



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 07/16/24

** = Mandatory, information must be provided*

or Procurement Director Award: ☐

***Contractor/Vendor Name/Grantor (DBA):**

Burgess & Niple, Inc. (Headquarters: Columbus, OH)

***Project Title/Description:**

Pima County Safe Streets For All: Creating A Culture Of Safety For Our Community

***Purpose:**

Award: Contract No. CT-TR-24-430. This award of contract is recommended to the highest qualified consultant in the amount of \$1,380,959.77 for a contract term from 07/16/24 to 12/31/26 for professional engineering services for the Pima County Safe Streets For All: Creating A Culture Of Safety For Our Community project. Administering Department: Transportation.

***Procurement Method:**

Solicitation for Qualifications No. SFQ-PO-2400017 was conducted in accordance with A.R.S. § 34-603 and Pima County Board of Supervisors Policy D29.1. Four (4) responsive statements of qualifications were received and evaluated by a seven (7) member committee using qualifications and experience-based selection criteria. Based upon the evaluation of the respondents' written representations of their qualifications and necessary due diligence, a short list of three (3) respondents were invited to interviews. As a result of the combined scoring of the written statements of qualifications and interviews, the highest qualified consultant is recommended for award.

Attachments: Notice of Recommendation for Award and Contract.

***Program Goals/Predicted Outcomes:**

A reduction or elimination of roadway fatalities and serious injuries.

***Public Benefit:**

Transportation safety improvements.

***Metrics Available to Measure Performance:**

The performance will be measured using the consultant evaluation process as outlined in BOS Policy D29.1 (E).

***Retroactive:**

No.

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: TR Contract Number (i.e., 15-123): 24-430
 Commencement Date: 07/16/24 Termination Date: 12/31/26 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount \$ 1,380,959.77 * ☐ Revenue Amount: \$ _____

***Funding Source(s) required:** U.S. Department of Transportation Federal Highway Administration (FHWA) Safe Streets and Roads for All (SS4A) Grant

Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☒ Yes ☐ No

If Yes, is the Contract to a vendor or subrecipient? Vendor

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Commencement Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

***Funding Source(s) required:** _____

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:** _____

***Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ _____ % _____

***Funding Source:** _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Procurement Officer: Judy Cooper Digitally signed by Judy Cooper Date: 2024.06.26 15:38:43 -07'00' Acting Division Manager: Dawn Dargan Digitally signed by Dawn Dargan Date: 2024.06.26 15:42:29 -07'00'

Department: Procurement Director: Terri Spencer Digitally signed by Terri Spencer Date: 2024.06.27 09:37:26 -07'00' Telephone: 520-724-3727

Department Director Signature: _____ Date: _____

Deputy County Administrator Signature: _____ Date: 6/29/2024

County Administrator Signature: _____ Date: 6/29/2024



NOTICE OF RECOMMENDATION FOR AWARD

Date of Issue: June 25, 2024

The Pima County Procurement Department hereby issues formal notice to respondents to Solicitation No. **SFQ-PO-2400017, Pima County Safe Streets For All: Creating a Culture of Safety For Our Community** that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors, on or after, July 16, 2024

Award is recommended to the Most Qualified Respondent.

AWARDEE NAME

Burgess & Niple, Inc.

OTHER RESPONDENTS' NAMES

Stanley Consultants, Inc.

WSP USA Inc.

NOTE: Pursuant to A.R.S. §34-603(H), only the names of the firms on the final list may be disclosed.

Issued by: /s/ Judy Cooper

Telephone Number: (520) 724-3727

This notice is in compliance with Pima County Procurement Code §11.20.010(C).

Copy to: Pima County SBE via e-mail at SBE@pima.gov

PIMA COUNTY DEPARTMENT OF TRANSPORTATION

PROJECT: PIMA COUNTY SAFE STREETS FOR ALL: CREATING A CULTURE OF SAFETY FOR OUR COMMUNITY

CONSULTANT: Burgess & Niple, Inc.
1500 North Priest Drive, Suite 102
Tempe, AZ 85288

CONTRACT NO.: CT-TR-24-430

AMOUNT: \$1,380,959.77

FUNDING: U.S. Department of Transportation Federal Highway Administration (FHWA) Safe Streets and Roads for All (SS4A) Grant

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 Burgess & Niple, Inc., 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 qualified to provide professional engineering services for the PIMA COUNTY SAFE STREETS FOR ALL: CREATING A CULTURE OF SAFETY FOR OUR COMMUNITY (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. SFQ-PO-2400017, 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 Board of Supervisors, commences on July 16, 2024, and terminates on December 31, 2026, 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 (9 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 Procurement Director, as required by the Pima County Procurement Code, before the work under the amendment commences.

This Contract is funded by federal funds and is subject to the additional Federal requirements in **EXHIBIT “C” – Uniform Terms and Conditions Federal Contract Requirements (Project Specific Contract Goals) (23 Pages)**, hereinafter referred to as “UTC”. For this Contract, the Federal Granting Agency is the Federal Highway Administration (FHWA).

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 4**.

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 (11 pages)**.

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**. CONSULTANT may invoice monthly for the actual costs incurred plus a pro-rata portion 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 **One Million Three Hundred Eighty Thousand Nine Hundred Fifty-Nine Dollars and Seventy-Seven Cents (\$1,380,959.77)**.

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 EXHIBIT "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 EXHIBIT "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 EXHIBIT "B" – COMPENSATION SCHEDULE will only be adjusted by written amendment to the Contract. The Parties may add additional required professional classifications or disciplines to EXHIBIT "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 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 borne by the ultimate user which in this case is the COUNTY. Therefore, the CONSULTANT, acting as a vendor, hereby assigns to the COUNTY any and all claims for such overcharges.

The Consultant warrants that it has not employed or retained any company or person, other than bona fide employee working solely for the Consultant to solicit or secure this Contract and that it has not paid or agreed to pay any company or person other than bona fide employee working sole for the consultant any fee commission percentage brokerage fee gift or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County shall have the right to annul this Contract without liability or in its discretion deduct from the Contract price or consideration or otherwise recover the full amount of such fee commission percentage brokerage fee gift or contingent fee.

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 or Procurement Director 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 the CONSULTANT from liabilities that arise out of the performance of the work under this Contract. CONSULTANT'S insurance will be placed with companies licensed in the State of Arizona and insureds will have an "A.M. Best" rating of not less than A- VII. 1. CONSULTANT shall have the capability and experience to perform and be responsible for negligent acts which may occur in the course and scope of the CONSULTANT's performance under the Contract.

7.1 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.

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

7.1.2 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.

7.1.3 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 will 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.

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

7.2 Additional Insurance Requirements:

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

7.2.1 Additional Insured: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY and FHWA, their departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT.

7.2.2 Subrogation: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY and FHWA, its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONSULTANT.

7.2.3 Primary Insurance: The CONSULTANT'S policies will stipulate that the insurance afforded the CONSULTANT will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance.

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

7.3 Notice of Cancellation:

Each required Insurance policy must provide, and certificates specify, that COUNTY and FHWA will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payments of a premium. Notice shall include the COUNTY project or contract number and project description.

7.4 Verification of Coverage:

CONSULTANT will furnish COUNTY with certificates of insurance as required by this Contract. An authorized representative of the insurer will sign the certificates.

7.4.1 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, prior to, commencement of work under the Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

7.4.2 All certificates required by this Contract will be sent directly to the Department. COUNTY project or contract number and project description will 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.

7.5 Approval and Modifications:

COUNTY Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the COUNTY'S failure to obtain a required insurance certificate or endorsement, the COUNTY'S failure to object to a non-complying certificate or endorsement, or the COUNTY'S receipt of any other information from the CONSULTANT, its insurance broker(s) and /or insurer(s), constitutes a waiver of any of the Insurance Requirements.

ARTICLE 8 – INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT will indemnify, defend, and hold harmless COUNTY, 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, 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 state statute will be interpreted and applied as if it were consistent with state statute.

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.

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.

No substitution or transfer of personnel, specifically identified in the approved Key Personnel list shall be made without prior written approval by COUNTY. Key Personnel are those individuals whose qualifications were highly significant and appropriate in evaluating the overall qualifications of the project team Key Personnel includes, at a minimum:

- 1) The Consultant's Project Principal/Owner responsible for the overall technical and administration aspects of this Contract;
- 2) The person in direct charge of the overall project work (Project Manager);
- 3) The person in charge of each major engineering disciplines/component of the work (e.g., bridge, pavement design, environmental, etc.);
- 4) Where applicable, the person in charge of overall scheduling of the project work.

Key Personnel may also include, but are not limited to, Project Engineer, Subconsultants' Team members and any other Key Personnel deemed vital to the completion of the project, and whose qualifications were evaluated by the Selection Panel.

The County will review the Consultant's proposed list of Key Personnel presented during contract negotiations and will approve the list of Key Personnel assigned to the Contract. The County's decision as to Key Personnel composition shall be final.

The Consultant shall not change any of the Key Personnel assigned to this Contract until it has obtained written approval from COUNTY. The Consultant shall notify COUNTY in advance of an anticipated change in the Key Personnel no later than 10 calendar days prior to the change, and shall inform the Department of the reasons the change for the change and shall certify that the overall intent of the Contract will not be impaired by the change. The advance notice requesting a Key Personnel change shall include the name(s) of the Key Personnel, date of departure, the proposed replacement and his/her credentials/resume. Qualifications of any Key Personnel proposed in a change shall be equal to or greater than the original qualifications of the person being replaced.

The County shall have the right to approve or reject the proposed successor. The County will consider any change in Key Personnel, and at its discretion may decide to terminate the Contract for convenience if, in COUNTY's sole discretion, COUNTY believes that the project team is materially different because of the change. The County shall make its decision within 30 days of the Consultant's request to change Key Personnel.

Failure to provide COUNTY with advanced notification may result in termination of the Contract, award of damages to COUNTY or loss of prequalification status.

When technical review establishes that all phases of the Contract have been completed to the satisfaction of COUNTY, COUNTY will notify the Consultant to follow the final closeout procedure specified in UTC Article 4.18.

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

- A. 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.
- B. In cases where a firm changes its name, acquires, or merges with another company, the firm under Contract with COUNTY shall notify COUNTY of name or ownership changes within **10 business days** from the date when the name or ownership change is legally signed/approved **before** the new Consultant begins any work on acquired firm's contract(s). The Consultant changing its name due to merger, acquisition, consolidation and/or transfer of ownership shall be responsible for fulfilling all obligations, liabilities, and Contract terms/conditions for all COUNTY Contracts of the acquired firm. The new/acquiring firm shall provide COUNTY with the required information to approve the name change, including but not limited to the following:
 - 1. A letter, on company letterhead, indicating the new name and reason for the change. The letter shall also include:
 - a. Effective date of the change.
 - b. List of active and pending closeout COUNTY Contracts affected by the change with contract description. Indicate which contract(s) the firm served as a Consultant or Subconsultant.

- c. A statement certifying that the new/acquiring Consultant shall assume all obligations and liabilities set forth in the respective contracts for all listed contracts between the new/acquiring Consultant and COUNTY.
 - d. A statement certifying that no changes have been made in the Key Personnel responsible for the affected contracts. If a Key Personnel change occurs resulting from the merger, acquisition, consolidation and/or transfers of ownership, the Consultant shall submit a separate request to obtain COUNTY'S approval for the Key Personnel change in accordance with Section 4.34 (KEY PERSONNEL) of this Contract.
 - 2. A copy of Arizona Corporation Commission (ACC) or home-state equivalent Corporation Commission approval documentation of the new/acquiring Consultant.
 - 3. Updated professional license(s) of the new/acquiring Consultant.
 - 4. Updated W-9 Form of the new/acquiring Consultant.
- C. If the acquiring firm is approved by COUNTY to take over the merged or acquired Contracts, the Contracts shall be modified to include the acquiring firm's name by a Contract Modification. The Consultant shall also re-qualify with COUNTY under the new entity/firm name by certification of financial systems.
- D. If a Subconsultant listed in the Contract changes its name due to merger, acquisition, consolidation and/or transfer of ownership, the **Subconsultant shall notify the Consultant** of the name or ownership changes within **10 business days** when the name or ownership change is legally signed/approved **before** the new/acquiring Subconsultant begins any work on the acquired Subconsultant contract(s). The Consultant shall request COUNTY'S written approval within 10 calendar days from the Subconsultant notification. The name-change request shall include, at a minimum, items required in B. 1 and 2 of this Article.

ARTICLE 15 – NON-DISCRIMINATION

CONSULTANT will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, **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. CONSULTANT agrees to comply with all provisions and requirements of the authorities listed in Appendix "B" of Exhibit "C", which is 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 Agreement.

ARTICLE 17 – CANCELLATION FOR CONFLICT OF INTEREST

The Standard of Conduct and Conflict of Interest laws and guidelines contained in the Arizona Revised Statutes (A.R.S.) § 38-501 through 38-511 and applicable Pima County Conflict of Interest Policies and Procedures apply to this Contract.

See Exhibit "C", UTC Article 4.20.

ARTICLE 18 – TERMINATION OF CONTRACT FOR DEFAULT

See Exhibit "C", UTC Article 4.16.

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 or Procurement Director 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:

Kathryn Skinner, Director
Department of Transportation
201 N. Stone Ave., 4th Floor
Tucson, Arizona 85701
Tel: (520) 724-6410

CONSULTANT:

Dana Biscan, PE
Burgess & Niple, Inc.
1500 North Priest Drive, Suite 102
Tempe, AZ 85288
Tel: (602) 244-8100

ARTICLE 22 – OTHER DOCUMENTS

The Parties in entering into this Contract have relied upon information provided in Solicitation for Qualifications #SFQ-PO-2400017, 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 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.

CONSULTANT agrees that if due to death or any other occurrence it becomes impossible for any principal or employee of the CONSULTANT to render the services required under this Contract, neither CONSULTANT nor the surviving principals shall be relieved of any obligation to render complete performance. However, in such event, COUNTY may terminate this Contract if it considers the death or incapacity of such principal or employee to be a loss of such magnitude as to (1) affect the CONSULTANT'S ability to satisfactorily complete the performance of this Contract, or (2) materially affect the evaluation of the CONSULTANT'S qualifications.

ARTICLE 28 – OWNERSHIP OF DOCUMENTS

See Exhibit "C", UTC Article 4.12.

ARTICLE 29 – PUBLIC INFORMATION

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

See Exhibit “C”, UTC Article 4.14.

ARTICLE 31 – ISRAEL BOYCOTT CERTIFICATION

Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

ARTICLE 32 – FORCED LABOR of ETHNIC UYGHURS

Pursuant to A.R.S. § 35-394, if Consultant engages in for-profit activity and has 10 or more employees, Consultant certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People’s Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and (3) any consultants, subconsultants or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. If Consultant becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Consultant must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.

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ARTICLE 33 - 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 superseded 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.

PIMA COUNTY:

CONSULTANT:

Chair, Board of Supervisors

Date

Signature

Edurn J. Muccillo

Edurn J. Muccillo - Chairman
Name and Title (Please Print)

7.1.2024

Date

ATTEST:

Clerk of the Board

Date

APPROVED AS TO FORM:



Deputy County Attorney

Rachelle Barr

Name (Please Print)

06/28/2024

Date

EXHIBIT “A” - SCOPE OF SERVICES (9 Pages)

BACKGROUND

Safe Streets for All (SS4A) is a funding program defined in the Infrastructure Investment and Jobs Act. The SS4A program authorizes \$1.0 billion each fiscal year from FY2022-2026. The goal of the SS4A funding is to prevent roadway fatalities and serious injury crashes in a locality, Tribe or region. The first step in qualifying for SS4A project implementation funds is to prepare a Comprehensive Safety Action Plan (SAP).

Pima County was selected as a SS4A planning grant recipient for Pima County Safe Streets for All: Creating a Culture of Safety for Our Community. The award amount will be used for the SAP development. Pima County Transportation is leading this multi-jurisdictional Action Plan effort for Pima County and all jurisdictions and Tribal governments therein.

The SAP will incorporate several components in order to achieve the SS4A grant objectives.

- Comprehensive analysis of roadway crash data, facility characteristics, driver behavior, equity areas and other quantitative approaches rooted in the methodology of the Highway Safety Manual to understand existing transportation safety challenges and opportunities, link crashes with Crash Modification Factors and identify low-cost, high-impact solutions.
- Widespread community outreach with diverse stakeholders to better understand safety challenges, particularly in low-income and disadvantaged areas, community needs, and needed improvements. Stakeholders will include first responders, emergency services/health care providers, community and neighborhood representatives, transit, bicycle and pedestrian advocates.
- Based on analysis and community engagement, develop new processes, policies and strategies, leadership commitments, and implementation plans and programs to improve safety and access. Develop and propose safety projects, technologies and prioritized locations for implementation that include human-centric designs.
- Collaborate to develop metrics for evaluation and track data on each metric as appropriate.

PURPOSE

The SAP will develop a comprehensive set of projects and strategies, that are data-driven, and incorporate stakeholder input, equity, and environmental considerations, to reduce or eliminate roadway fatalities and serious injuries in Pima County. The SAP will serve as a resource document for safety improvement implementation, including funding requests to the Federal Highway Administration for SS4A project implementation funds.

SCOPE

The consultant shall perform the necessary tasks to facilitate delivering the required Safe Streets For All (SS4A) Grant elements consisting of the eight components outlined by U.S. Department of Transportation. Consultants must provide a detailed approach with their submission as to how each component will be addressed with proposed project tasks necessary to accomplish work and deliverables outlined within this scope of work. The components are interrelated and are not necessarily listed in sequential order as to outline an ordered set of tasks. The entire project shall be scheduled for completion within 24 months from notice to proceed. A preliminary report of safety project recommendations shall be provided within 12 months from notice to proceed.

1. Planning Structure

A Project Steering Committee (PSC), Technical Advisory Committee (TAC), stakeholder list, and a project timeline will be established to oversee the SAP development, implementation, and monitoring. The PSC will be comprised of Pima County Transportation and Health Department staff, Tucson Department of Transportation and Mobility staff, and key staff from Pima County jurisdictions, Tribes, and planning agencies. The TAC will primarily consist of members of the state and local transportation planning agencies, law enforcement, citizen advisory boards, human service agencies, and community organizations that will guide the study throughout the planning process. The composition of the TAC will be determined collaboratively by the consultant and PSC.

It is expected that an internal project kick-off meeting will be held by the consultant with the PSC. The technical and logistical elements of the SAP will be reviewed. A project start-up meeting shall be held by the consultant with the TAC and members of the PSC. This will include a review and discussion of the approach to network screening, coordination with FHWA, ADOT, local government partners, the public engagement process, and additional topics relevant to project start-up.

Deliverables:

- Identification of members of the PSC and TAC and roles within the committees therein. Completion of associated report section detailing this information.
- Identification of committee objectives, meeting frequency, duration and location. Completion of associated report section detailing this information.
- Agenda topics and meeting summaries
- Style Guide
- Project Work Plan

2. Leadership Commitment and Goal Setting

The consultant shall develop a vision, goals, and objectives for the SAP with the Partners Team (Pima County, City of Tucson, Town of Marana, Town of Sahuarita, Town of Oro Valley, Pascua Yaqui Nation, Tohono O'odham Nation) in coordination with stakeholder outreach and data analysis. SAP objectives shall be developed consistent with the U.S. DOT National Road Safety Strategy, Safe Systems Approach, Vision Zero, Complete Streets, Arizona Strategic Highway Safety Plan, and other relevant documents to guide proposed safety actions. Safety action areas and associated targets shall be determined to monitor and evaluate the operation of the transportation network in coordination with the PSC.

The SAP goals must include a commitment and timeline for eliminating roadway fatalities and serious injuries achieved through one or both of the following:

- 1) A target date for achieving zero roadway fatalities and serious injuries, or
- 2) An ambitious percentage reduction of roadway fatalities and serious injuries by a specific date with an eventual goal of eliminating roadway fatalities and serious injuries.

It is anticipated support and evolution of the draft vision will be elicited throughout the stakeholder outreach and public participation process. This will include working with elected leaders to achieve an official public commitment (e.g. resolution, policy, ordinance, etc.) by a high-ranking official and/or governing body to an eventual goal of zero roadway fatalities and serious injuries. The consultant team and the PSC will work directly with elected leaders to support the goal and carry the message of Vision Zero throughout the County.

Deliverables:

- Technical memorandum and subsequent report section outlining the SAP vision, goals, and objectives.
- Technical memorandum summarizing performance measures and their evaluation.
- Graphics and appropriate materials to convey the vision, goals and objectives to elected leaders, and in support of the official public commitment (e.g. resolution, policy, ordinance, etc.)

3. Equity Considerations

Activities under this component shall run concurrently and in conjunction with all other tasks.

The SAP shall be developed using inclusive and representative processes to pursue a comprehensive approach to advancing equity for all, including individuals who belong to historically underserved, underrepresented and disadvantaged communities.

The SAP shall also focus on the disproportionate, adverse safety impacts that affect certain transportation user groups including those that walk, bike, use other non-motorized wheeled transport, or persons with disabilities and older adults.

In support of Executive Order 13985 Advancing Racial Equity and Support for Underserved Communities, the consultant shall assess safety focus areas and strategies through the lens of equity to ensure that the SAP adequately addresses the needs of underserved communities and population groups.

As part of the Safety Analysis (Section 5), the consultant shall overlay socio-demographic data (i.e. population, ethnicity, income) with technical transportation system (safety) data to identify where safety impacts affect those geographies and where transportation improvements can best address underserved, underrepresented and disadvantaged communities. This analysis shall utilize the US Climate and Economic Justice Screening Tool, US Census, and other available tools.

Deliverables:

- Specific and actionable strategies for ensuring equitable public outreach, data analysis, action item identification and prioritization and safety investment both within and across jurisdictions. This deliverable is not a standalone item and shall be incorporated into the entirety of the action plan development. Underserved communities shall be identified through data and other analyses. Completion of associated report section outlining this information.
- Geospatial identification (mapping) of underserved, underrepresented, and disadvantaged communities that includes both socioeconomic data (income, ethnicity, population) and transportation data (crashes, fatalities, and severe injuries by transportation mode). This will identify how these communities are impacted and where future improvements shall be focused.
- Equity technical memorandum

4. Engagement

The consultant shall develop an engagement plan that includes collaboration and extensive involvement from the PSC and TAC, and Pima County Health Department (PCHD) if necessary representation is not already included in PSC and TAC. Key stakeholders shall be identified including local entities, elected officials, municipal engineering and planning staff, safety interest groups, public safety agencies, school districts, hospitals, and multimodal advocacy groups. Equitable approaches of receiving public input and conducting targeted surveys shall be determined and incorporated into the plan methodology. People shall be met where they are including at bus stops, parks and other public events. Metrics of success for public engagement shall be developed such as obtaining adequate community representation in alignment with the demographics of Pima County.

Engagement efforts are intended to result in feedback that is impactful, transparent, and inclusive. Engagement and collaboration shall prioritize meaningful public involvement from persons belonging to underserved population groups (e.g., people in underserved communities, vulnerable populations, children, seniors, persons of color, persons with disabilities, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty of inequality) to ensure the impact of roadway safety to these groups is understood and addressed. Initial screening to identify how crashes relate to these population groups is recommended to better target outreach and involvement focused on safety. Engagement efforts shall employ a diverse and inclusive range of communications and outreach tools and methods. Outreach processes shall be coordinated and aligned with other governmental plans and planning processes, to the extent practical.

Consideration shall be given to holding a community kick-off event or safety summit to publicly recognize the increase in transportation crashes and fatalities and to collaborate with safety partners including transportation agencies, public transit agencies, nonprofit organizations, traffic safety educators, businesses, community groups, and interested members of the public to participate in the safety planning process.

Up to ten (10) focus group meetings shall be considered with both public and relevant safety stakeholders to discuss existing safety concerns, projects, or programs in their area as well as current safety-related data, analysis output, to elicit community engagement and feedback. Meaningful public involvement efforts shall include multiple focus groups in different languages, including ASL or other languages. Qualified interpreters shall be utilized to ensure participation in conversations by those who speak different languages to produce the best result. Consideration of use of Virtual Public Involvement (VPI) shall be given as necessary.

Compliance with applicable Federal requirements for community engagement/public involvement, including applicable Executive Orders shall be adhered to.

A local public survey shall supplement stakeholder meetings and be available to facilitate feedback and input into the SAP development. The survey will be developed with the PSC, administered by the consultant and staff, and summarized for incorporation into the SAP. The survey shall allow for broad input from the community and allow for site-specific identification by the public to enhance the analysis of crash data in identifying safety areas of concern. Information gathered through this outreach will be used to inform the planning process by serving as the basis for a user's account of local knowledge regarding roadway safety.

Deliverables:

- A detailed public engagement plan including robust engagement strategies, equitable outreach methods, in- person and online surveys, and date-specific events that meet people where they are.
- Metrics of success for public engagement, such as obtaining adequate community representation in alignment with the demographics of Pima County.
- Bilingual project website to ensure the accessibility, transparency, and documentation of the planning process for public information. The website shall convey the purpose, goals, public outreach methodology, public events and project timeline.
- Online bilingual transportation safety survey for Pima County to obtain public feedback. The survey questions shall be developed in coordination with the PSC and TAC. An online map will be developed to provide site- specific comment functionality to geographically identify transportation safety areas of concern based on user accounts. Information gathered from public input and engagement shall be used in conjunction with crash data to analyze safety needs and performance.
- Per Executive Order 13166 Limited English Proficiency (LEP), public outreach materials such as informative flyers and info cards for in-person and online distribution, associated material printing, press releases, social media posts and the like shall be accessible to LEP persons and not discriminate on the basis of national origin.
- Public engagement report summary with tables, charts and graphics as appropriate. The summary shall include the equitable public outreach methods employed, comments/feedback received, survey results, and trends and patterns noted within comment responses. The summary will be provided for overall Pima County and by separate jurisdictions. The feedback received shall be fully incorporated into the SAP development and help focus priorities for Pima County.

5. Safety Analysis

The objective is to establish a sustainable safety management system whereby the Partners Team can evaluate and track network and site-specific safety performance, identify areas needing targeted safety investigation, and identify and scope safety projects and initiatives to address safety issues.

1. Evaluate, recommend, and acquire a safety analysis platform or set of tools that can be used for safety analysis and safety project identification and scoping throughout the SAP development, and for future use by the Partners Team. The platform and set of tools shall be able to perform network screening, detailed safety analysis, incorporate geospatial data layers (e.g. equity, roadway characteristics, crash data with filterable metrics, traffic volumes, etc.), and facilitate project development and location-based analysis. The consultant shall work with the PSC to determine the appropriate platform and tools to acquire as part of the project. The consultant shall be expected to develop an appropriate training program and training

materials during the SAP development so Pima County and its partners can conduct network screening, detailed safety analysis, and safety project identification and evaluation beyond the completion of the SAP.

2. The consultant shall perform an analysis of existing conditions and historical trends for the most recent 5-years of reportable crash data, with a focus on fatalities and serious injuries throughout Pima County. This includes a location-based analysis of the crashes, the severity of the crashes, contributing factors and crash types by relevant road users (motorists, pedestrians, bicyclists, transit users, etc.). Any disproportional safety impacts within underserved communities shall be noted.

This analysis will include all roadway facilities, regardless of jurisdictional ownership. The crash analysis shall be both comprehensive for all Pima County as well as include jurisdiction and Tribe specific analysis and reports.

The safety investigations shall utilize tools such as Safety Assessments, ALISS/CLEAR crash data, crash reports, PAG Safety Explorer, and HSM software as well as others as appropriate.

3. Network Screening shall be undertaken by the consultant and shall focus on the ability to screen with and without the non-state or federally-owned roadway system. It is anticipated that the Arizona Department of Transportation (ADOT) will update the network screening process for state-owned roads as part of its Strategic Highway Safety Plan thereby limiting the analysis of state roads through the Pima County SS4A Action Plan effort. The consultant is to propose the approach to network screening including a method for building upon the crash data analysis capabilities and Safety Performance Functions (SPF) established as part of the PAG Safety Explorer. Supplemental network screening to address transportation facilities beyond those covered by the PAG SPF's shall be examined and proposed. Potential approaches include developing crash rates using traffic volume, per capita, per mile, or other metrics which can be applied uniformly. Approaches shall be developed so they can apply at the local, county, or regional level by road type or through the selection of crash metrics and user types.

It is expected that the Action Plan may use existing data sources and safety analysis platforms such as usRAP, AASHTOWare Safety Powered by Numetric, Fatality Analysis Reporting Systems (FARS), ADOT ACIS, PAG Safety Explorer, and emergency response, and others to identify systemic crash factors by location, and in consideration of equity and health and environmental platforms.

The data analysis conducted shall consider site-specific locations, particularly in underserved communities. The analysis of systemic and specific safety needs performed shall consider high-risk road features, specific safety needs of relevant road users, public health approaches, analysis of the built environment, demographics, structural issues, and methods and tools to identify which countermeasures shall be considered to reduce crashes and crash severity. The findings shall be used to guide the development of safety focus areas in the SAP and locations to be considered for safety investigations and identification of safety projects and initiatives. The consultant shall provide technical services to analyze crash issues at specific sites, in corridors, or at locations with common characteristics by undertaking detailed safety investigations as necessary.

It is expected that the network screening process will result in the establishment of a repeatable, measurable and trackable process whereby Pima County and its partners can regularly update reports and analysis to evaluate and report on the safety performance of the network.

4. The consultant shall determine safety focus areas using information gathered in the data and network screening analysis, stakeholder outreach, and other relevant input and analysis, the consultant, in consultation with the PSC and TAC. While the focus areas will ultimately relate to the ADOT SHSP focus areas, they shall ultimately focus on the safety needs and performance challenges within Pima County, its jurisdictions and Tribes therein. The consultant shall confer with PSC and appropriate project stakeholders to thoroughly review the list of focus areas. A robust selection of intersections, segments and other selected facilities shall have safety investigations completed as part of this task. The type and

location of the investigations shall be identified in consultation with the PRC and TAC. Based on the analysis performed, a geospatial identification of a high-injury network (HIN) or equivalent shall be created.

Deliverables:

- Safety analysis platform and associated tools. Training module and materials for use of platform and tools to perform ongoing network screening, detailed safety analysis, and safety project identification, development and evaluation beyond the completion of the SAP.
- Existing conditions and historical trends analysis for the most recent 5-years of reportable crash data, with a focus on fatalities and serious injuries throughout Pima County. This includes a location-based analysis of the crashes, the severity of the crashes, contributing factors and crash types by relevant road users (motorists, pedestrians, bicyclists, transit users, etc.). Any disproportional safety impacts within underserved communities shall be noted.
- Multimodal accessibility screening and infrastructure gap and deficiency analysis. This analysis shall identify the presence or absence of multimodal facilities and whether new or improved facilities are needed. The scope of the screening and analysis is to be defined by the consultant and approved by the PSC.
- Network screening reports to document the overall safety performance of Pima County, including the jurisdictions and Tribal areas therein. Network screening shall be conducted as desired by filterable metrics and data layers as determined in coordination with the PSC. Report functionality is expected to be documented and repeatable so Pima County and its partners can perform ongoing network screening, reporting, and tracking of safety performance throughout the network and track progress toward identified, measurable safety improvements beyond the completion of the SAP.
- Geospatial identification of a high-injury network or equivalent with associated data tables, including disadvantaged communities' data noted in Task 3. The method to determine the identified intersections and segments shall be documented and repeatable for future year compilation.
- The consultant shall be responsible for developing statistical, geospatial, and graphic outputs to illustrate the safety challenges and their relation in the geographic and socio-demographic context of Pima County. Appropriate graphics shall be developed to communicate the crash data and existing network performance as part of the SAP for use in presentations, on websites, and other materials. It shall be noted that location-based crash data is considered sensitive data. The consultant shall be expected to confer with the PSC and suggest mapped data and the level of detail which is useful but recognizes and addresses the sensitive nature of the content. Baseline, benchmarking, and network screening data shall be posted to the project website during plan development and on a Pima County SAP website following completion of the plan as part of a dashboard and tracking.

6. Policy and Process Changes

The consultant shall provide an assessment of current policies, plans, guidelines, and/or standards (e.g., manuals) to identify opportunities to improve how processes analyze, address, and prioritize transportation safety. The assessment shall assess and reference national level instruments but shall focus on the locally established policies, plans, guidelines, and/or standards that determine and govern how transportation safety is incorporated into the business of county, tribal, and city/town entities. Activities shall focus on how the policies, plans, guidelines, and/or standards of Pima County, its jurisdictions and Tribes therein are related to one another in the way in which they address transportation safety. This shall include assessment of jurisdiction-specific and regional documents such as general plans, transportation master plans, land-use policies, transportation policies and design guidelines, and other documents that impact transportation network design, use, and safety performance. The assessment shall also identify inconsistencies and policy conflicts affecting transportation safety that exist across Pima County jurisdictions and Tribal entities therein, as well as inconsistencies and policy conflicts within individual jurisdictions to ensure that policies, plans, guidelines, and/or standards that determine and govern how transportation safety is incorporated are consistent and supportive. The consultant in collaboration with the PSC shall identify the regional and jurisdiction-specific policies, plans, guidelines, and/or standards (e.g., manuals) for assessment.

After the assessment and in consultation with the PSC, the consultant shall provide a draft set of policy and process recommendations. The SAP shall discuss implementation steps for each of the selected policies or processes through the adoption of revised or new policies, guidelines, and/or standards, as appropriate in collaboration with the PSC. For each procedure, manual and guideline reviewed, it shall be identified whether technology could be integrated to improve analysis efficiency and consistency.

The consultant shall perform a focused assessment of speed management policies and practices with a goal of establishing speed limits and other speed management measures, practices, and policies that are consistent among all Pima County jurisdictions to the degree possible. The consultant is expected to develop recommendations for refinement, amendment, or adoption of speed management guidelines and evaluation procedures throughout Pima County. The recommendations shall include specifics related to the purpose, content, approach, procedures, and policies needed to achieve safe speeds to improve the safety performance of the transportation network. It is recommended to utilize the five-stage framework within the USDOT Safety System Approach for Speed Management to develop recommendations and action steps for Pima County jurisdictions to pursue to achieve a safe speed management approach to its transportation network that is consistent with, and in support of the safety objectives established as part of the SAP.

Deliverables:

- Qualitative assessment of regional and Pima County jurisdiction-specific policies, plans, guidelines, and/or standards (e.g., manuals). Identify opportunities to improve how processes prioritize transportation safety through modifying existing or developing new policies, plans, guidelines, and/or manuals.
- A detailed spreadsheet that provides a summary of the policies, plans, guidelines, and manuals reviewed, jurisdictional ownership, noted conflicts or concerns therein, and recommended updates. The recommended updates shall include implementation steps and how to consolidate and make all of the identified documents consistent in how transportation safety is prioritized. The spreadsheet shall also include information on guidelines and procedures that have been determined to not be in alignment with the latest federal and state guidelines. For each procedure, manual and guideline reviewed, it shall be identified whether technology could be integrated to improve analysis efficiency and consistency.
- Pima County wide speed management assessment and recommendations report. The report shall include evaluation procedures and specific criteria to use for roadway segment evaluations to determine the appropriate speed limits that can be uniformly applied throughout Pima County. At a minimum, a subset of roadways with various functional classifications, surrounding land uses and cross-sections shall be utilized to test that the methodology yields appropriate speed limit recommendations. This shall be developed as a repeatable procedure for a roadway segment evaluation to determine the appropriate speed limit for uniform application throughout Pima County.

7. Strategy and Project Selections

The consultant shall identify a comprehensive set of projects and safety strategies to address the safety focus areas, network-wide and site-specific safety issues throughout the transportation network, and multimodal accessibility and infrastructure gaps in coordination with the PSC and TAC. Key sources to identifying appropriate strategies include the AASHTO Highway Safety Manual (HSM), FHWA Crash Modification Factors (CMF) Clearinghouse, FHWA Proven Safety Countermeasures and Safe System Approach. Include an analysis of the effectiveness of mitigation strategies such as benefit/cost, crash reduction or other proven methods to determine the most effective projects and approach to safety strategy selection.

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The consultant shall develop a repeatable process for identifying safety projects and initiatives. Procedures shall be developed, documented, and utilized to identify the nature of the safety issues and appropriate infrastructure, behavioral and/or operational safety projects, and strategies. Technology implementation shall be considered as an action item strategy. The action items are expected to be foundational in addressing systemic and site-specific safety issues while supporting equity, environmental, sustainability, and economic growth. The safety projects shall be linked to jurisdictions' transportation master plans, such as Move Tucson, or Pima Prospers. Processes used for safety project and strategy identification, prioritization, and scoping shall be automated to the extent possible and documented so Pima County and its partners can repeat the process on a regular basis. To the extent practical, identify and mitigate data limitations.

It is expected that the consultant shall identify systemic and site-specific strategies that are proven to reduce fatal and serious injury crashes and that reduce crash rates within the various focus areas. FHWA's Proven Safety Countermeasures, low-cost, high-impact safety improvements at both a system and site-specific level, and complete street principles shall be considered. Various policies, education, enforcement, and emergency management services programs shall also be incorporated. The identified strategies shall identify key champions, project participants, funding sources, timeframes, and challenges, aiming to support the SAP goals and objectives.

A subset of projects and initiatives shall be identified to pursue near-term funding opportunities with a more detailed scope and design developed based on the applicable funding opportunity application requirements in coordination with the PSC and TAC. Funding opportunities include the SS4A Implementation Grant, Highway Safety Improvement Program, Governor's Office of Highway Safety, National Highway Traffic Safety Administration, Transportation Alternatives program, and other funding opportunities. The projects and initiatives shall be considered as a joint application or applications by single jurisdictions under the umbrella of the regional SS4A plan. Identified safety projects and initiatives shall be attributed to specific jurisdictions.

Once identified, the list of projects and strategies shall be prioritized by cost, Low cost (under \$1M, for example), Med (\$1-\$5M), and High (\$5M+) and timeframe for when the strategies and countermeasures are anticipated to be deployed (Short 1-5 years, Mid 5-10 years, and Long-Term 10+ years). The list shall include specific projects and strategies, or descriptions of programs and explains the prioritization criteria used. The prioritized lists shall also be organized by Pima County and by jurisdiction. The list shall contain interventions focused on infrastructure, human behavior, and/or operational safety. The list shall be ordered, within each timeframe by order of magnitude determined by the estimated project cost and challenge of implementation. Additionally, the list shall identify to which municipality or jurisdiction the project or strategy applies. The list of projects and strategies shall be mapped for public consumption.

Deliverables:

- Detailed procedure and criteria for network-wide and site-specific safety issue identification and associated project and safety strategy selection. Processes used for safety project and strategy identification, prioritization, and scoping shall be automated to the extent possible and documented so Pima County and its partners can repeat the process on a regular basis.
- A comprehensive set of projects and safety strategies to address the safety focus areas, network-wide safety issues in the transportation network, and multimodal accessibility and infrastructure gaps and deficiencies. The projects and safety strategies shall be prioritized by cost and timeframe for Pima County as a whole and separated by jurisdiction.
- A subset of projects and initiatives shall be identified to pursue near-term funding opportunities with a more detailed scope and design developed based on the applicable funding opportunity application requirements.
- Mapped identification of projects and strategies for public consumption, including statistical, geospatial and graphic outputs to illustrate the safety challenges and their relation in the geographic and socio demographic context of Pima County.

8. Progress and Transparency

The SAP is envisioned to establish both an action plan of recommended projects and initiatives as well as a sustainable process whereby Pima County partners can repeat the safety analysis, focus area identification, and project development process. Part of the sustainable process shall include establishing capabilities to conduct ongoing monitoring and reporting to assess the progress of efforts to achieve the safety goals, objectives and targets set as part of the SAP development. It is expected that the consultant shall develop, document, and deliver a process for Pima County partners to be able to routinely evaluate and report on progress at the regional and jurisdictional scales, as well as gauge mitigation effectiveness of projects and initiatives to assist in the refinement of future applications. Progress shall measure both mitigation efforts (quantity of safety improvements implemented) and reduction in the number and rate of crashes.

Deliverables:

- Documented method to measure progress following SAP development and implementation including annual public and accessible reporting on progress towards reducing roadway fatalities and serious injuries.

END OF EXHIBIT “A” – SCOPE OF SERVICES

EXHIBIT “B” - COMPENSATION SCHEDULE (11 Pages)

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)

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 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 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
- i. Interest Expense
- j. Political and Charitable
- k. Contributions Lobbying Costs Fines & Penalties Alcohol

- l. Entertainment, Gifts, Amusement
- m. Contingencies
- n. Bad Debt Expense
- o. Profit Distribution
- p. Public Relations and Related Advertising
- q. Accelerated Depreciation Losses on Other Contracts Organization/Reorganization
- r. Patents
- s. Goodwill
- t. Labor Relations
- u. Labor Expenses Caused by Negligence or Mistakes
- v. Personal Use of Company Assets (Vehicles, e.g.)
- w. Related Party Expenses that Exceed the Costs of Ownership
- x. Unreasonably High Executive Compensation
- y. Unreasonably High Indirect Labor
- z. Unreasonably High Rent
- aa. Bonus not related to employee performance

F. INVOICING

CONSULTANT will submit invoices monthly to the Project Manager with appropriate supporting data and documentation and in a format as prescribed by the Project Manager. 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.

Repeated violation of the requirement to submit timely PR in accordance with the terms of this Contract shall result in sanctions including and up to liquidated damages, Contract termination and removal of the offending party or disqualification of the offending Consultant or Subconsultant from participation in future COUNTY projects. COUNTY shall not be obligated to pay invoices that are submitted more than 60 calendar days after the end of the State fiscal year in which costs were incurred.

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BURGESS & NIPLE

1500 North Priest Drive | Suite 102 | Tempe, AZ 85288 | 602.244.8100

Judy Cooper
Procurement Officer
Pima County Procurement
850 West Congress, 5th Floor
Tucson, AZ 85701
Phone: 520.724.3727

Re: Scope of Services and Fee Proposal for Pima County Safe Streets For All: Creating a Culture of Safety For Our Community

Dear Ms. Cooper,

June 20, 2024

BURGESS & NIPLE (B&N) is pleased to submit the attached Scope of Work and Fee Proposal derivation for professional services to develop Pima County Safe Streets For All: Creating a Culture of Safety For Our Community. Our proposed Scope of Work and Fee Proposal derivation identifies the expected tasks, deliverables, and estimated labor hours.

We sincerely appreciate this opportunity and look forward to demonstrating our capabilities on an exciting and successful project.

Respectfully Submitted,



Jason Pagnard
Vice President
p. 602.244.8142 x 5332
e. Jason.Pagnard@burgessniple.com



Dana Biscan, PE
Project Manager
p. 480.650.5151
e. Dana.Biscan@burgessniple.com

COST AND HOURS FOR TASK ORDER												
CONSULTANT NAME:		Burgess & Niple, Inc.										
PROJECT NAME:		Pima County Safety Action Plan										
PRIME CONSULTANT		HOURS BY PERSONNEL AND TASK DESCRIPTION										
Original Costs and Rates	Raw Direct	Task 1	Task 2	Task 3	Task 4	Task 5	Task 5.1	Task 6	Task 7	Task 8	Total Hours	Total Cost
	Direct Hourly Rate	Planning Structure	Leadership Commitment and Goal Setting	Equity Considerations	Engagement	Safety Analysis	Additional Services	Policy and Process Changes	Strategy and Project Selections	Progress and Transparency		
Principal	\$97.50	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00	\$195.00
Sr. Project Manager	\$77.00	55.00	120.00	50.00	60.00	120.00	20.00	80.00	40.00	32.00	577.00	\$44,429.00
Sr. Project Engineer	\$81.00	16.00	100.00	4.00	60.00	60.00	0.00	60.00	40.00	12.00	352.00	\$28,512.00
Project Engineer	\$67.38	28.00	80.00	40.00	0.00	200.00	0.00	160.00	275.00	20.00	803.00	\$54,106.14
Information Technology	\$76.13	0.00	0.00	0.00	0.00	0.00	32.00	0.00	0.00	4.00	36.00	\$2,740.68
Planner	\$40.00	55.00	120.00	241.00	135.00	470.00	0.00	300.00	80.00	260.00	1661.00	\$66,440.00
GIS	\$49.88	30.00	120.00	177.00	40.00	300.00	108.00	140.00	80.00	150.00	1145.00	\$57,112.60
Project Admin	\$44.50	4.00	4.00	4.00	12.00	8.00	0.00	4.00	4.00	4.00	44.00	\$1,958.00
Total Task Hours		190.00	544.00	516.00	307.00	1,158.00	160.00	744.00	519.00	482.00	4,620.00	255,493.42
Total Task Cost		\$11,487.04	\$33,694.00	\$25,515.96	\$17,409.20	\$61,696.00	\$9,363.20	\$40,962.00	\$32,217.90	\$23,148.12		\$255,493.42
Overhead and/or Fringe Audited Rate	1.88	\$21,595.64	\$63,344.72	\$47,970.00	\$32,729.30	\$115,988.48	\$17,602.81	\$77,008.56	\$60,569.65	\$43,518.47		\$480,327.63
Total Labor with Overhead		\$33,082.68	\$97,038.72	\$73,485.96	\$50,138.50	\$177,684.48	\$26,966.01	\$117,970.56	\$92,787.55	\$66,666.59		\$735,821.05
Fee	0.08	\$2,646.61	\$7,763.10	\$5,878.88	\$4,011.08	\$14,214.76	\$2,157.28	\$9,437.64	\$7,423.00	\$5,333.33		\$58,865.68
Total Labor Budget With Overhead & Fees		\$ 35,729.29	\$ 104,801.82	\$ 79,364.84	\$ 54,149.58	\$ 191,899.24	\$ 29,123.29	\$ 127,408.20	\$ 100,210.55	\$ 71,999.92		\$794,686.73

TOTAL OF ALL COSTS BY TASK NUMBER												
TOTAL COST SUMMARY		Task 1	Task 2	Task 3	Task 4	Task 5	Task 5.1	Task 6	Task 7	Task 8	Total Hours	Total Cost
		Planning Structure	Leadership Commitment	Equity Considerations	Engagement	Safety Analysis	Additional Services	Policy and Process	Strategy and Project	Progress and Transparency		
Total Labor With Overhead and Fee		\$35,729.29	\$104,801.82	\$79,364.84	\$54,149.58	\$191,899.24	\$29,123.29	\$127,408.20	\$100,210.55	\$71,999.92		\$794,686.73
Prime Reimbursable Expenses												
Software		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$200,000.00	\$0.00	\$0.00	\$0.00		\$200,000.00
Total Subconsultant Costs		\$4,257.28	\$13,706.24	\$395.64	\$140,833.84	\$32,801.20	\$0.00	\$100,391.68	\$92,304.60	\$1,582.56		\$386,273.04
Adjustments		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00
GRAND TOTAL		\$ 39,986.57	\$ 118,508.06	\$ 79,760.48	\$ 194,983.42	\$ 224,700.44	\$229,123.29	\$ 227,799.88	\$ 192,515.15	\$ 73,582.48		\$1,380,959.77

SUBCONSULTANT - NO. 1												
HOURS BY PERSONNEL AND REIMBURSABLES												
Greenlight Traffic Engineering		Task 1	Task 2	Task 3	Task 4	Task 5	Task 5.1	Task 6	Task 7	Task 8	Total Hours	Total Cost
		Planning Structure	Leadership Commitment and Goal Setting	Equity Considerations	Engagement	Safety Analysis	Additional Services	Policy and Process Changes	Strategy and Project Selections	Progress and Transparency		
Labor Class	Loaded Hourly Rate	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Total Hours	Total Cost
Project Manager - Sr.	\$197.82	4.00	24.00	2.00	12.00	20.00	0.00	60.00	20.00	8.00	150.00	\$29,673.00
Project Engineer - Sr.	\$123.90	0.00	0.00	0.00	0.00	60.00	0.00	40.00	60.00	0.00	160.00	\$19,824.00
Project Engineer	\$111.82	0.00	8.00	0.00	0.00	60.00	0.00	344.00	330.00	0.00	742.00	\$82,970.44
Engineer	\$102.64	0.00	0.00	0.00	0.00	85.00	0.00	360.00	330.00	0.00	775.00	\$79,546.00
Designer	\$99.62	0.00	0.00	0.00	0.00	60.00	0.00	80.00	100.00	0.00	240.00	\$23,908.80
Technician	\$45.10	0.00	0.00	0.00	0.00	0.00	0.00	4.00	4.00	0.00	8.00	\$360.80
CADD Technician	\$83.45	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.00
Total Task Hours		4.00	32.00	2.00	12.00	285.00	-	888.00	844.00	8.00	2,075.00	\$236,283.04
Total Loaded Labor Costs		\$791.28	\$5,642.24	\$395.64	\$2,373.84	\$32,801.20	\$0.00	\$100,391.68	\$92,304.60	\$1,582.56		\$236,283.04
Total Subconsultant Reimbursable Expenses		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00
(or) Subconsultant Flat Fee		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00
Greenlight Traffic Engineering Total Cost		\$791.28	\$5,642.24	\$395.64	\$2,373.84	\$32,801.20	\$0.00	\$100,391.68	\$92,304.60	\$1,582.56		\$236,283.04

SUBCONSULTANT - NO. 2												
HOURS BY PERSONNEL AND REIMBURSABLES												
Gordley Group		Task 1	Task 2	Task 3	Task 4	Task 5	Task 5.1	Task 6	Task 7	Task 8	Total Hours	Total Cost
		Planning Structure	Commitment and Goal	Equity Considerations	Engagement	Safety Analysis	Additional Services	Safety Analysis	Project Selections	Progress and Transparency		
Labor Class	Loaded Hourly Rate	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Total Hours	Total Cost
Advisor	\$179.00	2.00	16.00	0.00	40.00	0.00	0.00	0.00	0.00	0.00	58.00	\$10,382.00
PI Director	\$174.00	2.00	0.00	0.00	260.00	0.00	0.00	0.00	0.00	0.00	262.00	\$45,588.00
Specialist	\$145.00	0.00	0.00	0.00	160.00	0.00	0.00	0.00	0.00	0.00	160.00	\$23,200.00
Art Director	\$145.00	0.00	0.00	0.00	20.00	0.00	0.00	0.00	0.00	0.00	20.00	\$2,900.00
Graphic Designer	\$115.00	0.00	0.00	0.00	12.00	0.00	0.00	0.00	0.00	0.00	12.00	\$1,380.00
Planner	\$130.00	0.00	40.00	0.00	124.00	0.00	0.00	0.00	0.00	0.00	164.00	\$21,320.00
Coordinator	\$115.00	24.00	0.00	0.00	200.00	0.00	0.00	0.00	0.00	0.00	224.00	\$25,760.00
Administrative	\$88.00	0.00	0.00	0.00	70.00	0.00	0.00	0.00	0.00	0.00	70.00	\$6,160.00
Total Task Hours		28.00	56.00	-	886.00	-	-	-	-	-	970.00	\$136,690.00
Total Loaded Labor Costs		\$3,466.00	\$8,064.00	\$0.00	\$125,160.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$136,690.00
Total Subconsultant Reimbursable Expenses												
Traditional and Social Media Ads		\$0.00	\$0.00	\$0.00	\$10,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$10,000.00
Interpreters and headsets		\$0.00	\$0.00	\$0.00	\$1,300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$1,300.00
Website hosting and domain		\$0.00	\$0.00	\$0.00	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$2,000.00
(or) Subconsultant Flat Fee		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00
Gordley Group Total Costs		\$3,466.00	\$8,064.00	\$0.00	\$138,460.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$149,990.00


 Ed Muccillo, Chairman
 Burgess & Niple

6/20/2024
 Date



June 14, 2024

Jason Pagnard, P.E.
Vice President
Burgess & Niple, Inc.

Re: SFQ-PO-2400017, Pima County Safe Streets For All: Creating a Culture of Safety for Our Community

Dear Jason,

We are excited to team with Burgess and Niple on delivery of the Pima County Safe Streets For All: Creating a Culture of Safety for Our Community Safety Action Plan. We commit to supporting delivery of the following Tasks, with major involvement Tasks in bold:

- Task 1: Planning Structure
- Task 2: Leadership Commitment and Goal Setting
- Task 3: Equity Considerations
- Task 4: Engagement
- **Task 5: Safety Analysis**
- **Task 6: Policy and Process Changes**
- **Task 7: Strategy and Project Selections**
- Task 8: Progress and Transparency

The summary of our hours and rates is attached.

Sincerely,
Greenlight Traffic Engineering, LLC

A handwritten signature in blue ink that reads "Mike Blankenship".

Mike Blankenship, PE, RSP2
Principal
mikeb@greenlightte.com

SUBCONSULTANT - NO. 1		HOURS BY PERSONNEL AND REIMBURSABLES									
Greenlight Traffic		Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8		
		Planning Structure	Leadership Commitment and Goal Setting	Equity Considerations	Engagement	Safety Analysis	Policy and Process Changes	Strategy and Project Selections	Progress and Transparency		
Labor Class	Loaded Hourly Rate	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Total Hours	Total Cost
Project Manager - Sr.	\$197.82	4	24	2	12	20	60	20	8	150	\$29,673.00
Project Engineer - Sr.	\$123.90	0	0	0	0	60	40	60	0	160	\$19,824.00
Project Engineer	\$111.82	0	8	0	0	60	344	330	0	742	\$82,970.44
Engineer	\$102.64	0	0	0	0	85	360	330	0	775	\$79,546.00
Designer	\$99.62	0	0	0	0	60	80	100	0	240	\$23,908.80
Technician	\$45.10	0	0	0	0	0	4	4	0	8	\$360.80
CADD Technician	\$83.45	0	0	0	0	0	0	0	0	0	\$0.00
Total Task Hours		4	32	2	12	285	888	844	8	2,075	\$236,283.04
Total Loaded Labor Costs		\$791.28	\$5,642.24	\$395.64	\$2,373.84	\$32,801.20	\$100,391.68	\$92,304.60	\$1,582.56		\$236,283.04
Total Subconsultant Reimbursable		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00
(or) Subconsultant Flat Fee		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00
Greenlight Traffic Engineering		\$791.28	\$5,642.24	\$395.64	\$2,373.84	\$32,801.20	\$100,391.68	\$92,304.60	\$1,582.56		\$236,283.04



PIMA COUNTY DEPARTMENT OF TRANSPORTATION

Pima County Safe Streets For All:

Creating a Culture of Safety for Our Community

Contract No.: CT-TR-24-430

Gordley Group – Subconsultant to Burgess & Niple, Inc.

June 18, 2024

This letter is to confirm that Gordley Group will be part of the consultant team working on the above-mentioned project. Gordley Group will provide support to the consultant team on the following tasks:

- Task 1 – Planning Structure
- Task 2 – Leadership Commitment and Goal Setting
- Task 4 – Engagement
(includes advertising, interpreters and headsets, and website hosting and domain)

We look forward to supporting the consultant team and Pima County on this important safety action plan project.

Sincerely,

Jan Gordley,
President



SUBCONSULTANT - NO. 1											
HOURS BY PERSONNEL AND REIMBURSABLES											
Gordley Group		Task 1	Task 2	Task 3	Task 4	Task 5	Task 5.1	Task 6	Task 7	Task 8	
		Planning Structure	Leadership Commitment and Goal Setting	Equity Considerations	Engagement	Safety Analysis	Additional Services	Policy and Process Changes	Strategy and Project Selections	Progress and Transparency	
Labor Class	Loaded Hourly Rate	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Task Hours	Total Hours
Advisor	\$179.00	2.00	16.00	0.00	40.00	0.00	0.00	0.00	0.00	0.00	58.00
PI Director	\$174.00	2.00	0.00	0.00	260.00	0.00	0.00	0.00	0.00	0.00	262.00
Specialist	\$145.00	0.00	0.00	0.00	160.00	0.00	0.00	0.00	0.00	0.00	160.00
Art Director	\$145.00	0.00	0.00	0.00	20.00	0.00	0.00	0.00	0.00	0.00	20.00
Graphic Designer	\$115.00	0.00	0.00	0.00	12.00	0.00	0.00	0.00	0.00	0.00	12.00
Planner	\$130.00	0.00	40.00	0.00	124.00	0.00	0.00	0.00	0.00	0.00	164.00
Coordinator	\$115.00	24.00	0.00	0.00	200.00	0.00	0.00	0.00	0.00	0.00	224.00
Administrative	\$88.00	0.00	0.00	0.00	70.00	0.00	0.00	0.00	0.00	0.00	70.00
Total Task Hours		28.00	56.00	-	886.00	-	-	-	-	-	970.00
Total Loaded Labor Costs		\$3,466.00	\$8,064.00	\$0.00	\$125,160.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$136,690.00
Total Subconsultant Reimbursable Expenses		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Traditional and Social Media Ads		\$0.00	\$0.00	\$0.00	\$10,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10,000.00
Interpreters and headsets		\$0.00	\$0.00	\$0.00	\$1,300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,300.00
Website hosting and domain		\$0.00	\$0.00	\$0.00	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,000.00
(or) Subconsultant Flat Fee		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Gordley Group	Total Cost	\$3,466.00	\$8,064.00	\$0.00	\$138,460.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$149,990.00

Schedule

The graphic below reflects our anticipated schedule. We are flexible to the needs of the County.

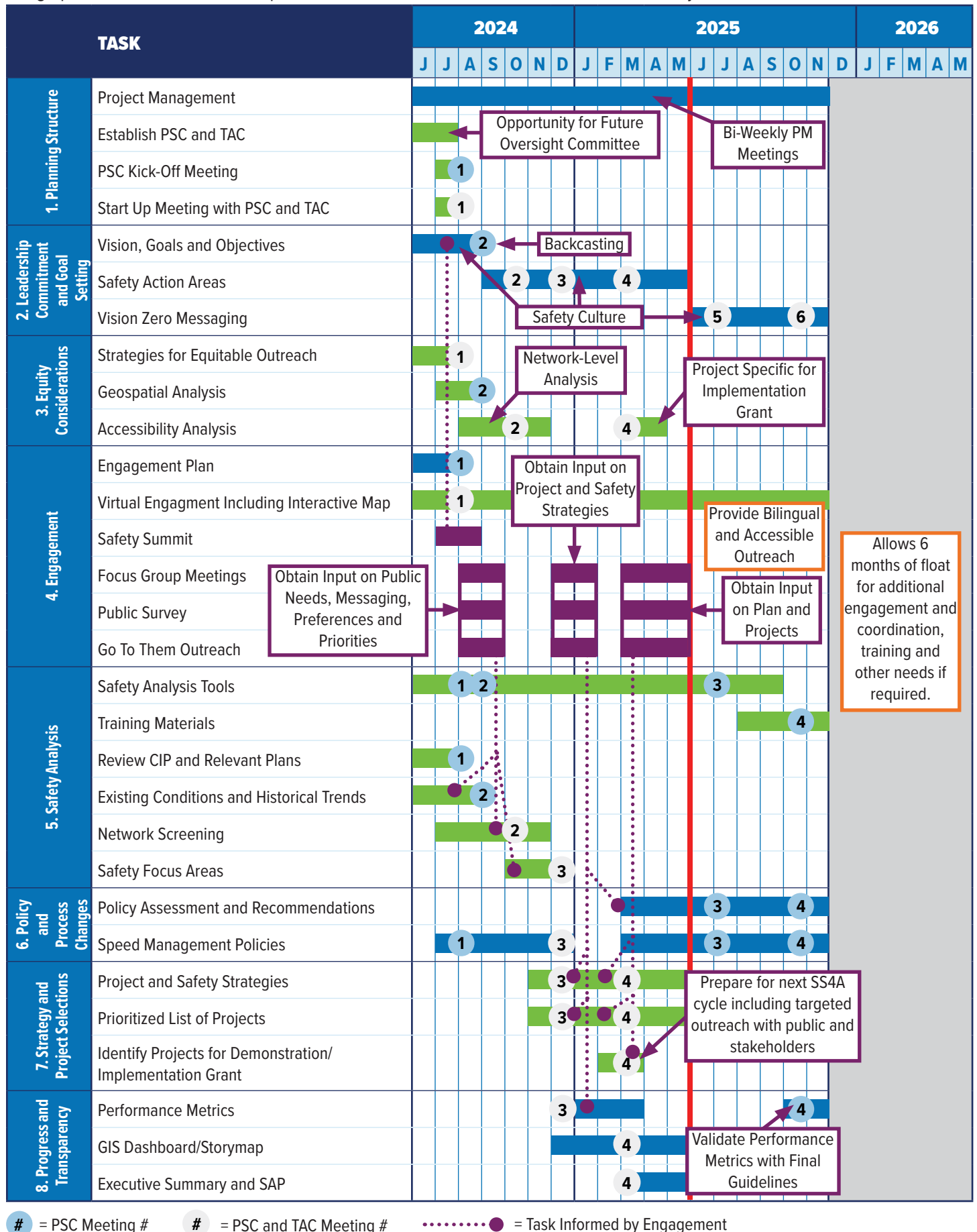


EXHIBIT “C” (23 Pages)

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract)

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 BUSINESS ENTERPRISES
- 4.10 ENVIRONMENTAL PROTECTION
- 4.11 ENERGY CONSERVATION
- 4.12 OWNERSHIP OF DATA
- 4.13 FRAUD AND FALSE STATEMENTS
- 4.14 FEDERAL IMMIGRATION AND NATIONALITY ACT
- 4.15 ERRORS AND OMISSIONS
- 4.16 TERMINATION FOR DEFAULT OR CONVENIENCE
- 4.17 PROMPT PAY
- 4.18 FINAL/INCURRED COST AUDIT
- 4.19 KEY PERSONNEL
- 4.20 CONFLICT OF INTEREST
- 4.21 CONSULTANT/CONTRACTOR CONFLICT OF INTEREST
- 4.22 CONSULTANT OR SUBCONSULTANT ENDORSEMENT OF PLANS
- 4.23 PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

SECTION APPENDICES

A. TITLE VI / NONDISCRIMINATION ASSURANCES (APPENDICES A and E)

Remainder of page intentionally left blank.

4.1 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 ("FHWA") or of Pima County ("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

- a. Sub-Contract Terms:

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 Pima County Department of Transportation. 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 the Department.

b. Sub-Contract Payments

1. Retention: If the prime contract does not provide for retention, the consultant and each subconsultant of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime consultant and each subconsultant of any tier shall not retain a higher percentage than the Department may retain under the prime contract. Retainage shall be paid to the subconsultant within 7 days of satisfactory completion of the work performed by the subconsultant.
2. No Set-offs Arising from Other Contracts: If a subconsultant is performing work on multiple contracts for the same consultant or subconsultant of any tier, the consultant or subconsultant of any tier shall not withhold or reduce payment from its subconsultants on the contract because of disputes or claims on another contract.
3. Partial Payment: The consultant and each subconsultant of any tier shall make prompt partial payments to its subconsultants within seven days of receipt of payment from the Department. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.
4. Final Payment: The consultant and each subconsultant of any tier shall make prompt final payment to each of its subconsultants. The consultant and each subconsultant of any tier shall pay all monies, including retention, due to its subconsultant within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.
5. Non-Compliance: Failure to make prompt partial payment or prompt final payment including any retention, within the time frames established in this contract, will result in remedies, as the Department deems appropriate, which may include, but are not limited to:
 - Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.
 - (i) The Department will withhold two times the disputed dollar amount not paid to each subconsultant.
 - (ii) If full payment is made within 30 days of the Department's payment to the consultant, the amount withheld by the Department will be released.
 - (iii) If full payment is made after 30 days of the Department's payment to the consultant, the Department will release 75 percent of the funds withheld. The Department will retain 25 percent of the monies withheld as liquidated damages.
 - Additional Remedies: If the consultant fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the consultant fails to make prompt payment on two or more contracts within 24 months, the Department may, in addition, invoke the following remedies:
 - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subconsultants and vendors subject to the requirements outlined under "Liquidated Damages" above,
 - (ii) Terminate the contract for default in accordance with Section 4.18 of this Contract, and/or

- (iii) Disqualify the consultant from future bidding temporarily or permanently, depending on the number and severity of violation.
- (iv) Reflect the consultant's performance in submitting payment reports and making subconsultant payments in the consultants Annual and Contract Completion Performance Evaluation.

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/sfillin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Consultant also agrees, by submitting its SOQ that it shall require that the language of this certification be included in subcontracts with all Subconsultant(s) and lower-tier Subconsultants which exceed \$100,000 and that all such Subconsultants and lower-tier Subconsultants shall certify and disclose accordingly.
- e. COUNTY 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 COUNTY Procurement Officer assigned to this Solicitation 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 COUNTY Representative to 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 COUNTY indicates that work on the Contract has been completed to the satisfaction of COUNTY. All Documents shall be retained for auditing, inspection and copying upon COUNTY'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 FHWA 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 COUNTY and State Record Retention Center Records Retention/Destruction Policy and Schedules.

4.6 REVIEWS AND INSPECTIONS

Representatives from COUNTY 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, sex or national origin in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration 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 submitting SOQs, or any other forms of proposals, 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 assurance.

- b. 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.
 - c. 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."
 - d. Comply with Appendix A through E of the Arizona Department of Transportation "Title VI/Non- Discrimination Assurances" as found in **APPENDIX A** 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 A** 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
Race Neutral Contract (With No DBE Goal)

It is COUNTY'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.

NO CONTRACT DBE GOAL HAS BEEN ESTABLISHED FOR DBE PARTICIPATION ON THIS CONTRACT.

Consultants are still encouraged to employ reasonable means to obtain DBE participation. Consultants must retain records in accordance with these DBE specifications.

4.10 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).

4.11 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).

4.12 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 COUNTY shall become the property of COUNTY and delivered to COUNTY upon request and shall not be used or released by the Consultant or any other person except with the prior written approval by COUNTY, provided the Consultant shall not be required to retain any Data not requested by COUNTY within five (5) years from the date of final payment to the Consultant hereunder; and provided further that until such delivery to COUNTY, the Consultant agrees to permit COUNTY 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 COUNTY and shall not be used or released by the Consultant or any other person except with the prior written approval by COUNTY.

4.13 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.

4.14 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. 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 on the following page:

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.			

4.15 ERRORS AND OMISSIONS

If COUNTY determines that the Consultant had made any errors and/or omissions (E&O) in the work product delivered to COUNTY under the terms of this Contract, the Consultant shall make all necessary revisions or corrections resulting from E&O without additional cost to COUNTY. 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. COUNTY 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 COUNTY's Errors and Omissions procedure.

If COUNTY determines that the Consultant had made any Errors and/or Omissions (E&Os), in the work product delivered to COUNTY, 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 COUNTY's Senior Management, when project is funded with federal funds. When claims are resolved, COUNTY will notify all parties in writing.

4.16 TERMINATION FOR DEFAULT OR CONVENIENCE

a. Termination for Default

COUNTY 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 COUNTY contemplates termination under the provisions of Subsections a.1., a.2., or a.3. above, COUNTY 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, COUNTY 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

COUNTY may terminate the Contract for convenience, in whole or in part, when, for any reason, COUNTY 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 COUNTY.

In the event of termination for convenience, COUNTY shall be liable to the Consultant only for Consultant's work performed prior to termination and only to the extent and as provided in ARTICLE 19 of the Contract.

c. The Agency's Right to Proceed with Work

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

4.17 PROMPT PAY LAW (A.R.S. §28-411)

In accordance with the Arizona Prompt Payment Law (A.R.S. §28-411), COUNTY 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 COUNTY, 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 COUNTY. The 21 calendar-day payment timeframe shall begin anew upon receipt of the complete and corrected PR.

COUNTY 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 COUNTY considers necessary. This provision shall not limit COUNTY's rights to terminate the Contract for default.

The Consultant shall not withhold the Subconsultant's payment if COUNTY has paid the full value of services rendered. Failure by the Consultant to invoice COUNTY 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 Article 4 of COUNTY's Contract. COUNTY 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 COUNTY.

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established above, will result in remedies, as COUNTY 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.

4.18 FINAL/INCURRED COST AUDIT

- a. Final/Incurred Cost Audit (ICA) of the Consultant's costs may be performed by COUNTY Audit and Analysis to determine the Contract costs' allowability, allocability, and reasonableness in accordance with the terms of the Contract before it is closed. COUNTY's final audit process is according to COUNTY's Contract Award and Administration Guidelines for Federal-Aid Projects Funded by FHWA.
[Vendor Information | Pima County, AZ](#)
- 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 Procurement Department.
- 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 Agency Audit and Analysis as the Consultant's acceptance of the findings in the draft report. The ICA report shall be issued by Agency Audit and Analysis to the Consultant after Agency Audit and Analysis review and approval. Once the audit report is issued, Agency Audit and Analysis 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 the COUNTY's Pre-Award/ICA Escalation Guidelines process.
- d. COUNTY or the Consultant shall reimburse either party in accordance with the ICA results. Failure of the Consultant to reimburse COUNTY 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 ARTICLE 4 of the COUNTY'S Contract.

4.19 KEY PERSONNEL

- a. No substitution or transfer of personnel, specifically identified in the approved Key Personnel list shall be made without prior written approval by the Agency.
- b. Key Personnel are those individuals whose qualifications were highly significant and appropriate in evaluating the overall qualifications of the project team Key Personnel includes, at a minimum:
 - 1) The Consultant's Project Principal/Owner responsible for the overall technical and administration aspects of this Contract;
 - 2) The person in direct charge of the overall project work (Project Manager);
 - 3) The person in charge of each major engineering disciplines/component of the work (e.g.,

- bridge, pavement design, environmental, etc.);
- 4) Where applicable, the person in charge of overall scheduling of the project work.

Key Personnel may also include, but are not limited to, Project Engineer, Subconsultants' Team members and any other Key Personnel deemed vital to the completion of the project, and whose qualifications were evaluated by the Selection Panel.

- c. The Agency will review the Consultant's proposed list of Key Personnel presented during contract negotiations and will approve the list of Key Personnel assigned to the Contract. The Department's decision as to Key Personnel composition shall be final.
- d. The Consultant shall not change any of the Key Personnel assigned to this Contract until it has obtained written approval from the Agency PM through a Contract Modification. The Consultant shall notify the Agency in advance of an anticipated change in the Key Personnel no later than 10 calendar days prior to the change, and shall inform the Department of the reasons the change for the change and shall certify that the overall intent of the Contract will not be impaired by the change. The advance notice requesting a Key Personnel change shall include the name(s) of the Key Personnel, date of departure, the proposed replacement and his/her credentials/resume. Qualifications of any Key Personnel proposed in a change shall be equal to or greater than the original qualifications of the person being replaced.

The Agency shall have the right to approve or reject the proposed successor. The Agency will consider any change in Key Personnel, and at its discretion may decide to terminate the Contract for convenience if, in the Agency's sole discretion, the Agency believes that the project team is materially different because of the change. The Agency shall make its decision within 30 days of the Consultant's request to change Key Personnel.

Failure to provide the Agency with advanced notification may result in termination of the Contract, award of damages to the Agency or loss of prequalification status.

4.20 CONFLICT OF INTEREST

- a. The Consultant shall not engage the services on the Contract of any present or former COUNTY 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. COUNTY 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.

4.21 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 COUNTY.
- 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 subconsultants or any supplier in accordance with COUNTY Conflict of Interest Policy.

- d. The Consultant shall not negotiate, contract, or make any agreement with subconsultants 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.

4.22 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.

4.23 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.

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APPENDIX "A" TO EXHIBIT "C" (8 PAGES)

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);

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 assurance 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 "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 funding 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 to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this 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 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 transferee 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 to 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 a 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 
(Signature of Authorized Official)

Dated September 12, 2022

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 performed 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 the 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 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 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.

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.*).



CERTIFICATE OF LIABILITY INSURANCE

Page 1 of 2

DATE (MM/DD/YYYY)

06/26/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis Towers Watson Northeast, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: WTW Certificate Center PHONE (A/C No. Ext): 1-877-945-7378 E-MAIL ADDRESS: certificates@wtwco.com FAX (A/C No): 1-888-467-2378																					
INSURED Burgess & Niple, Inc. 330 Rush Alley Suite 700 Columbus, OH 43215	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>National Union Fire Insurance Company of P</td><td>19445</td></tr><tr><td>INSURER B:</td><td>Travelers Property Casualty Company of Ame</td><td>25674</td></tr><tr><td>INSURER C:</td><td>New Hampshire Insurance Company</td><td>23841</td></tr><tr><td>INSURER D:</td><td>Continental Casualty Company</td><td>20443</td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	National Union Fire Insurance Company of P	19445	INSURER B:	Travelers Property Casualty Company of Ame	25674	INSURER C:	New Hampshire Insurance Company	23841	INSURER D:	Continental Casualty Company	20443	INSURER E:			INSURER F:		
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INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:** W34018927**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	GL 5268138	04/01/2024	04/01/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	CA 4489627	04/01/2024	04/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	CUP-0Y888377-24-NF	04/01/2024	04/01/2025	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> No	N/A	WC 015893628	04/01/2024	04/01/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability			AEH008215011	04/01/2024	04/01/2025	Each Claim: \$10,000,000 Aggregate: \$10,000,000 Deductible \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

This Voids and Replaces Previously Issued Certificate Dated 06/26/2024 WITH ID: W34017645.

RE: 202402626

The Umbrella/Excess policy does not sit excess over Professional Liability coverage.

CERTIFICATE HOLDER**CANCELLATION**

Pima County Procurement Department Design & Construction 150 W Congress Street, 5th Floor Tucson, AZ 85701	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2016/03)

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SR ID: 26077316

BATCH: 3518099



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Willis Towers Watson Northeast, Inc.		NAMED INSURED Burgess & Niple, Inc. 330 Rush Alley Suite 700 Columbus, OH 43215	
POLICY NUMBER See Page 1		EFFECTIVE DATE: See Page 1	
CARRIER See Page 1	NAIC CODE See Page 1		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Re: Pima County Safe Streets For All: Creating A Culture of Safety for Our Community; Contract No. CT-TR-24-430

Pima County, AZ and the FHWA, their departments, districts, boards, commissions, officers, officials, agents, and employees are included as Additional Insureds as respects to General Liability, Auto Liability and Umbrella/Excess Liability when required by written contract.

General Liability, Auto Liability and Umbrella/Excess Liability policies shall be Primary and Non-contributory with any other insurance in force for or which may be purchased by Additional Insureds when required by written contract.

Waiver of Subrogation applies in favor of Additional Insureds with respects to General Liability, Auto Liability, Umbrella/Excess Liability and Workers Compensation when required by written contract and permitted by law.

ENDORSEMENT

This endorsement, effective 12:01 A.M. 04/01/2024 forms a part of

Policy No. CA 448-96-27 issued to BURGESS & NIPLE, INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

ADDITIONAL INSURED:

ANY PERSON OR ORGANIZATION FOR WHOM YOU ARE CONTRACTUALLY BOUND TO PROVIDE ADDITIONAL INSURED STATUS BUT ONLY TO THE EXTENT OF SUCH PERSON'S OR ORGANIZATIONS LIABILITY ARISING OUT OF THE USE OF A COVERED AUTO.

I. SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. - Who Is Insured, is amended to add:

- d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:

- (1) The coverage and/or limits of this policy, or
- (2) The coverage and/or limits required by said contract or agreement.



AUTHORIZED REPRESENTATIVE

ENDORSEMENT #

This endorsement, effective 12:01 A.M. 04/01/2024 forms a part of

Policy No. CA 448-96-27 issued to BURGESS & NIPLE, INC.

By NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITED ADVICE OF CANCELLATION PROVIDED VIA E-MAIL
TO ENTITIES OTHER THAN THE FIRST NAMED INSURED**

This policy is amended as follows:

In the event that the **Insurer** cancels this policy for any reason other than non-payment of premium, and

1. the cancellation effective date is prior to this policy's expiration date;
2. the **First Named Insured** is under an existing contractual obligation to notify a certificate holder when this policy is canceled (hereinafter, the "Certificate Holder(s)") and has provided to the **Insurer**, either directly or through its broker of record, the email address of a contact at each such entity; and
3. the **Insurer** received this information after the **First Named Insured** receives notice of cancellation of this policy and prior to this policy's cancellation effective date, via an electronic spreadsheet that is acceptable to the **Insurer**,

the **Insurer** will provide advice of cancellation (the "Advice") via e-mail to each such Certificate Holders within 30 days after the **First Named Insured** provides such information to the **Insurer**; provided, however, that if a specific number of days is not stated above, then the Advice will be provided to such Certificate Holder(s) as soon as reasonably practicable after the **First Named Insured** provides such information to the **Insurer**.

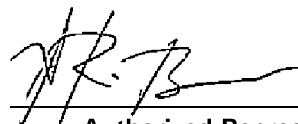
Proof of the **Insurer** emailing the Advice, using the information provided by the **First Named Insured**, will serve as proof that the **Insurer** has fully satisfied its obligations under this endorsement.

This endorsement does not affect, in any way, coverage provided under this policy or the cancellation of this policy or the effective date thereof, nor shall this endorsement invest any rights in any entity not insured under this policy.

The following Definitions apply to this endorsement:

1. **First Named Insured** means the Named Insured shown on the Declarations Page of this policy.
2. **Insurer** means the insurance company shown in the header on the Declarations page of this policy.

All other terms, conditions and exclusions shall remain the same.



Authorized Representative

ENDORSEMENT

This endorsement, effective 12:01 A.M. 04/01/2024 forms a part of

policy No. CA 448-96-27 issued to BURGESS & NIPLE, INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

Section IV - Business Auto Conditions, A. - Loss Conditions, 5. - Transfer of Rights of Recovery Against Others to Us, is amended to add:

However, we will waive any right of recover we have against any person or organization with whom you have entered into a contract or agreement because of payments we make under this Coverage Form arising out of an "accident" or "loss" if:

- (1) The "accident" or "loss" is due to operations undertaken in accordance with the contract existing between you and such person or organization; and
- (2) The contract or agreement was entered into prior to any "accident" or "loss".

No waiver of the right of recovery will directly or indirectly apply to your employees or employees of the person or organization, and we reserve our rights or lien to be reimbursed from any recovery funds obtained by any injured employee.



AUTHORIZED REPRESENTATIVE

ENDORSEMENT

This endorsement, effective 12:01 A.M. 04/01/2024 forms a part of

policy No. CA 448-96-27 issued to BURGESS & NIPLE, INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INSURANCE PRIMARY AS TO CERTAIN ADDITIONAL INSURED

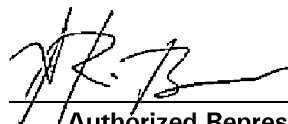
This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

Section IV - Business Auto Conditions, B., General Conditions, 5., Other Insurance, c., is amended by the addition of the following sentence:

The insurance afforded under this policy to an additional insured will apply as primary insurance for such additional insured where so required under an agreement executed prior to the date of accident. We will not ask any insurer that has issued other insurance to such additional insured to contribute to the settlement of loss arising out of such accident.

All other terms and conditions remain unchanged.



Authorized Representative or
Countersignature (in States Where
Applicable)

ENDORSEMENT #

This endorsement, effective 12:01 A.M. 04/01/2024 forms a part of

Policy No. GL 526-81-38 issued to BURGESS & NIPLE, INC.

By NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITED ADVICE OF CANCELLATION PROVIDED VIA E-MAIL
TO ENTITIES OTHER THAN THE FIRST NAMED INSURED**

This policy is amended as follows:

In the event that the **Insurer** cancels this policy for any reason other than non-payment of premium, and

1. the cancellation effective date is prior to this policy's expiration date;
2. the **First Named Insured** is under an existing contractual obligation to notify a certificate holder when this policy is canceled (hereinafter, the "Certificate Holder(s)") and has provided to the **Insurer**, either directly or through its broker of record, the email address of a contact at each such entity; and
3. the **Insurer** received this information after the **First Named Insured** receives notice of cancellation of this policy and prior to this policy's cancellation effective date, via an electronic spreadsheet that is acceptable to the **Insurer**,

the **Insurer** will provide advice of cancellation (the "Advice") via e-mail to each such Certificate Holders within 30 days after the **First Named Insured** provides such information to the **Insurer**; provided, however, that if a specific number of days is not stated above, then the Advice will be provided to such Certificate Holder(s) as soon as reasonably practicable after the **First Named Insured** provides such information to the **Insurer**.

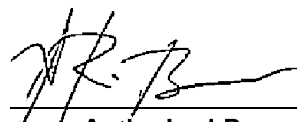
Proof of the **Insurer** emailing the Advice, using the information provided by the **First Named Insured**, will serve as proof that the **Insurer** has fully satisfied its obligations under this endorsement.

This endorsement does not affect, in any way, coverage provided under this policy or the cancellation of this policy or the effective date thereof, nor shall this endorsement invest any rights in any entity not insured under this policy.

The following Definitions apply to this endorsement:

1. **First Named Insured** means the Named Insured shown on the Declarations Page of this policy.
2. **Insurer** means the insurance company shown in the header on the Declarations page of this policy.

All other terms, conditions and exclusions shall remain the same.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II 6 Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):
PURSUANT TO APPLICABLE WRITTEN CONTRACT OR AGREEMENT YOU ENTER INTO.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions**:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

- a. Seeking damages to which this insurance does not apply; or
 - b. If any other insurer has a duty to defend.
3. When we have the duty to defend, we may, at our discretion, investigate and settle any claim or "suit". In all other cases, we may, at our discretion, participate in the investigation, defense and settlement of any claim or "suit" for damages to which this insurance may apply. If we exercise such right to participate, all expenses we incur in doing so will not reduce the applicable limits of insurance.
 4. Our duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or defense expenses if such expenses are within the limits of insurance of this policy.
 5. We will pay, with respect to a claim we investigate or settle, or "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. The cost of:
 - (1) Bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies; or
 - (2) Appeal bonds and bonds to release attachments;
 but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of such claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.
 - d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - f. All interest that accrues on the full amount of any judgment after entry of the judgment and before

we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable limit of insurance. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.

With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE A - EXCESS FOLLOW-FORM LIABILITY**, these payments will not reduce the applicable limits of insurance, but only if the applicable "underlying insurance" provides for such payments in addition to its limits of insurance. With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE B - UMBRELLA LIABILITY**, these payments will not reduce the applicable limits of insurance.

SECTION II - WHO IS AN INSURED

A. COVERAGE A - EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the "underlying insurance". If you have agreed to provide insurance for that person or organization in a written contract or agreement:

- a. The limits of insurance afforded to such person or organization will be:

- (1) The amount by which the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement exceed the total limits of insurance of all applicable "underlying insurance"; or
- (2) The limits of insurance of this policy;

whichever is less; and

- b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable "underlying insurance".

- b. To sue us on this insurance unless all of its terms have been fully complied with.
- 2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that:
 - a. Are not payable under the terms of this insurance; or
 - b. Are in excess of the applicable limit of insurance.

An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

L. MAINTENANCE OF UNDERLYING INSURANCE

1. The insurance afforded by each policy of "underlying insurance" will be maintained for the full policy period of this Excess Follow-Form And Umbrella Liability Insurance. This provision does not apply to the reduction or exhaustion of the aggregate limit or limits of such "underlying insurance" solely by payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY OF SECTION I – COVERAGES**. As such policies expire, you will renew them at limits and with coverage at least equal to the expiring limits of insurance. If you fail to comply with the above requirements, Coverage A is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with the above requirements.
2. The first Named Insured shown in the Declarations must give us written notice of any change in the "underlying insurance" as respects:
 - a. Coverage;
 - b. Limits of insurance;
 - c. Termination of any coverage; or
 - d. Exhaustion of aggregate limits.
3. If you are unable to recover from any "underlying insurer" because you fail to comply with any term or condition of the "underlying insurance", Coverage A is not invalidated. However, we will pay for any loss only to the extent that we would have paid had you complied with that term or condition in that "underlying insurance".

M. OTHER INSURANCE

This insurance is excess over any valid and collectible "other insurance" whether such "other insurance" is stated to be primary, contributing, excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply as excess of this insurance.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization that qualifies as an insured under this insurance must apply on a primary basis, or a primary and non-contributory basis, then insurance provided under Coverage A is subject to the following provisions:

1. This insurance will apply before any "other insurance" that is available to such additional insured which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

N. PREMIUM

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4. below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of **SECTION II – WHO IS AN INSURED**.

O. PREMIUM AUDIT

The premium for this policy is the amount stated in Item 5. of the Declarations. The premium is a flat

UMBRELLA

charge unless it is specified in the Declarations as adjustable.

P. PROHIBITED COVERAGE – UNLICENSED INSURANCE

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to provide insurance in such country or jurisdiction; or
 - b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Q. PROHIBITED COVERAGE – TRADE OR ECONOMIC SANCTIONS

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

R. REPRESENTATIONS

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

S. SEPARATION OF INSURED

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and

2. Separately to each insured against whom claim is made or "suit" is brought.

T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and the insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us, and with respect to Coverage A, the "underlying insurer", enforce them.

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the execution of that contract or agreement by such insured.

2. Reimbursement of any amount recovered will be made in the following order:

- a. First, to any person or organization (including us or the insured) who has paid any amount in excess of the applicable limit of insurance;
- b. Next, to us; and
- c. Then, to any person or organization (including the insured and with respect to Coverage A, the "underlying insurer") that is entitled to claim the remainder, if any.

3. Expenses incurred in the process of recovery will be divided among all persons or organizations receiving amounts recovered according to the ratio of their respective recoveries.

U. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE

1. Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an individual Named Insured.
2. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



POLICYHOLDER NOTICE NOTIFICATION OF CANCELLATION TO CERTIFICATE HOLDERS

NOTIFICATION OF CANCELLATION TO CERTIFICATE HOLDERS

- In the event this Policy is cancelled prior to its expiration date, for any reason other than non payment of premium, the Insurer shall provide to the broker of record, a blank schedule to be completed by the **Insured** or such broker, with the names and email addresses of any and all certificate holders to whom the **Insured** requests the Insurer provide notification of such cancellation ("notification"). Such schedule must be completed and returned to the Insurer within 5 business days of the broker's receipt. Upon the Insurer's receipt of the completed schedule, the Insurer shall endeavor to provide notification to those entities set out in such schedule. If the schedule is not returned to the Insurer within 5 business days the Insurer will not provide notification. The Insurer will assume that the schedule provided to the Insurer by the **Insured** or the broker is a complete and accurate list of certificate holders. Only those persons or entities listed on the schedule will receive notification. The Insurer will keep no other record of any certificate holders in the Insurer's file.
- There will be no schedule provided and, consequently, no notification provided, if such cancellation is for non payment of premium.
- Any notification by the Insurer to any party that is not the first **Named Insured** on the Policy is intended as a courtesy only. The Insurer's failure to provide such notification will not extend the Policy cancellation date, or negate cancellation of the Policy or be cause for legal action against the Insurer.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM 04/01/2024 forms a part of Policy No. WC 015-89-3628

Issued to BURGESS & NIPLES, INC.

By NEW HAMPSHIRE INSURANCE COMPANY

**LIMITED ADVICE OF CANCELLATION PROVIDED VIA E-MAIL
TO ENTITIES OTHER THAN THE NAMED INSURED
(WORKERS' COMPENSATION ONLY)**

This policy is amended as follows:

In the event that the **Insurer** cancels this policy for any reason other than non-payment of premium, and

1. the cancellation effective date is prior to this policy's expiration date;
2. the **Named Insured** or, if applicable, any other employers named in Item 1 of the Information Page is under an existing contractual obligation to notify a certificate holder when this policy is canceled (hereinafter, the "Certificate Holder(s)") and the **Named Insured** has provided to the **Insurer**, either directly or through its broker of record, the email address of a contact at each such entity; and
3. the **Insurer** received this information after the **Named Insured** receives notice of cancellation of this policy and prior to this policy's cancellation effective date, via an electronic spreadsheet that is acceptable to the **Insurer**,

the **Insurer** will provide advice of cancellation (the "Advice") via e-mail to each such Certificate Holders within 30 days after the **Named Insured** provides such information to the **Insurer**; provided, however, that if a specific number of days is not stated above, then the Advice will be provided to such Certificate Holder(s) as soon as reasonably practicable after the **Named Insured** provides such information to the **Insurer**.

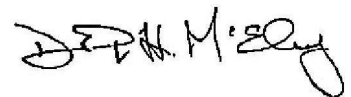
Proof of the **Insurer** emailing the Advice, using the information provided by the **First Named Insured**, will serve as proof that the **Insurer** has fully satisfied its obligations under this endorsement.

This endorsement does not affect, in any way, coverage provided under this policy or the cancellation of this policy or the effective date thereof, nor shall this endorsement invest any rights in any entity not insured under this policy.

The following definitions apply to this endorsement:

1. **Named Insured** means the insured first named employer in Item 1 of the Information Page of this policy.
2. **Insurer** means the insurance company shown in the header on the Information Page of this policy.

All other terms, conditions and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

This endorsement, effective 12:01 AM 04/01/2024 forms a part of Policy No. WC 015-89-3628

Issued to BURGESS & NIPLES, INC.

By NEW HAMPSHIRE INSURANCE COMPANY

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

ANY PERSON OR ORGANIZATION TO WHOM YOU BECOME
OBLIGATED TO WAIVE YOUR RIGHTS OF RECOVERY
AGAINST, UNDER ANY WRITTEN CONTRACT OR AGREEMENT
YOU ENTER INTO PRIOR TO THE OCCURRENCE OF LOSS.

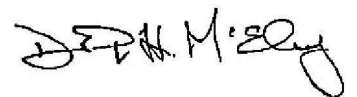
This form is not applicable in Kansas for private construction contracts as defined in K.S.A. 16-1801 through K.S.A. 16-1807 or public construction contracts as defined in K.S.A. 16-1901 through 16-1908, except where permitted by statute or other applicable law, such as for use in wrap-up insurance programs.

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, Texas, or Utah.

WC 00 03 13
(Ed. 04/84)

Countersigned by _____



Authorized Representative