



**PURCHASING ITEM
FOR
COUNCIL AGENDA
Memo No. CP16-212**

1. Agenda Item Number:
17
2. Council Meeting Date:
May 26, 2016

TO: MAYOR & COUNCIL

3. Date Prepared: April 29, 2016

THROUGH: CITY MANAGER

4. Requesting Department: Transportation & Development

5. SUBJECT: Professional Services Contract award to Mak Pro Services, LLC, for Arizona Avenue Improvements, Frye Road to Pecos Road, for Public Outreach, Phase 1

6. RECOMMENDATION: Staff recommends City Council award a Professional Services Contract to Mak Pro Services, LLC, for Public Outreach, Phase 1 for Arizona Avenue Improvements, Frye Road to Pecos Road, Contract No. ST1607.101, in an amount not to exceed \$49,965.00.

7. BACKGROUND/DISCUSSION: The Arizona Avenue Improvements, Frye Road to Pecos Road, is part of a comprehensive plan to improve Downtown Chandler streets and Infrastructure for further development and to improve traffic circulation in the downtown area. The project includes stakeholder coordination with the various high profile stakeholder groups within the project location.

The scope of services will include regular email updates to downtown businesses, including personal visits with businesses as appropriate to address concerns or issues related to design. Coordination will be necessary with all stakeholders, including the Design Consultant, City staff, Chamber of Commerce and Downtown Chandler Community Partnership (DCCP) to mitigate concerns and issues as they arise.

8. EVALUATION PROCESS: On November 18, 2015, staff received Statements of Qualifications from two (2) firms for Design Consultant Services. On December 15, 2015, the selection committee met to review the statement of qualifications and a 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 360 calendar days following the Notice to Proceed.

A Professional Services Contract for Design Services, Project No. ST1607.201, with RAK Development, Inc., dba Kreuzer Consulting Group, for Arizona Avenue Improvements, Frye Road to Pecos Road, is also scheduled for this Council meeting.

9. FINANCIAL IMPLICATIONS:

Cost: \$49,965.00

Savings:

Long Term Costs:

Fund Source:

<u>Account No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
401.3310.6517.6ST303	Capital General Fund	Street Const/Various	Yes	\$48,466.05
401.1291.6211.6GG619	General Fund	Imp Downtown Redevelopment Program	Yes	\$ 1,498.95

10. PROPOSED MOTION: Move City Council award a Professional Services Contract to Mak Pro Services, LLC, for Public Outreach, Phase 1 for Arizona Avenue Improvements, Frye Road to Pecos Road, Contract No. ST1607.101, in an amount not to exceed \$49,965.00.

ATTACHMENTS: Contract, Location Map

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APPROVALS

11. Requesting Department



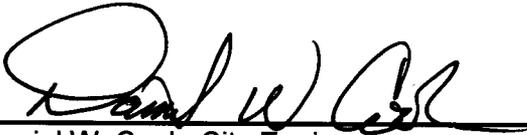
Bob Fortier, Capital Projects Manager

13. Department Head



R.J. Zeder, Transportation & Development Director

12. Transportation & Development

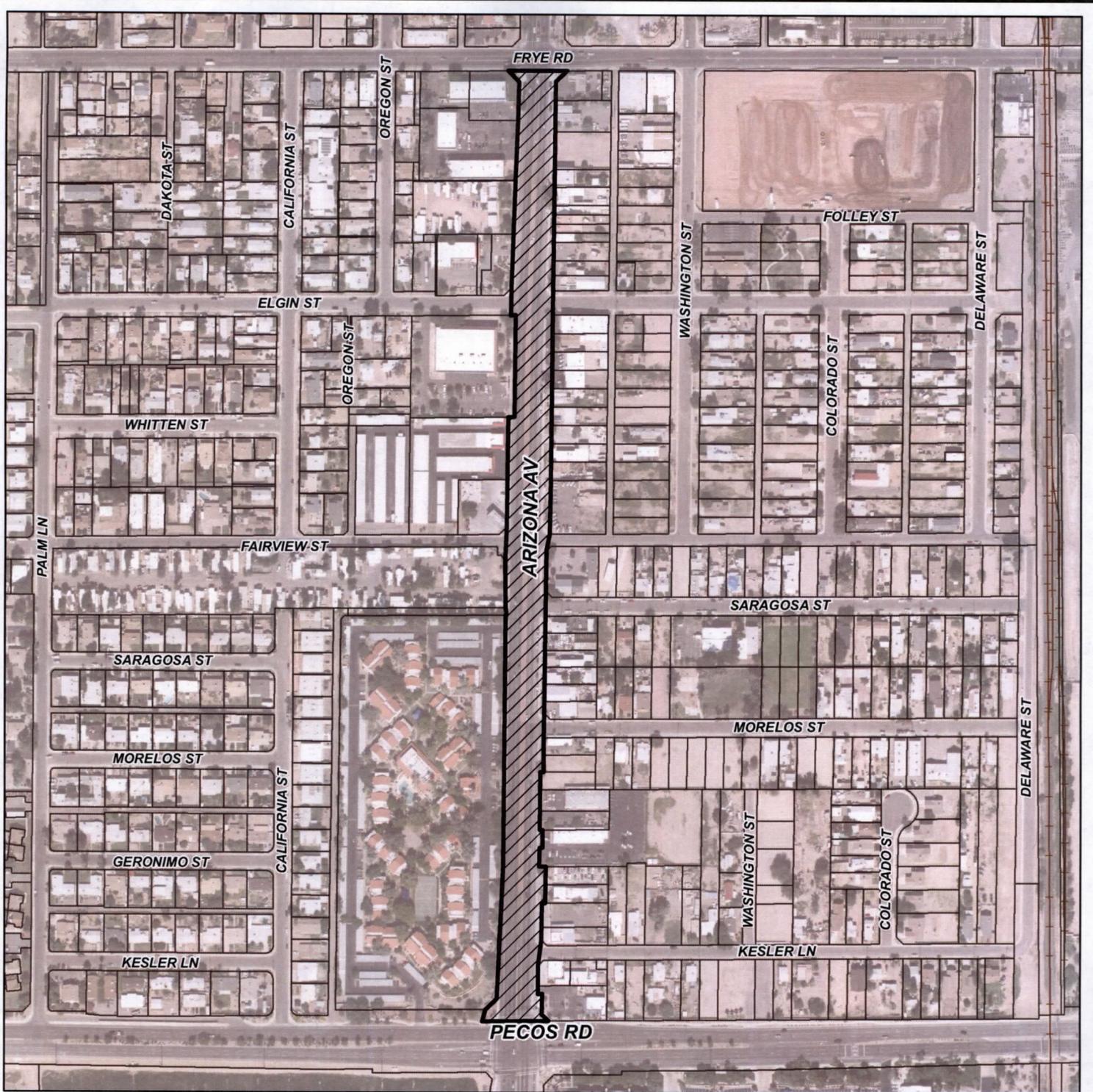


Daniel W. Cook, City Engineer

14. City Manager



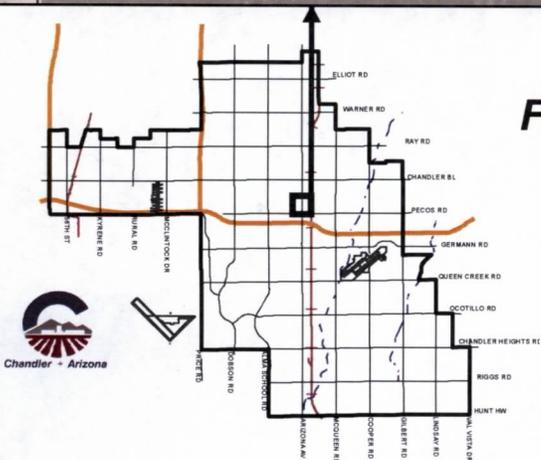
Marsha Reed



**FOR PUBLIC OUTREACH, PHASE I
FOR ARIZONA AVE IMPROVEMENTS
FRYE RD TO PECOS RD
PROJECT NO ST1607.101**



MEMO NO. CP16-212



 **PROJECT LOCATION**



PROFESSIONAL SERVICES CONTRACT

Project Name: Arizona Avenue Improvements (Frye Road to Pecos Road) Public Outreach, Phase I
Project No. ST1607.101

THIS CONTRACT is made and entered into this _____ day of _____, 2016, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Mak Pro Services, LLC a limited liability company 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.

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 Forty Nine Thousand Nine Hundred Sixty Five dollars (\$49,965) in accordance with the fee schedule attached hereto as Exhibit B and incorporated herein by reference.

5. TERM:

Following execution of this Contract by CITY, CONSULTANT shall immediately commence work and shall complete all services described herein within Three Hundred Sixty (360) 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 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) 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 REQUIREMENTS:

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:

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

15. 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.

16. 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 _____, 2016.

CITY OF CHANDLER

CONSULTANT

MAYOR Date

By: Jeissa Makro
Title: Principal

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

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

APPROVE AS TO FORM

ATTEST: If Corporation
[Signature]
Secretary

City Attorney by: [Signature]

ATTEST:

City Clerk

SEAL

EXHIBIT A SCOPE OF WORK

CONSULTANT shall provide public outreach services specifically consisting of the following tasks:

Task1 - Meetings:

- Public outreach consultant shall coordinate and attend up to 4 (four) public meetings with the general public and the local business communities to identify potential community impacts and issues.
- Public outreach consultant shall coordinate and attend up to 15 (fifteen) stake holder meetings to discuss project conceptual preliminary design and vision.
- Public outreach consultant shall attend up to 12 (twelve) project meetings for design comment resolution, DCCP, other.
- Public outreach consultant shall visit with businesses on a regular basis to "check-in" on project progress and respond to inquiries

Task2 – Business Outreach:

- Public outreach consultant shall work as part of the project team to keep businesses informed and coordinate special interests efforts for activities that will directly affect specific businesses.
- Public outreach consultant shall establish, maintain, and provide to the City a stakeholder database for communications during project the design phase, construction phase, and future use.

Task 3 – Administrative:

- Public outreach consultant shall coordinate with the City of Chandler's CAPA Office to develop any news releases, media, information or larger scope materials requiring distribution, such as newsletters, etc.
- Public outreach consultant shall maintain a project hotline/project email address/project website and respond to inquiries, comments or concerns. Maintain a log of incoming calls and responses provided. Coordinate and communicate regularly with the City Project Manager and the City Design Consultant on any issues and be the City Liaison to work toward remediation. Public outreach consultant shall prepare up to 6 (six) E-Updates and distribute electronically to stakeholder communication list.

Task 4 – Allowances/Expenses:

- **Direct Expenses:** Direct expenses associated with Tasks 1-3 are to be billed at cost.
- **Bilingual Allowance:** The public outreach consultant shall provide bilingual services as needed for all services described in tasks 1-3.
- **Owners Allowance:** Owners Allowance for unforeseen conditions to be used only under consent and direction of the City Project Manager.

**EXHIBIT B
FEE SCHEDULE**

Activity	Total
Task 1: Meetings	
Public Meetings	\$10,440.00
Stake Holder Meetings	\$8,025.00
Project Meetings	\$9,275.00
Business Visits and notifications	\$2,765.00
Sub Total Meetings	\$30,505.00
Task 2: Business Outreach	
Special Interest Coordination	\$1,450.00
Stake Holder Database	\$330.00
Sub Total Business Outreach	\$1,780.00
Task 3: Administrative	
CAPA Coordination	\$1,205.00
Project Hotline / Project Email Address E-Updates/Project Website/ Newsletters	\$11,975.00
Sub Total Administrative	\$13,180.00
Task 4: Allowances / Expenses	
Direct Expenses	\$500.00
Bilingual Allowance	\$2,500.00
Owners Allowance	\$1,500.00
Sub Total Allowances / Expenses	\$4,500.00
Project Total NTE	\$49,965.00

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: ST1607.101		
Company Name (as listed in the contract):		MakPro Services, LLC
Street Name and Number:		
City:	State:	Zip Code:

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 Makheri

Printed Name: Teresa Makheri

Title: Principal

Date (month/day/year): 5/11/16