



**PURCHASING ITEM
FOR
COUNCIL AGENDA
CP15-095**

1. Agenda Item Number:

32

2. Council Meeting Date:
October 23, 2014

TO: MAYOR & COUNCIL

3. Date Prepared: September 22, 2014

THROUGH: CITY MANAGER

4. Requesting Department: Transportation & Development

5. SUBJECT: Contract with Kimley-Horn and Associates, for design services for Western Canal Pedestrian and Bicycle Crossing Improvements at the Union Pacific Railroad

6. RECOMMENDATION: Staff recommends City Council award a contract to Kimley-Horn and Associates, for design services, for Western Canal Pedestrian and Bicycle Crossing Improvements at the Union Pacific Railroad (UPRR), Project No. ST1409.201, in an amount not to exceed \$49,200.

7. BACKGROUND/DISCUSSION: This project is to design at-grade pedestrian and bicycle crossing improvements at the Western Canal crossing of the UPRR. The City has a license agreement with Salt River Project for an existing multi-use path along the south side of the Western Canal from Price Road to the UPRR, 1/2 mile east of Arizona Avenue. The project scope consists of filling in a gap within the existing multi-use trail system at the UPRR crossing by designing a 10-foot wide concrete path and adding at-grade railroad crossing improvements. The construction of this project will utilize federal Congestion Mitigation Air Quality (CMAQ) funds.

Crossing improvements include replacing the wooden panels between the rails with concrete panels and installing railroad crossing signals with flashing lights, audible bell device, and signage. This design concept was developed by a collaborative effort by the Maricopa Association of Governments (MAG), several cities including Chandler, and the UPRR. The current design does not include automated crossing gates from the original design a few years ago.

As the lead consultant for the MAG "Bicycle and Pedestrian Pathway/Railroad Crossing Recommendations" report, Kimley-Horn and Associates worked with UPRR on railroad crossing solutions around the Valley and completed 15% design plans for this location. This contract will include final design, preparation of federal environmental documents, and design coordination with the UPRR and SRP. A crossing agreement with the UPRR will also need to be approved before construction starts. The contract completion time is 210 calendar days from Notice to Proceed.

8. EVALUATION PROCESS: Staff reviewed the scope of work, billing rates, and total fee for the project, and determined them to be reasonable. Kimley-Horn and Associates will use 15% design plans as a base. The Consultant was directly selected to finalize the design plans.

9. FINANCIAL IMPLICATIONS:

Cost: \$ 49,200

Savings: N/A

Long Term Costs: N/A

Funding Source:

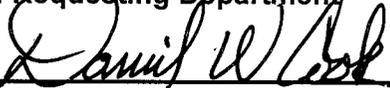
<u>Account No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded</u>	<u>Amount:</u>
401.3310.6517.0.6ST678	General Fund Capital	Western Canal Crossing Improvements at UPRR	Yes	\$49,200

10. PROPOSED MOTION: Move City Council award a contract with Kimley-Horn and Associates, for design services, for Western Canal Pedestrian and Bicycle Crossing Improvements at the Union Pacific Railroad (UPRR), Project No. ST1409.201, in an amount not to exceed \$49,200.

Attachments: Contract , Location Map

APPROVALS

11. Requesting Department



Daniel W. Cook, Transportation Manager

13. Department Head



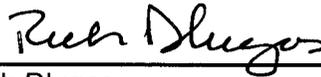
R.J. Zeder, Transportation & Development Director

12. Transportation & Development



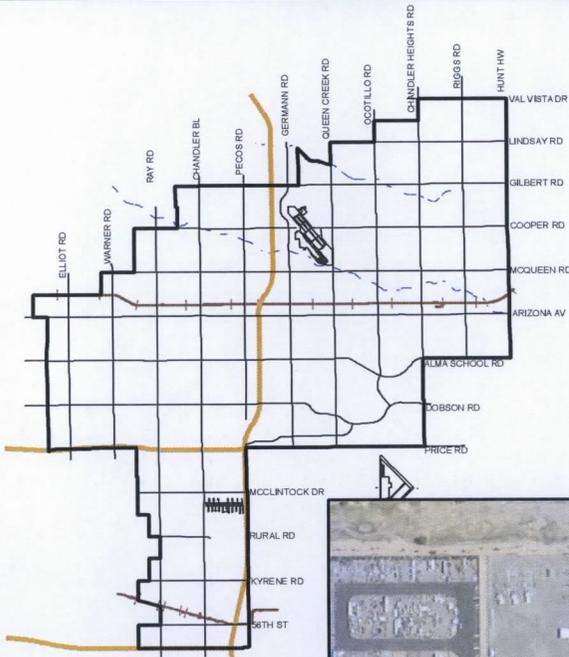
Bob Fortier, Capital Projects Manager

14. City Manager



Rich Dlugas

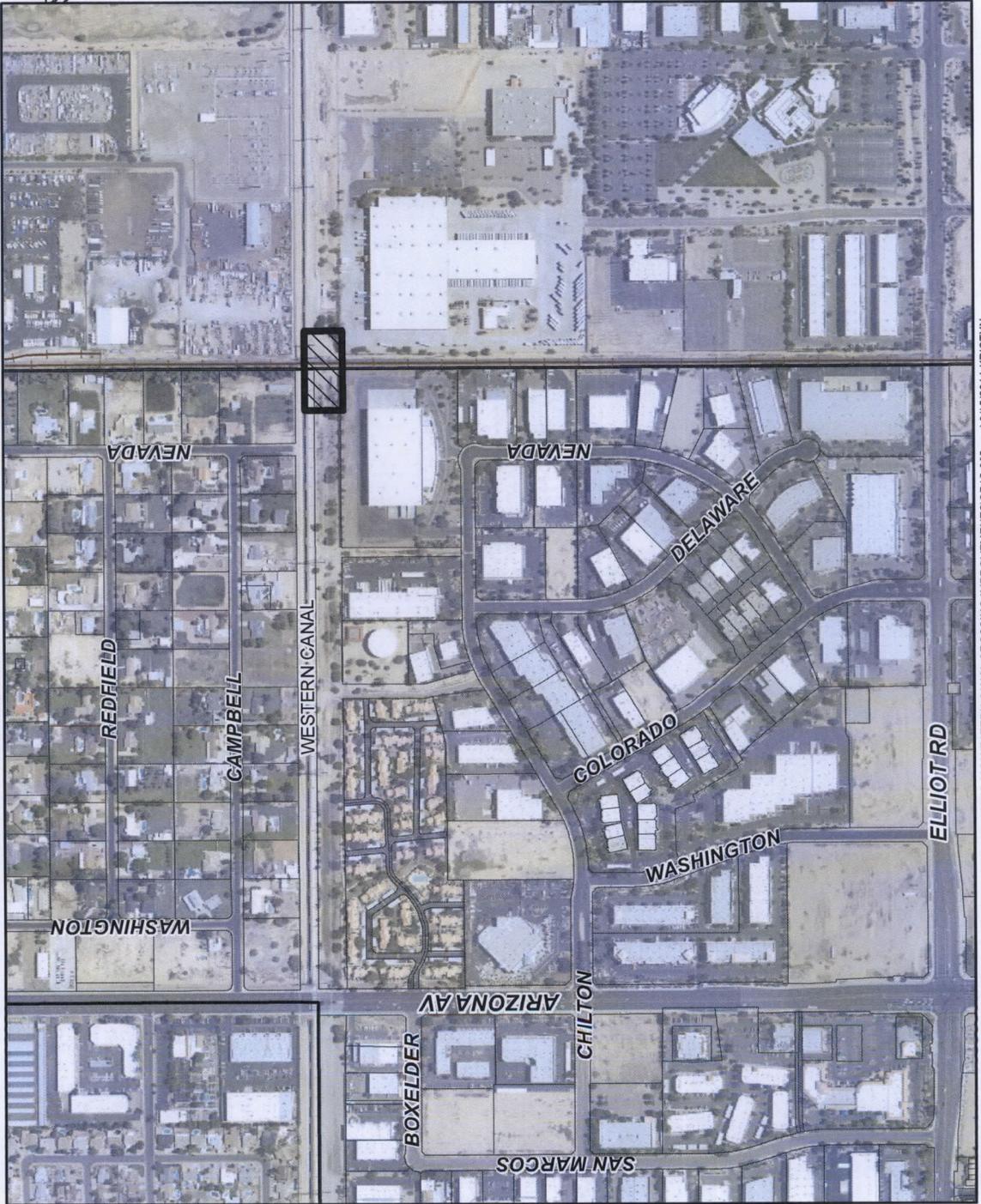
WESTERN CANAL CROSSING IMPROVEMENTS PROJECT NO. ST1409.201



MEMO NO. CP15-095



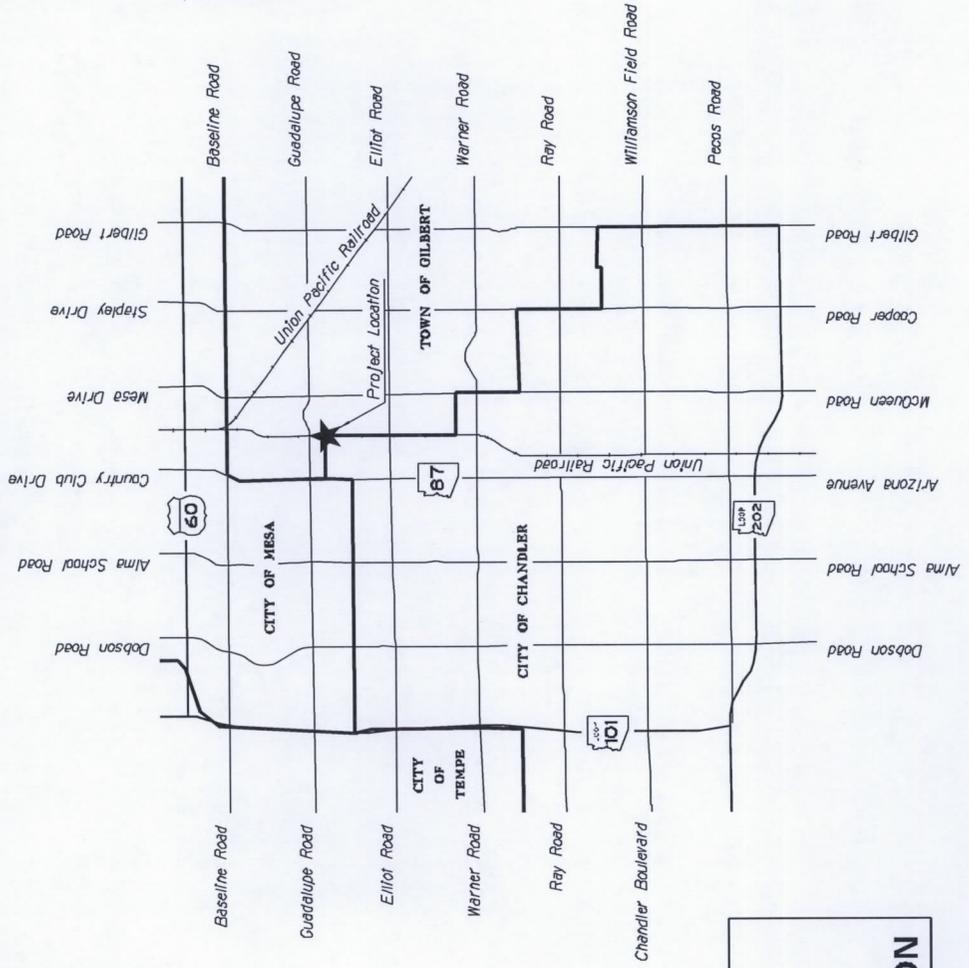
PROJECT SITE



BICYCLE AND PEDESTRIAN PATHWAY/ RAILROAD CROSSING RECOMMENDATIONS

CONCEPT PLANS

TASK ORDER: C-01-444-01



LEGEND

- Existing Overhead Power Line
- Existing Gas Line
- Existing Property Line
- ⊕ Existing Sign
- ⊗ Existing Light Pole
- ⊗ Existing Utility Pole
- New Underground Power Line
- New Sign
- ▨ New Concrete Pavement
- ▬ New Striping

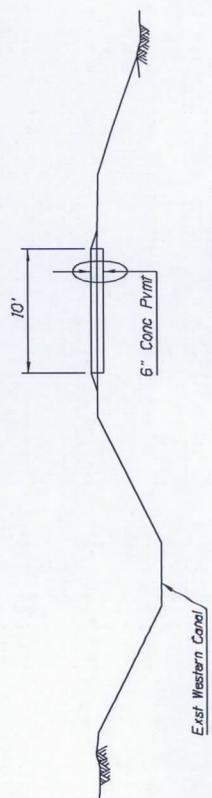
PRELIMINARY
15%
NOT FOR CONSTRUCTION

FEBRUARY 28, 2014



**MARICOPA
ASSOCIATION of
GOVERNMENTS**

PROJECT NO.	TOTAL SHEETS	AS BUILT
C-01-444-E-01	2	4



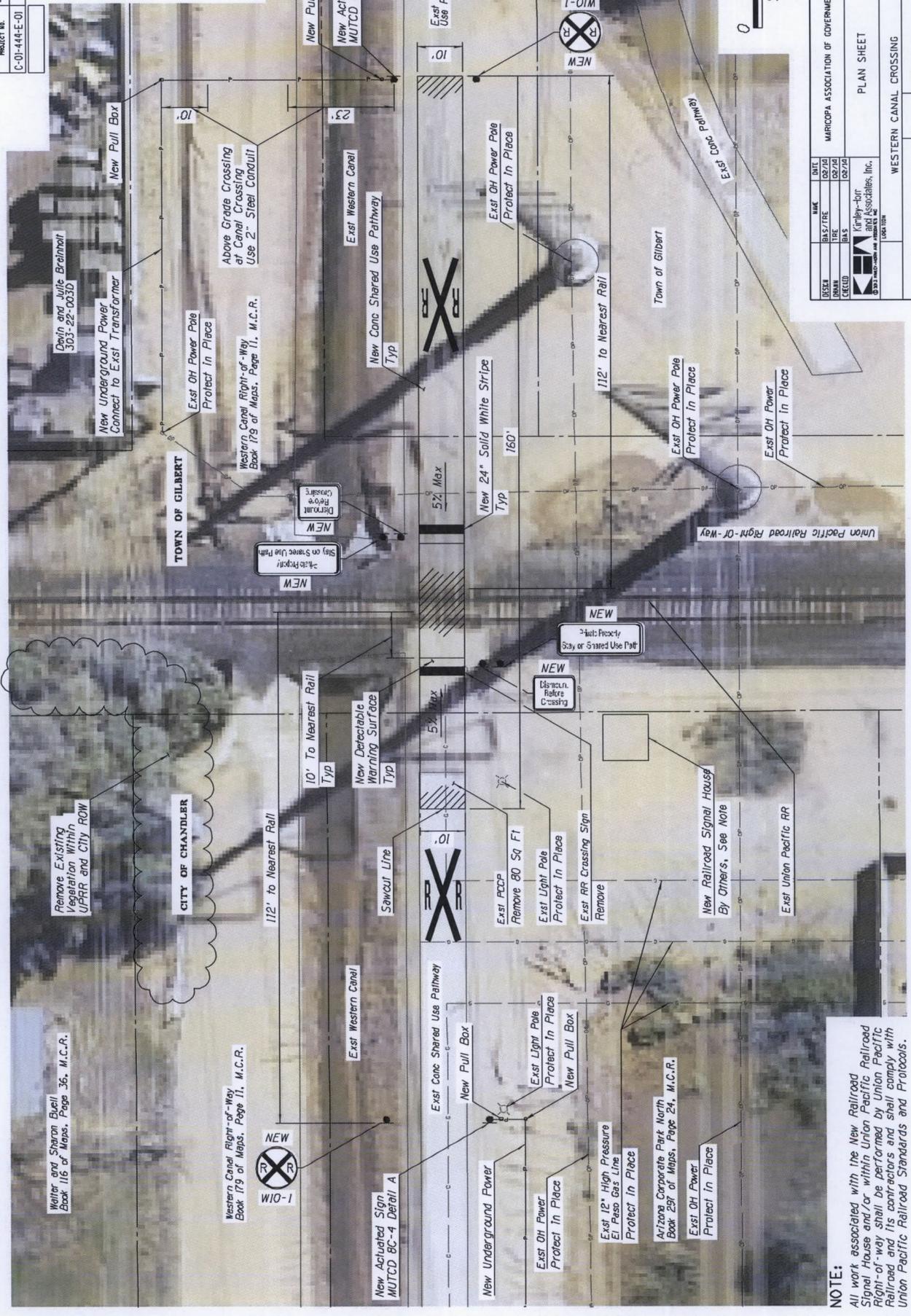
TYPICAL SECTION



0 100' 200'
Scale

DATE	02/20	DATE	02/20
BY	BAK/TRE	BY	BAK
CHECKED	BAK	CHECKED	BAK
KIMLEY-HORN AND ASSOCIATES, INC.		WESTERN CANAL CROSSING	
1001 N. CENTRAL AVENUE, SUITE 100, PHOENIX, AZ 85004		1001 N. CENTRAL AVENUE, SUITE 100, PHOENIX, AZ 85004	
MARIPOSA ASSOCIATION OF GOVERNMENTS		MARIPOSA ASSOCIATION OF GOVERNMENTS	
PRELIMINARY CONCEPT		PRELIMINARY CONCEPT	
15%		15%	
NOT FOR CONSTRUCTION OR RECORDING		NOT FOR CONSTRUCTION OR RECORDING	
DWS NO. 02 OF 04		DWS NO. 02 OF 04	

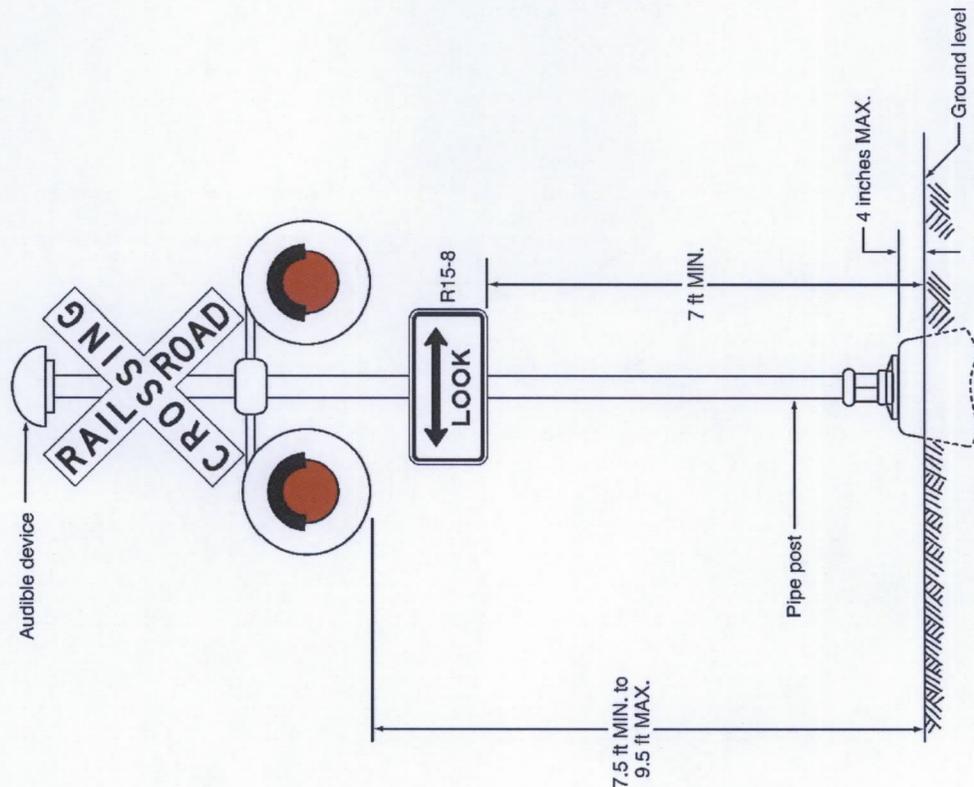
PROJECT NO.	TOTAL SHEETS	AS BUILT
C-01-4414-E-01	3	4



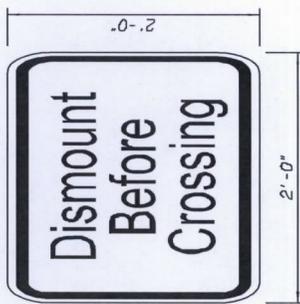
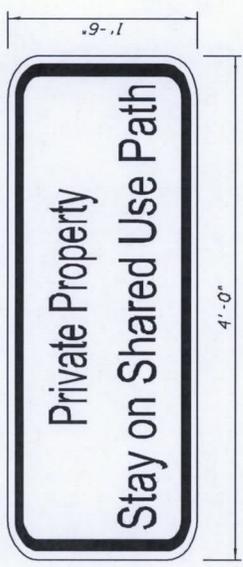
PRELIMINARY CONCEPT	DATE	BY	SCALE
15%	02/24	02/24	0 10' 20'
NOT FOR CONSTRUCTION OR RECORD INC	DATE	BY	SCALE
	02/24	02/24	0 10' 20'
MARCOPA ASSOCIATION OF GOVERNMENTS		PLAN SHEET	
WESTERN CANAL CROSSING		DWS NO. 03 OF 04	

NOTE:
 All work associated with the New Railroad Signal House and/or within Union Pacific Railroad Right-of-way shall be performed by Union Pacific Railroad and its contractors and shall comply with Union Pacific Railroad Standards and Protocols.

PROJECT NO.	SHEET NO.	TOTAL SHEETS	AS BUILT
C-01-44E-E-01	4	4	



DETAIL A
MULTICROSSING 8C-4



DETAIL B
MISCELLANEOUS SIGNS

DATE	BY	DESCRIPTION
02/24	BAS/RE	REVISION
02/24	TRE	REVISION
02/24	BAS	REVISION

PRELIMINARY CONCEPT 15%
 NOT FOR CONSTRUCTION OR RECORDING
 WESTERN CANAL CROSSING
 DWP NO. 04 OF 04

DESIGN CONSULTANT SERVICES CONTRACT

PROJECT TITLE: **Western Canal Crossing Improvements at Union Pacific Railroad**
PROJECT NO: **ST1409.201**

This Contract is made and entered into by and between the City of Chandler, Arizona, a municipal Corporation, hereinafter called the CITY, and Kimley-Horn and Associates, hereinafter called DESIGN CONSULTANT.

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

Design at grade bicycle/pedestrian crossing improvements at the Western Canal crossing at the Union Pacific Railroad (UPRR).

2. DEFINITIONS:

Words used in this Contract 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 (chandleraz.gov).

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 Contract, 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 **Forty Nine Thousand Two Hundred** dollars (**\$49,200**). 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 Ten (210)** 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 architect. 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 architect 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 http://www.chandleraz.gov/content/UDM_SDnSpecs.pdf. 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:

To the fullest extent permitted by law, but only to the extent caused by the negligence, recklessness or intentional wrong conduct, DESIGN 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 DESIGN 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 DESIGN 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.

11. INSURANCE:

1. General

A. At the same time as execution of this Contract, DESIGN 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. DESIGN 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 DESIGN CONSULTANT from liabilities that might arise out of the performance of the Contract services under this Contract by DESIGN CONSULTANT, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and DESIGN 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 DESIGN 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, DESIGN CONSULTANT shall execute a written Contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of DESIGN CONSULTANT in this Contract. DESIGN 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. DESIGN CONSULTANT shall provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form. DESIGN 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: DESIGN CONSULTANT must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on DESIGN CONSULTANT owned, hired, and non-owned vehicles assigned to or used in the performance of DESIGN 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: DESIGN CONSULTANT must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of DESIGN 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 DESIGN CONSULTANT, or if DESIGN CONSULTANT engages in any professional services or work adjunct or residual to performing the work under this Contract, DESIGN CONSULTANT must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the DESIGN CONSULTANT, or anyone employed by DESIGN CONSULTANT, or anyone whose acts, mistakes, errors and omissions the DESIGN 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 DESIGN 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, DESIGN CONSULTANT including the City's general supervision of the DESIGN CONSULTANT; Products and Completed operations of DESIGN CONSULTANT; and automobiles owned, leased, hired, or borrowed by DESIGN CONSULTANT.

2. DESIGN 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 DESIGN CONSULTANT even if those limits of liability are in excess of those required by this Contract.

4. DESIGN 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 DESIGN CONSULTANT and must not contribute to it.

5. DESIGN 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 DESIGN 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 DESIGN CONSULTANT for the City.

8. DESIGN 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. DESIGN 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 DESIGN CONSULTANT must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

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 FOR CAUSE:

This Contract may be terminated by CITY for cause should the DESIGN CONSULTANT fail to perform any provision of this Contract, 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 Contract 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 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) DESIGN 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) 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 Contract.

14. 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 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.

15. 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.

16. 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.

17. 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.

18. NO KICK-BACK CERTIFICATION:

DESIGN CONSULTANT warrants that no person has been employed or retained to solicit or secure this Contract upon a Contract 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.

19. 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.

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

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

20.2 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.

20.3 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.

21. CONTROLLING LAW:

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

22. 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.

23. 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.

24. 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.

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
480-782-3307

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney by: *[Signature]*

SEAL

DESIGN CONSULTANT: *Kimley-Horn and Associates, Inc.*

By: *[Signature]*
Title: V.P.

ADDRESS FOR NOTICE
1855 W. Baseline Road
Suite 200
Mesa, AZ 85202
Phone: 480-207-2666

ATTEST: *[Signature]*
Secretary

KHAMT
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EXHIBIT A SCOPE OF WORK

DESIGN CONSULTANT shall provide the following services:

Task 1 Meetings and Coordination

DESIGN CONSULTANT will lead, attend, and record meeting notes for the following meetings:

1. Kick off meeting with CITY
2. Four Party Kick Off meeting (Chandler/ Gilbert/ SRP/ UPRR)
3. Progress meetings for CITY Team (up to 4). These meetings can be attended by four stakeholder parties (Chandler/ Gilbert/ SRP/ UPRR) and are intended to function as progress meetings with each agency.
4. NEPA coordination meeting with ADOT
5. Up to two (2) internal consultant team meetings
6. Facilitate agreement between SRP and the City (SRP will provide the language)
7. Facilitate agreement between UPRR and the City (UPRR will provide the language)
 - a. Including up to 1 ROW clearance exhibit in UPRR format.

Task 2 Preparation of Scoping Letter

DESIGN CONSULTANT will prepare a scoping document in the form of a Scoping Letter that meets ADOT requirements for federal funding. DESIGN CONSULTANT assumes the Project Assessment will contain the following content:

- Title Page
- Introduction
- Background Data
- Project Scope
- Development Considerations
- Other Requirements
- Estimated Cost
- Vicinity Map

Deliverables

1. Draft Scoping Letter
2. Final Scoping Letter

Task 3.0 Environmental Documentation

This project is utilizing federal funds; as such, the project is subject to compliance with the National Environmental Policy Act (NEPA) and the environmental clearance process will be overseen by the ADOT Environmental Planning Group (EPG).

Clearance Type

The project will require a Group II Categorical Exclusion (CE). We are proposing that the CE be conducted as a Condensed Clearance Memo (CCM) because of the limited amount of disturbance and the minor usage of easement. This has been verified with ADOT Environmental Planning Group, but if later EPG requires a full CE for the project, a cost amendment will be prepared to handle the additional cost associated with the increased level of effort.

Biology

DESIGN CONSULTANT will prepare an Urban Project Biological Evaluation (UPBE). The UPBE will incorporate observations from field reconnaissance and the results of correspondence with the Arizona Game and Fish Department and the US Fish and Wildlife Service, as necessary. A draft UPBE will be submitted to ADOT EPG. Following ADOT EPG review, comments will be incorporated and a final UPBE will be submitted to ADOT EPG.

ADOT EPG has indicated on previous projects of a similar nature that a UPBE is sufficient to satisfy the biological component. It is assumed for this scope of work and will be verified at the time of the kick-off meeting that the appropriate biological document is an UPBE Form.

Hazmat

DESIGN CONSULTANT will prepare a Preliminary Initial Site Assessment (PISA) to identify contamination concerns within the project area. The PISA documentation will include observations from field reconnaissance and from a search of Environmental Protection Agency and Arizona Department of Environmental Quality databases that are available online. This task assumes that a Phase I Environmental Site Assessment will not be necessary.

Cultural Resources

Because the project will utilize federal funds, it is subject to compliance with Section 106 of the National Historic Preservation Act. PaleoWest as a subconsultant to DESIGN CONSULTANT will conduct a Class I literature review of the project area. The Class I review will determine the extent and adequacy of previous survey coverage and identify the types of cultural resources that may be present in the project area.

PaleoWest archaeologists will conduct a full pedestrian inventory of the project area following ADOT, ASM, and State Historic Preservation Office (SHPO) inventory standards and guidelines. Archaeologists will walk parallel transects spaced not more than 20 m apart, recording all isolated occurrences and mapping and recording any identified archaeological sites. This will include any previously recorded sites as well as newly discovered archaeological sites. A Registered Professional Archaeologist (RPA) who meets the National *Secretary of the Interior's* professional standards will head the fieldwork. PaleoWest will evaluate the significance of all identified historic and prehistoric resources in terms of eligibility for listing in the State and National Registers of Historic Places and provide recommendations for mitigation if necessary.

A report will be prepared that meets all applicable standards. In addition, draft Section 106 consultation letters will be prepared for use by EPG Historic Preservation Team.

Deliverables

1. Group II CCM
2. UPBE
3. PISA
4. Cultural Resources Report and Draft Section 106 Consultation Letters

Task 4.0 Plans, Specs, and Estimate

UPRR will design all elements of this project involving signals, signal houses, and associated electrical. Further, UPRR will design the rail bed improvements out to four feet outside of each railroad rail.

DESIGN CONSULTANT will design the groundplane approaches up to within four feet of each railroad rail (the remainder of area will be designed by UPRR). DESIGN CONSULTANT will also design the other elements required. Elements required are the trail, additional signage, fencing if needed, and lighting if needed, and extension of electrical lines to the signal house, if needed.

DESIGN CONSULTANT will develop the construction plans based on the following assumptions:

- The plans will consist of the following sheets:
 - Cover Sheet (1 Sheet)
 - General Notes/ Key Map/ Typical Pathway Section Sheet (1 Sheet)
 - Key Map will be Scaled to Fit full project on One Sheet
 - Detail Sheet (1 Sheet)
 - Pathway Plan Sheets (2 Sheets)
 - 1" = 20' (22" X 34")
 - Aerial Photo Background
 - Construction, Removal and Relocation/Adjustment Notes
- All plans will be prepared using AutoCAD software.
- Design will meet AASHTO and MUTCD standards

Construction details will follow the City of Chandler and MAG standards details.

- The City of Chandler shall provide their standard general notes either in AutoCAD or Word format.
- The plans will include existing pathway tie-ins, electrical connections, signage, and removal of visual obstructions.
- If additional sheets are required, this will be considered additional services.
- For pathway segments without curb and gutter, no staking information will be provided. The design will be based on horizontal dimensioning shown on the plan sheets and the cross slopes shown on the typical sections.

DESIGN CONSULTANT will prepare technical specifications for all elements of the work using City of Chandler specifications as a basis. Construction quantities will be tabulated using ADOT bid schedule format.

DESIGN CONSULTANT will prepare the Estimate of Probable Construction Cost using the items of work in the bid schedule. Unit prices will be determined from recent unit bid prices on bid tabulations for locally comparable construction projects.

Plans, special provisions, and estimate will be submitted at 60%, 95% and final design stages.

Deliverables:

1. Construction Plans as described above
2. Special Provisions
3. Probable Construction Cost Estimate

Task 5.0 Utility Clearance

Based on discussions with the City of Chandler and with our previous involvement with this project, it is believed that the proposed improvements will avoid utility conflicts within the canal, overhead power, and underground gas. Therefore, this scope of work/fee proposal assumes no utility coordination meetings beyond those itemized in Task 1.0. DESIGN CONSULTANT will make one initial contact with the utility providers to obtain contact information and collect information about their facilities in the area. This information will be included on the plans, if appropriate. DESIGN CONSULTANT will submit plans to utility providers and request conflict letters.

DESIGN CONSULTANT will prepare the utility clearance letter and submit to ADOT for clearance. DESIGN CONSULTANT will also include utility information in the Special Provisions.

DESIGN CONSULTANT will make all reasonable attempts to avoid utility relocations, but if utility conflicts arise that require relocations, those services will be considered additional services.

Deliverable:

1. Utility Clearance Letter

Task 6.0 Survey

Topographic information and property line information will be documented with a professional survey. Survey Innovation Group (SIG) is proposed as the survey sub consultant. SIG's proposal is attached to this proposal.

Deliverable:

1. Survey will be provided in digital version, but can also be provided as a hardcopy document if requested by Chandler.

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

- Public Meetings or Public Open House attendance or graphics
- Design work outside of the project boundary
- Extended length of project beyond the schedule established below
- Design work of any elements within the UPRR ROW
- Geotechnical inventory, studies, or analysis
- 30% design plans
- Payment of any UPRR engineering fees or permits

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Additional Stakeholder meetings
- Drainage Analysis/ Memorandum
- Full Categorical Exclusion
- Utility Relocation Coordination (if necessary)

Information Provided By CITY

DESIGN CONSULTANT shall be entitled to rely on the completeness and accuracy of all information provided by the CITY or the CITY's consultants or representatives. The CITY shall provide all information requested by DESIGN CONSULTANT during the project, including but not limited to the following:

- Previous environmental reports for adjacent portions of this site (Note: Chandler provided this via email 7/22/2014)

Schedule

This schedule is a project goal, but it is reliant on external factors such as the responsiveness of Utility companies, the UPRR, and the City. Those factors are out of our control and may negatively impact the schedule.

NTP	November 1, 2014
4 Party Kick Off Meeting	November 2014
60% Engineering plans	February 2015
Project Assessment	February 2015
90% Engineering plans	April 2015
Final Engineering plans	May 2015

**EXHIBIT B
FEE SCHEDULE**

DESIGN CONSULTANT shall provide all services as described in Exhibit A for an amount not to exceed:

Task 1	Meetings and Coordination	\$ 6,800.00
Task 2	Preparation of Scoping Document	\$ 3,750.00
Task 3	Environmental Documentation	\$ 17,500.00
Task 4	Plans, Specs, and Estimate	\$ 15,500.00
Task 5	Utility Clearance	\$ 2,750.00
Task 6	Topographic Survey (Subconsultant)	\$ 2,900.00
	Total Fee	\$ 49,200.00

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.

Project Number/Division:	ST1409.201
Name (as listed in the contract):	KIMLEY HORN AND ASSOCIATES, INC.
Street Name and Number:	1855 W. BASILINE ROAD STE 200
City: MESA State: AZ Zip Code:	85202

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: Brent Muthi

Title: V.P.

Date (month/day/year): 10/9/14