Chandler · Arizona
Where Values Make The Difference

PURCHASING ITEM
FOR
COUNCIL AGENDA
CP15-034

1. Agenda Item Number: 34

2. Council Meeting Date: August 14, 2014

TO: **MAYOR & COUNCIL**

THROUGH: **CITY MANAGER**

3. Date Prepared: July 18, 2014

4. Requesting Department: Transportation & Development

5. SUBJECT: Professional Services Contract award to MakPro Services, LLC, for Gilbert Road Improvements (Chandler Heights Road to Hunt Highway) – Public Outreach

6. RECOMMENDATION: Staff recommends City Council award a Professional Services Contract to MakPro Services, LLC, for Gilbert Road Improvements (Chandler Heights Road to Hunt Highway) – Public Outreach, Contract No. ST0809.103, in an amount not to exceed $37,800.

7. BACKGROUND/DISCUSSION: This federally funded project will improve Gilbert Road from Wood Drive, approximately 1000 feet south of Chandler Heights Road, to Hunt Highway, to a four lane arterial section. The construction work for this project includes subgrade preparation, roadway asphalt, concrete paving, drainage improvements, landscaping and irrigation, signing and striping, street lighting, modifications to traffic signals at Riggs Road, and traffic fiber interconnect.

This contract is for public outreach services consisting of providing and maintaining a project website, a 24 hours - 7 days per week answering service and construction hotline for residents and businesses, weekly email updates to the public, and coordination with contractor and City to mitigate public concerns and issues. Services also include implementation of the project Partnering Evaluation Program (PEP) and other related tasks, as necessary, to ensure compliance with local, state, and federal requirements.

8. EVALUATION PROCESS: A Request for Qualifications was issued on May 15, 2014. On June 19, 2014, Staff received Statements of Qualifications from one firm for Professional Services for Gilbert Road Improvements (Chandler Heights Road to Hunt Highway) – Public Outreach. On June 19, 2014, the Consultant was selected in accordance with State law. Staff reviewed the scope of work, billing rates, and total fee for this project, compared them to historical costs, and determined they are reasonable. Project completion is 300 days following Notice to Proceed.

9. FINANCIAL IMPLICATIONS:

Cost: $37,800
Savings: N/A
Long Term Costs: N/A
Fund Source:

Account No.:	Fund Name:	Program Name:	CIP Funded:	Amount:
415.3310.6517.6ST596	Impact Fee	Gilbert Road – Queen Creek Road to Hunt Highway	Yes	$33,264
411.3310.6517.6ST596	GO Bonds	Gilbert Road – Queen Creek Road to Hunt Highway	Yes	$ 4,536

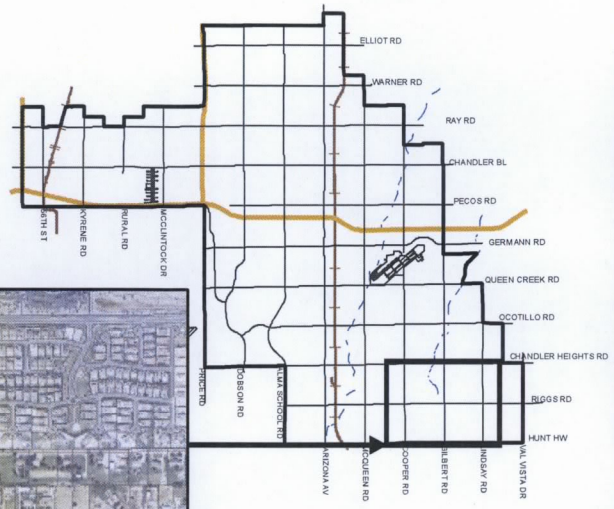
10. PROPOSED MOTION: Move City Council award a Professional Services Contract to MakPro Services, LLC, for Gilbert Road Improvements (Chandler Heights Road to Hunt Highway) – Public Outreach, Contract No. ST0809.103, in an amount not to exceed $37,800.

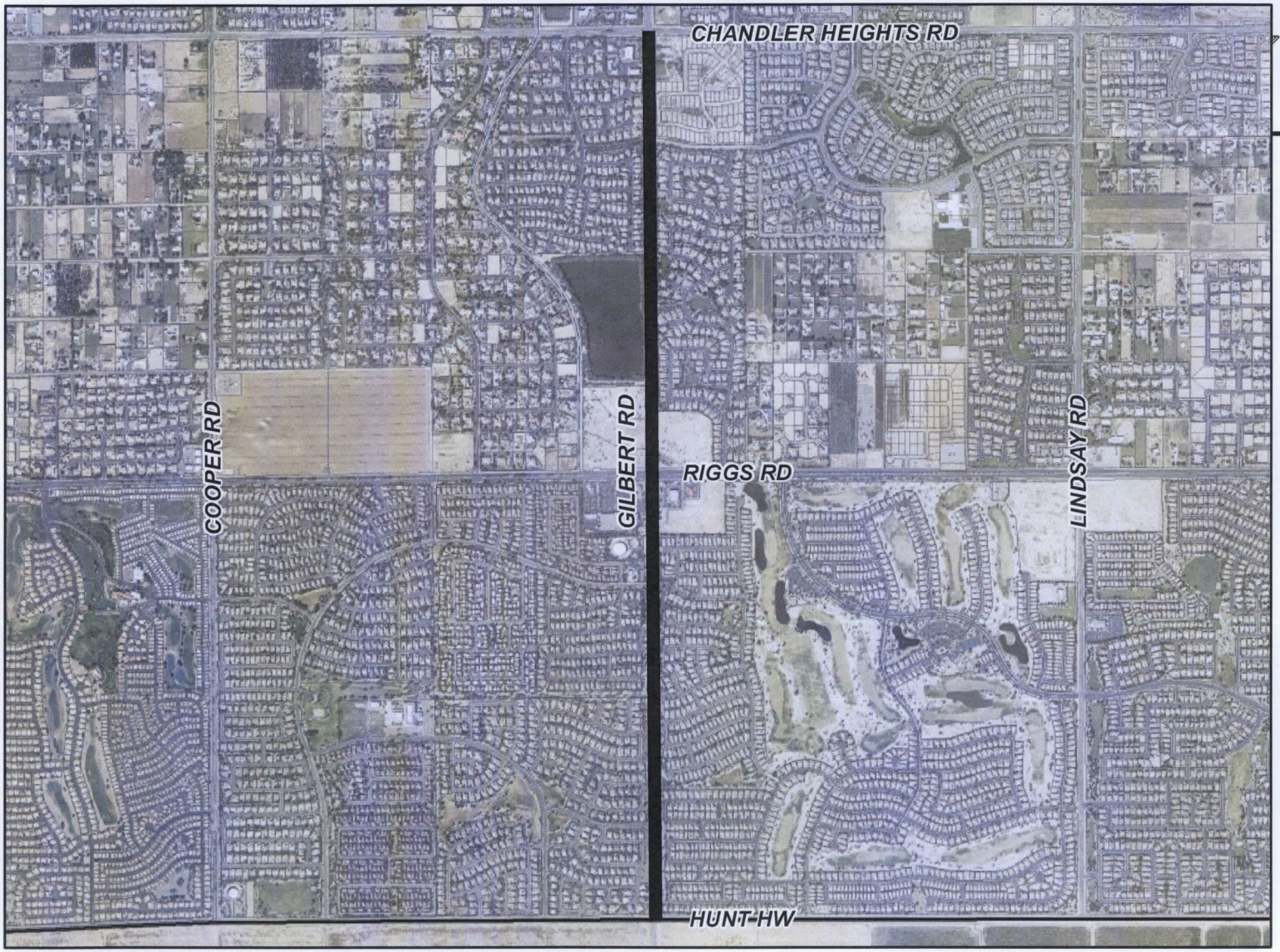
ATTACHMENTS: Contract, Location Map

APPROVALS	
11. Requesting Department for Daniel W. Cook, Transportation Manager/Interim City Engineer	**13. Department Head** R.J. Zeder, Transportation & Development Director
12. Transportation & Development Bob Fortier, Capital Projects Manager	**14. City Manager** Rich Dlugas

Chandler + Arizona

GILBERT RD IMPROVEMENTS
(CHANDLER HEIGHTS RD TO HUNT HIGHWAY)
PUBLIC OUTREACH
CONTRACT NO. ST0809.103





MEMO NO. CP15-034

PROJECT SITE

NTS

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PROFESSIONAL SERVICES CONTRACT

Project Name: Gilbert Road Improvements (Chandler Heights Road to Hunt Highway) – Public Outreach
Project No.: ST0809.103; Federal Aid No.: CHN-0(220)D; TRACS No.: SS91501C

THIS CONTRACT is made and entered into this _____ day of _____, 2014, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and MakPro Services, LLC, an Arizona corporation, hereinafter referred to as "CONSULTANT".

WHEREAS, the Mayor and City Council of the City of Chandler is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

WHEREAS, CONSULTANT represents that CONSULTANT has the expertise and is qualified to perform the services described in the Contract.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

1.1 To provide the professional services required by this Contract CONSULTANT shall act under the authority and approval of City Engineer or designee, (the Contract Administrator), who shall oversee the execution of this Contract, assist the CONSULTANT with any necessary information, audit billings, and approve payments. The CONSULTANT shall channel reports and special requests through the Contract Administrator.

1.2 CITY reserves the right to review and approve any/all changes to CONSULTANT'S key staff assigned to the CITY project by the firm during the term of this Contract.

1.3 The Arizona Department of Transportation, also referred to as ADOT, Department, or State, has delegated certain federal administrative procedures to the CITY. All required administrative procedures and requirements are inclusive and hereby part of this agreement with CONSULTANT. CONSULTANT shall fulfill all federal administrative procedures and requirements regardless of whether the CITY or State is overseeing those duties

2. SCOPE OF WORK:

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

3. ACCEPTANCE AND DOCUMENTATION:

Each task shall be reviewed and approved by CITY to determine acceptable completion. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract, shall be and remain the property of CITY and shall be delivered to CITY before final payment is made to CONSULTANT.

4. FEE SCHEDULE:

For the services described in paragraph 2 of this Contract, CITY shall pay CONSULTANT a fee not to exceed the sum of Thirty Seven Thousand Eight Hundred dollars ($37,800) in accordance with the fee schedule attached hereto as Exhibit B and incorporated herein by reference. The fee schedule shall be defined by agreed-upon hourly rates of labor plus reimbursement for other direct costs. 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 with each application for payment: a clear, detailed invoice reflecting items being billed for; a summary sheet showing percentage of work completed to date; amount/percent billed to date; current status of all tasks within a project; and any/all backup documentation supporting the above items. Work schedule updates shall also be included in the monthly progress payment requests.

(1) All costs billed are subject to audit. The CONSULTANT, and by way of subcontract, all Subconsultants or subcontractors, shall allow the designated auditors to perform an audit as deemed appropriate. Such an audit shall take into consideration consistent application of the Generally Accepted Accounting Principles (GAAP) and Contract Cost Principles and Procedures as set form in Chapter 1 of the Federal Acquisition Regulation (FAR), 48 CFR Part 31 and any other mutually agreed upon policy or regulations.

(2) The CONSULTANT shall insert in each of its subcontracts all the Contract provisions and shall require its Subconsultants to include the same Contract Provision in any lower-tier subcontracts.

5. TERM:

Following execution of this Contract by CITY, CONSULTANT shall immediately commence work and shall complete all services described herein within Three Hundred Days (300) calendar days from the date hereof.

6. TERMINATION FOR CAUSE:

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

(a) CONSULTANT abandons Work;
(b) CONSULTANT assigns or attempts to assign its rights or obligations under this Contract or any part thereof to any third-party (without the prior written consent of CITY;
(c) CONSULTANT is adjudged bankrupt of insolvent, makes a general assignments 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) CONSULTANT fails or refuses to perform any obligation under the Contract, or fails to remedy such nonperformance within seven (7) days after its occurrence;
(e) CONSULTANT fails to comply with any applicable Laws and fails to remedy such nonperformance within seven (7) days after its occurrence;
(f) CONSULTANT fails to achieve the required dates for performance required pursuant to the Contract.

7. TERMINATION FOR CONVENIENCE:

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 CONSULTANT specifying the termination date. Immediately after receiving such notice, 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.

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 CONSULTANT (S) fee described in this Contract under paragraph 3 and shall be in the amount to be agreed mutually by CONSULTANT and the CITY. The CITY shall make this final payment within sixty (60) days after CONSULTANT has delivered the last of the partially completed items.

8. OWNERSHIP OF INSTRUMENTS OF SERVICE UPON TERMINATION FOR CAUSE AND/OR FOR CONVENIENCE:

Upon Termination for Cause or for Convenience, the CITY shall have ownership of the Instruments of Service.

9. INDEMNIFICATION:

To the fullest extent permitted by law, but only to the extent caused by the negligence, recklessness or intentional wrong conduct, CONSULTANT, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONSULTANT, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract, including but not limited to, any injury or damages claimed by any of CONSULTANT's and subcontractor's employees. The amount and type of insurance coverage requirements set forth in the Agreement will in no way be construed as limiting the scope of indemnity in this paragraph.

10. INSURANCE:

1. General.

   A. At the same time as execution of this Contract, CONSULTANT shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Worker's Compensation coverage.

   B. CONSULTANT and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, the insurances set forth below.

C. The insurance requirements set forth below are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

D. The City in no way warrants that the minimum insurance limits contained in this Contract are sufficient to protect CONSULTANT from liabilities that might arise out of the performance of the Contract services under this Contract by CONSULTANT, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and CONSULTANT is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the CONSULTANT from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract.

F. Use of SubContractors: If any work is subcontracted in any way, CONSULTANT shall execute a written Contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of CONSULTANT in this Contract. CONSULTANT is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope and Limits Of Insurance. CONSULTANT shall provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form. CONSULTANT must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than $2,000,000 for each occurrence, $4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

B. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles
Vehicle Liability: CONSULTANT must maintain Business/Automobile Liability insurance with a limit of $1,000,000 each accident on CONSULTANT owned, hired, and non-owned vehicles assigned to or used in the performance of CONSULTANT's work or services under this Contract. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

C. Workers Compensation and Employers Liability Insurance: CONSULTANT must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONSULTANT employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability insurance of not less than $1,000,000 for each accident and $1,000,000 disease for each employee.

D. Professional Liability. If the Contract is the subject of any professional services or work performed by CONSULTANT, or if CONSULTANT engages in any professional services or work adjunct or residual to performing the work under this Contract, CONSULTANT must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the

CONSULTANT, or anyone employed by CONSULTANT, or anyone whose acts, mistakes, errors and omissions the CONSULTANT is legally liable, with a liability limit of $1,000,000 each claim and $2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and CONSULTANT, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.

A. Self-Insured Retentions Or Deductibles. Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

B. City as Additional Insured. The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, CONSULTANT including the City's general supervision of the CONSULTANT; Products and Completed operations of CONSULTANT; and automobiles owned, leased, hired, or borrowed by CONSULTANT.

2. CONSULTANT's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.

3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by CONSULTANT even if those limits of liability are in excess of those required by this Contract.

4. CONSULTANT's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by CONSULTANT and must not contribute to it.

5. CONSULTANT's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Coverage provided by CONSULTANT must not be limited to the liability assumed under the indemnification provisions of this Contract.

7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by CONSULTANT for the City.

8. CONSULTANT, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. CONSULTANT must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Contract insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the CONSULTANT must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

11. ENTIRE CONTRACT:

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.

12. CONFLICT OF INTEREST:

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, CITY may cancel this Contract within three (3) years after its execution, without penalty or further obligation by CITY if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of CITY is, at any time while this Contract is in effect, an employee of any other party to this Contract in any capacity, or a CONSULTANT to any other party of this Contract with respect to the subject matter of this Contract.

13. ARIZONA LAW, JURISDICTION AND VENUE, AND FEES AND COSTS:

13.1 Arizona Law. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

13.2 Jurisdiction and Venue. The parties agree that this Contract is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Contract shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

13.3 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Contract 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.

14. ARIZONA LAW:

CONSULTANT shall comply with all Federal, State laws and regulations, and local ordinances, as they relate to the performance of work under this Contract. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

15. PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

CONSULTANT shall comply with the "Rules of Professional Conduct" provision pursuant to A.A.C. R4-30-301, which is incorporated herein by reference and hereby made a part of this CONTRACT. CONSULTANT shall comply with the "Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor" provision pursuant to A.A.C. R4-30-201, which is incorporated herein by reference and hereby made a part of this Contract.

16. EMPLOYMENT OF PERSONNEL OF PUBLIC AGENCIES

CONSULTANT shall not engage the service of any person or persons employed by CITY for work covered by the terms of this CONTRACT without prior written approval by CITY.

17. REQUIRED COMPLIANCE WITH ARIZONA PROCUREMENT LAW:

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the CONSULTANT hereby warrants to the City that the 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 "Consultant Immigration Warranty").

A breach of the 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 CONSULTANT or Subcontractor employee who works on this Contract to ensure that the CONSULTANT or Subcontractor is complying with the Consultant Immigration Warranty. The 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 CONSULTANT and any Subcontractors to ensure compliance with Consultants Immigration Warranty. The CONSULTANT agrees to assist the City in performing any such random verifications.

The provisions of this Article must be included in any contract the 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 CONSULTANT or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

18. FEDERAL DEBARMENT AND SUSPENSION

a. By signature on this Contract, CONSULTANT certifies its compliance, and the compliance of CONSULTANT 's Subconsultants or subcontractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
2. Does not have a proposed debarment pending;
3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years as specified by Code of Federal Regulations 49 CFR paragraph 29.305(a).

b. Where CONSULTANT or CONSULTANT 's Subconsultant is unable to certify to the statement in Section 1 above, CONSULTANT or CONSULTANT 's Subconsultant shall be declared ineligible to enter into CONTRACT or participate in the project.

c. Where CONSULTANT or CONSULTANT's Subconsultant is unable to certify to any of the statements as listed in Sections 2, 3, or 4 above, CONSULTANT or CONSULTANT 's Subconsultant shall submit a written explanation to CITY. The certification or explanation shall be considered in connection with the CITY's determination whether to enter into CONTRACT.

d. CONSULTANT shall provide immediate written notice to CITY if, at any time, CONSULTANT or CONSULTANT 's Subconsultant, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

19. 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 Contract, and the extension, continuation, renewal amendment, or modification of any Federal CONTRACT grant, loan, or cooperative Contract.

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 Contract, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (http://www.whitehouse.gov/omb/grants/sfllin.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.

20. 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.

21. NONDISCRIMINATION

1. During the performance of this CONTRACT, the CONSULTANT, for itself, its Subconsultants, assignees and successors shall:

   a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the CONSULTANT to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of this CONTRACT,

disqualification from proposing on other Contracts or other remedy as the State deems appropriate.

b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this CONTRACT.

c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this CONTRACT.

d. Post in conspicuous places available to employees and applicants for employment, the following notice:

"It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the-job training. Also, it is the policy to ensure and maintain a working environment free of harassment, intimidation and coercion."

e. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter DOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this CONTRACT.

f. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.

g. In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the CONSULTANT's obligations under this CONTRACT and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.

h. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.

2. In the event of the CONSULTANT's noncompliance with the NONDISCRIMINATION provision (Section 21) of this CONTRACT, the State shall impose such Contract sanctions as the State or FHWA may determine to be appropriate, including but not limited to:

   a. Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies, and/or;

   b. Cancellation, termination, or suspension of the CONTRACT, in whole or in part.

3. The CONSULTANT shall include the provisions of paragraph 1.a. through 1.h. in every subcontract with Subconsultants, DBE and Non-DBE, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.

4. The CONSULTANT shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CONSULTANT becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the CONSULTANT may request the State to enter into such litigation to protect the interests of the State, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

22. 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:

1. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.

2. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.

3. 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.

4. Where the requirement permits, establish delivery schedules which shall encourage participation by firms owned by socially and economically disadvantaged individuals.

5. 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.

23. 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.

g. It is also ADOT's policy to facilitate and encourage participation by Small Business Concerns (SBCs). ADOT encourages CONSULTANTS to take responsible steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts. See Section 25 Participation By Small Business Concerns (SBCs)

The Federal regulations require a recipient of federal highway funding to implement an approved DBE Program that consists of establishing a statewide DBE utilization goal that uses 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.

The CONSULTANT is required to adhere to the commitment made to utilize certified Disadvantaged Business Enterprises (DBE) as indicated in the firm's Statement of Qualifications (SOQ) or subsequently agreed to by the State during negotiations. The State, at its discretion on a case by case basis, may waive the above limitations.

2. DBE GOAL/COMMITMENT AND DOCUMENTATION:

a. A DBE GOAL OF **25.52%** HAS BEEN ESTABLISHED ON THIS CONTRACT. THE CONSULTANT IS ENCOURAGED TO OBTAIN DBE PARTICIPATION ABOVE AND BEYOND THE GOAL ON THIS PROJECT.

b. The CONSULTANT is required to adhere to the commitment made to utilize certified DBEs as indicated in the firm's Statement of Qualifications (SOQ) or the CONSULTANT and Subconsultant DBE Affidavits submitted, or subsequently

agreed to by the State during negotiations. The state, at its discretion on a case-by-case basis, may waive the above limitations.

c. The CONSULTANT is also required to utilize DBEs at or above the DBE goal established in this Contract if Contract Modifications increase the value of the contract. 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 as Contract Modifications increase the value of the contract, ADOT reserves the right to disapprove the Contract Modification negotiations with the CONSULTANT. If the CONSULTANT wishes to dispute the Good Faith Effort determination, the CONSULTANT may escalate the decision according to the levels outlined in Section X Dispute Escalation of this Contract. The ADOT Business Engagement Compliance Office (BECO) will be represented at each escalation level with the goal of resolving the matter at the lowest possible level. **The decision of the BECO is final.**

3. COMPLIANCE:

a. This CONTRACT is subject to DBE compliance tracking for the CONSULTANT and its Subconsultants. Lower-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 shall 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 BECO.

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 lower-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 BECO's DBE Contract & Labor Compliance Management System **(DBE System)**.

c. After execution of the CONTRACT and before the first Payment Report/Invoice is submitted to City, the CONSULTANT is required to log into the BECO'S online DBE Contract & Labor Compliance Management System (https://adot.dbesystem.com) and enter the name, contact information, and subcontract amounts for all Subconsultants, lower-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 to DBE Firms* 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 in the CONSULTANT or Subconsultant DBE Affidavit submitted with this project 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 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 or City 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.

24. COUNTING DBE PARTICIPATION

In counting participation of DBEs, the Department shall apply the rules in 49 CFR §26.55 (see Title 49 TRANSPORTATION Subtitle A – Office of the Secretary of Transportation 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 and 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 Contract 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]

25. PARTICIPATION BY SMALL BUSINESS CONCERNS (SBC)

It is ADOT's policy to facilitate and encourage participation by Small Business Concerns (SBCs) in contracts. ADOT and City encourages CONSULTANTS to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts.

CONSULTANT shall take all reasonable steps to remove obstacles to SBC participation in the contract. ADOT and City encourages the CONSULTANT to utilize SBCs. SBCs are registered in AZ UTRACS.

26. ENVIRONMENTAL PROTECTION

(This clause is applicable if this CONTRACT exceeds $100,000. It applies to Federal-aid contracts only.)

The CONSULTANT is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).

27. ENERGY CONSERVATION

(This clause is applicable to Federal-aid contracts only.)

The CONSULTANT is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency, which is contained in the State Energy Conservation Plan issued by the Department in compliance with the Energy Policy Conservation Act (Public Law. 94-163).

28. FRAUD AND FALSE STATEMENTS

The CONSULTANT understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the CONSULTANT represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the CONSULTANT and any company that the CONSULTANT represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

29. 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 and/or City may 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. Minimum sanctions are presented 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.		

30. PANDEMIC CONTRACTUAL PERFORMANCE

a. The Department shall require a written plan that illustrates how the CONSULTANT shall perform up to contractual standards in the event of a pandemic. The Department may require a copy of the plan at any time prior to or at post-award phase of the Contract. At a minimum, the pandemic performance plan shall include:

1. Key succession and performance planning if there is a sudden significant decrease in the CONSULTANT's workforce.

2. Alternative methods to ensure adequate work force.

3. An updated list of the CONSULTANT's contacts and organizational chart.

b. In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization (WHO), which makes performance of any term under this Contract impossible or impracticable, the Department shall have the following rights:

1. After the official declaration of a pandemic, the Department may temporarily place the Contract(s) on "HOLD," in whole or in part, if the CONSULTANT cannot perform to the standards agreed upon in the initial terms.

2. The Department shall not incur any liability if a pandemic is declared and emergency procurements are authorized by ADOT Director pursuant to §41-2537 of the Arizona Procurement Code (APC).

3. Once the pandemic is officially declared over or the CONSULTANT can demonstrate the ability to perform, the Department may reinstate the temporarily voided Contract(s).

c. The Department, at any time, may request to see a copy of the written plan from the CONSULTANT. The CONSULTANT shall produce the written plan within 72 hours of the request.

31. PERFORMANCE EVALUATIONS

The CONSULTANT's performance shall be evaluated periodically.

32. NOTICES:

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 2014.

CITY OF CHANDLER

_____
MAYOR Date

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

FAX: 480-782-3355

APPROVE AS TO FORM

_____
City Attorney by: KB

ATTEST:

_____
City Clerk SEAL

CONSULTANT

By: Teresa Makowski
Title: Principal

ADDRESS FOR NOTICE
MakPro Services, LLC
2036 N. Gentry
Mesa AZ 85213
Phone: 480-890-1927
FAX: 480-964-7555

ATTEST: If Corporation

_____
Secretary

EXHIBIT A
SCOPE OF WORK

Project Description
This federally funded project will improve Gilbert Road from Wood Drive, approximately 1000 feet south of Chandler Heights Road, to Hunt Highway, to a four lane arterial section. The construction work for this project includes subgrade preparation, roadway asphalt, concrete paving, drainage improvements, landscaping and irrigation, signing and striping, street lighting; modifications to traffic signals at Riggs Road, and traffic fiber interconnect.

Public outreach is an important component to construction projects, and provides a vital link between the project and the community it impacts. In addition, it provides the effected community an opportunity to learn about and perhaps even understand the need for what will be occurring around them, and offers avenues for further information and comments regarding the construction. Many times this small link is all that is needed to help a project run more smoothly.

Tasks

CONSULTANT shall providing and maintaining a project website, a 24 hour - 7 days per week answering service and construction hotline for residents and businesses, weekly email and newsletter updates to the public, and coordination with contractor and City to mitigate public concerns and issues. Services also include implementation of the project Partnering Evaluation Program (PEP) and other related tasks, as necessary, to ensure compliance with local, state, and federal requirements.

Clarifications & Assumptions

- Project website task includes regular maintenance and posting of information
- Hotline shall respond to standard project inquiry calls, billed on monthly basis, $200 per month. Calls requiring additional follow up or site visits shall be billed at hourly rate.
- Newsletters include:
    - Development of draft flyer for initial mailing to inform residents/businesses of start of construction and notification of public meeting
    - Coordination with City Communication and Public Affairs (CAPA) staff for review and media information
    - Revise and prepare for printing and distribution of project information as needed.
- Public meeting includes coordination and preparation of pre-construction meeting with public to inform of work activities, schedule, and contacts.
- Community/School/Business Contact and Coordination includes:
    - Attend HOA or other meetings or as requested to provide current construction information.
    - Visit with businesses in the effected construction area to "check-in" on project progress and respond to inquiries.
    - Develop/distribute regular e-updates for upcoming work.
    - Personal coordination with those directly impacted by activities (i.e. driveways, access, service outages, etc.)
    - Maintain stakeholder contact listing for project.
    - Coordinate with school events, school hours, and district transportation needs.
    - Coordination for high-impact activities, such as intersection work, night-time activities, etc.
- Project Management coordination with City, Construction Management Consultant, and Contractor includes:
    - Prepare for/attend weekly Project Meetings.
    - Maintain communications binder/info, update as needed.
    - Communication with Owner/Contractor, as needed.
- Partnering includes:
    - Coordinate, prepare for, and facilitate partnering session.

    - Develop/conduct monthly partnering evaluations as part of the PEP (Project Evaluation Program) for the project.
    - Compile partnering info and discuss results with team.
- Provide Bilingual services, if needed, to assist with public inquiries.
- Assume any displays, exhibits, engineering designs or details, required for public meetings or open houses will be provided by the City of Chandler, the Construction Management Consultant, or Contractor for the project.
- Tasks shall be billed for work actually performed at $110 per hour including incidental local telephone calls, process design, meeting preparation and facilitation, meeting materials and equipment, and local transportation.
- Direct Expense Allowance shall be utilized for printing and mailing cost associated with Newsletters and Partnering shall be billed at cost.
- Owner Allowance shall only be utilized with prior written direction and approval from City.

EXHIBIT B
FEE SCHEDULE

Task	Fee
Project Website	3,500.00
Hotline	3,000.00
Newsletters	3,000.00
Public Meeting	1,000.00
Community/School/Business Contact and Coordination	9,100.00
Project Partnering	2,800.00
Project Management	9,200.00
Direct Expense Allowance	1,200.00
Owner's Allowance	5,000.00
Total	**37,800.00**

EXHIBIT C
Consultant Immigration Warranty
To Be Completed by Consultant Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the 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 Consultant shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Project Number/Division: ST0809.103; FEDERAL AID NO.: CHN-0(220)D; TRACS NO.: SS91501C	
Company Name (as listed in the contract): MakPro Services, LLC	
Street Name and Number: 2036 N. Gilbert	
City: Mesa **State:** AZ	**Zip Code:** 85213

I hereby attest that:

1. The 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 Consultant has identified all 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 Consultant (Employer) or Authorized Designee:

Teresa Makinen

Printed Name: Teresa Makinen

Title: Principal

Date (month/day/year): 7/31/14