to DESIGN CONSULTANT based on their proposal that those personnel and consultants listed in Exhibit A attached hereto will perform the portions of the work listed on said Exhibit A. DESIGN CONSULTANT shall not deviate nor substitute any of these team members without prior written approval by CITY.

B. DESIGN CONSULTANT shall be familiar with CITY's Standard Details and Specifications and other relevant CITY regulations. DESIGN CONSULTANT shall ensure there are no conflicts among the Contract Documents including, but not limited to, the CITY's General and Supplementary Conditions for Construction Contracts, the plans and specifications prepared by DESIGN CONSULTANT, any standard details or specifications incorporated therein by reference, and the Construction Contract.

C. Correction of Mistakes: DESIGN CONSULTANT shall be responsible for the completeness and accuracy of the work prepared or compiled under DESIGN CONSULTANT's obligation for this project and shall correct, at DESIGN CONSULTANT's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or DESIGN CONSULTANTing drawings and specifications shall be accomplished by DESIGN CONSULTANT. The cost of the design necessary to correct those errors attributable to DESIGN CONSULTANT and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to DESIGN CONSULTANT and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved DESIGN CONSULTANT's work shall in no way relieve DESIGN CONSULTANT of any of its responsibilities.

## 10. INDEMNIFICATION

(a) For Professional Liability:

To the fullest extent permitted by law, DESIGN CONSULTANT shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by DESIGN CONSULTANT, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose errors, mistakes or omissions DESIGN CONSULTANT may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC (other than DESIGN CONSULTANT, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

(b) For all Other Liabilities, Hazards and Exposures:

To the fullest extent permitted by law, DESIGN CONSULTANT shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of DESIGN CONSULTANT and alleged to have been caused in whole or in part by any act or omission of DESIGN CONSULTANT, anyone directly or indirectly employed by them or anyone for whose acts DESIGN CONSULTANT may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of DESIGN CONSULTANT, its agents, employees or representatives to fulfill DESIGN CONSULTANT's obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC, (other than DESIGN CONSULTANT, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

(c) Consequential Damages:

The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this contract in dollars as payable by the City of Chandler or twice the amount of aggregate insurance required by this Contract, whichever is greater.

(d) Insurance does not limit liability:

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

11. INSURANCE REQUIREMENTS:

A DESIGN CONSULTANT, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of A-6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.

B With the exception of professional liability policies, policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.

- C All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
- D If any of the insurance policies are not renewed prior to expiration, payments to the DESIGN CONSULTANT may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the DESIGN CONSULTANT.
- E All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- F DESIGN CONSULTANT's insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- G The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of DESIGN CONSULTANT's acts, errors, mistakes, omissions, work or service.
- H The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of DESIGN CONSULTANT. DESIGN CONSULTANT shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require DESIGN CONSULTANT to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/designee.
- I All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
- J Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the DESIGN CONSULTANT with reasonable promptness in accordance with the DESIGN CONSULTANT's information and belief.
- K In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the DESIGN CONSULTANT until such time as the DESIGN CONSULTANT shall furnish such additional security covering such claims as may be determined by the CITY.

## **11.2 Proof of Insurance - Certificates of Insurance**

- A Prior to commencing work or services under this Agreement, DESIGN CONSULTANT shall furnish to CITY Certificates of Insurance, issued by DESIGN CONSULTANT's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.

- B If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
- C All Certificates of Insurance shall identify the policies in effect on behalf of DESIGN CONSULTANT, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
- D CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise DESIGN CONSULTANT of any deficiencies in such policies and endorsements, and such receipt shall not relieve DESIGN CONSULTANT from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of DESIGN CONSULTANT's obligations under this Agreement.

### 11.3 Required Coverage

Such insurance shall protect DESIGN CONSULTANT from claims set forth below which may arise out of or result from the operations of DESIGN CONSULTANT under this Contract and for which DESIGN CONSULTANT may be legally liable, whether such operations be by the DESIGN CONSULTANT or by a Sub-consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- A Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- B Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- C Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- D Claims for damages insured by usual personal injury liability coverage;
- E Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- F Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "1" "any auto" policy form CA00011293 or equivalent thereof.
- G Claims for bodily injury or property damage arising out of completed operations;
- H Claims involving contractual liability insurance applicable to the Contractor's obligations under the Indemnification Agreement;
- I Claims for injury or damages in connection with one's professional services;

J Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

#### 11.3.1 Commercial General Liability - Minimum Coverage Limits:

The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for DESIGN CONSULTANT's operations and products, and completed operations.

#### 11.3.2 General Liability - Minimum Coverage Limits

The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent Contractors, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.

#### 11.3.3 Automobile Liability

DESIGN CONSULTANT shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the DESIGN CONSULTANT's work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

#### 11.3.4 Worker's Compensation and Employer's Liability

DESIGN CONSULTANT shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over DESIGN CONSULTANT's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, DESIGN CONSULTANT will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of DESIGN CONSULTANT.

#### 11.3.5 Professional Liability

DESIGN CONSULTANT shall maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by DESIGN CONSULTANT, or any person employed by DESIGN CONSULTANT, with a claims made policy limit of not less than \$1,000,000.

## 12. AMENDMENTS

Whenever a change in the scope of work contemplated in this Contract is determined to be necessary, the work will be performed in accordance with the Contract provided, however, that BEFORE such work is started, a Contract Amendment shall be executed by the CITY and DESIGN CONSULTANT. Additions to, modifications of, or deletions from the project provided herein may be made and the compensation to be paid to DESIGN CONSULTANT may be adjusted accordingly by mutual agreement of the contracting parties. It is agreed that no claim for extra work by DESIGN CONSULTANT will be allowed by the CITY except as provided herein, nor shall DESIGN CONSULTANT do any work not covered by this Contract unless such work is authorized through an executed amendment.

### 13. TERMINATION WITHOUT CAUSE

CITY may at any time and for any or no reason, at its convenience, terminate this contract or any part of the services to be rendered pursuant thereto by written notice to DESIGN CONSULTANT specifying the termination date. Immediately after receiving such notice, DESIGN CONSULTANT shall discontinue advancing the work under this Contract and shall deliver to the CITY all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by the CITY.

DESIGN CONSULTANT shall receive as compensation in full for services performed to date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of DESIGN CONSULTANT(S) fee described in this Contract under paragraph 3 and shall be in the amount to be agreed mutually by DESIGN CONSULTANT and the CITY. The CITY shall make this final payment within sixty (60) days after DESIGN CONSULTANT has delivered the last of the partially completed items.

### 14. TERMINATION WITH CAUSE

This Agreement may be terminated by CITY for cause should the DESIGN CONSULTANT fail to perform any provision of this Agreement, including without limitation, for any of the following reasons:

- (a) DESIGN CONSULTANT abandons Work;
- (b) DESIGN CONSULTANT assigns or attempts to assign its rights or obligations under this Agreement or any part thereof to any third-party (without the prior written consent of CITY);
- (c) DESIGN CONSULTANT is adjudged bankrupt or insolvent, makes a general assignment for the benefit of creditors, has a trustee or receiver appointed for its property, or files a petition to take advantage of any debtor's act;
- (d) DESIGN CONSULTANT fails or refuses to perform any obligation under the Agreement, or fails to remedy such nonperformance within seven (7) days after its occurrence;
- (e) DESIGN CONSULTANT fails to comply with any applicable Laws and fails to remedy such nonperformance within seven (7) days after its occurrence;
- (f) DESIGN CONSULTANT fails to achieve the required dates for performance required pursuant to the Agreement.

The CITY'S right of termination for cause as set forth herein shall be in addition to, and not a limitation of, any and all other remedies available to CITY at law, in equity, or under the terms and provisions of this Agreement.

### 15. OWNERSHIP OF DOCUMENTS

All documents, including, but not limited to, tracings, drawings, original mylars, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of this Contract are to be, and remain the property of, the CITY. DESIGN CONSULTANT shall furnish the CITY, upon its request, originals or reproducible of technical specifications and copies of all other documents listed above. DESIGN CONSULTANT shall endorse, by his professional seal, all plans and engineering data furnished by him.

16. RE- USE OF DOCUMENTS

The parties agree the documents, drawings, specifications and designs, although the property of CITY, are prepared for this specific project and are not intended nor represented by DESIGN CONSULTANT to be suitable for re-use for any other project. Any reuse without written verification or adaptation by DESIGN CONSULTANT for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.

17. NO KICK-BACK CERTIFICATION

DESIGN CONSULTANT warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the DESIGN CONSULTANTING firm.

For breach or violation of this warranty, the CITY shall have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18. CONFLICT OF INTEREST

DESIGN CONSULTANT stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.

Pursuant to A.R.S. Section 38-511, the City may cancel this contract within three (3) years after its execution, without penalty or further obligation by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Chandler is, at any time while the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

19. ALTERNATE DISPUTE RESOLUTION

- 19.1 Alternative Dispute Resolution. The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONTRACTOR pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.
- 19.2 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 19.3 Jurisdiction and Venue. The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

19.4 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

20. CONTROLLING LAW

The law of the state of Arizona shall govern this Contract.

21. REQUIRED COMPLIANCE WITH ARIZONA PROCUREMENT LAW

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the Design Consultant hereby warrants to the City that the Design Consultant and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Design Consultant Immigration Warranty").

A breach of the Design Consultant Immigration Warranty (Exhibit C) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The City retains the legal right to inspect the papers of any Design Consultant or Subcontractor employee who works on this Contract to ensure that the Design Consultant or Subcontractor is complying with the Design Consultant Immigration Warranty. The Design Consultant agrees to assist the City in the conduct of any such inspections.

The City may, at its sole discretion, conduct random verifications of the employment records of the Design Consultant and any Subcontractors to ensure compliance with Design Consultants Immigration Warranty. The Design Consultant agrees to assist the City in performing any such random verifications.

The provisions of this Article must be included in any contract the Design Consultant enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Design Consultant or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In accordance with A.R.S. §35-393.06, the Design Consultant hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the Design Consultant hereby certifies that the offeror does not have scrutinized business operations in Sudan.

22. NO ASSIGNMENT

DESIGN CONSULTANT shall not assign, transfer, convey or subcontract this contract or the services to be rendered pursuant thereto without the prior written consent of CITY.

23. NOTICES

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

## 24. FEDERAL AID PROVISIONS ANTI-LOBBYING

The CONSULTANT certifies, by signing and submitting the SOQ, 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 for influencing or attempting to influence any officer or employee of 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 for 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 or not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The CONSULTANT also agrees, by submitting its SOQ that it shall require that the language of this certification be included in subcontracts with all Subconsultant(s) and lower-tier Subconsultants which exceed \$100,000 and that all such Subconsultants and lower-tier Subconsultants shall certify and disclose accordingly.
- e. The DEPARTMENT shall keep the firm's certification on file as part of its original SOQ. The CONSULTANT shall keep individual certifications from all Subconsultants and lower-tier Subconsultants on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.
- f. Disclosure forms for the CONSULTANT and its Subconsultants and lower-tier Subconsultants shall be submitted to the ECS Contract Specialist assigned to the CONTRACT on the date the Statement of Qualifications are due. The CONSULTANT and each Subconsultant and lower-tier Subconsultant shall file revised disclosure forms at the end of each calendar quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. The Disclosure forms shall be submitted by the ECS Director to the FHWA for further review.

### **RECORDS RETENTION, MAINTENANCE AND AUDIT**

- a. Pursuant to A.R.S. §35-214, the CONSULTANT and its Subconsultant(s) shall keep and maintain all books, papers, records, accounting records, files, accounts, expenditure records, reports, cost proposals with backup data and all other such materials related to the CONTRACT and other related project(s). The CONSULTANT shall make all such materials related to the project(s) available at any reasonable time and place during the term of the CONTRACT and for five (5) years from the date the Initial Closeout Letter is sent to the CONSULTANT after ADOT indicates that work on the CONTRACT has been completed to the satisfaction of the DEPARTMENT (Contract Status Form). All Documents shall be retained for auditing, inspection and copying upon the DEPARTMENT'S or at FHWA's request, or any other authorized representative of the Federal Government.
- b. Pursuant to A.R.S. §35-215, the CONSULTANT and its Subconsultant(s) with intent to defraud, deceive, improperly influence, obstruct or impair an audit being conducted or about to be conducted in relation to any CONTRACT or subcontract with the DEPARTMENT is guilty of a class 5 felony.

- c. *In case of an audit and the CONSULTANT has failed to retain records in accordance with the applicable CONTRACT provision, it shall be presumed that the documents would not have supported the CONSULTANT'S position. Therefore, failure to retain such records shall result in the CONSULTANT being required to reimburse ADOT for unsupported costs. The CONSULTANT may also be disqualified per revised ECS Rules Section 2.02 from submitting future SOQ proposals.*
- d. *Upon completion and final closeout of the CONTRACT, physical/paper or electronic CONTRACT files and any supporting materials shall be maintained in accordance with ADOT and State Record Retention Center Records Retention/Destruction Policy and Schedules.*

#### **AFFIRMATIVE ACTION (FOR FEDERAL-AID FUNDED CONTRACTS)**

*CONSULTANT shall take the following affirmative action steps with respect to securing supplies, equipment or services under the terms of this CONTRACT:*

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

#### **PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES**

1. *The Department 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. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.*

*It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts. It is also ADOT's policy to:*

- a. *Ensure nondiscrimination in the award and administration of federally-funded contracts;*
- b. *Create a level playing field on which DBEs can compete fairly for federally-funded contracts;*
- c. *Ensure that the DBE program is narrowly tailored in accordance with applicable law;*
- d. *Ensure that only firms that fully meet 49 CFR Part 26 eligibility requirements are counted as DBEs;*
- e. *Help remove barriers to the participation of DBEs in federally-funded contracts; and*
- f. *Assist in the development of firms that can compete successfully in the marketplace.*

*Federal regulations require a recipient of federal highway funding to implement an approved DBE Program that consists of establishing a statewide DBE utilization goal and using race-neutral means to the maximum feasible extent to achieve the goal. Where race-neutral measures prove inadequate to achieve the goal, the STATE is required to use race-conscious measures, such as a DBE participation goal for individual contracts.*

*The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends to meet the goal with a combination of race-conscious efforts*

and race-neutral efforts. Race-conscious participation occurs where the CONSULTANT uses a percentage of DBEs to meet a 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.

2. DBE GOAL/COMMITMENT AND DOCUMENTATION:

- a. A DBE GOAL OF 8.98% HAS BEEN ESTABLISHED ON THIS CONTRACT. THE CONSULTANT IS ENCOURAGED TO OBTAIN DBE PARTICIPATION ABOVE AND BEYOND THE GOAL ON THIS PROJECT. DBE GOAL ATTAINMENT WILL BE REVIEWED ON A TASK ORDER BY TASK ORDER BASIS TO HELP ENSURE THAT OVERALL DBE GOAL IS MET ON THIS CONTRACT.
- b. The CONSULTANT is required to adhere to the DBE goal/commitment made to utilize certified DBEs as indicated in the firm's Statement of Qualifications (SOQ) or the Prime and Subconsultant DBE Affidavits submitted with each approved Task Order, or subsequently agreed to by the STATE during negotiations. The STATE, at its discretion and on a case by case basis, may waive the above limitations.
- c. With each new Task Order request, the CONSULTANT is required to submit the following documents certifying that:
  1. The firm will meet or exceed the established CONTRACT DBE goal for the Task Order by providing:
    - a. A notarized Prime Consultant Intended DBE Participation Affidavit, if the CONSULTANT is a DBE firm. The form is available on the ECS website ([http://www.azdot.gov/highways/ecs/dbe\\_program.asp](http://www.azdot.gov/highways/ecs/dbe_program.asp)) and must be submitted with the cost proposal.

OR

- b. A notarized Prime Consultant Intended DBE Participation Affidavit and a completed Subconsultant Intended DBE Participation Affidavit for each DBE Subconsultant working on each Task Order. These forms are available on the ECS website ([http://www.azdot.gov/highways/ecs/dbe\\_program.asp](http://www.azdot.gov/highways/ecs/dbe_program.asp)) and must be submitted with the cost proposal for each Task Order.

OR

2. The firm has made good faith efforts to meet the DBE goal for the Task Order but did not succeed in achieving the DBE goal. The CONSULTANT shall document the good faith efforts on the Consultant Certification of Good Faith Efforts form (must be notarized). This form is available on the ECS website ([http://www.azdot.gov/highways/ecs/dbe\\_program.asp](http://www.azdot.gov/highways/ecs/dbe_program.asp)) and must be submitted with the cost proposal for each Task Order in which the firm is unable to meet the CONTRACT DBE goal.

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

- d. ADOT shall make the determination whether the CONSULTANT has made a satisfactory good faith effort to secure certified DBEs to meet the CONTRACT goal in accordance with 49 CFR Part
26. If ADOT determines that the CONSULTANT has not met the DBE goal or has not made an adequate good faith effort to meet the DBE goal on a given Task Order, ADOT shall terminate the Task Order negotiations with the firm. If the CONSULTANT wishes to dispute the Good Faith Effort determination, the CONSULTANT may escalate the decision according to the levels

outlined in Section 4.07 (Dispute Resolution) of this CONTRACT. The ADOT Civil Rights Office (CRO) will be represented at each escalation level with the goal of resolving the matter at the lowest possible level.

### 3. COMPLIANCE:

- a. This CONTRACT is subject to DBE compliance tracking. The CONSULTANT and its Subconsultants, Tier-Subconsultants and Vendors are required to provide any requested DBE CONTRACT compliance-related data in hard copy or electronically as determined by the STATE, including written agreements between the CONSULTANT and Subconsultant DBEs. The CONSULTANT must report the amount earned by and paid to each DBE and Non-DBE Subconsultants working on the project for the preceding month on each monthly Progress Payment Report. The CONSULTANT is responsible for ensuring that the CONSULTANT and all its Subconsultants and lower-tier Subconsultants have completed all requested items and that their contact information is accurate and up-to-date.
- b. The CONSULTANT'S achievement of the DBE goal is measured by actual payments made to the DBEs. At the completion of the project, the CONSULTANT shall complete and submit a "Certification of Payments to DBE Firms" affidavit for each DBE firm working on the project. This affidavit shall be signed by the CONSULTANT and the relevant DBE Subconsultant and submitted to ECS and CRO.

### 4. REPORTING AND SANCTIONS:

- a. ADOT is required to collect DBE participation data on all federal aid projects, whether or not there is a stated DBE goal/commitment on this CONTRACT. Therefore, the CONSULTANT shall report the monthly payments made to all DBE, Non-DBE Subconsultants and Direct Expense Vendors, including all Tier-Subconsultants, for labor, equipment, and materials. If the CONSULTANT and its Subconsultants do not provide all required DBE usage and payment information with the monthly Progress Payment Reports (PRs) submittals for the preceding month, the STATE shall deduct \$1,000 for each delinquent report, whether from the CONSULTANT or any of its Subconsultants, from the progress payment for the current month, not as a penalty but as liquidated damages. If by the following month, the required DBE payment information for the previous month has still not been provided, the STATE shall deduct an additional \$1,000 for each delinquent report. Such deductions shall continue for each subsequent month that the CONSULTANT or its Subconsultants fail to provide the required payment information.
  - b. DBEs shall confirm the payments received from the CONSULTANT through CRO'S DBE Contract & Labor Compliance Management System.
  - c. After execution of the CONTRACT and before the first Payment Report/Invoice is submitted to ECS, the CONSULTANT is required to log into the CRO'S online DBE Contract & Labor Compliance Management System (<https://adot.dbesystem.com>) and enter the name, contact information, and subcontract amounts for all Subconsultants, Tier-Subconsultants and Direct Expense vendors performing any work on the project to help ADOT track payments to DBEs and all Subconsultants on the project and to confirm that the scopes of services and commitments made via the DBE Intended Participation Affidavits are being met.
  - d. All DBE and non-DBE subcontracting activities and payments must be reported by the CONSULTANT. All DBE subcontracting activities will be counted toward DBE participation. This includes lower-tiers subcontracting activities regardless of whether or not the DBE is under contract with another DBE.
5. At the completion of the contract, the CONSULTANT must submit a Certificate of Payment Affidavit certifying that all DBEs were paid in full for material and/or work promised and performed under the terms of the CONTRACT.

**6. DBE SUBSTITUTION OR REPLACEMENT:**

- a. The CONSULTANT must not terminate a DBE Subconsultant listed in the SOQ or the Prime or Subconsultant DBE Affidavit submitted with each approved Task Order without the prior written consent of the STATE.
  - b. If a Subconsultant is terminated, or fails to complete its work on the CONTRACT for any reason, the CONSULTANT must make a good faith effort to find another DBE to perform at the least the same amount of work under the CONTRACT as the DBE that was terminated, to the extent needed to meet the DBE commitment percentage established in the CONTRACT.
7. The Department, at its sole discretion, may terminate the CONTRACT at any time if the Department determines that the CONSULTANT is not satisfactorily meeting the DBE goals/commitment stated in the CONTRACT or is not making satisfactory good faith efforts to meet the goal.

**COUNTING DBE PARTICIPATION**

In counting participation of DBEs, the Department shall apply the rules in 49 CFR §26.55 (see Title 49 CFR Part 26 below) as a supplement herein. The firm must count only the value of the work actually performed by the DBE toward DBE goals.

1. CONTRACTS created to artificially create DBE participation are not acceptable; the arrangement must be within normal industry practices. The DBE must perform a commercially useful function.
2. Count the entire amount of that portion of a CONTRACT (or other CONTRACT not covered by paragraph 2 of this section) that is performed by the DBE's own forces. Firms should include the cost of supplies and materials obtained by the DBE for the work on the CONTRACT, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE Subconsultant purchases or leases from the CONSULTANT or its affiliate).
3. Count 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 specially required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with the fees customarily allowed for similar services.
4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the sub-tier Subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE does not count toward DBE goals.
5. It is presumed that the DBE is not performing a commercially useful function if (a) 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, (b) 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.

**TITLE 49 - TRANSPORTATION**

**Subtitle A – Office of the Secretary of Transportation**

**PART 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

[Code of Federal Regulations]; [Title 49, Volume 1]; [Revised as of October 1, 2008]

From the U.S. Government Printing Office via GPO Access; [CITE: 49CFR26.55]; [Page 300-302]

**Subpart C Goals, Good Faith Efforts, and Counting**

**§26.55 - How is DBE participation counted toward goals?**

- (a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
  - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the

cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

- (2) Count 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 DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
  - (b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
  - (c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
    - (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the 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 used 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, you must 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.
    - (2) A DBE does not 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, you must examine similar transactions, particularly those in which DBEs do not participate.
  - (3) 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 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, you must presume that it is not performing a commercially useful function.
  - (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  - (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- (d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
  - (1) 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.
  - (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  - (4) 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 lessee DBE provides on the contract.

- (5) *The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of 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 receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.*

*Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would 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.*

- (6) *For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.*
- (e) *Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:*
- (1) (i) *If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.*
- (ii) *For purposes of this paragraph (e)(1), a manufacturer is 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.*
- (2) (i) *If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.*
- (ii) *For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, 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.*
- (A) *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.*
- (B) *A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) 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.*
- (C) *Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).*
- (3) *With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged 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 you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.*

- (f) *If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in Sec. 26.87(i).*
- (g) *Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.*
- (h) *Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.*

*[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]*

## **FEDERAL IMMIGRATION AND NATIONALITY ACT**

### **a. GENERAL**

*The CONSULTANT, including all Subconsultants, shall comply with all federal, state and local immigration laws and regulations, as set forth in Arizona Executive Order 2005-30, relating to the immigration status of their employees who perform services on the CONTRACT during the duration of the CONTRACT. The DEPARTMENT shall retain the right to perform random audits of CONSULTANT and Subconsultants' records or to inspect papers of any employee thereof to ensure compliance.*

*The CONSULTANT shall include the provisions of this Section in all its subcontracts. In addition, the CONSULTANT shall require that all SUBCONSULTANTS comply with the provisions of this Section, monitor such SUBCONSULTANT compliance, and assist the DEPARTMENT in any compliance verification regarding its Subconsultant(s).*

### **b. COMPLIANCE REQUIREMENTS**

*The DEPARTMENT retains the legal right to inspect the papers or records of the CONSULTANT and its Subconsultants who works on this CONTRACT to ensure compliance with A.R.S. §41-4401, Government Procurement, E-Verify Requirements.*

*By submission of an SOQ proposal, the CONSULTANT warrants that the CONSULTANT and all proposed Subconsultant(s) are and shall remain in compliance with:*

- 1. All federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the CONTRACT; and*
- 2. A.R.S. §23-214 (A) which states "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer."*

*A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the CONTRACT, and the CONSULTANT and its Subconsultant(s) are subject to sanctions specified in Section D below.*

*Failure to comply with a DEPARTMENT audit process to randomly verify the employment records of CONSULTANT and SUBCONSULTANTS shall be deemed a material breach of the CONTRACT, and the CONSULTANT and SUBCONSULTANTS are subject to sanctions specified in Section D below.*

**c. COMPLIANCE VERIFICATION** *The STATE may, at its sole discretion, require evidence of compliance from the CONSULTANT and its Subconsultant(s).*

*Should the DEPARTMENT request evidence of compliance, the CONSULTANT shall complete and return the Consultant Employment Record Verification Form and Employee Verification Worksheet*

provided by the DEPARTMENT, no later than 21 days from receipt of the request for such information.

Listing of the compliance verification procedure specified above does not preclude the DEPARTMENT from utilizing other means to determine compliance.

The DEPARTMENT retains the legal right to inspect the papers of any employee who works on the CONTRACT to ensure that the CONSULTANT and its Subconsultant(s) is/are complying with the warranty specified in this Section.

d. **SANCTIONS FOR NONCOMPLIANCE** For purposes of this paragraph, noncompliance refers to either the CONSULTANTS or its Subconsultants' failure to follow the immigration laws or to the CONSULTANT'S failure to provide records when requested. Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of CONTRACT. At a minimum, the DEPARTMENT shall reduce the CONSULTANT'S compensation by \$10,000 for the initial instance of noncompliance by the CONSULTANT or its Subconsultant(s). If the same CONSULTANT or its Subconsultant(s) is in noncompliance within two (2) years from the initial noncompliance, the CONSULTANT'S compensation shall be reduced by a minimum of \$10,000 for each instance of noncompliance. The third instance by the same CONSULTANT or its Subconsultant(s) within a two (2) year period may result in addition to the minimum \$50,000 reduction in compensation, in removal of the offending CONSULTANT or its Subconsultant(s), suspension of work in whole or in part or, in the case of a third violation by the CONSULTANT, termination of the CONTRACT for default. Instances of noncompliance are counted on a firm-wide basis, not on a contract-by-contract basis.

In addition, the DEPARTMENT may declare the CONSULTANT or its Subconsultant(s) who is in noncompliance three times within a two-year period ineligible to perform on any DEPARTMENT CONTRACT for up to one year. For purposes of considering a declaration of ineligibility: (1) noncompliance by a Subconsultant does not count as a violation by the CONSULTANT; and (2) the DEPARTMENT shall count instances of noncompliance on other DEPARTMENT CONTRACTS.

The sanctions described herein are the minimum sanctions. In case of major violations, the DEPARTMENT reserves the right to impose any sanctions including and up to termination and debarment, regardless of the number of instances of non-compliance.

Any delay resulting from compliance verification or a sanction under this subsection is a non-excusable delay. The CONSULTANT is not entitled to any compensation or extension of time for any delays or additional costs resulting from compliance verification or a sanction under this Section.

An example of the minimum sanctions under this subsection is presented in the table below:

Offense by:			Minimum Reduction in Compensation
Consultant	Subconsultant A	Subconsultant B	
First			\$10,000
	First		\$10,000
	Second		\$50,000
		First	\$10,000
	Third		\$50,000 *
* May, in addition, result in removal and debarment of the Subconsultant.			

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

CITY OF CHANDLER

DESIGN CONSULTANT:

\_\_\_\_\_  
MAYOR Date

By: Joseph F Spadafino  
Title: Sr Project Manager / COO

ADDRESS FOR NOTICE  
City of Chandler  
P.O. Box 4008, Mail Stop 407  
Chandler, AZ 85244-4008  
480-782-3307

ADDRESS FOR NOTICE  
Y S Mantri & Associates, LLC  
124 W Orion St., Suite F-10  
Tempe, AZ 85283  
Phone: (480) 247-3702  
Fax: (480) 961-8667

ATTEST:

ATTEST: If Corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney AK SEAL

**EXHIBIT A  
SCOPE OF WORK**

**A. GENERAL**

1. The Project is generally described as follows: the design of fiber-optic infrastructure along Ray Rd from 54<sup>th</sup> Street to Dobson Road, Dobson Road from Ray Road to Elliot Road, and Elliot Road from Dobson Road to Arizona Avenue that will add additional branch connections to the City of Chandler's (the City) fiber optic network by tying into existing fiber at the intersection of Elliot Road and Arizona Avenue that currently travels south and into the City's Traffic Operation Center (TOC).
2. Y.S. Mantri & Associates, LLC (A/E) shall be responsible for the professional quality, technical accuracy and the coordination of reports, designs, drawings, specifications and other Services furnished by A/E under this Contract. A/E shall, without additional compensation, correct or revise any errors or omissions in its reports, design, drawings, specifications and other Services.
3. The Contract sets forth the construction budget for the Project. A/E shall complete the Design and Construction Documents, such that construction cost of the Project designed by A/E will not exceed the construction budget and shall not proceed from one phase to another unless the budget for the phase is in compliance with the construction budget or any approved revised construction budget. If at anytime during the design of the Project it appears the cost of construction may exceed the construction budget, A/E shall immediately notify the City. If the construction budget is exceeded, A/E shall value engineering the Project at no additional cost to the City.
4. A/E shall maintain a log of all meetings, site visits or discussions held in conjunction with the Services, with documentation of major discussion points, observations, decisions, question or comments. These shall be furnished to the City for inclusion in the overall Project documentation.
5. All Services performed under this Contract shall be performed by or under the direct supervision of persons then licensed in the State of Arizona to perform these Services. The name of each such licensed individual shall be listed on the title sheet of the Plans and Specifications.
6. All designs and specifications prepared by A/E shall comply with applicable A/E and design standards to include, but not be limited to, ADOT Standard Specifications for Road and Bridge Construction, ADOT Traffic Signals and Lighting Standard Drawings, MAG Standard Details and Specifications (current edition), City of Chandler Supplement to MAG Standard Details and Specifications (current edition), and the Americans with Disabilities Act, as determined by permitting agencies.
7. Time is of the essence in this contract.

**B. PRE-DESIGN PHASE**

**1. PROJECT INITIATION**

Upon final execution of the Contract with the City, the A/E shall:

- 1.1 Meet with the City and walk the entire nine and a half mile project corridor. The intention of this walkthrough is to verify the locations of existing conduit, pull boxes, and vaults, areas where conduit will be trenched, where it will have to be bored, the conditions of pull boxes, and the

details of design elements to be shown on the plans. The A/E will document existing features and take photos of the site as necessary for the purposes of the project design.

- 1.2 Meet with the City and its representatives to prepare a detailed design schedule. The A/E shall produce the final design schedule and shall forward the schedule to the project representatives.
- 1.3 This design schedule shall identify specific tasks including, but not limited to: data collection, required City filing standards, analysis, report preparation, concepts and schematic design preparation, design phases, coordination and estimating that are part of the work of the Project. Also identified will be milestone activities or dates, specific task responsibilities, required times for completion and additional definition of deliverables including plan submittals to all utilities and permitting agencies.
- 1.4 The A/E will collect additional information regarding existing conditions and facilities by reviewing the As-Built Plans to get an understanding of the existing features which will be utilized or avoided in order to design this project.
- 1.5 Review the developed work plan with the City and its representatives to familiarize them with the proposed tasks and design schedule and develop necessary modifications.
- 1.6 Participate in a general Project kick-off meeting to include the A/E'S appropriate Sub-consultants, the City and/or other stakeholders.
  - 1.6.1 The project kick-off meeting will introduce key team members from the City and the A/E to each other defining roles and responsibilities relative to the Project.
  - 1.6.2 Identify and review pertinent information and/or documentation necessary from the City for the completion of the Project.
  - 1.6.3 Review and explain the overall project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.
  - 1.6.4 Review and explain the project analysis and project work plan for all parties present; determine any adjustments or fine tuning that needs to be made to the work plan.
  - 1.6.5 Prepare and distribute minutes of the project kick-off meeting.
- 1.7 The City will prepare the Project Assessment Report (PAR) document for review and approval by ADOT in the required ADOT format. The A/E shall supplement the PAR by providing to the City conceptual plans of the project.

## **2. MEETINGS**

During the Pre-Design Phase it is anticipated that a project walk through meeting and a kick-off meeting will be held. Except for the project walk through meeting, all meetings will be held at the City. A/E shall prepare and distribute notes of these meetings within 2 working days of the meeting.

## **C. DESIGN PHASE**

### **1. GENERAL**

- 1.1 The proposed improvements at each of these locations are more specifically described as follows:
  - 1.1.1 Prepare plans, specifications and construction cost estimate for the installation of fiber optic cable, conduit, junction boxes, and vaults within the City's right-of-way along Ray

Road from 54<sup>th</sup> Street to Dobson Road, Dobson Road from Ray Road to Elliot Road, and Elliot Road from Dobson Road to Arizona Avenue to add additional branch connections to the City's fiber optic network. The plans and specifications will also include connections to the existing traffic signal controllers, cameras and detector stations within the design corridor and an access point to the Sunset Library.

- 1.1.2 This project will be delivered using a Design-Bid-Build method of procurement.
- 1.1.3 The A/E shall be responsible for coordinating and consulting with the City during the design phase of this project.
- 1.1.4 During the Design Phase it is anticipated that progress meetings will be convened between the A/E, the City and other project stakeholders. Such meetings will normally be held at the City's conference rooms on as needed basis. A/E shall prepare and distribute notes of these meetings within 2 working days of the meeting. Any significant reconsideration of decisions made at such meetings shall be brought to the attention of the City to determine if it represents substantial change in the scope of services of the A/E.

1.2 The proposed improvements are more specifically described in the following paragraphs.

## **2. SURVEYS AND MAPPING**

### **2.1 Topographic Survey**

- 2.1.1 The A/E shall provide 2-dimensional topographic survey services for this project to prepare electronic CADD base files depicting existing topographic features.
- 2.1.2 The A/E shall survey for horizontal control for topographic surveys and supplemental ground surveys. The work shall include providing horizontal control points for the topographic survey, providing cross sections of existing pavement, curb and concrete-lined canal ditches.

### **2.2 Utility Location Survey**

- 2.2.1 The A/E shall provide locations of existing utilities for this project. The work shall include locating overhead lines and poles, manholes, valves, meter boxes, risers, and underground utilities.
- 2.2.2 The A/E will obtain utility maps by contacting Arizona Blue Stake to find out what utilities are present in the vicinity of the project. The A/E will be contacting those specific utility companies to obtain maps of their facilities. The A/E will request GIS maps in either AutoCAD (.dwg) or Microstation (.dgn) format for all City facilities. Where maps of facilities are not available, A/E will research As-Built plans at the City. All coordination efforts will be documented into a Utility Coordination Tracking Log that will always be available for City inspection upon request.

2.3 Completed surveys and maps shall be recorded in an acceptable format and shall be utilized for preparing the Base Plans by A/E.

## **3. RAILROAD COORDINATION**

3.1 Through discussions with the City A/E understands that there is an existing 2" conduit under the Union Pacific Railroad. Installation of new conduit OR installation of fiber in existing conduit will require permitting from UPRR. The A/E will initiate coordination with UPRR as part of 30%

design phase and begin working on the Draft Permit Application. The Final Permit Application will need to be prepared by the City and submitted to the railroad by the City. It is anticipated that coordination with the Arizona Corporation Commission (ACC) will not be needed for this project.

3.2 The A/E shall participate and lead railroad coordination meetings at an agreed upon location as required. The A/E shall organize and lead the meetings and shall prepare and distribute meeting minutes to all attendees.

### 3.3 Existing Information

3.3.1 The A/E shall use all available railroad location information. This information shall be shown on the plans prior to submittal to the utility companies.

#### 3.3.2 Identification of Railroad Crossings:

3.3.2.1 The A/E shall communicate and coordinate with the Union Pacific Rail Road (UPRR) serving the project area to obtain railroad crossing as-built information. The A/E shall prepare an electronic CADD file depicting the horizontal locations of railroad crossings. The horizontal locations of the railroad crossings shall be determined by the A/E based on railroad as-built information supplemented by UPRR.

3.3.2.2 Where elevations are necessary for the determination of conflicts, the A/E shall provide a list of the possible conflict locations for potholing.

3.3.2.3 A/E shall provide information/plans requested by the railroad.

3.4 The A/E shall prepare the Draft Railroad Crossing Permit for doing work in UPRR's right-of-way and submit the permit to both the City and UPRR. The City will submit the Final Permit to UPRR.

## 4. UTILITY COORDINATION

4.1 The A/E shall obtain as-built information, shall indicate existing utilities on construction plans and shall communicate and coordinate with the utility companies. It is anticipated that utilities will not be relocated. Any relevant utility information shall be shown on the plans prior to submittal to utility companies for review. All work shall be performed in accordance with applicable agency and City standards.

4.2 The A/E shall lead utility coordination meetings at an agreed upon location as required and shall prepare and distribute meeting minutes to all attendees.

### 4.3 Existing Information

4.3.1 The A/E shall use all available utility location information. This information shall be shown on the plans prior to submittal of plans to the utility companies.

#### 4.3.2 Identification of Utilities:

4.3.2.1 The A/E shall contact Blue Stake to obtain the most current information about utilities having facilities within the project area. A/E shall use this information to obtain utility as-built information from all the utility companies serving the project area, including from the City. Some utilities may not be shown on Blue Stake records and may require a set of plans from Utility Companies to determine potential conflicts.

- 4.3.2.2 The A/E shall prepare an electronic CADD file in the form of base plans depicting the horizontal locations of existing utilities both overhead and underground. The horizontal locations of the existing utilities shall be determined by the A/E based on survey and shall be supplemented utility as-built information.
- 4.3.2.3 Where elevations are necessary for the determination of conflicts, the A/E shall provide a list of the possible conflict locations and conflicting utilities. This list shall be used for identification of potholing locations to provide accurate horizontal and vertical location of the utility following completion of 60% plans. An allowance for ten (10) pot holes is established in the budget.

#### 4.4 Utilities Conflicts and Adjustments

- 4.4.1 The A/E shall determine any utility conflicts that require the utility to be relocated or adjusted and shall provide this information to the City. However, it is anticipated that utility relocation will not be required. The A/E shall prepare utility conflict review letters to all utilities in the area and follow up with these utilities, as they can take up to a month to respond to the conflict letter. The A/E will address the comments and respond to appropriate utility as needed.
- 4.4.2 The A/E shall advise the City of relocations, replacements, or new facilities requested by the utility companies.
- 4.4.3 The A/E shall be responsible for reviewing relocation plans produced by utility companies to assure that utility conflicts are mitigated or eliminated and that proposed utility installations conform to the City's requirements.
- 4.4.4 If needed, the A/E shall assist the City with verification that prior rights documentation submitted by the utility companies represents the correct relocation area.
- 4.4.5 Only the City will authorize utility companies to start design on relocation of their facilities where they have prior rights and want reimbursement for their design.

#### 4.5 Utility Special Provisions & Clearance Letter:

- 4.5.1 The A/E shall prepare Utility Special Provisions based on the utility clearance letters. The utility special provisions shall include the following:
  - 4.5.1.1 List of utility companies in the area, and contact person's name and telephone number.
  - 4.5.1.2 A statement that there are no utility conflicts; OR
  - 4.5.1.3 Work to be performed by utility companies during project construction.
  - 4.5.1.4 Completion date or schedule for each utility conflict to be removed by utility company.
  - 4.5.1.5 Work to be performed for the utility company by the Contractor.
  - 4.5.1.6 Utility license, permit, insurance or right of entry requirements.
  - 4.5.1.7 Utility company requirements related to protection of or construction adjacent to their facilities.

- 4.6 The A/E shall work with the utility companies to facilitate clearing of utilities. The A/E shall be responsible for preparing and obtaining actual clearance/conflict letters.

**5. RIGHT-OF-WAY**

5.1 The A/E shall determine the requirements for new right-of-way (ROW) and easements, including, but not limited to, new roadway ROW, public utility easements, slope easements, drainage easements and temporary construction easements. It is anticipated that new ROW will not be needed for this project. However, the A/E will set aside an allowance for writing legal description of up to 5 parcels in the event the new ROW is needed. The A/E shall submit a written request to the City for copies of title reports for all affected parcels within three (3) weeks of finalizing 30% plans.

5.1.1 The A/E will obtain the ROW information based on the ROW maps provided by the City or the ROW maps shown on the County's web site.

5.1.2 The A/E will show property owner name, parcel number, and property lines for both sides of the road on appropriate plan sheets.

5.2 If needed, the A/E shall submit the final ROW and easement requirements in writing to the City concurrent with the 30% design submittal. No revisions or additions to the ROW and easement requirements will be allowed after the 60% design submittal without the approval of the City.

5.3 If needed, the new ROW requirements shall be submitted in writing to the City for review and shall include the following as a minimum:

5.3.1 A letter indicating the project name, project number, contract number, project location, originator of report (Firm's Name), submittal date.

5.3.2 A plan of sufficient scale and detail to show the existing and proposed ROW and easements.

5.3.3 At the 60% design submittal, the new requirements shall be accurately defined with widths, lengths, stations, offsets, etc, and enough definition to identify all ownerships that will be affected. A/E shall show all property lines, parcel numbers and parcel ownership on the project plans. Through discussions with the City, the City will provide the A/E GIS maps in AutoCad (.dwg) or Microstation (.dwg) format that will show the parcel boundaries and the parcel information such as parcel number, owner, and address.

5.4 Appraisal and Acquisition Support:

5.4.1 The Appraisals will be performed by the city.

5.4.2 An allowance has been set aside by A/E to provide assistance to prepare legal description and ROW strip maps for up to five (5) new parcels.

5.4.3 A/E shall prepare a right-of-way strip map showing all required rights-of-way, property lines, parcel numbers, ownership and required right-of-way by type of acquisition for up to five (5) new parcels affected by the project. Right-of-way strip map shall be on 11x17 sheets and shall be provided concurrently with exhibits and legal descriptions.

5.5 Temporary Right of Entry Documents

If a temporary right of entry document is required for entry to each parcel to conduct design or survey work, the A/E shall notify the City of the need for any temporary entry documents no later than ten (10) days after the notice to proceed. The City will obtain the appropriate owner's signatures and the right of entry documents. The A/E may not enter any such property prior to approval of the temporary entry documents by the Property Owner.

## 6. FIBER OPTIC CONDUIT AND CABLE DESIGN

- 6.1 The A/E shall prepare 30% Schematic Design (SD), 60% Design Development (DD), 95% Construction Documents (CD), and 100% Final Plans on the City's standard sheets using Microstation V8i format for the proposed interconnect improvements. All design shall comply with the City and ADOT standards and guidelines and shall be developed, at a minimum, in accordance with the requirements of the respective sections of this scope of work.
- 6.2 30% Schematic Design (SD) Submittal. The A/E shall prepare base plans for the project area. The base plans will be prepared in English units at 1:40 scale. Potential conflicts to trenching (such as landscape, monument signs, utility lines, etc) shall be identified. Wherever necessary, the A/E shall include enlarged details of intersection and controller cabinet foundation areas. The A/E shall meet with the City at each intersection to verify cabinet information shown on existing plan sheets and to determine how the cabinet will be connected to the trunk line. The following material shall be developed and submitted for review:
- 6.2.1 All roadway features captured during survey.
  - 6.2.2 All aboveground utilities and underground utility location as provided by survey and blue stake respectively.
  - 6.2.3 Existing conduit.
  - 6.2.4 Existing junction boxes and vaults.
  - 6.2.5 Alignment of proposed conduit
  - 6.2.6 Location of proposed junction boxes and vaults.
  - 6.2.7 Location of signal cabinets at all intersection along route.
  - 6.2.8 Location of all ITS equipments such as CCTV camera, DMS, Count stations along the route.
  - 6.2.9 Final ROW and easement requirements.
  - 6.2.10 Final survey information.
  - 6.2.11 Preliminary summary of quantities.
  - 6.2.12 30% Engineer's construction cost estimate.
  - 6.2.13 Final Project Assessment Report (by City).
- 6.3 60% Design Development (DD) Submittal. The following material shall be developed and submitted for review:
- 6.3.1 Design sheet with index and general notes, summary sheets and special details.
  - 6.3.2 Final locations of new pull boxes and of pull boxes to be replaced.
  - 6.3.3 The conduit system.
  - 6.3.4 Trunk fiber optic communication runs.
  - 6.3.5 Branch fiber optic cable connections to main communication runs.
  - 6.3.6 Details showings modifications to existing cabinet foundations, or pull boxes.
  - 6.3.7 Base plan information.
  - 6.3.8 Special provisions.
  - 6.3.9 60% ENGINEER'S construction cost estimate.
- 6.4 95% Construction Documents (CD) Submittal. The following final material shall be completed, checked and submitted for review:
- 6.4.1 Design sheet(s) with index and general notes.
  - 6.4.2 Summary sheets.
  - 6.4.3 Special details.
  - 6.4.4 Completed conductor schedules.
  - 6.4.5 Special details as required.

- 6.4.6 Locations and details of splices.
  - 6.4.7 Technical special provisions.
  - 6.4.8 Final summary of quantities.
  - 6.4.9 Final specifications.
  - 6.4.10 Final Bid Schedule.
  - 6.4.11 95% ENGINEER'S construction cost estimate.
- 6.5 Final Submittal (100%). The following material shall be submitted to the City for completion of the project:
- 6.5.1 A complete reproducible set of sealed and signed contract plans necessary to bid and construct the improvements identified in this contract.
  - 6.5.2 A complete reproducible set of sealed and signed specifications and special provisions necessary to bid and construct the improvements identified in this contract.
  - 6.5.3 A complete reproducible bid schedule necessary to bid and construct the improvements identified in this contract.
  - 6.5.4 Electronic versions of all plan sheets in Microstation V8i or AutoCAD compatible format on compact disk (CD) in CD-R format.
  - 6.5.5 Electronic versions of the contract specifications and engineer's estimate.
  - 6.5.6 Final and complete quantity summaries.
  - 6.5.7 Final survey computations and original field books.
  - 6.5.8 100% ENGINEER'S construction cost estimate.
- 6.6 The plans will be prepared in Microstation™ V8i Version. The plans will be delivered to the City by converting the Microstation™ DGN files into the AutoCAD 2004 compatible DWG files. The City will provide the standard technical special provisions and bid item reference numbers in electronic format. The plans will be prepared in 24"x36" sheet format.
- 6.7 The City will direct the A/E to use specific equipment to connect the traffic signal controller and the video detection equipment to the fiber optic cable. A/E shall prepare the necessary details showing the equipment and the connections.

## 7. COORDINATION OF ENVIRONMENTAL APPROVALS

The A/E, via a sub-consultant, will begin the environmental coordination process using conceptual layout plans in order to expedite the environment approval process. It is assumed that the categorical exclusion process will be followed and will be sufficient to secure the environmental clearance on this project. The categorical exclusion environmental report will be submitted to ADOT for approval. The environmental scope of work has been designed to meet ADOT environmental clearance requirements. All deliverables anticipated for ADOT environmental clearance, based on the current project description, are included in the scope of work.

## 8. COST ESTIMATES

- 8.1 The A/E will prepare detailed quantity summaries and construction cost estimates in the format provided by the City at the 30%, 60%, 95% and 100% design submittals.
- 8.2 The A/E will provide value engineering review. The A/E shall incorporate the City's comments and suggestions unless the A/E believes the comments do not conform to good engineering practice.

- 8.3 Allowances for design, bidding or construction, if included in the estimate, are to be shown as individual line items, with the percentage and base of calculation clearly identified.

## 9. SPECIFICATIONS

The A/E shall develop technical specifications for the project in a format that follows the Arizona Department of Transportation format. Specifications shall be developed as follows:

- 9.1 Design Development (60%) – Include a paragraph summary of all technical Specification sections.
- 9.2 Construction Documents (95-100%) – Provide the complete technical Specification package suitable for constructing the project.

## 10. SPECIAL PROVISIONS

- 10.1 The A/E shall prepare the Special Provisions for items, details, and procedures not adequately covered by Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, City of Chandler Supplements, and other specifications identified by the City. Special Provisions will be provided at the 60%, 95% and 100% Submittals.
- 10.2 The A/E shall identify critical elements of construction, including but not limited to, construction limits, access requirements, potential night construction, coordination with affected local agencies (police, fire, etc.), traffic lanes open, utility trench close ups, and critical materials requiring advanced purchase.

## 11. BID SCHEDULE

The A/E shall prepare the Bid Schedule for all items determined to be pay items for the project. Bid Schedules will be prepared in City's standard format and will be provided at the 30%, 60%, 95% and 100% Submittals. The A/E shall prepare "front-end" documents using the City's standard forms and provide the completed bid package the City's review.

## REVIEWS AND SUBMITTALS

- 11.1 Review and coordination of the A/E'S work by the City will continue through the project development process.
- 11.2 Submittals for review shall be made when the studies and/or plans have been developed to the following levels of completion:
- 11.2.1 30% design.
  - 11.2.2 60% design.
  - 11.2.3 95% design.
  - 11.2.4 100% design.
- 11.3 The A/E shall distribute copies of the review submittals and finalized documents per the City's instructions. For each review submittal, the A/E shall coordinate the method of distribution and review comment return deadline with the City in advance so as to ensure thorough and timely reviews of deliverables.
- 11.4 The City's review of submittals will include technical content, incorporation of previous comments and completion of design and details, as well as:

- 11.4.1 Conformance with City requirements.
- 11.4.2 Completeness of the contract documents.
- 11.4.3 Compatibility of plans, specifications, and special provisions.
- 11.4.4 Coordination between disciplines, phases and outside parties.
- 11.4.5 Clarity of the contract documents.
- 11.4.6 Consistency of presentation.
- 11.4.7 Return any documents and other materials provided for use on this project.

## **12. TRAFFIC CONTROL PLAN**

The A/E shall prepare a Traffic Control Plan for work locations in ADOT right-of-way within the Ray Road corridor at State Route Loop 101, the Price Freeway as part of the 95% and final submittal.

## **13. DELIVERABLES**

- 13.1 Thirty percent (30%) submittal – five (5) full size (24" x 36") copies and five (5) half size (11" x 17") copies of the thirty percent (30%) working drawings, engineer's estimate, and required reports.
- 13.2 Sixty percent (60%) submittal – five (5) full size (24" x 36") copies and five (5) half size (11" x 17") copies of the sixty percent (60%) working drawings, specifications, special provisions, and required reports.
- 13.3 Ninety-five percent (95%) submittal – five (5) full size (24" x 36") copies and five (5) half size (11" x 17") copies of the ninety five percent (95%) working drawings, specifications, A/E calculations, special provisions and bid schedule.
- 13.4 Final (100%) Submittal – one (1) full size (24" x 36") original on Vellum of signed and sealed completed plans plus specifications, special provisions, estimate and bid schedule on plain, letter-sized paper. One (1) CD of electronic files which include CADD base files and plans sheets, PDF and word file of special provisions, and PDF and excel file of engineer's estimate and bid schedule.
- 13.5 A Traffic Control Plan for work locations in ADOT right-of-way within the Ray Road corridor at State Route Lop 101, the Price Freeway.

## **14. SCHEDULE**

- 14.1 The A/E shall prepare complete Plans, Specifications, and Estimate including survey and will apply for environmental clearance with twelve (12) months of the date of receiving the notice to proceed.
- 14.2 The A/E shall prepare a final schedule in MS-Project format with two (2) weeks after the project kick-off meeting.

## **15. BIDDING ASSISTANCE**

The A/E will perform the following bidding assistance services:

- 15.1 Attend the Pre-Bid Meeting

15.2 Attend the Pre-Construction Meeting

**16. SERVICES NOT INCLUDED**

16.1 As-Built Plans.

16.2 Right of Way Clearance.

16.3 Final UPRR Permit Application

16.4 Project Assessment Report.

**EXHIBIT B  
FEE SCHEDULE**

<u>Classification</u>	<u>Hours</u>	<u>Rate/Hr</u>		<u>Extension</u>
Principal	71		\$150.00	\$ 10,650.00
Senior Transportation Engineer	184		\$120.00	\$ 22,080.00
Engineer/Designer	446		\$95.00	\$ 42,370.00
Engineer In Training/CAD Tech	278		\$85.00	\$ 23,630.00
Graphics Designer	0		\$55.00	\$ -
Administrative Assistant	20		\$55.00	\$ 1,100.00
<i>Total Hours</i>	999			
<b>Sub-Total Labor</b>				<b>\$ 99,830.00</b>
<b>DIRECT AND OUTSIDE EXPENSES</b>				
	<u>Qty</u>	<u>Unit</u>	<u>Cost</u>	<u>Extension</u>
B&W Copies, letter size	1100		\$0.02 /copy	\$ 22.00
B&W Copies (24x36")	575		\$1.00 /plot	\$ 575.00
Color Copies	0		\$0.90 /copy	\$ -
Extra Copies of B/W Reports	0		\$15.00 /copy	\$ -
Plots/Vellums	40		\$10.00 /plot	\$ 400.00
Deliveries of reports or plans	5		\$10.00 /delivery	\$ 50.00
Special graphic displays, color reports	0		At cost	\$ -
mileage	450		\$0.500 /mile	\$ 225.00
<b>Survey (AZTEC) Sub Consultant</b>				<b>\$ 28,731.00</b>
<b>Environment (EcoPlan) Sub Consultant</b>				<b>\$ 20,142.00</b>
<b>Sub-Total Direct Expense</b>				<b>\$ 50,145.00</b>
<b>FEE (Excluding Allowance)</b>				<b>\$ 149,975</b>
Allowance: ROW Legal Descriptions (5 parcels)				\$ 15,000.00
Allowance: Utility Potholes (10 Locations)				\$ 4,000.00
<b>Allowance</b>				<b>\$ 19,000.00</b>

**Total \$168,975**

**EXHIBIT B (cont.)  
FEE SCHEDULE**

Task No.	Group of Activities	Total Hours/ Task	Principal QA/QC	PM	Engineer	EIT	Admin
<b>B</b>	<b>Project Initiation Phase</b>	106					
	Gather as build plans, review existing conditions.		2	6	12	24	
	Project Walkthrough and Documentation				24	24	
	Prepare Project Schedule		1	3			
	Kick off meeting and minutes		2	2	4		2
<b>C</b>	<b>Design Phase</b>						
<b>2.0</b>	<b>Survey And Mapping</b>	17					
	Topographic Survey - Aztec Sub-Consultant- See fee schedule						
	Survey Coordination			3	14		
<b>3.0</b>	<b>Union Pacific Railroad (UPRR) Coordination</b>	20					
	Coordination with AZ Corp Comm (ACC)			0			
	Coordination with UPRR		2	8			
	Two Progress Meeting with UPRR			2	4		
	Draft Railroad Permits			4			
	<b>Utility Coordination</b>	116					
	Contact Utilities & gather plans				6	16	
	Prepare and maintain utility coordination log, file clearance letters				24	6	
	Submit 60% Plans & 95% Plans					8	12
	Utility Coordination Meetings			4	12		
	Utility Clearance letters			4	24		
	<b>Right of Way</b>	78					
	Compile ROW information from as-built information and show it on		2	2	26	30	
	Identify right-of-way problem areas, Identify parcel ownership on			6	12		
	<b>Prepare base plans</b>	36					
	Survey, utilities, monuments, etc.				12	24	
	<b>Pre-Design (30% plans)</b>	182					
	Place existing and new related ITS features (conduits, PB, controller		8		60	24	
	Prepare preliminary conduit schedule				20	20	
	Submit Plans to Chandler and ADOT		8		4	4	2
	30% Estimate		2	8	16		
	30% Comment Resolution Meeting			2	2		2
	<b>Prepare 60% Construction Documents</b>	214					
	Plans		6	12	30	30	
	Cost Estimate		4	4	8		
	Prepare detail sheets		2	8	16	20	
	Splice tables		0	0	0		
	Special provisions		6	8	16		2
	60% comment resolutions			4	6		
	Field Review				16	16	
	<b>Prepare 95% Construction Documents</b>	110					
	Conductor Schedule for #7, #9 pull box splicing		6	6	13	10	
	95% Plans with Detail Drawings		3		16		
	95 % Cost estimate		2	8			
	95% Special Provisions		2	10	10		
	95% Splice Tables		0		0	0	
	95% Comment Resolution Meeting			2	2		
	Traffic Control Plan at L101 along Ray		1		3	6	
	Revisions and documentation			2	4	4	
	<b>Prepare Final Construction Documents</b>	80					
	Final Plans		4	16	20	12	
	Final Cost estimate		2	8			
	Final Special Provisions		2	10	6		
	<b>Coordination of Environmental Approvals</b>	18	2	16			
<b>6.0</b>	<b>Project Meetings</b>	14					
	Progress meetings (4)			10			
	Progress Meeting with ADOT		2	2			
<b>7.0</b>	<b>Bidding Assistance</b>	8					
	Attend Pre-Bid Meeting			2	2		
	Attend Pre-Construction Meeting			2	2		
	<b>TOTAL HOURS</b>	<b>999</b>	<b>71</b>	<b>184</b>	<b>446</b>	<b>278</b>	<b>20</b>

**EXHIBIT C**

**Design Consultant Immigration Warranty**  
To Be Completed by Design Consultant Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the Design Consultant and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

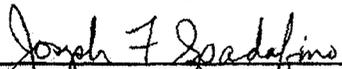
By completing and signing this form the Design Consultant shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

<b>Project Number/Division:</b>	ST1201-201
<b>Name (as listed in the contract):</b>	YS Mantri & Associates, LLC
<b>Street Name and Number:</b>	124 W Orion St, Suite F-10
<b>City: Tempe State: AZ</b>	<b>Zip Code: 85283</b>

I hereby attest that:

1. The Design Consultant complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees; and
3. The Design Consultant has identified all Design Consultant and subcontractor employees who perform work under the contract and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

**Signature of Design Consultant (Employer) or Authorized Designee:**

  
\_\_\_\_\_

**Printed Name:** JOSEPH F. SPADAFINO

**Title:** Sr Project Manager / COO

**Date (month/day/year):** 5 March 2012