PIMA COUNTY

PROCUREMENT

SOLICITATION FOR QUALIFICATIONS

DESIGN ENGINEERING SERVICES FOR

INA ROAD – SHANNON ROAD TO LA CHOLLA BLVD SIDEWALK PROJECT (4INASW)

FEDERAL PROJECT NO. SL 737 01D
ADOT TRACS NO. PPM-0(246)D

TUCSON, ARIZONA

May, 2016

Pima County Procurement Department
Design & Construction Division
130 West Congress Street, Third Floor
Tucson, Arizona 85701
(520) 724-3731 / Fax (520) 724-4434

Solicitation No. 216637

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PIMA COUNTY

PROCUREMENT

NOTICE OF SOLICITATION FOR QUALIFICATIONS

SOLICITATION FOR QUALIFICATIONS NO. 216637

DESIGN ENGINEERING SERVICES FOR: INA ROAD: SHANNON ROAD TO LA CHOLLA BLVD. SIDEWALK PROJECT (4INASW) FEDERAL PROJECT NO. SL 737 01D ADOT TRACS NO. PPM-0(246)D

Pima County is seeking Statements of Qualifications (SOQs) from qualified firms to provide Engineering Design Services for the following improvement project.

The Ina Road Sidewalk project is a Pima County Department of Transportation (PCDOT) roadway improvement project which has partial federal funding through the Highway Safety Improvement Program (HSIP).

This project consists of the design for construction of concrete sidewalk and curb access ramps to provide ADA access to both sides of Ina Road for 1 mile between Shannon Road and La Cholla Boulevard. Project activities include: development of technical documents and reports and development of Plans Specification and Estimate for all project phases from concept to final, culminating in all clearances and a bid package for advertising. Other activities include over-the-shoulder reviews and participation in public outreach meetings.

Respondents will be subject to Arizona Department of Transportation (ADOT) Registration and Disadvantaged Business Enterprise (DBE) requirements and reporting. Please review these requirements carefully. A minimum goal of 6.37% for participation by Disadvantaged Business Enterprises (DBE's) as a percentage of the total amount of the negotiated fee.

The County intends to award a single contract to the firm ranked highest as a result of evaluation of demonstrated competence and qualifications for these services pursuant to the procedures prescribed in A.R.S. § 34-603 and Pima County Policy D29.1 and with which the County is able to negotiate a satisfactory contract pursuant to A.R.S.§ 34-603.E.

Information regarding the submittal requirements of this Solicitation for Qualifications (SFQ) may be obtained at the Design and Construction Division of the Procurement Department located at 130 W. Congress Street, 3rd Floor, Tucson, AZ, 85701. Contact Ms. Christy Bustillos regarding documents at (520) 724-8414, FAX: (520) 724-4434; Email: christy.bustillos@pima.gov. The entire information package can be downloaded from the Pima County website: **http://www.co.pima.az.us/procure/ifbrfp-dc.htm.**

Pima County reserves the right to reject any and all qualification statements or withhold the award for any reason.

SOQ DUE DATE/TIME: **June 21, 2016, at or before 4:00 PM Local Tucson Time**
LOCATION: Pima County Procurement Department, 130 W. Congress Street, 3rd Floor, Tucson, AZ

PRE-SUBMITTAL MEETING: **June 7, 2016, 2:00 PM Local Tucson Time**
LOCATION: Pima County Procurement Department, 130 W. Congress Street, 3rd Floor, Tucson, AZ

DIRECT QUESTIONS IN WRITING TO: Anthony V. Schiavone, Commodity / Contracts Officer
Fax: 520-724-4434 / E-mail: Anthony.schiavone@pima.gov

PUBLISH: **The Daily Territorial:** **May 26, 27, 31, and June 1, 2016**
Arizona Daily Star: **May 26 and June 9, 2016**

Pima County One Stop often has design professional and administrative staff, managers, and experienced construction supervisors and workers available for immediate hire. Call (520) 243-6700 or contact One Stop at http://webcms.pima.gov/cms/one.aspx?portalId=169&pageId=28947

GENERAL INFORMATION

1. **SCOPE OF SERVICES:** Pima County is seeking Statements of Qualifications (SOQ) from qualified firms to provide engineering design services for the following improvement project.

   The Ina Road Sidewalk project is a Pima County Department of Transportation (PCDOT) roadway improvement project. This project includes design for construction of concrete sidewalk and curb access ramps to provide ADA access to both sides of Ina Road for 1 mile between Shannon Road and La Cholla Boulevard. Project activities include: development of technical documents and reports and development of Plans Specification and Estimate for all project phases from concept to final, culminating in all clearances and a bid package for advertising. Other activities include over-the-shoulder reviews and participation in public outreach meetings.

   A complete description of CONSULTANT's required professional services for the project, are detailed in **Exhibit 'A', Scope of Services** of the Sample Contract included herein as **Attachment '3'.**.

   Respondents will be subject to Arizona Department of Transportation (ADOT) Registration and Disadvantaged Business Enterprise (DBE) requirements and reporting. Please review these requirements carefully. A minimum goal of 6.37% for participation by Disadvantaged Business Enterprises (DBE's) as a percentage of the total amount of the negotiated fee.

   The County intends to award a single contract to firm ranked highest as a result of evaluation of demonstrated competence and qualifications for these services pursuant to the procedures prescribed in A.R.S. § 34-603 and Pima County Policy D29.1 and with which the County is able to negotiate a satisfactory contract pursuant to A.R.S.§ 34-603.E.

2. **CONFIDENTIALITY AND DISCLOSURE:** Responses to this solicitation shall be considered privileged communications as to technical, financial, and institutional Content until award of the Contract. Until that time, pursuant to A.R.S. §34-603(H), only the names of the firms on the short list may be disclosed. In accordance with that section, limited material may be disclosed after award of the contract; after contract execution, all material is publicly available. **Any material that you consider to be trade secret or proprietary must be clearly identified and marked. Under A.R.S. §34-603(H), the County must agree with your claim of confidentiality before any material may be withheld from disclosure. The County has initiated a new policy on confidential information that is reflected in the Public Information article of the attached sample contract. Respondents should familiarize themselves with that provision.**

3. **INTENT TO RESPOND.** Firms that intend to submit SOQs should notify the COUNTY as soon as possible of their intent by email to Anthony.schiavone@pima.gov.

4. **INQUIRIES / QUESTIONS.** Inquiries shall be written, preferably sent by email. All questions must be received no later than seven (7) calendar days in advance of the submittal due date. Effective the first date of advertisement of the SFQ, no further contact is allowed with any Pima County personnel concerning this project except for questions of an administrative or contractual nature that shall be submitted in writing to the Point-of-Contact. This restriction is in effect until the selection is announced. All administrative and contractual questions related to this SFQ shall be directed to the following **Point of Contact**:

   Anthony V. Schiavone – Commodities/Contracts Officer
   Pima County Procurement Department, Design & Construction Division
   130 W. Congress, 3rd Floor
   Mail Stop DT-AB3-126
   Tucson, AZ 85701
   Anthony.schiavone@pima.gov or Fax (520) 724-4434

5. **CLARIFICATIONS / ADDENDA:** Any clarifications or interpretations of this Statement for Qualifications (SFQ) that materially affect or change the scope or intent will be issued via addenda and posted by the County on the County's web site (**http://www.co.pima.az.us/procure/ifbrfp-dc.htm**). Oral statements or clarifications not in writing shall be non-binding and without legal effect. The County will make an effort to notify respondents of the posting of addenda; however, it cannot guarantee that every potential respondent will be notified each time. Therefore, **it is the responsibility of all respondents to check the website periodically for addenda and to obtain this information in a timely manner**. Failure to include acknowledgment of all addenda may be cause for rejection of the SOQ. **No oral interpretations shall be made as to the meaning of any of the SFQ documents, or be effective to modify any of the provisions of the SFQ documents. Oral interpretations of the SFQ documents are not binding on the County.**

6. **ACCEPTANCE OF EVALUATION METHODOLGY:** By submitting its SOQ in response to this SFQ, respondent acknowledges and accepts the evaluation process, the stated selection criteria and relative weight of the stated selection criteria, and that determination of the "most qualified" firm will require subjective judgments by the County.

7. **SAMPLE CONTRACT:** These SFQ documents contain a Sample Contract that the selected firm will enter into with the County. By submission of an SOQ, each Firm will be certifying to the County that the Sample Contract is acceptable as written, unless exceptions are taken and specific alternate language proposed. The County may consider proposed changes and negotiate terms or conditions if deemed in the interest of the County. However, the County reserves the right to reject any submission that takes exceptions or proposes alternate language unacceptable to the County.

8. **PRE-SUBMITAL MEETING**: The date and time of a pre-submittal meeting, if applicable, is indicated on the Notice of Solicitation for Qualifications page of this document. The purpose of this meeting will be to clarify the contents of this solicitation in order to prevent any misunderstandings of County's position. Any questions regarding this solicitation should be presented to County at this meeting. This facility is wheelchair accessible. Upon request, ten (10) working days prior to bid opening, a signer will be provided for the hearing impaired.

9. **DUE DATE AND LOCATION FOR SUBMISSION:** Submittals must be received and time stamped at the Procurement Department, Design & Construction Division, 130 W. Congress Street, 3rd Floor, at or before the time and date indicated on the Notice of Solicitation for Qualifications page of this document. Late submittals will NOT be accepted.

10. **SUBMITTAL:** Respondents shall submit one (1) hardcopy original, four (4) hardcopies, and one (1) electronic version in a single file format of their Statement of Qualifications as further described in the Required Submittal Information and Evaluation Criteria Section of this document. The SOQs shall be delivered in a sealed envelope and clearly marked with the Firm Name, Name and Number of the SFQ, Due Date, and Time addressed to: Pima County Procurement Department, Design & Construction Division, Attn: Anthony V. Schiavone, Commodity/Contracts Officer, 130 W. Congress Street, 3rd Floor, Tucson, AZ 85701.

    SOQs received after the due date and time as noted on the Notice of Solicitation for Qualifications page of this document will be returned to the respondent unopened. No late submittals of SOQs will be accepted. The County will not acknowledge or receive SOQs that are delivered by telephone, facsimile (fax), or electronic mail (e-mail). Properly submitted SOQs will not be returned to respondents.

11. **CONSULTANT SELECTION PROCESS:**
    A. The evaluation of the SOQs shall be based on the requirements described in this SFQ and pursuant to A.R.S. §34-603. All properly submitted responsive SOQs will be evaluated, and ranked according to the stated selection criteria and relative weight of the stated selection criteria by the selection

committee. SOQs shall not include any information regarding respondent's fees, pricing, person-hours or other cost information.

B. A "Consultant Selection Committee" will be comprised of Representatives from the Project Management Office and the Department of Transportation. A Contracts Officer from the Pima County Procurement Department, Design & Construction Division will act as the non-scoring Chair of the selection committee.

C. This committee will evaluate SOQs based upon evaluation of the stated selection criteria and relative weight of the selection criteria published in this SFQ. Based on the results of the evaluation of statements of qualifications submitted in response to the SFQ, recommend the most qualified firm for award. The selection committee may not consider fees, price, man-hours or any other cost information in the selection or order of preference. The County does not intend to conduct interviews, but reserves the right to short-list firms and conduct interviews if determined in the best interest of the County.

D. The County intends to enter into negotiations for these services with the top ranked and recommended firm on the final list, which shall include consideration of compensation and other contract terms that the County determines to be fair and reasonable to the County. If an agreement satisfactory to the County cannot be reached with the top ranked and recommended firm, the County intends to formally terminate negotiations with that firm and undertake negotiations with the next highest ranked and recommended firm on the final list in sequence until an agreement is reached or a determination is made to reject all firms on the final list. Following successful negotiation, a contract will be recommended for award with the selected firm.

E. The Department will make an award recommendation to the Procurement Director based on the evaluation scores and successful negotiation of a contract for services. The recommendation will be posted to the Pima County Procurement website at http://pima.gov/procure/awards/ at least five (5) business days prior to the scheduled date for award. It is the responsibility of the respondents to check the website to obtain the recommendation. Selection of CONSULTANT shall be at the discretion of the County and the County reserves the right to reject any or all SOQ's.

12. The following represents anticipated milestone dates for the selection. Any known conflicts with the dates such as observed holidays, scheduled vacations, trade seminars, etc. that could interfere with your participation in the selection should be made known to the Contracts Officer immediately.

Pre-Submittal Meeting:	June 7, 2016 .
Due Date Statements of Qualifications:	June 21, 2016
Notice to Respondents	July 2016
Fee Negotiations:	July / August 2016
Award:	August / September 2016
Final Contract and NTP:	September 2016

13. **COUNTY'S RESERVATION OF RIGHTS:** The County may evaluate the SOQs based on the anticipated completion of all or any portion of the Project. The County reserves the right to divide the Project into multiple parts, to reject any and all SOQs and re-solicit for new SOQs, or to reject any and all proposals and temporarily or permanently abandon the SFQ. County makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this SFQ for any project and no such representation is intended or should be construed by the issuance of this SFQ.

14. **COST OF SUBMITTAL PREPARATION:** This SFQ does not commit County to pay any costs incurred in the preparation, presentation or return of submittal including interview time.

15. **WAIVER OF CLAIMS:** Each respondent in submitting an SOQ is deemed to have waived any claims for damage by reason of the selection of another submission and/or the rejection of said respondent's submission.

16. **ELIGIBLE RESPONDENTS:** Respondents failure to be properly registered with the Arizona Corporation Commission at the time of submission of SOQ's will result in rejection as non-responsive. Only individual firms or lawfully formed business organizations may apply. (This does not preclude a respondent from using consultants.) The County will contract only with the individual firm or formal organization that submits an SOQ.

17. **JOINT VENTURES:** Respondents that submit an SOQ as a Joint Venture must include a copy of the Joint Venture Agreement at the time of submittal. Respondent's Statement of Interest and Availability to Undertake the Project must be executed by the Joint Venture Partners or by one Joint Venture Partner with a letter of authorization from the other Joint Venture Partner(s).

18. **SUSPENSION / DEBARMENT:** By submitting its SOQ in response to this SFQ, respondent is certifying that neither it nor any of its principals are debarred or suspended or under consideration for suspension or debarment by any federal, state or local government or agency. If a respondent is not able to so certify, the respondent must submit a letter that identifies the agency involved and a contact and explains why respondent is suspended or debarred or being considered for suspension or debarment.

    CONSULTANT shall not have, nor shall subcontract at any tier to any firm, individual or other entity reported to have, an active exclusion in the System for Award Management (SAM) at https://www.sam.gov/portal/public/SAM.

    The County Board of Supervisors reserves the right to reject the SOQ of any persons or corporations who have previously defaulted on any contract with Pima County or who have engaged in conduct that constitutes a cause for debarment or suspension as set forth in Pima County Code Chapter 11.28 and 11.32.

19. **PROTESTS:** The Pima County protest procedures are in Chapter 11.20 of the Pima County Procurement Code, available through http://www.pima.gov/cob/code/. The five-day period to file a protest of the award will be measured from the date the Notice of Recommendation for Award is posted on the Pima County Procurement website at http://www.pima.gov/procure/awards/ without regard to whether individual notices were issued. It is the responsibility of bidders and offerors to check the website.

20. **PIMA COUNTY ONESTOP SYSTEM:** Pima County One Stop often has professional and administrative staff, managers, and experienced construction supervisors and workers available for immediate hire. Call (520) 243-6700 or contact One Stop at http://webcms.pima.gov/cms/one.aspx?portalId=169&pageId=18397

21. **VENDOR REGISTRATION:** Pima County's internet-based vendor registration system is VSS (Vendor Self Service Portal). This system allows Vendors to create and maintain their own Vendor record online using a standard internet browser. The internet link for Pima County's Vendor Registration is located on the Procurement Department website at www.pima.gov/procure. All Consultants must register in Pima County's VSS.

22. **ARIZONA UNIFIED TRANSPORATATION REGISTRATION CERTIFICATION SYSTEM (AZ UTRACS) ONLINE VENDOR REGISTRATION:** Pursuant to 49 CFR 26.11 (c) (2), the US DOT requires Arizona Department of Transportation (ADOT) to collect demographic information on all firms who seek to work on federally-assisted contracts, including prime Consultants, subconsultants, Disadvantage Business Enterprises (DBEs), and Small Business Concern firms. ADOT's primary

method of collecting this data is through the Arizona Unified Transportation Registration Certification System (AZ UTRACS), a centralized database of companies doing business in ADOT on federal-funded projects.

All prime Consultants submitting Statement of Qualifications (SOQ) to ADOT or Pima County shall be registered as a vendor in AZ UTRACS. Prime Consultants submitting SOQs must register or update their firm's AZ UTRACS vendor registration at http://adot.dbesystem.com.
Noncompliance or failure of Prime Consultant to include their AZ UTRACS vendor registration number in the **SOQ Proposer's Solicitation List (Attachment 1)**, or maintain a current (non-expired) AZ UTRACS vendor registration number, shall result in the SOQ rejection.

23. **NON-COLLUSION:** Each respondent, by submitting an SOQ, is certifying that the respondent has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free and open competition in connection with this solicitation.

24. **PROFESSIONAL LICENSES:** All firms shall have current and valid State of Arizona Registrations with the Board of Technical Registrants. It's the Prime Consultant's responsibility to verify that all Subconsultants have proper Arizona license registrations and DBE registrations, if applicable.

End of General Information

REQUIRED SUBMITTAL INFORMATION AND EVALUATION CRITERIA

Responses to the SFQ should be bound on the left side and have front and back covers. The submittal pages shall not exceed 8.5 X 11 inches. 11 x 17 inch sheets may be used as required to depict organizational charts, prior project experience tables, or project schedule diagrams only, and shall be folded to 8 ½ x 11-inches. The copy marked "Original" shall be printed single sided only. The additional copies may be duplexed at Respondent's discretion. Additional attachments beyond those requested will count in the overall page count. Responses should be kept concise, and it is suggested that SOQs not exceed **ten (10)** pages in length, not including the front and back covers, table of contents, Respondent's Statement of Interest and Availability to Undertake the Project, indexes, joint venture agreements, SOQ Proposer's Solicitation List (Attachment 1), or resumes. Clear, concise responses that are under the suggested maximum page limit are preferred to unclear responses that use the maximum number of pages. Resumes shall each be no more than two pages and included in an Appendix at the end of the SOQ. Failure to follow the outline of required information or submission of material other than that requested may result in rejection of the proposal.

SOQs shall be submitted according to the paragraph entitled "Submittal" of the General Information section

Evaluation Criteria and Relative Weighting of Evaluation Criteria

SECTION	TOTAL POINTS
1. Respondent's Statement of Interest and Availability to Undertake the Project	N/A
2.A. Project Team Capabilities	40 Points
2.B. Specific Project Approach	50 Points
2.D. Past Performance Evaluations	10 Points
Appendix I (resumes only)	
TOTAL PER SOQ	100 POINTS

(The Remainder of this Page is Intentionally Left Blank)

1. Respondent's Statement of Interest and Availability to Undertake the Project

Company Name:	
Street Address:	
Town, State, Zip Code:	
Phone Number:	
Fax Number:	
City/State of Corporate Headquarters:	
Point-of-Contact for Firm: **Title:** *(provide signature below)* **Email:**	
A. Provide General Statement of Interest and Qualifications (100 words maximum):	
Response:	
B List Key Contact Person from your firm who will manage this County Contract.	
Response:	
C. List and describe availability and commitment of the Respondent, it's Principal(s) and assigned professionals to undertake the Project and include number of Principal(s) current and valid Professional Registration in the State of Arizona:	
Response:	
D. Provide statement regarding acknowledgement of all issued addenda, if any, and agreement or exception to the terms contained in the attached Sample Contract. If exceptions are taken, propose specific alternate language.	
Response:	

E. Statement regarding having read and agreed to the terms and conditions of the County's sample Contract provided in the SFQ (exceptions may be noted in the Appendix if desired and which will not count toward the suggested page limitation);
Response:
F. A statement that Consultant currently maintain insurance in at least the minimum amounts of coverage as required by this agreement, and that Pima County, State of Arizona and ADOT are included as additional insured's on the General Commercial Liability, and Business Automobile Liability policies. Statement should also affirm a Waiver of Subrogation in favor of Pima County, State of Arizona and ADOT on the General Commercial Liability, Business Automobile Liability, and Worker's Compensation policies. See requirements in the Sample Contract.
Response:
G. A statement certifying that CONSULTANT will, upon request, provide financial information demonstrating the firm's financial viability. The highest ranked firm selected for the negotiation phase will be asked to provide their most recent audited financial statements.
Response:
H. A statement certifying that CONSULTANT's accounting system meets Federal Acquisition Regulations.
Response:
I. A statement certifying that CONSULTANT has not and will not, either directly or indirectly, enter into any agreement, participate in any collusion, or otherwise take any action, in restraint of free and open competition in connection with this Solicitation or with respect to any resulting Contract under consideration as a result of this Solicitation.
Response:

J. A statement certifying that the CONSULTANT nor any of its principals, nor any of its subconsultants, are debarred or suspended or under consideration for suspension or debarment by any federal, state or local government or agency. If CONSULTANT is not able to so certify, the CONSULTANT must submit a letter that identifies the agency involved and a contact and explain why the CONSULTANT is suspended or debarred or being considered for suspension or debarment.
Response:
K. A statement certifying that CONSULTANT to the best of their knowledge and belief that no Federal-Aid Highway Program funds have been paid or will be paid, by or on behalf of its firm for the purpose of lobbying: influencing or attempting to influence a federal, state, or local agency or Congress in connection with the award of any Federal-Aid Highway Program funded contract, grant, loan or cooperative agreement.
Response:
L. A statement certifying that CONSULTANT complies with all federal, state and local immigration laws.
Response:
M. The Consultant affirms it shall utilize all Project Team members, subconsultants and DBE firms, if applicable, submitted in the SOQ, and shall not add other Project Team members or subconsultants, unless the Consultant has received prior written approval by the County.
Response:
N. If a DBE goal applies, the Consultant shall either meet its DBE goal commitment and any other DBE commitments or make Good Faith efforts to meet the DBE goal commitments as stated in the SOQ proposal or Cost Proposal and shall report on a timely basis its DBE utilization as detailed in the contract.
Response:

O. The Consultant affirmatively ensures that in any subcontract entered into pursuant to this advertisement, disadvantaged business enterprises shall be awarded full and fair opportunity to submit proposals in response to this invitation and shall not be discriminated against on the grounds or race, color, or national origin in consideration for an award, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation.
Response:
P. The Consultant affirmatively ensures that all members of the Project Team who are former County employees did not have or provide information that gives the Consultant a competitive advantage; and either (1) concluded their employment with the County at least 12 months before the date of the SOQ or (2) have not made any material decisions about this project while employed by the County.
Response:

Signator certifies that the information provided in this Statement of Qualifications is current and accurate to the best of the Signator's knowledge. By signing this statement of interest and availability, Signator represents that the firm and assembled team have the financial resources and staff availability to complete this project within the required schedule.	_____ **Signature** _____ **Date**

2. QUALIFICATIONS AND EXPERIENCE

In order to ensure that the constructed improvements meet the needs of the County, the public and our partners and stakeholders, it is essential that project teams possess the ability to:

- Instill a teamwork-oriented approach with collaborative decision making supported by facts and data, and facilitated to meet each partner/stakeholder's needs.
- Provide a thorough and comprehensive approach to Quality Control in order to ensure that mistakes are prevented and caught prior to Departmental reviews.
- Be proactive in risk management; develop and manage project costs and schedules reflecting known and unknown items and tasks; and incorporate discovered contingencies as project progresses.
- Develop and manage good ideas.
- Build in value engineering as a common way of developing the design.
- Understand the interrelationship between the design and environmental investigation and assessment to ensure that those major activities inform one another so that the overall design meets the criteria of best overall design, with least overall environmental impact.
- Work closely with, help educate, and inform the public and at the same time segregate wants from needs.

With those key attributes in mind, the following criteria will be used in the evaluation of firms. Address each item in the order presented. The statement of qualifications shall include brief narratives describing the firm's qualifications and experience as it relates to each criterion.

A. Project Team Capabilities (40 points)

1 Introduce the team members (at all key professional levels) and identify the roles they will perform in the initial design, development and approval of required documents, and final design for the project. Identify and describe the unique qualifications of the team members, such as civil engineering areas of specialty, environmental science, archeology, etc. Describe the level of experience members of the team have working together as a team. Make special note of expertise in team member experience on small, limited scope projects with a singular purpose and that are federally funded but locally managed. Demonstrate that key personnel assigned to the project possess current and valid State of Arizona professional registration in the discipline that corresponds to their team role. In an Appendix, submit resumes of project team's principals, project engineers, project managers, and sub-consultants stating certifications, training, and experience. Resumes shall be limited to 1-2 pages each. **(20 points)**

2 Describe in detail the services provided, approach taken, and lessons learned on transportation projects similar to the type and scope of this project. Explain in detail how the experienced gained from these specific other or past projects will be applied to the proposed project. Provide a client reference list including client firm name, address, phone number, fax number, and e-mail address and a contact person. The County may contact these references as part of the evaluation of this criteria and/or criteria D. **(20 points)**

NOTE: Projects used as examples of work similar to these projects shall be clearly noted if the work was done by individuals while employed with other firms.

B. Specific Project Approach (50 points)

1. Describe possible issues using federal funds on local, non-ADOT projects and describe how you address these issues. **(10 points)**

2. Describe how your team will design to the budget at each phase of project development. For example, how does your team account for items that are typically not identified or fully developed at the 30% level? What has been your past experience (success, failures, lessons learned, etc.) with cost estimating through planning and design phases? **(10 points)**

3. Describe your team's approach to project coordination. For example, what strategies do you use to coordinate with Pima County Department of Transportation (PCDOT), Arizona Department of Transportation (ADOT), utilities, community, sub-consultants, etc. **(15 points)**

4. Describe your team's approach to the scope of work as provided in this solicitation and discuss any opportunities or concerns with respect to the proposed project. **(15 points)**

C. SOQ Proposer's Solicitation List (No Points)

Complete the SOQ Proposer's Solicitation List (Attachment 1). List each Subconsultant that (1) your firm directly solicited to be part of this contract, (2) contacted your firm expressing interest in this contract and (3) your firm ultimately proposes to work on this contract. This list will not count toward the suggested page limitation.

D. Past Performance Evaluation - References: (10 points)

1. Provide CONSULTANT Performance Inquiry form (Attachment 2) to **THREE (3)** references that can support your firm's qualifications.

2. Request those references to email or fax that form DIRECTLY back to Pima County Procurement Department, Design and Construction Division at Anthony.schiavone@pima.gov or 520-724-4434 by the due date for the Solicitation, June 21, 2016.

3. References should be familiar with Respondent's work on these projects and be knowledgeable regarding Respondent's performance. It is Respondent's responsibility to follow-up with references to ensure they submit CONSULTANT Performance Inquiry form by the deadline. Late submittals will not be considered. References may be contacted for additional information.

E. Professionalism of written statement (a maximum of 10 points may be deducted)

All statements are expected to be prepared in a professional manner. This includes organization, formatting, readability, accuracy of spelling and grammar, and adherence to the suggested page count limitation as stated herein. Evaluation points may be deducted for less than professional work.

3. SELECTION

The total score for selection criteria A.- E. above will be used as the evaluation/ranking score for each submittal. Should this not result in identifying the top scoring firm, committee consensus may be used to determine final recommendation for award. Please note that interviews will not be required.

The County reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Respondent.

End of Required Submittal Information and Evaluation Criteria

ATTACHMENT 1 (1 Page)
SOQ PROPOSER'S SOLICITATION LIST

Solicitation No. _____
Must be submitted with SOQ's

In accordance with 49 CFR 26.11,, Pima County is required to create and maintain a *Proposer's Solicitation List* to capture accurate data regarding the universe of DBE, non-DBE, and Small Business Concerns (SBC) Consultants and Subconsultants who expressed interest or were solicited to work on this Contract. Proposers **must** complete the required information below. **Failure to complete this form in its entirety and submit it with the SOQ proposal shall result in rejection of the SOQ proposal.** ADOT Business Engagement and Compliance Office (BECO will review this form to ensure compliance with 49 CFR 26.11. Firms may be contacted for clarification or additional information.

Consultant Name	Contact Person	Address	Phone Number (XXX) XXX-XXXX	Email Address	AZ UTRACS Vendor Registration Number *	Select One D DBE N Non-DBE
* Prime Consultant's Failure to include their AZ UTRACS vendor registration numbers in this form shall result in SOQ rejection.						

List each Subconsultant that (1) your firm directly solicited to be part of this contract, (2) contacted your firm expressing interest in this contract and (3) your firm ultimately proposes to work on this contract.

Consultant Name	Contact Person	Address	Phone Number (XXX) XXX-XXXX	Email Address	AZ UTRACS Vendor Registration Number (If available)	Identifier D DBE N Non-DBE S SBC

Copy form and add additional sheets as needed.

All prime Consultants are REQUIRED to register in ADOT *Arizona Unified Transportation Registration and Certification System* (AZ UTRACS).
Failure to complete this form in its entirety and submit it with the SOQ proposal shall result in the rejection of the SOQ Proposal.

BECO FORM 3202 PS (Rev. 5-29-14)

End of Attachment '1'

ATTACHMENT 2 (5 Pages)
CONSULTANT PERFORMANCE INQUIRY

PIMA COUNTY

PIMA COUNTY PROCUREMENT DEPARTMENT
DESIGN AND CONSTRUCTION DIVISION
PHONE: 520-724-8414
FAX: 520-724-4434

CONSULTANT: _____

FOR: ***Ina Road: Shannon Road to La Cholla Blvd Sidewalk Project (4INASW)***

PIMA COUNTY, ARIZONA IS CONSIDERING THE ABOVE CONSULTANT'S APPLICATION TO PROVIDE PROFESSIONAL SERVICES TO PIMA COUNTY FOR THE ABOVE-REFERENCED PROJECT. PLEASE RANK CONSULTANT'S PAST PERFORMANCE IN THE CATEGORIES INDICATED ON PAGE 2, USING THE CATEGORIES INDICATED ON PAGE 2 AND THE DEFINITIONS ON PAGES 3 – 6.

PLEASE FAX/EMAIL THIS SHEET AND YOUR COMPLETED QUESTIONNAIRE TO THE FOLLOWING *ON OR BEFORE June 21, 2016 at or before 4:00 p.m. local Tucson Time.* Any revised Submittal Due Date published by the County will supersede above schedule.

ATTENTION: Anthony V. Schiavone
Pima County Procurement Department
Design and Construction Division
Email: Anthony.schiavone@pima.gov
Fax: 520-724-4434

FIRM PROVIDING REFERENCE:

Name of Company: _____

Person Completing Reference: _____

Position: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

PIMA COUNTY PROCUREMENT DEPARTMENT
CONSULTANT PERFORMANCE INQUIRY

1. Name and Address of Consultant or Joint Venture	**2. Total Contract Value:** **3. Contract Completion Date:**
4. Type of Service Provided:	
5. Ratings: After commenting, score in column on the right, using 1 for unsatisfactory, 2 for marginal, 3 for satisfactory, 4 for very good, and 5 for exceptional.	
Technical Performance – Comments:	
Cost Control – Comments:	
Schedule/Timeliness – Comments:	
Business Relations – Comments:	
6.TOTAL SCORE: (sum of scores from above)	

7. Key personnel of Consultant:	
Name/Title:	**Primary Responsibility:**
Name/Title:	**Primary Responsibility**
Name/Title:	**Primary Responsibility**
8. Did CONSULTANT seem committed to customer satisfaction? ___Yes ___No **Why?**	
9. Were the services brought in on-time and on-budget? ___Yes ___No **Why?**	

CONSULTANT PERFORMANCE RATING GUIDELINES

1. Name and Address of Consultant or Joint Venture being evaluated. Identify the specific division being evaluated if there is more than one.

2. Total Contract value, including amendments or change orders.

3. Contract completion date. State date the project was completed. Describe any issues if the work was completed beyond the original expected completion date.

4. Type of Contract. Describe the purpose/services of the overall contract.

5. In the comment area, provide rationale for the rating in accordance with the guidance attached to this Guideline. Indicate the performance rating in the far right column.

6. Add the scores and place in this box.

7. Identify Consultant or Joint Venture key personnel who played a major role in the performance rating. Identify their area of primary responsibility and comment on their performance during this contract phase. Do not list personnel not employed long enough to affect performance. In some cases, more than one individual may have served in a key position. List persons that had an effect on the ratings.

8. The reference person should indicate whether CONSULTANT seemed to be committed to customer satisfaction.

9. Indicate here if CONSULTANT completed the project within the time constraints and within the proposed budget. Amendments adding to the scope of work are considered within time and budget unless a time extension was needed for consultant to finish the original scope of work.

CONSULTANT PERFORMANCE RATING GUIDELINES

These are suggested guidelines for assigning ratings on a consultant's compliance with the contract performance, cost, and schedule goals as specified in the Scope of Services. The rating for each category does not need to address all of the rating topics shown in the tables below.

Technical Performance (Quality of Product/Service)

Exceptional
- Met all performance requirements / Experienced/knowledgeable staff retained on project throughout rating period
- Minor problems / Highly effective corrective actions / Work and products greatly exceeded expectations
- Excellent communication with client / Prompt follow up / Effective communications with outside agencies and public bodies

Very Good
- Met all performance requirements / Most staff remained throughout rating period.
- Minor problems / Effective corrective actions / Work and products above expectations
- Good communication with client / Good follow up / Good communications with outside agencies and public bodies

Satisfactory
- Met all performance requirements / Generally stable staff
- Minor problems / Satisfactory corrective actions / Satisfactory work and products
- Follow up and communications with client, outside agencies and public bodies met expectations

Marginal
- Some performance requirements not met / Some key staff reassigned during rating period
- Performance reflects serious problem / Ineffective corrective actions / Work and products below expectations / Poor Quality Assurance/Quality Control
- Poor follow up and/or communications with client, outside agencies and public bodies

Unsatisfactory
- Most performance requirements were not met / Most key staff reassigned during rating period
- Recovery not likely / Work and products inadequate / No QA/QC evident
- Follow up and/or communications with client, outside agencies and public bodies inadequate

Cost Control

Exceptional
- Significantly reduced costs while meeting all contract requirements
- Use of internal value engineering or other innovative management techniques
- Quickly resolved cost issues / Effective corrective actions facilitated cost reductions

Very Good
- Achieved overall cost reductions while meeting all contract requirements
- Used innovative management techniques in cost control
- Quickly resolved cost/price issues / Effective corrective actions to facilitate overall cost/price reductions

Satisfactory
- Met overall cost/price estimates while meeting all contract requirements

Marginal
- Do not meet cost/price estimates / Additional funds needed to complete some work
- Poor corrective action plans / No innovative techniques to bring overall expenditures within limits

Unsatisfactory
- Significant cost overruns
- Ineffective or no corrective action plan

CONSULTANT PERFORMANCE RATING GUIDELINES

Schedule (Timeliness)

Exceptional
- Significantly exceeded delivery schedules / Many deliverables submitted ahead of schedule
- Quickly resolved delivery issues / Highly effective corrective actions
- Communications with client and/or outside agencies anticipated and made ahead of need / Effectively communicates schedule changes
- Effectively communicates unanticipated problems and impacts on project

Very Good
- On-Time deliveries / Some deliverables submitted ahead of schedule
- Quickly resolved delivery issues / Effective corrective actions
- Some communications with client and/or outside agencies made ahead of need / Communicates schedule changes
- Communicates unanticipated problems and impacts on project

Satisfactory
- On-time deliveries / On time communications
- Minor scheduling problems / Did not effect overall schedule

Marginal
- Some late deliveries / Some communications late causing some schedule delays
- Poor corrective actions / Delays in correcting actions causing some cost impact

Unsatisfactory
- Many late deliveries / Communications inadequate and source of many delays
- Significant cost impact / Loss of capability for Client
- Ineffective or No corrective actions

Business Relations

Exceptional
- Highly professional / Responsive / Proactive / Effective use of Partnering
- Prompt and accurate invoicing/construction invoice approvals
- Early and accurate shop drawing review / Accurate submittal logs
- Minor changes made without cost impact / Limited in number / Anticipated early

Very Good
- Professional / Responsive / Use of Partnering
- Accurate invoicing/construction invoice approvals/submittal logs
- Prompt and accurate shop drawing reviews
- Few change proposals submitted on a timely schedule

Satisfactory
- Professional / Reasonably responsive
- Adequate invoicing/construction invoice approvals/submittal logs
- Timely shop drawing reviews
- Reasonable number of change proposals submitted without impact on work effort

Marginal
- Less Professionalism and Responsiveness
- Low user satisfaction / No attempts to improve relations / Some subconsultant complaints
- Unnecessary change proposals / Untimely change proposal submittals

Unsatisfactory
- Delinquent responses / Lack of cooperative spirit
- Unsatisfied user / Unable to improve relations / Significant subconsultant complaints
- Change proposals to correct poor management
- Inappropriate and/or very untimely change proposals / Significant work effort impact

End of Attachment '2'

ATTACHMENT 3
SAMPLE CONTRACT

PIMA COUNTY DEPARTMENT OF TRANSPORTATION		
PROJECT:	**INA ROAD: SHANNON ROAD TO LA CHOLLA BLVD (4INASW)**	
CONSULTANT:	**NAME** **ADDRESS** **CITY, STATE, ZIP**	
AMOUNT:	**$**	
FUNDING:	**HSIP 94.3%** **DOT 57 HURF Bonds 5.7%**	**(STAMP HERE)**

CONSULTANT SERVICES CONTRACT

THIS CONTRACT is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and <CONSULTANT Name>, hereinafter called CONSULTANT, and collectively referred to as the Parties.

W I T N E S S E T H

WHEREAS, COUNTY requires the services of a CONSULTANT registered in the State of Arizona and qualified to provide Design Engineering Services for the Ina Road: Shannon Road to La Cholla Blvd (4INASW) (Project); and

WHEREAS, CONSULTANT is willing, qualified, and properly registered within the State of Arizona to provide such services; and

WHEREAS, based on CONSULTANT'S representations in response to Pima County Solicitation No. 216637, CONSULTANT was determined to be the most qualified for this Project; and

WHEREAS, CONSULTANT has proposed to perform the work at a price acceptable to COUNTY.

NOW, THEREFORE, in consideration of the foregoing recitals and other valuable and good consideration, the parties hereto agree as follows:

ARTICLE 1 – TERM AND EXTENSION/RENEWAL/CHANGES

This Contract, as approved by the Procurement Director, commences on the date of the Procurement Director's Signature, and terminates on <termination date> unless sooner terminated or further extended pursuant to the provisions of this Contract.

COUNTY has the option to extend the Contract termination date for purposes of project completion. Any modification or extension of the Contract termination date must be by formal written amendment executed by the Parties.

ARTICLE 2 – SCOPE OF SERVICES

CONSULTANT agrees to provide Design Engineering Services for the COUNTY as described in **EXHIBIT A: SCOPE OF SERVICES** (4 pages), an attachment to this Contract, and to complete such services within the term and value of this Contract as it may be modified in accordance with **Article 5**.

Amendments and changes to the Scope must be approved by the Board of Supervisors or the Procurement Director, as required by the Pima County Procurement Code, before the work under the amendment commences.

This Contract is funded wholly or partially by Federal Funds and is subject to the additional Federal requirements in **EXHIBIT C – Uniform Terms and Conditions Federal Contract Requirements (Project Specific Contract with Goals), an attachment to this Contract and hereby made a part of this Contract**. For this Contract, the Federal Granting Agency is Federal Highway Administration and the State Agency is Arizona Department of Transportation.

ARTICLE 3 - DEFINITIONS

Other Direct Costs. Other Direct Costs are those costs that can be specifically identified within this Contract, are required for performance of the Contract, and are actually incurred. This includes Subcontract or Subconsultant costs; reproduction, copy and printing costs; courier services; and similar costs specifically necessary for this Contract and approved by COUNTY.

Cost Plus Fixed Fee. The modified Cost Plus Fixed Fee (CPFF) is a compensation method that provides compensation to CONSULTANT for actual costs of Direct Labor, Indirect, and Other Direct Costs incurred up to a "not-to-exceed" amount, plus a fixed Fee amount for the successful performance of the work. The Fee amount may initially be determined as a percentage of the estimated not-to-exceed costs. Once negotiated, the Fee amount becomes fixed and does not vary with actual costs. The Fee may only be in accordance with ***ARTICLE 5***.

Critical Path Method. The Critical Path Method (CPM) is a way of depicting the sequence of activities in a project, including interdependencies, and containing all activities needed for successful completion of the Work. Delay in the completion of activities on the critical path will extend the completion date.

Direct Labor Costs. Direct Labor Costs are the total number of allowable hours worked on the Project by each individual multiplied by the Labor Rate, identified in EXHIBIT 'B' – COMPENSATION SCHEDULE.

Fee. Fee is the amount, independent of actual costs, that CONSULTANT is allowed for assuming risk and to stimulate efficient Contract performance. Fee includes compensation to CONSULTANT for both profit and unallowable costs. Efficient cost control will allow CONSULTANT to earn a higher profit margin without adjustment of the fee amount. Conversely, inefficient cost control will result in a lower profit margin.

Float. Float is the number of days by which an activity not on the critical path in a CPM network may be delayed before it extends the completion date.

Labor Rates. Labor rates are the actual cost of salary paid to employees of CONSULTANT and identified in EXHIBIT 'B' – COMPENSATION SCHEDULE.

Not-to-Exceed Cost. The Not to Exceed Cost for a task is the sum of the agreed Direct Labor costs, indirect costs, and other reimbursable costs of the task defined in the original Project Baseline. Actual Direct Labor costs may be invoiced based on hours worked, per discipline, per task, or a percent complete by task for the period. CONSULTANT assumes all risk for providing the requested task/deliverables at or below the original estimated cost, unless an equitable adjustment to the scope and/or fee are made by amendment to the Contract. Any costs incurred by CONSULTANT beyond the not-to-exceed amount identified which are not attributable to any change in the project baseline are unallowable. Unallowable costs are compensated through CONSULTANT'S fixed Fee.

Indirect Costs. Indirect costs are at the overhead rate identified in EXHIBIT 'B' – COMPENSATION SCHEDULE.

Project Baseline. The agreed Contract scope of services, total Not-to-Exceed Cost plus Fixed-Fee (CPFF), the allocation thereof among Contract tasks, and the accompanying schedule and expectations/assumptions upon which the scope of services and schedule are based, collectively constitute the Project Baseline.

ARTICLE 4 – COMPENSATION AND PAYMENT

In consideration of the services specified in this Contract, COUNTY agrees to pay CONSULTANT on a modified Not-to-Exceed Cost plus Fixed Fee (CPFF) basis, not to exceed the total amount of this Contract. Cost is comprised of CONSULTANT'S Direct Labor Costs, Indirect Costs and Other Direct Costs. CONSULTANT'S fee will remain fixed and may be adjusted only as provided in ***ARTICLE 5*** and ***ARTICLE 6***.

CONSULTANT'S total CPFF will be allocated among the major tasks contemplated by this Contract in such manner that each major deliverable will have associated with it a not-to-exceed cost, plus a fixed fee amount, incorporated herein as EXHIBIT 'B' – COMPENSATION SCHEDULE (7 page(s)). CONSULTANT may invoice monthly for the actual costs incurred plus a pro-rata portion of one-half (1/2) of the fee amount for each task. CONSULTANT will calculate actual costs based on actual hours spent, to which the agreed overhead rate may be applied, plus Other Direct Costs. Actual Costs may then be represented as percentage of the "not to exceed" cost amount associated with that task on CONSULTANT'S invoice for billing purposes. Calculations and supporting data will be made available to COUNTY at any time, upon request. The cumulative payment for the actual costs of any task may not be more than the "not to exceed" cost amount associated with that task. Upon completion of a task, (including acceptance by COUNTY of all associated deliverables), COUNTY will pay the balance of the fee allocated to that task to CONSULTANT.

Hourly rates and all other rates included under this Contract will remain fixed throughout the term of the Contract. COUNTY may consider adjustments to rates in connection with any extensions of the contract term.

The total of all payments to CONSULTANT for services provided under this Contract will not exceed <DOLLAR AMOUNT OF CONTRACT ($)>.

Unless otherwise agreed, CONSULTANT will submit invoices monthly. All invoices will be accompanied by a narrative description of the work performed during the period covered by the invoice, time accounting information, and an allocation of all direct costs, including reimbursable costs and subconsultant charges, to the tasks identified in the Scope of Services for which those costs were incurred. The time accounting information should be sufficient to show the workers and hours worked by day for the period covered by the invoice. subconsultant charges must be supported by appropriate documentation with each separate invoice submitted.

For the period of record retention required under ***ARTICLE 25***, COUNTY reserves the right to question any payment made under this Article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment is at CONSULTANT'S own risk. Additional Services identified in APPENDIX 'B' – COMPENSATION SCHEDULE, are services within the scope of this Contract but not included within the Tasks identified as of the effective date of this Contract. If ordered, CONSULTANT will invoice additional Services at the rates incorporated into this Contract as in APPENDIX 'B-COMPENSATION SCHEDULE'. COUNTY may add additional services throughout the term of the Contract by providing notice in writing to CONSULTANT. Hourly billable rates shown in APPENDIX 'B' – COMPENSATION SCHEDULE will only be adjusted by written amendment to the Contract. The Parties may add additional required professional classifications or disciplines to APPENDIX 'A' - SCOPE OF SERVICES by written amendment at any time.

COUNTY has ten (10) calendar days from the date of invoice to notify CONSULTANT of any invoicing

discrepancies. COUNTY and CONSULTANT will meet to resolve any discrepancies before the invoice is approved or rejected for payment. Subconsultant charges must be supported by appropriate documentation upon request by COUNTY.

In accordance with A.R.S. § 28-411, COUNTY will issue payments to prime consultants within twenty-one (21) calendar days after receipt of a correct invoice. In addition, CONSULTANT will pay subconsultants within seven (7) calendar days after receiving payment from COUNTY, unless exceptions exist within the agreed-upon consultant/subconsultant agreement. CONSULTANT shall not withhold subconsultants' payment if COUNTY has paid for the full value of services rendered. Failure by the CONSULTANT to invoice COUNTY in accordance with the terms of the contract and/or pay subconsultants in accordance with A.R.S. § 28-411 shall be constituted as a material breach of contract. COUNTY reserves the right to request that CONSULTANT provides proof of payment to subconsultants if a complaint of non-payment is made to COUNTY by the subconsultant.

Incomplete or incorrect invoices will be returned to the submitter within seven (7) calendar days of receipt by COUNTY. The twenty-one (21) day calendar payment timeframe for COUNTY payment will begin anew upon receipt of the corrected invoice.

CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment shall be at CONSULTANT'S own risk.

Furthermore, the CONSULTANT and COUNTY recognize that in actual economic practice, overcharges resulting from anti-trust violations are in face borne by the ultimate user which in this case is the COUNTY. Therefore, the CONSULTANT, acting as a vendor, herby assigns to the COUNTY any and all claims for such overcharges.

ARTICLE 5 – PROJECT BASELINE AND ADJUSTMENTS

A. COUNTY and CONSULTANT have agreed upon the Project scope and the total Cost Plus Fixed Fee, and will prepare a CPM-based schedule for the performance of the work. The schedule is based on assumptions and expectations agreed upon by the Parties. Schedule estimates for the timeframes associated with outside party activities, i.e. design and other reviews, and/or permits or other clearances do not represent commitments made by either outside agencies or the permit-granting entities of County. This Project Baseline represents a firm commitment by the Parties to complete the work within the schedule and total cost identified in the Baseline, subject to schedule variations by outside parties and other factors beyond the control of the Parties.

B. Although the Baseline reflects the best estimates and expectations of the Parties at the time of agreement, there is an element of uncertainty associated with the design process that makes the actual schedule and effort required to complete the work difficult or impossible to establish in advance. Unusual citizen input, litigation, regulatory changes, significant delays by utilities or others, unforeseen decisions or commitments by policy makers, or other unanticipated events or factors beyond the control of the Parties that differ materially from the expectations of the Parties may delay or disrupt the schedule and/or require a change in the level of resources or effort. The Project Baseline may be adjusted as follows:

    1. A delay in the work attributable to a failure by COUNTY to adhere to its estimates with respect to schedule is an excusable delay for which an adjustment may be made to the schedule. In any such case affecting a task on the critical path, the schedule of the affected task or activity may be extended one (1) day for each day of COUNTY-caused delay; provided, however, that if the COUNTY-caused delay overlaps a period of delay attributable to any other cause, the extension for COUNTY-caused delay is limited to the number of non-overlapped days of COUNTY-caused delay.

    2. There is no adjustment for any delay in the work attributable to a failure by CONSULTANT to adhere to its commitments with respect to schedule. In the event of a significant delay attributable to a failure by

CONSULTANT to adhere to its schedule expectations, CONSULTANT will provide a recovery plan to COUNTY within five (5) days of COUNTY'S request. For the purposes of this paragraph, a delay arising from or attributable to a necessity for CONSULTANT to make more than two (2) submissions of plans or documents for approval is a failure by CONSULTANT to adhere to its schedule commitments. CONSULTANT's work associated with additional reviews are non-compensable.

3. A delay in the work attributable to any other cause that differs materially from the expectations of the Parties regarding that cause is an excusable delay for which the Parties will negotiate an appropriate schedule adjustment. If the period of delay attributable to any cause under this paragraph overlaps a period of delay attributable to any other cause, the adjustment under this paragraph will be made first and the delay attributed to such other cause will be limited to that occurring outside of the overlap.

4. If any of the causes of delay in Paragraphs 1 or 3 above affects a task or activity on the critical path, then the schedule adjustment may include adjustment to the completion date. If the cause does not affect a task or activity on the critical path, then the adjustment will be made from Float and the completion date will not change.

5. If any of the causes of delay in Paragraphs 1 or 3 above results in material provable additional costs to the affected task or tasks as a result of disruption of the schedule, then the Parties will negotiate an equitable adjustment to the cost for the affected task or tasks, but not to the fee.

6. The Parties will negotiate an equitable adjustment of cost and fee for any task or tasks for which there is any significant change in the level of effort arising from additional or changed work requested or directed in writing by COUNTY that materially deviates from or adds to the baseline expectations or assumptions of the Parties with respect to the work.

7. If any action, comment, cause, decision, or other event attributable to any third party results in a change in requirements that differs materially from expectations, then the Parties will negotiate in good faith an equitable adjustment in the cost and fee for the affected task or tasks.

C. CONSULTANT agrees to complete the work by the completion date in the schedule, as it may be adjusted under the preceding provisions of this Article. Costs incurred by CONSULTANT to complete the work after the completion date in the schedule are not reimbursable under this Contract.

ARTICLE 6 – REALLOCATION OF FUNDS

Given the magnitude and complexity of the scope required by this Contract, the Parties understand that the actual cost to perform specific tasks may vary from the estimates reflected in EXHIBIT 'A' - SCOPE OF SERVICES and EXHIBIT 'B' – COMPENSATION SCHEDULE.

If the actual cost to complete a task is less than the estimated amount for that task, the cost savings realized accrues to COUNTY. With the agreement of the Parties, COUNTY may reallocate the cost savings to other tasks in EXHIBIT 'A' - SCOPE OF SERVICES and EXHIBIT 'B' – COMPENSATION SCHEDULE as follows:

A. Reallocation between subtasks in EXHIBIT 'A' - SCOPE OF SERVICES under any one of the major task categories in EXHIBIT 'B' – COMPENSATION SCHEDULE may be made between the COUNTY'S department representative and CONSULTANT'S project manager by written agreement.

B. County's Procurement Director may make a reallocation among the major tasks in EXHIBIT 'B' – COMPENSATION SCHEDULE by a Contract amendment, provided that the transfer does not increase the total amount of the Contract.

C. The Board of Supervisors may make any reallocation or adjustment in EXHIBIT 'A' - SCOPE OF SERVICES

or EXHIBIT 'B' – COMPENSATION SCHEDULE that increases the total contract amount through a Contract Amendment.

Costs and Fee may not be reallocated from any task on which work has not progressed significantly and which does not include actual or demonstrable savings or reductions in required effort such that the task may be completed for less than the balance of the task remaining after the transfer.

ARTICLE 7 – INSURANCE

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY in no way warrants that the minimum limits contained herein are sufficient to protect CONSULTANT from liabilities that arise out of the performance of the work under this Contract. CONSULTANT is free to purchase additional insurance.

CONSULTANT'S insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M. Best" rating of not less than A- VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect CONSULTANT from potential insurer insolvency.

A. Minimum Scope and Limits of Insurance:

CONSULTANT will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form with limits of $1,000,000 Each Occurrence and $2,000,000 General Aggregate. Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

2. Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of $1,000,000.

3. Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - $1,000,000.
   Note: The Workers' Compensation requirement shall not apply to a CONSULTANT that is exempt under A.R.S. § 23-901, and when such CONSULTANT executes the appropriate COUNTY Sole Proprietor or Independent CONSULTANT waiver form.

4. Professional Liability (Errors and Omissions) Insurance – This insurance is required when soliciting work from licensed professionals. The policy limits shall be not less than $2,000,000 Each Claim and $2,000,000 Annual Aggregate. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

5. Valuable papers insurance shall be included in the policy for a minimum of $25,000 or in a higher amount sufficient to assure the restoration of any document, memoranda, plans, specifications, drawings, media, computer files, data or other information related to the work of the Consultant in the completion of this Contract.

   In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage shall be maintained, or an extended discovery period shall be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

Examples of Professional Services requiring E&O insurance: Accounting, Architecture, Asbestos Design, Inspection or Abatement Contractors, Licensed Health Care Practitioners, Legal Services, Engineering Services, or Surveying

B. Additional Insurance Requirements:

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

1. Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies shall each be endorsed to include COUNTY, The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant.

2. Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of COUNTY, The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant.

   a. Primary Insurance Endorsement: CONSULTANT'S policies shall stipulate that the insurance afforded CONSULTANT shall be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY, FHWA, State of Arizona, or ADOT will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

   b. Insurance provided by CONSULTANT will not limit CONSULTANT'S liability assumed under the indemnification provisions of this Contract.

C. Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Contract, CONSULTANT must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement Department, 130 West Congress, Tucson, Arizona. Fax Number (520) 724-4434.

D. Verification of Coverage:

CONSULTANT shall furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An authorized representative of the insurer will sign the certificates.

1. All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverage or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
2. All certificates required by this Contract shall be sent directly to the Department. COUNTY project or contract number and project description shall be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

E. Approval and Modifications:

COUNTY Risk Management and the State of Arizona reserves the right to review or make modifications to the insurance limits, required coverage, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

ARTICLE 8 – INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless COUNTY, FHWA, State of Arizona, and ADOT their officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of CONSULTANT, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article shall not extend to the negligence of COUNTY, FHWA, State of Arizona, and ADOT, their agents, employees or indemnitees.

All warranty and indemnification obligations under this contract shall survive expiration or termination of the contract, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with A.R.S. § 34-226 is, in all cases, not void, but will be interpreted and applied as if it were consistent with A.R.S. § 34-226.

Upon request, CONSULTANT may fully indemnify and hold harmless any private property owner granting a right of entry to CONSULTANT for the purpose of completing the project. The obligations under this Article do not extend to the negligence of COUNTY, its agents, employees or indemnitee.

ARTICLE 9 – COMPLIANCE WITH LAWS

CONSULTANT will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

ARTICLE 10 – STATUS OF CONSULTANT

The status of CONSULTANT is that of an independent contractor and CONSULTANT is not considered an employee of Pima County and is not entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONSULTANT is responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONSULTANT from COUNTY. CONSULTANT is responsible for program development and operation without supervision by COUNTY.

ARTICLE 11 – CONSULTANT'S PERFORMANCE

CONSULTANT will perform the work in accordance with the terms of the contract and with the degree of care and skill required of any similarly situated Arizona registrant. CONSULTANT will employ suitably trained and skilled professional personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CONSULTANT will obtain the approval of COUNTY.

CONSULTANT is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by CONSULTANT under this Contract. Without

additional compensation, CONSULTANT will correct or revise any errors, omission, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of CONSULTANT found during or after the course of the services performed by or for CONSULTANT under this Contract, regardless of COUNTY having knowledge of or condoning/accepting the products or the services. Correction of such deficiencies will be at no cost to COUNTY.

Pursuant to the Arizona Administrative Code (A.A.C.) R4-30-304 (Use of Seals), which is incorporated herein by reference and hereby made a part of this Contract, the Consultant shall affix a proper engineer's seal to all plans, reports and engineering data furnished under this Contract.

The CONSULTANT shall utilize all Project Team Members, subconsultants, and DEB Firms, if applicable, submitted in the SOQ, and shall not add other Project Team Members or subconsultants unless CONSULTANT has prior written approval by the COUNTY.

ARTICLE 12 – NON-WAIVER

The failure of COUNTY to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time is not an accord and satisfaction.

ARTICLE 13 – SUBCONSULTANT

CONSULTANT will be fully responsible for all acts and omissions of its SUBCONSULTANT and of persons directly or indirectly employed by SUBCONSULTANT and of persons for whose acts any of them may be liable to the same extent that CONSULTANT is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any SUBCONSULTANT, except as may be required by law.

ARTICLE 14 – NON-ASSIGNMENT

CONSULTANT will not assign its rights to this Contract in whole or in part, without prior written approval of COUNTY. COUNTY may withhold approval at its sole discretion, provided that COUNTY will not unreasonably withhold such approval.

ARTICLE 15 – NON-DISCRIMINATION

CONSULTANT agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 and all the authorities listed in Exhibit D, which are hereby incorporated into this Contract as if set forth in full herein **including flow down of all provisions and requirements to any subconsultants.** During the performance of this contract, CONSULTANT will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE 16 – AMERICANS WITH DISABILITIES ACT

CONSULTANT will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CONSULTANT is carrying out government programs or services on behalf of COUNTY, then CONSULTANT will maintain accessibility to the program to the same extent and degree that would be required of the COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so may result in the termination of this Contract.

ARTICLE 17 – CANCELLATION FOR CONFLICT OF INTEREST

This Contract is subject to the provisions of A.R.S. §38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."

ARTICLE 18 – TERMINATION OF CONTRACT FOR DEFAULT

A. Upon a failure by CONSULTANT to cure a default under this Contract within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONSULTANT. In this event, COUNTY may take over the work and complete it by contract or otherwise. In such event, CONSULTANT will be liable for any damage to the COUNTY resulting from CONSULTANT'S default, including any increased costs incurred by COUNTY in completing the work.

B. The occurrence of any of the following, without limitation to the named events, constitutes an event of default:

1. Abandonment of or failure by CONSULTANT to observe, perform or comply with any material term, covenant, agreement or condition of this Contract, or to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;

2. Persistent or repeated refusal or failure to supply adequate staff, resources or direction to perform the work on schedule or at an acceptable level of quality;

3. Refusal or failure to remedy defective or deficient work within a reasonable time;

4. Loss of professional registration or business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONSULTANT'S performance of this Contract;

5. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the contract;

6. Performance of work hereunder by personnel that are not qualified or permitted under state law or local law to perform such services;

7. Commission of any act of fraud, misrepresentation, willful misconduct, or intentional breach of any provision of this Contract; or

8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONSULTANT, or CONSULTANT becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.

C. In the event of a termination for default:

1. All finished and unfinished drawings, specifications, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by

CONSULTANT for this project become COUNTY'S property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;

2. COUNTY may withhold payments to CONSULTANT arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONSULTANT is determined; and

3. Subject to the immediately preceding subparagraph 2., COUNTY's liability to CONSULTANT will not exceed the Contract value of work satisfactorily performed prior to the date of termination for which COUNTY has not previously made payment.

D. COUNTY will not terminate the Contract for default or charge CONSULTANT with damages under this Article, if—

1. Excepting item 8. in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONSULTANT. Examples of such causes include—
   (i) Acts of God or of the public enemy,
   (ii) Acts of the COUNTY in either its sovereign or contractual capacity,
   (iii) Acts of another Contractor in the performance of a contract with the COUNTY,
   (iv) Fires,
   (v) Floods,
   (vi) Epidemics
   (vii) Quarantine restrictions,
   (viii) Strikes,
   (ix) Freight embargoes,
   (x) Unusually severe weather, or
   (xi) Delays of subcontractors at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONSULTANT and the subcontractor(s); and

2. CONSULTANT, within seven (7) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies COUNTY in writing of the cause(s) therefor. In this circumstance, COUNTY will ascertain the facts and the extent of the resulting delay. If, in the reasonable judgment of COUNTY, the findings warrant such action, COUNTY may extend the time for completing the work.

E. For the purposes of paragraph A above, "receipt of notice" includes receipt by hand by CONSULTANT's project manager, by facsimile transmission with notice of receipt, or under the Notices clause of this Contract.

F. If, after termination of the Contract for default, COUNTY determines that CONSULTANT was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if COUNTY had terminated the Contract for convenience.

G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this contract.

ARTICLE 19 – TERMINATION FOR CONVENIENCE OF COUNTY

COUNTY may terminate this Contract at any time by giving written notice to CONSULTANT of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials will, at the option of the COUNTY, become its property. If COUNTY terminates the Contract as provided herein, COUNTY will pay CONSULTANT an amount based on the time and expenses incurred by CONSULTANT prior to the termination date, however, no payment will be allowed for anticipated profit on unperformed services.

ARTICLE 20 – NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, COUNTY will have no further obligation to CONSULTANT, other than payment for services rendered prior to termination.

ARTICLE 21 – NOTICES

Any notice required or permitted to be given under this Contract must be in writing and be served by delivery or by certified mail upon the other party as follows:

COUNTY:
Name
Dept
Address
City, State, Zip
Tel:
Fax:

CONSULTANT:
Name
Firm Name
Address
City, State, Zip
Tel:
Fax:

ARTICLE 22 – OTHER DOCUMENTS

The Parties in entering into this Contract have relied upon information provided in Solicitation for Qualifications # 216637, and on representations and information in CONSULTANT'S response to said SFQ. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract. CONSULTANT will perform services in accordance with the terms of the Contract and at a level of care consistent with prevailing industry standards. In the event any provision of this Contract is inconsistent with those of any other document, the contract provisions will prevail.

ARTICLE 23 – REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in **ARTICLE 27** are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE 24 – SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE 25 – BOOKS AND RECORDS

CONSULTANT will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

CONSULTANT will retain all records relating to this Contract at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, CONSULTANT may, at its option, deliver such records to COUNTY for retention.

ARTICLE 26 – DELAYS

Neither Party hereto will be considered in default in the performance of its obligations hereunder to the extent that

the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such Party.

ARTICLE 27 – DISPUTES

In the event of a dispute between the Parties regarding any part of this Contract or the Parties' obligations or performance hereunder, either Party may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, then either Party may request escalation of the issue to a meeting between the Director of the Pima County Department administering this Contract and CONSULTANT'S counterpart official, such meeting to be held within one (1) week of the request, unless otherwise agreed. If the dispute is still not resolved after that meeting, then either Party may pursue such remedy or remedies as may be available to them under the laws of the State of Arizona.

The Parties will continue performance of their respective obligations under this Contract notwithstanding the existence of any dispute.

ARTICLE 28 – OWNERSHIP OF DOCUMENTS

All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CONSULTANT under this contract vest in and become the property of COUNTY and shall be delivered to COUNTY upon completion or termination of the services, but CONSULTANT may retain and use copies thereof. COUNTY agrees that the material will not be used for any project other than the project for which it was designed without the expressed permission of CONSULTANT.

ARTICLE 29 – PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H), in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted by CONSULTANT in any way related to this contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any information submitted related to this Contract that CONSULTANT believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to COUNTY and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a Public Record and must not include any information considered confidential.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONSULTANT of the request for release, unless CONSULTANT has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. COUNTY will notify CONSULTANT of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

County is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is County in any way financially responsible for any costs associated with securing such an order.

ARTICLE 30 – LEGAL ARIZONA WORKERS ACT COMPLIANCE

CONSULTANT hereby warrants that it will at all times during the term of this Contract comply with all federal

immigration laws applicable to CONSULTANT'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONSULTANT will further ensure that each subconsultant who performs any work for CONSULTANT under this contract likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CONSULTANT and any subconsultant in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONSULTANT'S or any subconsultant's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONSULTANT to penalties up to and including suspension or termination of this Contract. If the breach is by a subconsultant, and the subcontract is suspended or terminated as a result, CONSULTANT must take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subconsultant, subject to COUNTY approval, as soon as possible so as not to delay project completion.

CONSULTANT will advise each sub-consultant of COUNTY'S rights, and the sub-consultant's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONSULTANT hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to SUBCONSULTANT'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONSULTANT further agrees that COUNTY may inspect the SUBCONSULTANT'S books and records to insure that SUBCONSULTANT is in compliance with these requirements. Any breach of this paragraph by SUBCONSULTANT is a material breach of this Contract subjecting SUBCONSULTANT to penalties up to and including suspension or termination of this Contract."

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CONSULTANT. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONSULTANT'S approved construction or critical milestones schedule, such period of delay is excusable delay for which CONSULTANT is entitled to an extension of time, but not costs.

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ARTICLE 31 - ENTIRE AGREEMENT

This document constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby supersede and merged herein. This Contract may be modified, amended, altered or extended only by a written Amendment signed by the Parties.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Contract on the dates written below.

APPROVED:

_____
Procurement Director

_____
Date

APPROVED AS TO FORM:

_____
Deputy County Attorney

_____
Name (Please Print)

_____
Date

CONSULTANT:

_____
Signature

_____
Name and Title (Please Print)

_____
Date

End of Attachment '3'

EXHIBIT "A"
SCOPE OF SERVICES

Ina Rd. – Shannon Rd. to La Cholla Blvd. Sidewalk Project (4INASW)

Consultant Scope of Services for Preliminary and Final Design

During the term of this agreement, the CONSULTANT shall perform professional services for Pima County (COUNTY) in connection with the above referenced project. This scoping document shall be used to plan, conduct, and complete the CONSULTANT'S work on the project.

PROJECT DESCRIPTION

This scope serves as a guideline for the development of the Ina Rd. – Shannon Rd. to La Cholla Blvd. Sidewalk Project which has partial federal funding through the PAG TAP Set Aside.

This project includes design for construction of concrete sidewalk and curb access ramps to provide ADA access to both sides of Ina Road for 1 mile between Shannon Road and La Cholla Boulevard.

Project activities include: development of technical documents and reports and development of Plans Specification and Estimate for all project phases from concept to final, culminating in all clearances and a bid package for advertising. Other activities include over-the-shoulder reviews and participation in public outreach meetings. All documents required by the Arizona Department of Transportation (ADOT) guidelines for PAG TAP projects should be prepared in accordance with the PCDOT Roadway Design Manual (RDM) and other relevant County guidelines and procedures. The project should be prepared for delivery using the traditional Design, Bid, Build (DBB) Method.

WORK TASKS

1. Project Management

The CONSULTANT shall provide a dedicated Project Manager (PM) plus the design staff necessary to develop this project. The CONSULTANT PM shall be responsible for coordinating project activities with the County PM in the day-to-day management and oversight of this project. The CONSULTANT PM is responsible for working with PCDOT to keep the project focused on staying within the approved scope, on budget, and on schedule. The CONSULTANT shall work jointly with PCDOT to develop a project schedule that completes the required activities in the shortest time frame possible while meeting all procedures and requirements. The CONSULTANT shall work with the County PM and evaluate the process steps to determine how to best incorporate the process and delivery principles into this project in order to ensure total acceptance by both internal and external partners and stakeholders. The CONSULTANT PM shall also be expected to provide regular and on-going status updates to the County PM as the various efforts progress. The County PM may distribute status updates to other stakeholders to facilitate coordination, communication, and interaction with County staff, ADOT staff, and the public. The CONSULTANT shall organize, plan for, participate in, and provide follow up for all meetings. The CONSULTANT shall provide written responses to review comments and shall perform quality control on all deliverables.

2. Conceptual Phase

This phase consists of work activities related to completing project initiation, surveys and investigations, conceptual design, and community outreach.

Project Initiation
Project initiation shall consist of a project kickoff/alignment meeting, coordinated with ADOT, and designed to bring all key partners and stakeholders together to explain the overall project, establish key lines of communication, establish an issue resolution and escalation procedure, confirm ADOT documentation requirements, and identify key issues and concerns as early as possible. This effort closely resembles the Design Partnering activities that PCDOT uses on larger, more complex projects. The COUNTY shall plan, attend, and perform follow-up for the project kickoff meeting. The CONSULTANT shall attend and participate in the project kickoff meeting.

Survey and Investigation
The CONSULTANT shall be responsible for investigations that support all design and permitting activities.

The CONSULTANT shall work with Pima County Survey to obtain survey data. The COUNTY shall be responsible for performing the survey activities in accordance with the 2013 Roadway Design Manual (RDM) using NAD 83 as the horizontal datum, and NAVD 88 for the vertical datum. The level of detail shall be enough to confirm existing locations and conditions and support the subsequent detailed design activities. It is assumed that this activity shall consist of establishing local control, and establishing basic vertical and horizontal alignment/control lines for location and reference.

The CONSULTANT shall work with Pima County Real Property staff to obtain right-of-way and easement acquisitions, if needed.

Conceptual Design
The CONSULTANT shall develop the overall conceptual design taking into account the input and guidance provided by all technical team members, including but not limited to: design engineering, field engineering, traffic engineering, environmental compliance, cultural compliance, utility coordination, flood control, bicycle & pedestrian, operations and maintenance, development services, etc. The CONSULTANT shall develop the design to a level of detail adequate to ensure that during any subsequent phases, no major design items shall need revising and the cost estimate does not exceed the limits of the original budget. This means that design shall be developed to approximately 30-50% overall with many of the key features and elements being designed to a much higher level of detail so that that these items can de identified, designed, and developed along with the appropriate quantity calculations and cost estimates. This development process shall include bi-weekly meetings that serve as over-the-shoulder reviews. Some meetings may occur in the field on site as needs dictate. Upon completion of the conceptual design, a review workshop will be held with County staff to perform a detailed review of all documents. For estimation purposes, assume six over-the-shoulder meetings at two hours each, two field meetings at two hours each, and one workshop at eight hours each. Design alternatives shall be developed and analyzed and project activities documented and communicated. During this phase the CONSULTANT shall identify ALL information related to environmental and cultural permits and approvals, and utility and right of way clearances.

Community Outreach
The COUNTY shall plan, lead and develop community outreach efforts utilizing Pima County Community Relations staff. The CONSULTANT shall provide displays for the first public meeting, attend the first public meeting, respond to technical questions from the public and generally support the COUNTY'S public outreach activities.

3. **Documentation Phase**
As the Conceptual Phase transitions to the Documentation Phase, the CONSULTANT shall proceed with work activities related to completing and obtaining approvals for the initial and final Project Assessment, Technical environmental and cultural documents (Biological, etc.), and the Categorical Exclusion. Pima County shall be the lead contact with ADOT, FHWA, and other review agencies and will provide all project documents to these agencies.

Initial and Final Project Assessment
The CONSULTANT shall prepare the Initial and Final Project Assessments that comply with ADOT format and requirements. The CONSULTANT shall provide to COUNTY draft copies of the Initial and Final Project Assessments for review. After revision by the CONSULTANT and verification by the COUNTY, the CONSULTANT shall provide final copies to the COUNTY for submittal and resubmittals to ADOT and other review agencies as needed.

Technical Documents
The CONSULTANT shall prepare all agency scoping letters and environmental technical documents including but not limited to Biological reports. The CONSULTANT will perform lead-based paint and asbestos sampling if needed. The CONSULTANT shall provide a Class III Cultural Resources Survey report to federal standards that shall be performed and prepared by an Arizona State Museum permitted archaeologist. The COUNTY will prepare the Preliminary Environmental Site Assessment (PISA) - Hazardous Materials report, and Phase 1 ESA's for acquisitions, if needed. The CONSULTANT shall complete activities such as a records reviews, field surveys, exploratory excavations, and documentation, and reporting. The CONSULTANT shall provide draft copies of all technical reports to COUNTY for review. After revision by the CONSULTANT and verification by the COUNTY, the CONSULTANT shall provide final copies to the COUNTY for submittal to ADOT and other review agencies as needed.

Categorical Exclusion
The CONSULTANT shall prepare the Categorical Exclusion for the COUNTY'S submittal to ADOT and FHWA. The CONSULTANT will need to work closely with the team members from PCDEQ during development to include information, incorporate formatting, revise wording, etc. The CONSULTANT shall provide draft copies to COUNTY for review. After revision by the CONSULTANT and verification by COUNTY, the CONSULTANT shall provide final copies to the COUNTY for submittal to ADOT and other review agencies as needed. CONSULTANT shall provide all necessary information and documentation and perform all activities necessary to obtain final approval from ADOT and ultimately FHWA.

4. **Verification Phase**
As the Documentation Phase transitions to the Verification Phase, the CONSULTANT shall proceed with work activities related to obtaining ADOT Authorization to Proceed with Design, and developing the detailed Design.

ADOT Authorization to Proceed with Design
The CONSULTANT shall work closely with the COUNTY to request and obtain authorization to proceed with design. The CONSULTANT shall provide all information and documentation in a format that the COUNTY can use to respond to any ADOT or other review agency's comments.

Design
The CONSULTANT shall develop the detailed design, taking into account the input and guidance provided by all technical team members, including but not limited to: design engineering, field engineering, traffic engineering, environmental compliance, cultural compliance, flood control, bicycle & pedestrian, operations and maintenance, development services, etc. The CONSULTANT shall develop the design to a minimum of 60% level of detail, but many features and elements shall be designed to a much higher level. This development process shall include bi-weekly meetings that serve as over-the-shoulder reviews. Some meetings may occur in the field on site as needs dictate. Upon completion of the conceptual design, a review workshop will be held with COUNTY staff to perform a detailed review of all documents. For estimation

purposes, assume six over-the-shoulder meetings at two hours each, two field meetings at two hours each, and one workshop at eight hours each. Design details shall be developed and analyzed and project activities documented and communicated. The CONSULTANT shall continue to verify that ALL clearance requirements continue to be met by the design.

The CONSULTANT shall coordinate with utilities so that all utility conflicts are identified and relocated prior to construction. The CONSULTANT shall communicate and meet with utilities as needed to facilitate coordination. "Final Plans for Utilities" which are typically less than 100% final design plans, shall be provided by the CONSULTANT to the COUNTY for distribution to the utilities.

5. PS&E Phase

As the Verification Phase transitions to the PS&E Phase, the CONSULTANT shall proceed with work activities related to completing Bid Documents (Plans, Specifications and Estimate), which include Storm Water Pollution Prevention Plan binder and plans using the latest County SWPPP template. Although irrigation will not be designed, landscape activities should be included in the bid documents, such as vegetation removals and relocations, tree and shrub pruning, eradication of invasive species, soil stabilization measures, etc. The CONSULTANT shall assist in acquiring final approvals and agreements and requesting Authorization to Proceed to Advertising.

Bid Documents

The CONSULTANT shall complete detailed design and develop final contract plans, specifications, and estimate (PS&E) to the 100% level so that the project can be advertised for construction. Some special provisions will be stored specs available from Pima County; other special provisions will be unique to the project and written by the CONSULTANT. Development of final PS&E shall include regular project meetings, over-the-shoulder review meetings, and a plan review workshop. Targeted workshops on the Special Provisions and bid items shall also be required. The CONSULTANT shall be responsible for organizing, preparing for, and performing follow up revisions for all review meetings and workshops. The CONSULTANT shall continue to verify that ALL clearance requirements continue to be met by the final design.

Authorization to Proceed to Advertising

The CONSULTANT shall be responsible for working closely with the COUNTY to develop any and all required documents and letters, and obtain any and all clearances and approvals, including any required permits and/or agreements. The COUNTY shall be responsible for submitting the Authorization to Proceed, and upon approval from ADOT and FHWA, proceed with advertising the project for construction.

6. Post Design Phase

Community Outreach – Pre-Construction Open House

The COUNTY shall plan, lead and develop community outreach efforts utilizing Pima County Community Relations staff. The CONSULTANT shall provide displays for a public meeting, attend a public meeting, respond to technical questions from the public and generally support Pima County's public outreach activities.

Post Design Services

During the advertising period the CONSULTANT shall provide responses to questions assist with a review of the bids.

During construction, the CONSULTANT shall respond to questions and provide information and clarification to the COUNTY and their contractor.

End of Exhibit "A" Scope of Services

EXHIBIT "B"
COMPENSATION SCHEDULE

*****FOR INFORMATION PURPOSES ONLY, DO NOT SUBMIT YOUR RESPONSE*****

1. ***COST PLUS FIXED FEE SCHEDULE OF PAYMENTS***
(Detailed by Major Milestone, Not to Exceed Cost by Task (Direct Labor, Indirect, and Other Direct Costs), and Fixed Fee)

(DO NOT SUBMIT THIS SCHEDULE WITH THE SOQ)

2. ***COMPENSATION DETAILS***

A. Cost Allocation and Ceilings

The compensation schedule will contain the negotiated cost allocations for each individual task. The compensation schedule will be used to monitor cost expenditures and sets the fixed price that can be charged for work pursuant to the specified task.

B. Cost Adjustments

If, for valid reason(s), CONSULTANT notifies the Project Manager that the requisite work cannot be performed within the task's compensation allocation, and the Project Manager (PM) concurs, PCRWRD will consider modifying cost allocations. The total compensation may be increased only by formal amendment to this agreement.

C. Progress Payments

It is anticipated certain elements of the Project may take longer than one (1) month to complete. These elements may be at considerable cost to CONSULTANT prior to their full completion and acceptance by COUNTY. In such cases, at the sole discretion of COUNTY, COUNTY may authorize interim progress payments to CONSULTANT. The invoice from CONSULTANT will be proportionate to the actual percentage of work completed through the period covered by the invoice, as accepted by the PM.

D. The Fixed Fee for each assignment will be negotiated on a case-by-case basis. The fee will be a percent of CONSULTANT or co-consultants level of effort cost estimate agreed to by the County excluding sub-consultants and other direct cost estimates. The fee will be fixed for the scope of work detailed in the contract. The fixed fee percentage will be based upon historical departmental percentages for similar assignments, published industry guidelines and magnitude and duration of the assignment. Fixed Fee for engineering sub-consultants will generally follow the same guidelines established for the prime consultants but can also be negotiated on a case-by-case basis as appropriate.

E. COST ITEMS

1. Hourly Billing

a. Hourly Billing Rates
- Actual Payroll Rates within published industry standards
- Actual payroll rates for each person anticipated to be performing services on the assignment will be provided in advance of execution of the contract. Said listing will be updated on an annual basis during the term of the contract
- Hourly fee schedules for various position titles are not allowed

b. Annual Salaried Professionals
   - Annual Salary individuals working a normal forty (40) hour week will be divided by two thousand eighty (2,080) hours to arrive at hourly billing rates
   - Annual Salary individuals working a normal thirty-seven and one-half (37.5) hour week will be divided by one thousand nine hundred fifty (1,950) to arrive at hourly billing rates

c. Allowable Annual Increases
   - Reasonable annual salary increases within published industry standards will be allowed and approved in advance
   - Unusually high proposed increases and increases above published industry standards will be agreed to on a case by case basis.

d. Sub consultants
   Specific billing arrangements will be negotiated with specialty sub-consultants such as the following:
   - Attorneys
   - Financial Advisors
   - Surveyors
   - Subsurface Consultants
   - Specialty Consultants

e. Vacation/Holidays
   - Included in firm's audited multiplier

f. Sick Time
   - Included in firm's audited multiplier

g. Billing for non-productive idle time
   - No billing for vehicle driving time (commuting time)
   - Allow billing during air travel to Pima County for actual time worked on Pima County projects
   - Short-term assignments are negotiable

2. Multipliers

   a. Only audited multipliers following Generally Accepted Accounting Principles (GAAP) or Federal Single Audit principles are allowed

   b. Corporate, Regional or Local Audited Multipliers of firms will be negotiated for each contract

   c. Job Site multipliers will be negotiated in the event the County provides office space or job site trailers for CONSULTANT

   d. County will consider annual audited multipliers or fixed multipliers for the contract period

3. Travel Time

   a. Air Travel
      - Allow only for time spent on aircraft working on Pima County projects

   b. Land Travel
      - Not allowed from Phoenix Metro Area to Pima County (both ways)

- Not allowed to and from airports

c. Local Travel between meetings and job sites
   - Allowed

4. Expenses

a. Mileage (Between Phoenix Metro Area and Pima County)
   - Approve at the established County mileage rate
   - Included in firm's audited multiplier or as other direct cost
   - Mileage for commuting not allowed

b. Mileage – local
   - Approve at the established County mileage rate
   - Included in firm's audited multiplier or as other direct cost
   - Mileage for commuting to and from work place not allowed

c. Car Rental/Lease/Corporate Vehicles
   - Included in firm's audited multiplier or as other direct cost

d. Hotel/Meals
   - Allow only for infrequent call-in of an out of state consultant for a limited period of time
   - Establish daily limits in accordance with Federal Guidelines and negotiable for unusual circumstances
   - Allowed charges to be identified as other direct costs

e. IT/ Phone/Internal Delivery Charges/Normal Postage/ Miscellaneous/Other Administrative Charges
   - Include in firm's audited multiplier

f. Relocation, second domicile or subsistence expenses
   - Negotiable on a case by case basis

g. Reproduction Costs
   - Bill as other direct costs if not in audited multiplier

h. All other direct costs will be detailed in the contract billing

5. Unallowable Costs

a. Bonus
   - Not allowed as a direct charge or in the multiplier

b. Entertainment Costs

c. Marketing Costs
   - Only as allowed in audited multipliers

d. Non-identifiable Costs

e. Donations
   - Only as allowed in audited multipliers

f. Mark-up on sub-consultants

g. Travel time from Phoenix Metro Area to Pima County (both ways)

h. Air travel for commuting purposes

3. ***COST PLUS FIXED FEE SCHEDULE OF PAYMENTS***
(Detailed by Major Milestone, Not to Exceed Cost by Task (Direct Labor, Indirect, and Other Direct Costs), and Fixed Fee)

(DO NOT SUBMIT THIS SCHEDULE WITH THE SOQ)

4. ***COMPENSATION DETAILS***

A. Cost Allocation and Ceilings

The compensation schedule will contain the negotiated cost allocations for each individual task. The compensation schedule will be used to monitor cost expenditures and sets the fixed price that can be charged for work pursuant to the specified task.

B. Cost Adjustments

If, for valid reason(s), CONSULTANT notifies the Project Manager that the requisite work cannot be performed within the task's compensation allocation, and the Project Manager (PM) concurs, PCRWRD will consider modifying cost allocations. The total compensation may be increased only by formal amendment to this agreement.

C. Progress Payments

It is anticipated certain elements of the Project may take longer than one (1) month to complete. These elements may be at considerable cost to CONSULTANT prior to their full completion and acceptance by COUNTY. In such cases, at the sole discretion of COUNTY, COUNTY may authorize interim progress payments to CONSULTANT. The invoice from CONSULTANT will be proportionate to the actual percentage of work completed through the period covered by the invoice, as accepted by the PM.

F. The Fixed Fee for each assignment will be negotiated on a case-by-case basis. The fee will be a percent of CONSULTANT or co-consultants level of effort cost estimate agreed to by the County excluding sub-consultants and other direct cost estimates. The fee will be fixed for the scope of work detailed in the contract. The fixed fee percentage will be based upon historical departmental percentages for similar assignments, published industry guidelines and magnitude and duration of the assignment. Fixed Fee for engineering sub-consultants will generally follow the same guidelines established for the prime consultants but can also be negotiated on a case-by-case basis as appropriate.

G. COST ITEMS

6. Hourly Billing

a. Hourly Billing Rates
- Actual Payroll Rates within published industry standards
- Actual payroll rates for each person anticipated to be performing services on the assignment will be provided in advance of execution of the contract. Said listing will be updated on an annual basis during the term of the contract
- Hourly fee schedules for various position titles are not allowed

b. Annual Salaried Professionals
   - Annual Salary individuals working a normal forty (40) hour week will be divided by two thousand eighty (2,080) hours to arrive at hourly billing rates
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   - Specialty Consultants

h. Vacation/Holidays
   - Included in firm's audited multiplier

i. Sick Time
   - Included in firm's audited multiplier

j. Billing for non-productive idle time
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      - Mileage for commuting to and from work place not allowed

   c. Car Rental/Lease/Corporate Vehicles
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   b. Entertainment Costs

   c. Marketing Costs
      - Only as allowed in audited multipliers

   d. Non-identifiable Costs

   e. Donations
      - Only as allowed in audited multipliers

   f. Mark-up on Subconsultants

g. Travel time from Phoenix Metro Area to Pima County (both ways)

h. Air travel for commuting purposes

i. Interest Expense

j. Political and Charitable Contributions

k. Lobbying Costs

l. Fines & Penalties

m. Alcohol

n. Contingencies

o. Bad Debt Expense

p. Profit Distribution

q. Public Relations and Related Advertising

r. Accelerated Depreciation

s. Losses on Other Contracts

t. Organization / Reorganization

u. Patents

v. Goodwill

w. Labor Relations

x. Legal Expenses Caused by Negligence or Mistakes

y. Personal Use of Company Assets (Vehicles, e.g.)

z. Related Party Expenses that Exceed the Costs of Ownership

aa. Unreasonably High Executive Compensation

bb. Unreasonably High Indirect Labor

cc. Unreasonably High Rent

5. *INVOICING*

CONSULTANT will submit invoices monthly, at the Monthly Progress Meeting, to the Project Manager, with appropriate supporting data and documentation and in a format as prescribed by the Project Manager. (Acceptance of the invoice at this meeting is not mandatory. The Project Manager may delay approval for up to five (5) work days to review the Progress Report and invoice.). The invoice will

tabulate the costs associated with each individual task. All Task (deliverables) and Subcontracted Service costs will be appropriately documented. The Project Manager will review and check the invoice to determine if it is complete and acceptable. If the Project Manager determines the invoice to be complete and acceptable, the Project Manager will approve the invoice and forward it for processing the payment.

End of Exhibit "B" Compensation Schedule

EXHIBIT "C"
UNIFORM TERMS AND CONDITIONS
FEDERAL CONTRACT REQUIREMENTS
(PROJECT SPECIFIC CONTRACT WITH GOALS)
(ECS 1-28-16)

SECTION 4.0 UNIFORM TERMS AND CONDITIONS

4.1 EMPLOYMENT OF PERSONNEL OF PUBLIC AGENCIES

4.2 FEDERAL DEBARMENT AND SUSPENSION

4.3 SUBCONTRACTS

4.4 ANTI-LOBBYING

4.5 RECORDS RETENTION, MAINTENANCE AND AUDIT

4.6 REVIEWS AND INSPECTIONS

4.7 NONDISCRIMINATION

4.8 AFFIRMATIVE ACTION (FOR FEDERAL-AID CONTRACTS)

4.9 PARTICIPATION BY DISADVANTAGED BUSINES ENTERPRISES (DBE) -- COMMITMENT, COMPLIANCE AND REPORTING

4.10 COUNTING DBE PARTICIPATION

4.11 PARTICIPTION BY SMALL BUSINESS CONCERNS (SBCs)

4.12 ENVIRONMENTAL PROTECTION

4.13 ENERGY CONSERVATION

4.14 OWNERSHIP OF DATA

4.15 FRAUD AND FALSE STATEMENTS

4.16 FEDERAL IMMIGRATION AND NATIONALITY ACT

4.17 ERRORS AND OMISSIONS

4.18 TERMINATION FOR DEFAULT OR CONVENIENCE

4.19 PROMPT PAY (A.R.S. §28-411)

4.20 FINAL/INCURRED COST AUDIT

4.21 CONFLICT OF INTEREST

4.22 CONSULTANT/CONTRACTOR CONFLICT OF INTEREST

4.23 CONSULTANT OR SUBCONSULTANT ENDORSEMENT OF PLANS

4.24 PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

SECTION APPENDICES

A. PART 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS
A.1 PART 26 – GUIDANCE CONCERNING GOOD FAITH EFFORTS
B. TITLE VI / NONDISCRIMINATION ASSURANCES (APPENDICES A and E)
C. INSURANCE AND INDEMNIFICATION REQUIREMENTS

4.01 EMPLOYMENT OF FEDERAL HIGHWAY ADMINISTRATION AND PIMA COUNTY'S PERSONNEL

The Contractor shall not employ any person or persons in the employ of the Federal Highway Administration or of Pima County or any of its boards, agencies, or commissions, for any work required by the terms of this Contract, without prior written permission of the Federal Highway Administration or of the State.

4.2 FEDERAL DEBARMENT AND SUSPENSION

a. By signature on this Contract, the Consultant certifies its compliance, and the compliance of its 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 the Consultant or its Subconsultant is unable to certify to the statement in Section a.1. above, the Consultant or its Subconsultant shall be declared ineligible to enter into Contract or participate in the project.

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

d. The Consultant shall provide immediate written notice to the Department if, at any time, the Consultant or its Subconsultant, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

4.3 SUBCONTRACTS

The Consultant agrees to execute a written Contract with all Subconsultants for work to be completed under this Contract. The executed Contract shall include Subconsultant's Scope of Work and all the Uniform Terms and Conditions set forth in Section 4.0 of this Contract.

The Consultant shall provide electronic copies of signed subcontract agreements with all Subconsultants to ADOT Business Engagement Compliance Office (BECO) by uploading them to the LPA **System**) at https://adot.dbesystem.com. Subcontract agreements shall include all required assurances and required clauses as outlined in Section 4.0 of this Contract. Each agreement and required attachment shall be dated and signed by the Subconsultant in order for the subcontract to be considered valid.

The Consultant shall be in breach of this Contract if the Consultant materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subconsultants. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by Pima County.

4.4 ANTI-LOBBYING

The Consultant certifies, by signing and submitting the SOQ, to the best of his/her knowledge and belief, that:

a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (http://www.whitehouse.gov/omb/grants/sflllin.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 this 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 Manager to the FHWA for further review.

4.5 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 Pima County indicates that work on the Contract has been completed to the satisfaction of Pima County shall be retained for auditing, inspection and copying upon Pima County. All Documents shall be retained for auditing, inspection and copying upon Pima County's, ADOT'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 Pima County, ADOT and State Record Retention Center Records Retention/Destruction Policy and Schedules.

4.6 REVIEWS AND INSPECTIONS

Representatives from Pima County, ADOT and FHWA are authorized to review and inspect the Contract activities and facilities during the Consultant's and its Subconsultants normal business hours.

4.7 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 or such other remedy as the State deems appropriate, which may include, but are not limited to:

      i. Withholding monthly progress payments;

      ii. Assessing sanctions;

iii. Liquidated damages;

iv. Disqualifying the consultant from future bidding as non-responsible;

v. Cancellation, termination, or suspension of the Contract, in whole or in part.

The Consultant, Subconsultant, subrecipient and/or subcontractor shall ensure all subcontract agreements contain the Nondiscrimination Assurances.

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 insure and maintain a working environment free of harassment, intimidation and coercion."

e. Comply with Appendix A and E of the Arizona Department of Transportation "Title VI/Non- Discrimination Assurances" as found in Appendix B of this contract.

2. The Consultant shall include the provisions of Section 4.08 of this Contract, paragraph 1.a. through 1.e. and Appendix B of this Contract in every subcontract with Subconsultants, DBEs and Non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.

3. 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.

4.8 AFFIRMATIVE ACTION (FOR FEDERAL-AID CONTRACTS)

The 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.

4.9 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES – COMMITMENT, COMPLIANCE AND REPORTING

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 all Business Concerns (SBCs) in Pima County and ADOT contracts. ADOT encourages Consultants to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts. See section 4.49.

   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 Pima County 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 DBE GOAL OF % 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 CONRACT. 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 firm. If the Consultant wishes to dispute the Good Faith Effort determination, the Consultant may escalate the decision according to the levels outlined in Section 4.09 (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 Pima County 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 Agency 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 Agency 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 the LPA Contract Management System (**LPA System**).

c. After execution of this Contract and before the first Payment Report/Invoice is submitted to Pima County, the Consultant is required to log into the LPA 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 and monitor payments to DBE and Non-DBE Subconsultants on the project and to confirm that the scope of services and commitments made via the DBE Intended Participation Affidavits are being met.

d. All DBE and non-DBE subcontracting activities and payments shall 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.

e. At the completion of this Contract, the Consultant shall submit a *Certification of Payments to DBE Firms* affidavit certifying that all DBEs were paid in full for material and/or work promised and performed under the terms of this Contract.

5. **DBE SUBSTITUTION OR REPLACEMENT**:

a. The Consultant shall not terminate a DBE Subconsultant listed in the SOQ or in the Consultant or Subconsultant DBE Affidavit submitted with each approved Task Order without the prior written approval by Pima County and BECO.

b. If a Subconsultant is terminated, or fails to complete its work on this Contract for any reason, the Consultant shall make a good faith effort to find another DBE to perform at the least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the DBE commitment percentage established in this Contract.

c. Pima County, at its sole discretion, may terminate the Contract at any time if the Department determines that the Consultant is not satisfactorily meeting the DBE goal/commitment stated in the Contract or is not making satisfactory good faith efforts to meet the goal.

4.10 COUNTING DBE PARTICIPATION

In counting the DBE participation, Pima County shall apply the rules in 49 CFR §26.55 (**APPENDIX D**) as a supplement herein. The firm shall count only the value of the work actually performed by the DBE toward DBE goals. No credit shall be allowed for shipping, manufacturing or supply.

1. Contracts created to artificially create DBE participation are not acceptable; the arrangement shall be within normal industry practices. The DBE shall 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 shall 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 lower-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 (30%)** 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.

4.11 PARTICIPATION BY SMALL BUSINESS CONCERNS (SBC)

It is ADOT's policy to facilitate and encourage participation by Small Business Concerns (SBCs) in Pima County and ADOT contracts. ADOT 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 encourages the Consultant to utilize SBCs. SBCs are registered in AZ UTRACS.

4.12 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).

4.13 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).

4.14 OWNERSHIP OF DATA

a. The Consultant agrees to maintain (in sufficient detail as shall properly reflect all work done and results achieved in the performance of this Contract) tracings, plans, specifications and maps, basic survey notes and sketches, books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof, and other graphic or written data generated in connection with the work required in the Contract; all such information and documentation to be termed "Data" under this Contract.

b. All Data procured hereunder for the work funded by Pima County shall become the property of Pima County and delivered to Pima County upon request, and shall not be used or released by the Consultant or any other person except with the prior written approval by Pima County, provided that the Consultant shall not be required to retain any Data not requested by Pima County within five (5) years from the date of final payment to the Consultant hereunder; and provided further that until such delivery to Pima County, the Consultant agrees to permit Pima County, ADOT and FHWA representatives to examine and review at reasonable times all Data still in the possession of the Consultant.

c. All services, information, computer program elements, reports and other deliverables which may be patented or copyrighted and created under this Contract are the property of Pima County and shall not be used or released by the Consultant or any other person except with the prior written approval by Pima County.

4.15 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.

4.16 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. Pima County 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 Subconsultants' 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; Sanctions.

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

1. All federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the Contract; and

2. A.R.S. §23-214 (A) which states "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer."

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

Failure to comply with a Department audit process to randomly verify the employment records of Consultant and Subconsultants shall be deemed a material breach of the Contract, and the Consultant and Subconsultants are subject to sanctions specified in Section d below.

c. **COMPLIANCE VERIFICATION**

The State may, at its sole discretion, require evidence of compliance from the Consultant and its Subconsultant(s).

Should the Department request evidence of compliance, the Consultant shall complete and return the Consultant Employment Record Verification Form and Employee Verification Worksheet provided by the Department, no later than 21 days from receipt of the request for such information.

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

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

d. **SANCTIONS FOR NONCOMPLIANCE**

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

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

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

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

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

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

4.17 ERRORS AND OMISSIONS

If Agency determines that the Consultant had made any errors and/or omissions (E&O) in the work product delivered to the the Agency under the terms of this Contract, the Consultant shall make all necessary revisions or corrections resulting from E&O without additional cost to the Agency. Errors and Omissions is defined as a deviation from the standard of care on the part of a design engineering consultant in the performance of architectural and/or engineering services under this Contract. Agency shall actively pursue the resolution of E&Os at the lowest possible level within a reasonable timeframe in accordance with the most current version of Agency's Errors and Omissions procedure.

If the Agency determines that the Consultant had made any Errors and/or Omissions (E&Os), in the work product delivered to the Agency, under the terms of this Contract, the Consultant is immediately notified of the E&O, verbally and followed up in writing, and invited to participate in corrective actions in order to mitigate the cost. No waiver, release, or settlement of claims or potential claims against a Consultant shall be valid without written approval of the Agency's Senior Management, ADOT and FHWA, when project is funded with federal funds. When claims are resolved, Agency will notify all parties in writing.

4.18 TERMINATION FOR DEFAULT OR CONVENIENCE

a. **Termination for Default**

The Agency may terminate the Contract for default under the following circumstances:

1. Consultant's failure to perform the services as detailed herein and in any modifications to the Contract.

2. Consultant's failure to complete the Contract within the timeframe specified herein and in any modifications to the Contract.

3. Consultant's failure to comply with any of the material terms of the Contract.

If the Agency contemplates termination under the provisions of Subsections a.1., a.2., or a.3. above, the Agency shall issue a written notice of default describing the deficiency. The Consultant shall have five (5) business days to cure such deficiency. In the event the Consultant does not cure such deficiency, the Agency may terminate the Contract without further consideration by issuing a Notice of Termination for Default and may recover compensation for damages.

If, after the Notice of Termination for Default has been issued, it is determined that the Consultant was not in default or the termination for default was otherwise improper, the termination shall be deemed to have been a Termination for Convenience.

b. **Termination for Convenience**

The Agency may terminate the Contract for convenience, in whole or in part, when, for any reason, the Agency determines that such termination is in its best interest. The Contract termination is effected by notifying the Consultant, in writing, specifying that all or a portion of the Contract is terminated for convenience and the termination effective date. The Consultant shall be compensated only for work satisfactorily completed prior

to the termination of the Contract. The Consultant is not entitled to loss or profit. The amount due to the Consultant is determined by the Agency.

In the event of termination for convenience, the Agency shall be liable to the Consultant only for Consultant's work performed prior to termination and only to the extent and as provided in Pima County Section of the Contract.

c. The Agency's Right to Proceed with Work

In the event this Contract is terminated, the Agency shall have the option of completing the Contract or entering into an agreement with another party to complete services outlined in the Contract.

4.19 PROMPT PAY LAW (A.R.S. §28-411)

In accordance with the Arizona Prompt Payment Law (A.R.S. §28-411), Agency shall issue payments to Consultants within 21 calendar days after receipt of complete and accurate Payment Report (PR) unless proper objection is made under the statute. The law also requires the Consultant to pay their Subconsultants within seven (7) calendar days after receiving payment from the Agency, to the extent of each Subconsultant's contractual interest in the payment, subject to provision of the statute.

Incomplete or incorrect PR shall be returned to the Consultant within seven (7) calendar days of receipt by the Agency. The 21 calendar-day payment timeframe shall begin anew upon receipt of the complete and corrected PR.

The Agency shall not withhold retention on progress payments; however, if satisfactory progress has not been made on the project, the Department may first retain a maximum of 10% of the current and subsequent billings. If unsatisfactory progress continues for a second subsequent month, the Department may, at its sole option, refuse to make progress payment(s) of such sums, which the Agency considers necessary. This provision shall not limit the Agency's rights to terminate the Contract for default.

The Consultant shall not withhold the Subconsultant's payment if the Agency has paid the full value of services rendered. Failure by the Consultant to invoice the Agency in accordance with the terms of the Contract and/or pay its Subconsultants in accordance with the Arizona Prompt Pay Law is a material breach of the Contract and the Consultant shall be subject to disqualification in accordance with Section Pima County of Agency's Contract. The Agency reserves the right to request that Consultant provides proof of payment to its Subconsultants.

The Consultant shall be found to be in breach of the Contract if it executes subcontract agreements with Subconsultants, DBE and non-DBE, which materially change the Prompt Pay requirement. This action may result in termination of the Contract, or any other such remedy as deemed appropriate by the Agency.

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established above, will result in remedies, as the Agency deems appropriate, which may include but are not limited to:

a. Withholding monthly progress payments;

b. Assessing sanctions;

c. Liquidated damages;

d. Disqualifying the contractor from future bidding as non-responsible;

e. Cancellation, termination, or suspension of the Contract, in whole or in part.

4.20 FINAL/INCURRED COST AUDIT

a. Final/Incurred Cost Audit (ICA) of the Consultant's costs may be performed by the Agency to determine the Contract costs' allowability, allocability, and reasonableness in accordance with the terms of the Contract. (INSERT LPA)'s final audit process or link, where it can be accessed.

b. A CPA-prepared overhead schedule or a Cognizant Audit Report that meets ADOT/AASHTO/FHWA guidelines is acceptable for establishing a given year's overhead rate with the concurrence of Agency's Office of Audit & Analysis.

c. Upon receipt of an ICA draft report, the Consultant has 14 calendar days to respond to the Incurred Cost Auditor with any disagreements, questions, or request for additional supporting documentation. A time extension may be allowed, if requested in writing within the 14-day timeframe, by the appropriate parties. Disagreements related to the results of the ICA draft report shall be addressed or resolved with the Incurred Cost Auditor on or before the date of the formal Exit Conference with the Incurred Cost Auditor and the Consultant. Non-response to the draft audit report after the 14-day timeframe and after the Exit Conference will be deemed by ADOT as the Consultant's acceptance of the findings in the draft report. The ICA report shall be issued by ECS to the Consultant after ADOT Office of Audit & Analysis' review and approval. Once the audit report is issued to ECS by ADOT Office of Audit & Analysis, ADOT shall not re-examine any new issues not addressed in the draft report and/or formal Exit Conference. The Consultants disagreeing with the ICA report has the option of escalating the matter in accordance with Pima County's Pre-Award/ICA Escalation Guidelines process.

d. The Agency or the Consultant shall reimburse either party in accordance with the ICA results. Failure of the Consultant to reimburse the Agency for over-billed charges based on the results of the Pre-award Reviews or ICAs shall result in disqualification of the Consultant in accordance with Pima County's Section of the Agency's Contract.

4.21 CONFLICT OF INTEREST

a. The Consultant shall not engage the services on the Contract of any present or former Agency employee who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or Contract modifications for the Contract.

b. The Consultant agrees that no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of the Contract.

c. The Agency must disclose in writing any potential conflict of interest to the Federal award agency or pass- through entity in accordance with applicable Federal awarding agency policy.

4.22 CONSULTANT/CONTRACTOR CONFLICT OF INTEREST

a. No Contract for the construction of a project shall be awarded to the Consultant that designed the project, or its subsidiaries, affiliates, parent company or Subconsultants, except with the written approval by the Agency.

b. The applicability of the above also applies to a Management and/or General Consultant or

any of its subsidiaries, affiliates, parent company or Subconsultants that were involved in any aspect of the design phase.

c. The Consultant agrees that it shall not perform services on this project for the contractor, subcontractor or any supplier in accordance with Pima County's Conflict of Interest Policy.

d. The Consultant shall not negotiate, contract, or make any agreement with the contractor, subcontractor or any supplier with regard to any of the work under the Contract, or any services, equipment or facilities to be used on the Contract.

4.23 CONSULTANT OR SUBCONSULTANT ENDORSEMENT OF PLANS

Pursuant to the Arizona Administrative Code (A.A.C.) R4-30-304 (Use of Seals), which is incorporated herein by reference and hereby made a part of this Contract, the Consultant shall affix a proper engineer's seal to all plans, reports and engineering data furnished under this Contract.

4.24 PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

The 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.

The 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.

APPENDIX A – Part 26 Partipication by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs (*With Appendix A.1 to Part 26 - Guidance Concerning Good Faith Efforts)*

APPENDIX A

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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by- contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in Sec. 26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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

APPENDIX A.1 to Part 26

GUIDANCE CONCERNING GOOD FAITH EFFORTS

NOTE: In the following section of the Federal requirements the "you" means the agency (ADOT).

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. (1) Conducing market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract

work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

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

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

H. Effectively using the services of available minority/women community organizations;

minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)((vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

NOTE: Contacting the Business Engagement and Compliance Office for assistance in identifying certified DBEs that can perform work on a contract or task order is also considered a strong factor in making good faith efforts.

APPENDIX B – TITLE VI / NONDISCRIMINATION ASSURANCES (APPENDICES A AND E)

ADOT

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the *Federal Highway Administration,* as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration,* as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration* ,may determine to be appropriate, including, but not limited to:
   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ADOT

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et. seq).

APPENDIX C – INSURANCE AND INDEMNIFICATION REQUIREMENTS

Arizona Department of Transportation
ENGINEERING CONSULTANT SERVICES
Insurance Requirements Effective January 2015

INSURANCE

The Consultant and all Subconsultants shall provide their insurance agent/producer with a copy of the insurance requirements within this section.

The Consultant and all Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, its agents, representatives, employees or Subconsultants, and the Consultant is free to purchase additional insurance.

The Consultant may purchase an excess or umbrella policy to secure these limits. If the Consultant or Subconsultant uses any excess or umbrella insurance to meet the required limits then this excess or umbrella insurance must be "follow form" equal to or broader in coverage than the underlying insurance requirements, including but not limited to, additional insured endorsements and waiver of subrogation endorsements.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE**: The Consultant shall provide coverage with limits of liability not less than those stated below.

1. ***Commercial General Liability – Occurrence Form***

The policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

• General Aggregate	$2,000,000
• Products – Completed Operations Aggregate Products and completed operations coverage shall be maintained for three (3) years after completion of design	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Blanket Contractual Liability – Written and Oral	$1,000,000
• Damage to Rented Premises	$50,000
• Each Occurrence	$1,000,000

Contract Value	Required Insurance			
$0 to $5,000,000	$1,000,000	Each Occurrence;	$2,000,000	Aggregate
$5,000,001 to $15,000,000	$5,000,000	Each Occurrence;	$5,000,000	Aggregate
$15,000,001 to $50,000,000	$5,000,000	Each Occurrence;	$10,000,000	Aggregate
$50,000,001 & up	$25,000,000	Each Occurrence;	$25,000,000	Aggregate

a. The Consultant shall be responsible for monitoring the Contract value as it increases and the Consultant shall be responsible for purchasing additional insurance to be in compliance with this Contract should the increase in Contract value require a higher limit of insurance. The Consultant shall provide a new certificate of insurance that reflects the increase in limits as required in 4.20(E) below.

b. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant."*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.

c. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	$1,000,000

If work is performed on the active roadway then Consultant or Subconsultant shall provide a minimum of $5,000,000 Combined Single Limit coverage.

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant, involving automobiles owned, leased, hired or borrowed by the Consultant."*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.

b. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

c. Policy shall contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability

▪ Workers' Compensation	Statutory
▪ Employers' Liability	
Each Accident	$1,000,000
Disease – Each Employee	$1,000,000
Disease – Policy Limit	$1,000,000

a. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

b. This requirement shall not apply to: Separately, EACH Consultant or Subconsultant exempt under
A.R.S. §23-901, AND when such Consultant or Subconsultant executes the appropriate waiver (Sole Proprietor/Independent Consultant) form.

4. Professional Liability (Errors and Omissions Liability)

Each Claim	$1,000,00
Annual Aggregate	$2,000,00

Contract Value	Required Insurance			
$0 to $5,000,000	$1,000,000	Each Occurrence;	$2,000,000	Aggregate
$5,000,001 to $15,000,000	$5,000,000	Each Occurrence;	$5,000,000	Aggregate
$15,000,001 to $50,000,000	$5,000,000	Each Occurrence;	$10,000,000	Aggregate
$50,000,001 & up	$25,000,000	Each Occurrence;	$25,000,000	Aggregate

a. The Consultant shall be responsible for monitoring the Contract value as it increases and the Consultant shall be responsible for purchasing additional insurance to be in compliance with this Contract should the increased value of the Contract require a higher limit of insurance. The Consultant shall provide a new certificate of insurance that reflects the increase in limits as required in 4.20(E) below.

b. In the event that the professional liability insurance required by this Contract is written on a claims- made basis, the Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of the Contract.

d. Consultant is required to carry professional liability insurance regardless of the type of contract or the scope of work and it shall not be waived without prior approval from Risk Management.

5. Aircraft Liability – Per Occurrence Form (if applicable)

If the Consultant or their Subconsultant will be using aircraft to perform any portion of this Contract then aircraft liability shall be provided. The policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• Products – Completed Operations Aggregate	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Hangarkeepers Liability	$1,000,000
• Per Seat Limit	$1,000,000
• Blanket Contractual Liability – Written and Oral	$1,000,000
• Fire Legal Liability	$50,000
• Each Occurrence	$5,000,000

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its***

officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant." Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by the Contract.

b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

6. Valuable Papers Coverage

Valuable papers insurance shall be included in the policy for a minimum of $25,000 or in a higher amount sufficient to assure the restoration of any document, memoranda, plans, specifications, drawings, media, computer files, data or other information related to the work of the Consultant in the completion of this Contract.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The Consultant's policies shall stipulate that the insurance afforded the consultant shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

2. Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. NOTICE OF CANCELLATION: With the exception of the 10-day notice of cancellation for non-payment of premium, any changes material to compliance with this Contract in the insurance policies above shall require a 30-day written notice to the Agency. Such notice shall be sent directly to the Agency and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS: Consultants insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: The Consultant shall furnish the Agency with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by the Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements shall be received and approved by the Agency before work commences. Each insurance policy required by this Contract shall be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of this Contract

All certificates required by this Contract shall be sent directly to the Agency. The Pima County Contract number and project description shall be noted on the certificate of insurance. The Agency reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONSULTANTS**: The Consultant is responsible for ensuring and/or verifying that all Subconsultants have current, valid, and collectable certificates of insurance that are consistent with the minimum requirements within the consultant Contract. This is applicable to all lines of insurance within the Contract. The Agency reserves the right to request that the Consultant provide proof that its Subconsultants have the required insurance coverage at any time.

G. **EXCEPTIONS**: Requests for exceptions to insurance requirements for Subconsultant(s) shall be provided in writing to the Agency and the Agency's Risk Manager prior to the start of work and will be reviewed for any risks to the the Agency. No work by the involved Subconsultant(s) shall proceed until the Agency makes a decision regarding the request.

INDEMNIFICATION (RESPONSIBILITY FOR CLAIMS AND LIABILITIES)

To the extent permitted by law, consultant shall indemnify and hold harmless the State of Arizona, its departments, agencies, boards, commissions and their officers and employees from all liabilities, damages, losses and costs, including reasonable attorney fees and court cost, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of the consultant or other persons employed or used by the consultant in the performance of the contract or subcontract. "Other persons employed or used" means a subconsultant to a consultant or design professional in any tier, or any other person or entity who performs work or design professional services, or provides labor, services, materials or equipment in connection with the contract.

EXHIBIT "D" (8 PAGES)
PIMA COUNTY DEPARTMENT OF TRANSPORTATION
TITLE VI ASSURANCES

Please note that Appendix "A" to Exhibit "E" refers to requirements of the "Contractor". Federal Highway Administration refers to "Contractor" in general terms. The requirements referred to in this document are pertinent to the "CONSULTANT" awarded a contract resulting from this Solicitation.

Pima County Department of Transportation
Title VI Assurances

The **Pima County Department of Transportation** (herein referred to as the "Recipient"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through *Federal Highway Administration and Arizona Department of Transportation*, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation--Effectuation Of Title VI Of The Civil Rights Act Of 1964);*
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- 23 C.F.R. Part 200 Subchapter C-Civil Rights (Title VI program implementation and related statues)

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda and/or guidance, the Recipient hereby gives assurances that it will promptly take any measures necessary to ensure that:

> *"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its *Federal Aid Highway Program.*

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all *Federal Aid Highway Program* and, in adapted form, in all proposals for negotiated agreements regardless of finding source:

> *"The **Pima County Department of Transportation,** in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to a construct a facility or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

   a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
   b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transference for the longer of the following periods:

a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, *Pima County Department of Transportation* also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing *Federal Highway Administration or Arizona Department of Transportation* access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the *Federal Highway Administration or Arizona Department of Transportation.* You must keep records, reports, and submit the material for review upon request to *Federal Highway Administration, Arizona Department of Transportation,* or its designee in timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

Pima County Department of Transportation gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the *Federal Highway Administration and Arizona Department of Transportation.* This ASSURANCE is binding on Arizona, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the *Federal Aid Highway Program* the person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

Pima County Department of Transportation
(Name of Recipient)

by _____ **DATED** 10/15/14
(Signature of Authorized Official)

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Federal Highway Administration or the Arizona Department of Transportation,* as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the *Federal Highway Administration or Arizona Department of Transportation* to be pertinent to ascertain compliance with such Acts, Regulations, and Instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation,* as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration or Arizona Department of Transportation,* may determine to be appropriate, including, but not limited to:

   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

A

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that ***Pima County Department of Transportation*** will accept title to the lands and maintain the project constructed thereon in accordance with *Title 23*, United States Code the Regulations for the Administration of *Federal Aid for Highways*, and the policies and procedures prescribed by the *Arizona Department of Transportation ,Federal Highway Administration and* the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252;42 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ***Pima County Department of Transportation*** all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ***Pima County Department of Transportation*** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the ***Pima County Department of Transportation,*** its successors and assigns.

The ***Pima County Department of Transportation*** ,in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [.] [and]* (2) that the ***Pima County Department of Transportation*** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.

B

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the ***Pima County Department of Transportation*** pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, ***Pima County Department of Transportation*** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, ***Pima County Department of Transportation*** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the ***Pima County Department of Transportation*** and its assigns*.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.

C

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by ***Pima County Department of Transportation*** pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, ***Pima County Department of Transportation*** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, ***Pima County Department of Transportation*** will there upon revert to and vest in and become the absolute property of ***Pima County Department of Transportation*** and its assigns.*

Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.

D

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin): and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et seq).

E