



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS**

Award Contract Grant

Requested Board Meeting Date: 12/17/24

** = Mandatory, information must be provided*

or Procurement Director Award:

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

Dibble & Associates Consulting Engineers, Inc. (Headquarters: Phoenix, AZ)

***Project Title/Description:**

Design Engineering Services: Palo Verde Rd and Michigan St, Hawk (4PVRHK) and Palo Verde Sidewalks (4PVRSW)

***Purpose:**

Award: Contract No. PO2400015152. This award of contract is recommended to the highest qualified consultant in the amount of \$350,337.37 for a contract term from 12/17/24 to 03/31/27 for the design of the Palo Verde Rd and Michigan St, Hawk (4PVRHK) and Palo Verde Sidewalks (4PVRSW). Administering Department: Project Design and Construction.

***Procurement Method:**

Request for Qualifications (RFQu) No. RFQu-24000085 was conducted in accordance with A.R.S. § 34-603 and Pima County Board of Supervisors Policy D29.1. One (1) responsive statement of qualifications was received and evaluated by a five (5) member committee using qualifications and experienced-based selection criteria. Based upon the evaluation of the respondent's written representations of their qualifications and necessary due diligence, the highest qualified consultant is recommended for award.

Attachments: Notice of Recommendation for Award and Contract.

***Program Goals/Predicted Outcomes:**

The goal of this project is to improve public safety by defining separate walking paths for pedestrians and providing a signalized crossing for S. Palo Verde Road.

***Public Benefit:**

The Palo Verde Sidewalks project is located along both sides of Palo Verde Road approximately between E. Gas Road to North of E. Columbia Street. The HAWK will provide access at E. Michigan St. This is one of the highest volume bus routes in the County. Additionally, this corridor connects multiple businesses and land uses including the Tanque Verde Swap Meet, Gospel Rescue Mission, Butterfield Business Park, Gem and Mineral Show, and several other retail businesses and offices. This project allows for safe walking routes within the corridor by separating vehicle and pedestrian uses. The signalized crossing of S. Palo Verde Road at E. Michigan St. creates an additional safety measure to benefit the public, where separation is not possible, and will ultimately reduce the number of pedestrian-vehicle conflicts.

***Metrics Available to Measure Performance:**

A Consultant Performance Evaluation will be used to measure compliance with the project's scope, schedule, and budget. This assessment will determine if the work was satisfactorily delivered in a manner that meets the expectations defined in the program goals.

***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: PO Department Code: PDC Contract Number (i.e., 15-123): PO2400015152
Commencement Date: 12/17/24 Termination Date: 03/31/27 Prior Contract Number (Synergen/CMS):
[X] Expense Amount \$ 350,337.37 * [] Revenue Amount: \$

*Funding Source(s) required: U.S. Department of Transportation Federal Highway Administration (FHWA) Highway Safety Improvement Program (HSIP)(50%) and Transportation Capital Improvement Projects (50%)

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: 2024.11.18 10:02:40 -0700 Division Manager: Scott Loomis Digitally signed by Scott Loomis Date: 2024.11.18 17:38:18 -0700

Department: Procurement Director: Terri Spencer Telephone: 520-724-3727

Department Director Signature: Signed by: Date: 11/20/2024
Deputy County Administrator Signature: Date: 11/21/2024
County Administrator Signature: Date: 11/21/2024



NOTICE OF RECOMMENDATION FOR AWARD

Date of Issue: November 18, 2024

The Pima County Procurement Department hereby issues formal notice to respondents to Solicitation No. **RFQu-24000085, Design Engineering Services for Palo Verde Rd and Michigan St, HAWK (4PVRHK) and Palo Verde Sidewalks** 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, December 17, 2024.

Award is recommended to the Most Qualified Respondent.

AWARDEE NAME

Dibble & Associates Consulting Engineers, 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: *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 PROJECT DESIGN AND CONSTRUCTION

PROJECT: Design Engineering Services For: Palo Verde Rd and Michigan St, HAWK (4PVRHK) and Palo Verde Sidewalks (4PVRSW)

CONSULTANT: Dibble & Associates Consulting Engineers, Inc.
3020 East Camelback Road, Suite 201
Phoenix, AZ 85016

CONTRACT NO.: PO2400015152

AMOUNT: \$350,337.37

FUNDING: U.S. Department of Transportation Federal Highway Administration (FHWA) Highway Safety Improvement Program (HSIP)(50%) and Transportation Capital Improvement Projects (50%)

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 Dibble & Associates Consulting Engineers, Inc., hereinafter called CONSULTANT, and collectively referred to as the Parties.

WITNESSETH

WHEREAS, COUNTY requires the services of a CONSULTANT registered in the State of Arizona and qualified to provide design engineering services for the Design Engineering Services For: Palo Verde Rd and Michigan St, HAWK (4PVRHK) and Palo Verde Sidewalks (4PVRSW) (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. RFQu-24000085, 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 December 17, 2024, and terminates on March 31, 2027, 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 (20 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 partially by federal funds and is subject to the additional Federal requirements in **EXHIBIT C – Uniform Terms and Conditions Federal Contract Requirements (Project Specific Contract Goals) (55 Pages)**, hereinafter referred to as “UTC”, and **APPENDIX B – Professional Services DBE Provisions (23 Pages)**, which are attachments to and hereby made part of this Contract. For this Contract, the Federal Granting Agency is the Federal Highway Administration (FHWA) and the State Agency is the Arizona Department of Transportation (ADOT).

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 (46 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 Three Hundred Fifty Thousand Three Hundred Thirty-Seven Dollars and Thirty-Seven Cents (\$350,337.37).

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, ADOT, 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, 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 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 registered 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 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:

Rod Lane, Director
Project Design and Construction
150 W. Congress St., 3rd Floor
Tucson, Arizona 85701
Tel: (520) 724-3106

CONSULTANT:

Tim Wolfe, PE, Vice President
Dibble & Associates Consulting Engineers, Inc.
3020 East Camelback Road, Suite 201
Phoenix, AZ 85016
Tel: (602) 957-1155

ARTICLE 22 – OTHER DOCUMENTS

The Parties in entering into this Contract have relied upon information provided in REQUEST FOR QUALIFICATIONS RFQu-24000085, and on representations and information in CONSULTANT'S response to said RFQu. 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.

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 Consultant engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Consultant 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.

ARTICLE 33 - HEAT INJURY AND ILLNESS PREVENTION AND SAFETY PLAN.

Pursuant to Pima County Procurement Code 11.40.030, Consultant hereby warrants that if Consultant’s employees perform work in an outdoor environment under this Contract, Consultant will keep on file a written Heat Injury and Illness Prevention and Safety Plan. At County’s request, Consultant will provide a copy of this plan and documentation of heat safety and mitigation efforts implemented by Consultant to prevent heat-related illnesses and injuries in the workplace. Consultant will post a copy of the Heat Injury and Illness Prevention and Safety Plan where it is accessible to employees. Consultant will further ensure that each subconsultant who performs any work for Consultant under this Contract complies with this provision.

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ARTICLE 34 - ENTIRE AGREEMENT

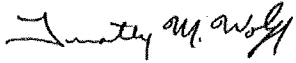
This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written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



Signature

Timothy M. Wolfe, Vice President

Date

Name and Title (Please Print)

November 21, 2024

Date

ATTEST:

Clerk of the Board

Date

This contract template has been approved as to form by the Pima County Attorney's Office.

EXHIBIT A - SCOPE OF SERVICES (20 Pages)

SCOPE OF SERVICES FOR THE PALO VERDE MICHIGAN HAWK (CTR.4PVRHK) FEDERAL ID PPM-0(275) D ADOT TRACS NO. T0576 01D

During the term of this Agreement, the engineering consultant (Consultant) shall perform professional services for Pima County (County) in connection with the High Intensity Activated Crosswalk (HAWK) located at the intersection of E. Michigan St. and S. Palo Verde Rd. (CTR.4PVRHK). This scoping document shall be used to plan, conduct, and complete the Consultant's work on the project.

A. BACKGROUND

The intersection of South Palo Verde Road and Michigan Street / Coach Street experiences a high volume of pedestrian traffic. There are two bus stops on each side of S. Palo Verde Road at this intersection. And this corridor services multiple businesses and land uses. This corridor has significant pedestrian use and South Palo Verde Road can have heavy vehicle traffic, which results in safety risks, notably pedestrian-vehicle conflicts.

This project focuses on the need to provide a signalized crossing of South Palo Verde Road at this intersection as a means of mitigating the risk of crossing a road with heavy traffic.

B. PROJECT DESCRIPTION

The scope of work for this effort includes the Consultant providing Engineering Design services according to the Pima County Roadway Design Manual, all applicable ADOT Details, Specifications, and Standards, and this Contract to provide all supporting Construction Drawings and Specifications for a High Intensity Activated Crosswalk (HAWK), crossing South Palo Verde Road, south of the East Michigan Street / South Coach Road intersection.

The Palo Verde HAWK project will realign curb and gutter at two corners, install pedestrian ramps at all corners, restripe this intersection to define stop bars and crosswalks, add directional signage to vehicle lanes, install sections of concrete walk to connect to existing walk on Coach, and to define tie-in points for new walk associated with the South Palo Verde Road Sidewalk project, and relocate existing signage at this intersection. The scope will be limited to the HAWK and its supporting walks, signage, and striping, at this intersection.



Project work will occur simultaneously with the Palo Verde Road Sidewalk Project (CTR.4PVRSW). The two projects tie into each other, with clearly defined limits. The projects have different funding sources, justifying the separation of work. Complete document sets will be created for each project for compliance with the funding sources. The schedule for deliverables will be consistent for both projects. The County will award both projects to a single Consultant.

Funding sources are unique to the two projects; therefore, accounting methods will maintain these as separate projects. This project will be funded through the Federal Highway Safety Improvement Program (HSIP).

C. DESIGN CRITERIA

The design of this project shall proceed in general conformance with the current edition of the Pima County Roadway Design Manual (RDM) and the ADOT Roadway Engineering Design Standards, and any other applicable design criteria as listed herein or as required by regulatory review agencies.

D. PROJECT SCHEDULE

The duration of the design work shall be 12 months. The Consultant is expected to deliver the submittals identified in the RDM incrementally through the design period in accordance with the schedule prepared at the inception of the project. Generally, the Consultant should be completed with the Design Concept Report (DCR) within 3 months. ADOT requires review of the Final DCR, required Clearance Documents (Environmental, Right-of-Way, Utilities and Materials), Construction Documents at 30%, 60%, 95%, and 100%. The 30% submittals will coincide with the Design Phase identified in the RDM. The 60%, 95% and 100% submittals will coincide with the PS&E Phase. RDM Table 3-1 Design Process Tasks and Submittals provides a checklist of key submittals required. The Consultant's schedule shall specifically identify the submittals shown within the forementioned table and the ADOT submittals within this paragraph.

The duration of construction and post-design services is expected to be 12 months.

E. ITEMS AND SERVICES TO BE FURNISHED BY THE COUNTY

The County will provide the items and services to the Consultant per the Solicitation for Qualifications and as modified in this scope of work. County will also provide Consultant with documents used to request funding for this improvement.

F. ABBREVIATIONS

The following abbreviations may be referred to throughout this scope of work:

AASHTO	American Association of State Highway and Transportation Officials
ADEQ	Arizona Department of Environmental Quality
ADOT	Arizona Department of Transportation
AGFD	Arizona Game and Fish Department
Corps	U.S. Army Corps of Engineers
COT	City of Tucson
County	Pima County
DCR	Design Concept Report
EAMR	Environmental Assessment and Mitigation Report
EA	Environmental Assessment
EPG	Environmental Planning Group
ESR	Environmentally Sensitive Roadway

ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
GIS	Geographic Information System
LOS	Level of service
Manual	2013 Pima County Department of Transportation Roadway Design Manual
NEPA	National Environmental Policy Act
NPDES	National Pollutant Discharge Elimination System
PAG	Pima Association of Governments
PCDOT	Pima County Department of Transportation
PCOCRHP	Pima County Office of Cultural Resources and Historic Preservation
PCRFC	Pima County Regional Flood Control District
PCRWRD	Pima County Regional Wastewater Reclamation Department
PLSS	Public Land Survey System
PS&E	Plans, specifications, and estimates
RDM	Roadway Design Manual
ROE	Right of Entry
SOQ	Pima County Solicitation
R/W	Right-of-way
TDM	Transportation Demand Management
USFWS	U.S. Fish and Wildlife Service

G. PROJECT DOCUMENTATION

The documents listed as “**Deliverables**” in the Work Tasks of this scope of services, and other exhibits or presentations for the work covered by this AGREEMENT and associated supplements, if necessary, will be furnished by the Consultant to the County upon completion of the various tasks of work. Whether the documents are submitted in electronic media or in tangible format, any use of the materials on another project or on extensions of this project beyond the use for which they were intended, or any modification of the materials or conversion of the materials to an alternate system or format will be without liability or legal exposure to the Consultant. The County will assume all risks associated with such use, modifications, or conversions. If the County uses materials other than how they were intended, then the Consultant may remove from the electronic materials delivered to the County, all references to the Consultant’s involvement and will retain a tangible copy of the materials delivered to the County, which will govern the interpretation of the materials and the information recorded. Electronic files are considered working files only; the Consultant is not required to maintain electronic files beyond 90 days after the project final billing and makes no warranty as to the viability of electronic files beyond 90 days from date of transmittal.

H. WORK TASKS

TASK A.1 DESIGN SERVICES

General Requirements:

- a. This is a Federally Funded Project, through the HSIP Grant Program. All Federal standards and process shall apply, including all procedures required for ADOT and FHWA compliance.
- b. The level of effort for each phase and work task is limited to the amount of labor and expenses identified in a Project Budget spreadsheet (Fee Calculation). Costs are itemized to aid in project tracking purposes only. The budget may be transferred between tasks, provided the total contracted amount is not exceeded. Additional services beyond these limits will be considered Extra Work.

- c. The Project duration is anticipated to be 3 months for the Conceptual Design, 9 months for Final Design, and 12 months for Post Design Services. The Consultant is responsible for meeting deadlines for their and their sub-Consultants' tasks only.
- d. The analyses, design, plans, specifications, and estimate performed or prepared as part of the Project will be in English units. Metric units will not be used on this Project.
- e. The plans will be prepared in accordance with Pima County design practices and standards as identified on the Pima County DOT website.
- f. Design plans shall be developed using AutoCad 2023 and PCDOT CAD drafting standards. Final plan submittals shall be in electronic (PDF) and hardcopy format.
- g. Survey file submittals (monumentation, horizontal and vertical control, right-of-way plans) shall be in AutoCAD 2023 format.
- h. Originals of all project deliverables will be delivered to the County.
- i. Meeting summaries will be distributed electronically. Hard copies will not be provided.
- j. Unless specified within individual tasks, an original, hard copy and electronic, and 2 hard copies of each report will be submitted to the County.

TASK A.1 PROJECT MANAGEMENT AND QUALITY CONTROL

Task A.1.1. Project Management. Develop project design by coordinating design efforts. The anticipated management activities are as follows:

- a. Coordinate with all stakeholders through all means necessary, including but not limited to, phone, electronically, paper, face-to-face, etc.
- b. Ensure that project team members are communicating and cooperating on project tasks.
- c. Generate and regularly update a project contact list.
- d. Provide a monthly progress report submitted with the monthly invoice.
- e. Establish and keep updated correspondence files for all correspondence, including electronic, phone, paper, etc. Include the Federal/State Project Number on all documents.
- f. Manage all aspects of the project's scope schedule, budget, quality, and risk.
- g. Manage the project in accordance with ALL federal regulations and standards as well as County RDM, ADOT, and FHWA Standards.

Deliverables:

- Project Team Contact List.
- Progress Reports attached to monthly invoices.
- Responses to all review comments.

Task A.1.2. Quality Control Plan. Develop a project-specific quality control plan that identifies responsible personnel, technical review, checking procedures, and monitoring process. Submit within 10 days of notice to proceed. Each major submittal shall include verification of the quality control completed on said submittal.

Deliverables:

- Project-Specific Quality Control Plan.
- Verification of quality control shall be provided with each major submittal.
- Responses to all review comments.

Task A.1.3. Meetings and Communication. Consultant will be responsible for coordinating meeting times, inviting meeting participants, creating an agenda, preparing graphics and handouts, facilitating meetings, and providing meeting summaries. The anticipated design team meetings and activities are as follows:

- a. Conduct monthly meeting with the project team.
- b. Conduct sub-consultant and in-house team meetings.
- c. Conduct pre-review overview meetings with County reviewers prior to major submittals to deliver and explain submittal.
- d. Conduct major review comment meetings to discuss review comments and responses with the County and the project team.
- e. Conduct minor review comment meetings to discuss review comments and responses with individual reviewers for comments identified as needing additional resolution.
- f. Conduct other meetings as needed or required.

Deliverables:

- Meeting agendas and displays.
- Meeting summaries as required.
- Responses to all review comments.

Task A.1.4. Coordinate Between Participating Agencies. The Consultant will coordinate with involved agencies to include but not be limited to; Pima County and Arizona Department of Transportation.

Task A.1.5. Schedule. Provide an initial schedule within 10 days of Notice to Proceed. Provide an updated schedule with each monthly invoice.

Deliverables:

- Initial Schedule
- Monthly schedule updates.
- Responses to all review comments.

Task A.1.6. Cost Estimating. Consultant to develop a Base Estimate that identifies the major components of project scope and their cost, defines all components of scope, and describes all scope and cost assumptions within 20 days of notice to proceed. Consultant will update the cost by reviewing, updating and documenting assumptions and costs for each item, and including contingency information in the report during major plan submittals and as identified in the RDM.

Deliverables:

- Base Estimate - Incorporate various scenarios, risk analysis and contingency information into the estimate, identifying all assumptions.
- Estimates at all Design Submittals. Incorporate risk analysis and contingency information into the estimate. Identify all assumptions.

TASK A.2 NOT USED

TASK A.3 PUBLIC PARTICIPATION

The project does not have a Public Participation requirement.

TASK A.4 PUBLIC ART

This project does not have a Public Art requirement.

TASK A.5 UTILITY COORDINATION

Task A.5.1. Data Gathering and Utility Mapping. The CONSULTANT will perform the following data gathering and mapping tasks:

- a. Identify Utility Providers in the project limits.
- b. Request utility base mapping.
- c. Review and plot utility lines using available aerial photography, survey, and information found from field visit.

Task A.5.2. Design Coordination, Utility Impact Identification, Utility Status Letter. The CONSULTANT will initiate utility coordination and facilitate utility impact meetings with County, utility and appropriate team members to develop mitigation measures acceptable to the County that will clear the project of utility impacts by a determined Utility Relocation Date. The CONSULTANT will perform the following specific asks:

- a. Identify conflicts with utilities based on project design footprint. Include recognition of conflict in Final Design Plans.
- b. Request utility clearance / feedback within the Final Design Submittal.
- c. Review feedback from utility. Coordinate relocation work and date with utility.
- d. Request utility clearance / feedback within the Final PS&E Submittal.
- e. Capture all correspondence within a Utility Status Letter. The letter will include the contact information and any communication that has taken place.

Deliverables:

- Utility Status Letter
- Utility Relocation Date
- Letters of Clearance
- Meeting minutes prepared, distributed to project team, and revised as needed.
- Design plans showing updated mapping of utility information, including potholing information.
- Responses to all review comments.

TASK A.6 EVALUATION AND DOCUMENTATION OF ENVIRONMENTAL IMPACTS

It is assumed that this project will proceed through environmental clearance with a categorical exclusion status. The Consultant will complete all documentation necessary to obtain environmental clearance for this project.

Task A.6.1. Environmental Coordination Meeting. The Consultant will conduct field visits of the project area and arrange a meeting with the project team to discuss issues that would assist in completing the Questionnaire for Areas of Impact and to review the Summary Impact Matrix. The Consultant will coordinate with Game and Fish regarding potential wildlife corridors.

Task A.6.2. Questionnaire for Establishing Potential Areas of Impact. The Consultant will complete the questionnaire using field visits, correspondence, other reports, specialists, and other information. All sources will be cited.

Task A.6.3. Cultural Resources Process. Not Used

Task A.6.4. Summary Impact Matrix. The Consultant will complete the matrix. The Consultant will use the matrix to establish potential adverse environmental impacts. The Summary Impact Matrix will incorporate the results of the Cultural Resources review effort (by others) and Hazardous Materials Investigation. Additional data collection for zoning, planned developments, potential annexation and planned developments and relevant planning documents collected will be incorporated as necessary to consider potential design modifications.

Task A.6.5. Environmental Results Memorandum. The Consultant will prepare a memo to summarize the screening process, discuss issues noted, recommend courses of action, and identify issues that exceed the original scope of work. The Consultant will review and discuss the results of the screening with the entire project team.

Task A.6.6. Team Review. The Consultant will plan, prepare for, and attend a project team meeting to review and discuss environmental concerns.

Task A.6.7. Project Modifications/Alternatives. The Consultant will document project changes and their anticipated environmental effects.

Task A.6.8. Quality Control Review. The Consultant will provide quality control reviews of the deliverables listed below.

Deliverables:

- Meeting minutes, prepared, distributed to project team, and revised as needed.
- Completed Questionnaire for Establishing Potential Areas of Impact.
- Completed Summary Impact Matrix.
- Completed Environmental Results Memorandum.
- Memorandum detailing project changes and anticipated environmental effects.
- Responses to all review comments.

TASK A.7 SURVEY AND MAPPING

The Consultant will be responsible for providing any survey data needed to ensure that the signal plan accurately reflects the location of signal and roadway infrastructure in accordance with RDM.

Deliverables:

- Results of survey drawings by the Consultant.
- Responses to all review comments.

TASK A.8 DRAINAGE

This task is not required.

TASK A.9 GEOTECHNICAL

This task is not required.

TASK A.10 PAVEMENT DESIGN

This task is not required.

TASK A.11 BRIDGE STRUCTURE SELECTION STUDY/REPORT

This task is not required.

TASK A.12 TRAFFIC ENGINEERING

This task is not required.

TASK A.13 DESIGN CONCEPT REPORT (DCR)

Prepare and submit a Design Concept Report (DCR) that meets the requirements of the RDM

Deliverables:

- Initial Design Concept Report
- Final Design Concept Report
- Responses to all review comments.

TASK A.14 ENVIRONMENTAL ASSESSMENT AND MITIGATION REPORT (EAMR)

This task is not required.

TASK A.15 RIGHT-OF-WAY ACQUISITION SUPPORT

This task is not required.

TASK A.16 PREPARATION OF CONSTRUCTION DOCUMENTS

The package of construction documents includes final construction plans, specifications, bid schedule, and a cost estimate in Pima County's bid sheet format. The construction documents need to be clear and unambiguous about the work to be done, the standards to be met, elements of work, method of measurement, and basis of payment. The construction documents shall reflect current Pima County design practices and standards except as previously agreed upon with Pima County. The documents shall also reflect any special recommendations or requirements stated in the RDM. The 100% Final PS&E deliverable shall be usable for federal approval, pricing, and construction.

Task A.16.1. Initial Design Phase Plans. The Consultant will prepare initial HAWK plans. The Design Concept Plans will be at 1"=40' and will address horizontal and vertical alignment, cross sections, channelization, drainage, right-of-way, and major and minor structures.

Task A.16.2. Final Design Phase Plans. The Consultant will develop Final Design Plans per the checklist found in Chapter 3 of the RDM, including pavement layout, curb ramps, striping plans, and signal equipment. Establish initial Civil 3D templates, earthwork modeling, and project cost estimate for the Final Design Phase. This will correspond with ADOT's 30% review.

Task A.16.3. Initial PS&E. The Consultant will develop Initial PS&E Plans for the project per the checklist found in Chapter 3 of the RDM, including revisions from Final Design Phase Plan submittals, adding storm drain plans, landscape plans, staking plans and updating project cost estimate for the Initial PS&E. This will correspond with ADOT's 60% review.

Task A.16.4. Final PS&E. The Consultant will develop Final PS&E Plans per the checklist found in Chapter 3 of the RDM, including revisions from Initial PS&E, including SWPPP, construction sequencing (if

applicable), special provisions, signing plans and updating project cost estimate for Final PS&E. This will correspond with ADOT's 95% and 100% reviews.

Task A.16.5. Quality Control Review of Plans. The Consultant will provide a quality control review of the Stage I Design Concept Plans and Stage II Initial Construction Plans.

Deliverables:

- Initial Design Plans per the Design Manual Checklist, including cost estimate and quantity takeoff calculations.
- 30% Final Design Plans per the Design Manual Checklist, including cost estimate and quantity takeoff calculations.
- 60% Initial PS&E Plans per the Design Manual Checklist, including cost estimate and quantity take-off calculations.
- 95% Final PS&E Plans per the Design Manual Checklist, including cost estimates, special provisions, and quantity take-off calculations.
- 100% Final PS&E Plans per the Design Manual Checklist, including cost estimates, special provisions, and quantity take-off calculations.
- Responses to all review comments.

TASK B – ADDITIONAL SERVICES

Task B is as-needed services. No work shall commence under Task B without prior written authorization from the County.

TASK B.1 ADDITIONAL UTILITY INVESTIGATION

Task B.1.1. Utility Coordination and Survey. In the event a utility is unable to provide the ground marking and certified survey data requested in Task A.7.7, the Consultant shall provide Utility Quality Level B information for the utility in accordance with ASCE Standard Guidelines for the collection and Depiction of Existing Subsurface Data (CI/ASCE 38-02), page 3.

Any ground disturbing activity shall not begin until cultural clearance has been provided.

TASK B.2 OTHER SERVICES

Task B.2.1 Other Services. The Consultant may be called upon to perform services unknown or identified subsequent to the original scoping of the project. These efforts may be caused by unforeseen issues that arise after the development of this scope of work. Potential services could include the need to attend additional meetings, provide displays or summaries, perform additional analysis, provide additional design, or other efforts associated with the project beyond those identified within this scope of work.

TASK C – POST DESIGN SERVICES

The Consultant may be called upon to provide services beyond the submittal of the final PS&E. PCDOT will coordinate all the Post-Design Services and will act as the principal initial contact for post-design questions. However, the following additional efforts may be required.

Task C.1.1 Pre-Bid Services. PCDOT will coordinate all Pre-Bid Services and will act as the principal initial contact for pre-bid questions. However, the following additional efforts may be required by the Consultant.

- Attending pre-bid meetings
- Assisting in the preparation of amendments
- Addressing questions on the plans and specifications

Task C.1.2. Construction Services. PCDOT will coordinate all Construction Services and will act as the principal initial contact for construction questions. However, the following additional efforts may be required by the Consultant.

- Attending the pre-construction meeting and partnering meetings if any
- Attending weekly construction meetings at the project site
- Making site observations of the work under construction
- Evaluating and/or recommending changes in the construction documents
- Providing design details and revised drawings as needed to support construction
- Reviewing shop drawings, erection procedure plans, form work details, and proposals for substitutions or "approved alternates"
- Evaluating value engineering proposals

Task C.1.3 Post Construction Electronic AS-Builts. The Consultant will provide the County drafting services to incorporate the Contractors redlined record documents in to an electronic as-built in accordance with the requirements of PCDOT Network Management Systems Division.

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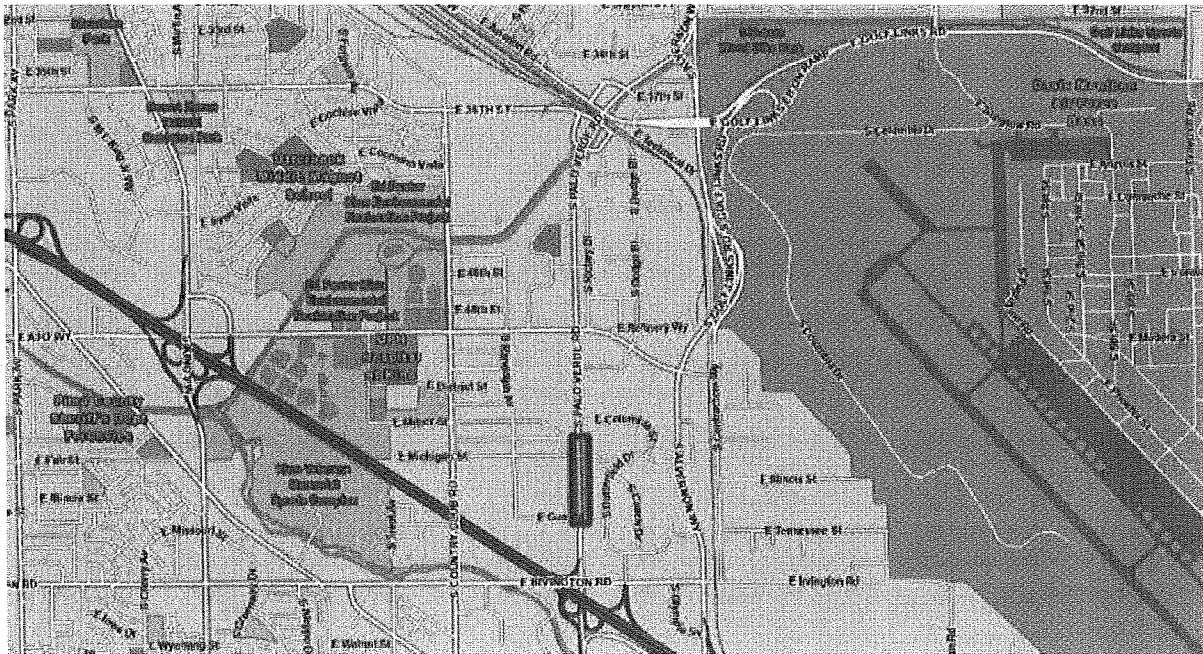
**SCOPE OF SERVICES FOR THE
PALO VERDE SIDEWALKS (CTR.4PVRSW)**

During the term of this Agreement, the engineering consultant (Consultant) shall perform professional services for Pima County (County) in connection with the Sidewalk Improvements located along an approximately one- half mile section of S. Palo Verde Rd., extending just south of E. Gas Rd. to north of E. Columbia St. This scoping document shall be used to plan, conduct, and complete the Consultant's work on the project.

A. BACKGROUND

The Palo Verde Sidewalks project serves a section of roadway which has a significant number of pedestrians, in part associated with one of the highest volume bus routes in the City. This corridor is connected to multiple businesses and land uses that attracts and generates significant pedestrian and vehicle traffic. Due to , the safety risks and conflicts that exist, PAG, Pima County, and City of Tucson conducted a Road Safety Analysis in 2019 that recommended continuous sidewalks among other improvements. This project will provide ADA-compliant sidewalk for pedestrians and allow better separation of uses.

This project will develop the curb, gutter, and sidewalks to improve safety and provide access to the businesses, connect to four existing bus stops, and tie into the planned High Intensity Activated Crosswalk (HAWK) at S. Palo Verde Rd. and E. Michigan St. to create greater continuity.



B. PROJECT DESCRIPTION

The scope of work for this effort includes the Consultant providing Engineering Design services according to the Pima County Roadway Design Manual, all applicable ADOT Details, Specifications, and Standards, and this Contract to provide all supporting Construction Drawings and Specifications for constructing sidewalk and curb and gutter along Palo Verde Road, from approximately 450 ft south of the intersection at East Gas Road and continuing north to terminating past the bus stop just north of East Columbia Street.

This work will include relocation of existing light pole and fixtures where they conflict with the final sidewalk location, curb and gutter, sidewalks, curb ramps, and expanded pavement areas at bus stop locations for future shelters. The shelters will be placed at the bus stops at a future date and as a separate project. The sidewalk will include the curb ramps at the intersections and entry drives to ensure the sidewalk meet all applicable roadway standards. At the intersection of Palo Verde Road and Michigan Street / Coach Drive this work will tie into the sections of sidewalk and ramps, included in the scope for the HAWK at S. Palo Verde Road and E. Michigan St. (CTR.4PVRHK).

Project work will occur simultaneously with the Palo Verde Road Michigan HAWK Project (CTR.4PVRHK). The two projects tie into each other, with clearly defined limits. The projects have different funding sources, justifying the separation of work. Complete document sets will be created for each project for compliance with the funding sources. The schedule for deliverables will be consistent for both projects. The County will award both projects to a single Consultant.

Funding sources are unique to the two projects; therefore, accounting methods will maintain these as separate projects. This project will be funded through Pima County.

C. DESIGN CRITERIA

The design of this project shall proceed in general conformance with the current edition of the Pima County Roadway Design Manual (RDM) and the ADOT Roadway Engineering Design Standards, and any other applicable design criteria as listed herein or as required by regulatory review agencies.

D. PROJECT SCHEDULE

The duration of the design work shall be 12 months. The Consultant is expected to deliver the submittals identified in the RDM incrementally through the design period in accordance with the schedule prepared at the inception of the project. Generally, the Consultant should be completed with the Design Concept Report (DCR) within 3 months. ADOT requires review of the Final Construction Documents. To maintain consistency across both projects, the Consultant will submit the Design Concept Phase and PS&E Phase drawings as outlined in the Palo Verde Michigan HAWK project. This includes review of the Construction Documents at 30%, 60%, 95%, and 100%. The 30% submittal will coincide with the Design Phase identified in the RDM. The 60%, 95% and 100% submittals will coincide with the PS&E Phase. RDM Table 3-1 Design Process Tasks and Submittals provides a checklist of key submittals required. The Consultant's schedule shall specifically identify the submittals shown within the forementioned table and the ADOT submittals within this paragraph.

The duration of construction and post-design services is expected to be 12 months.

E. ITEMS AND SERVICES TO BE FURNISHED BY THE COUNTY

The County will provide the items and services to the Consultant per the Solicitation for Qualifications and as modified in this scope of work. County will also provide Consultant with documents used to request funding for this improvement.

F. ABBREVIATIONS

The following abbreviations may be referred to throughout this scope of work:

AASHTO	American Association of State Highway and Transportation Officials
ADEQ	Arizona Department of Environmental Quality
ADOT	Arizona Department of Transportation

AGFD	Arizona Game and Fish Department
Corps	U.S. Army Corps of Engineers
COT	City of Tucson
County	Pima County
DCR	Design Concept Report
EAMR	Environmental Assessment and Mitigation Report
EA	Environmental Assessment
EPG	Environmental Planning Group
ESR	Environmentally Sensitive Roadway
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
GIS	Geographic Information System
LOS	Level of service
Manual	2013 Pima County Department of Transportation Roadway Design Manual
NEPA	National Environmental Policy Act
NPDES	National Pollutant Discharge Elimination System
PAG	Pima Association of Governments
PCDOT	Pima County Department of Transportation
PCOCRHP	Pima County Office of Cultural Resources and Historic Preservation
PCRFC	Pima County Regional Flood Control District
PCRWRD	Pima County Regional Wastewater Reclamation Department
PLSS	Public Land Survey System
PS&E	Plans, specifications, and estimates
RDM	Roadway Design Manual
ROE	Right of Entry
SOQ	Pima County Solicitation
R/W	Right-of-way
TDM	Transportation Demand Management

G. PROJECT DOCUMENTATION

The documents listed as “**Deliverables**” in the Work Tasks of this scope of services, and other exhibits or presentations for the work covered by this AGREEMENT and associated supplements, if necessary, will be furnished by the Consultant to the County upon completion of the various tasks of work. Whether the documents are submitted in electronic media or in tangible format, any use of the materials on another project or on extensions of this project beyond the use for which they were intended, or any modification of the materials or conversion of the materials to an alternate system or format will be without liability or legal exposure to the Consultant. The County will assume all risks associated with such use, modifications, or conversions. If the County uses materials other than how they were intended, then the Consultant may remove from the electronic materials delivered to the County, all references to the Consultant’s involvement and will retain a tangible copy of the materials delivered to the County, which will govern the interpretation of the materials and the information recorded. Electronic files are considered working files only; the Consultant is not required to maintain electronic files beyond 90 days after the project final billing and makes no warranty as to the viability of electronic files beyond 90 days from date of transmittal.

H. WORK TASKS

TASK A.1 DESIGN SERVICES

General Requirements:

- a. Construction of this project will be partially Federally Funded, through the RTAG Program. All Federal standards and process shall apply, including all procedures required for ADOT and FHWA compliance.

- b. The level of effort for each phase and work task is limited to the amount of labor and expenses identified in a Project Budget spreadsheet (Fee Calculation). Costs are itemized to aid in project tracking purposes only. The budget may be transferred between tasks, provided the total contracted amount is not exceeded. Additional services beyond these limits will be considered Extra Work.
- c. The Project duration is anticipated to be 3 months for the Conceptual Design, 9 months for Final Design, and 12 months for Post Design Services. The Consultant is responsible for meeting deadlines for their and their sub-Consultants' tasks only.
- d. The analyses, design, plans, specifications, and estimate performed or prepared as part of the Project will be in English units. Metric units will not be used on this Project.
- e. The plans will be prepared in accordance with Pima County design practices and standards as identified on the Pima County DOT website.
- f. Design plans shall be developed using AutoCad 2023 and PCDOT CAD drafting standards. Final plan submittals shall be in electronic (PDF) and hardcopy format.
- g. Survey file submittals (monumentation, horizontal and vertical control, right-of-way plans) shall be in AutoCAD 2023 format.
- h. Originals of all project deliverables will be delivered to the County.
- i. Meeting summaries will be distributed electronically. Hard copies will not be provided.
- j. Unless specified within individual tasks, an original, hard copy and electronic, and 2 hard copies of each report will be submitted to the County.

TASK A.1 PROJECT MANAGEMENT AND QUALITY CONTROL

Task A.1.1. Project Management. Develop project design by coordinating design efforts. The anticipated management activities are as follows:

- a. Coordinate with all stakeholders through all means necessary, including but not limited to, phone, electronically, paper, face-to-face, etc.
- b. Ensure that project team members are communicating and cooperating on project tasks.
- c. Generate and regularly update a project contact list.
- d. Provide a monthly progress report submitted with the monthly invoice.
- e. Establish and keep updated correspondence files for all correspondence, including electronic, phone, paper, etc. Include the Federal/State Project Number on all documents.
- f. Manage all aspects of the project's scope schedule, budget, quality, and risk.
- g. Manage the project in accordance with ALL federal regulations and standards as well as County RDM, ADOT, and FHWA Standards.

Deliverables:

- Project Team Contact List.
- Progress Reports attached to monthly invoices.
- Responses to all review comments.

Task A.1.2. Quality Control Plan. Develop a project-specific quality control plan that identifies responsible personnel, technical review, checking procedures, and monitoring process. Submit within 10 days of notice to proceed. Each major submittal shall include verification of the quality control completed on said submittal.

Deliverables:

- Project-Specific Quality Control Plan.
- Verification of quality control shall be provided with each major submittal.
- Responses to all review comments.

Task A.1.3. Meetings and Communication. Consultant will be responsible for coordinating meeting times, inviting meeting participants, creating an agenda, preparing graphics and handouts, facilitating meetings, and providing meeting summaries. The anticipated design team meetings and activities are as follows:

- a. Conduct monthly meetings with the project team.
- b. Conduct sub-consultant and in-house team meetings.
- c. Conduct pre-review overview meetings with County reviewers prior to major submittals to deliver and explain submittal.
- d. Conduct major review comment meetings to discuss review comments and responses with the County and the project team.
- e. Conduct minor review comment meetings to discuss review comments and responses with individual reviewers for comments identified as needing additional resolution.
- f. Conduct other meetings as needed or required.

Deliverables:

- Meeting agendas and displays.
- Meeting summaries as required.
- Responses to all review comments.

Task A.1.4. Coordinate Between Participating Agencies. The Consultant will coordinate with involved agencies to include but not be limited to, Pima County and Arizona Department of Transportation.

Task A.1.5. Schedule. Provide an initial schedule within 10 days of Notice to Proceed. Provide an updated schedule with each monthly invoice.

Deliverables:

- Initial Schedule
- Monthly schedule updates.
- Responses to all review comments.

Task A.1.6. Cost Estimating. Consultant to develop a Base Estimate that identifies the major components of project scope and their cost, defines all components of scope, and describes all scope and cost assumptions within 20 days of notice to proceed. Consultant will update the cost by reviewing, updating, and documenting assumptions and costs for each item, and including contingency information in the report during major plan submittals and as identified in the RDM.

Deliverables:

- Base Estimate - Incorporate various scenarios, risk analysis and contingency information into the estimate, identifying all assumptions.
- Estimates at all Design Submittals. Incorporate risk analysis and contingency information into the estimate. Identify all assumptions.

TASK A.2 NOT USED

TASK A.3 PUBLIC PARTICIPATION

This task is not required

TASK A.4 PUBLIC ART

This project has a Public Art requirement. The County will coordinate all activities associated with this task. The consultant may be directed to show potential locations for Public Art within in this corridor.

TASK A.5 UTILITY COORDINATION

Task A.5.1. Data Gathering and Utility Mapping. The CONSULTANT will perform the following data gathering and mapping tasks:

- a. Identify Utility Providers in the project limits.
- b. Request utility base mapping.
- c. Review and plot utility lines using available aerial photography, survey, and information found from field visit.

Task A.5.2. Design Coordination, Utility Impact Identification, Utility Status Letter. The CONSULTANT will initiate utility coordination and facilitate utility impact meetings with County, utility and appropriate team members to develop mitigation measures acceptable to the County that will clear the project of utility impacts by a determined Utility Relocation Date. The CONSULTANT will perform the following specific asks:

- a. Identify conflicts with utilities based on project design footprint. Include recognition of conflict in Final Design Plans.
- b. Request utility clearance / feedback within the Final Design Submittal.
- c. Review feedback from utility. Coordinate relocation work and date with utility.
- d. Request utility clearance / feedback within the Final PS&E Submittal.
- e. Capture all correspondence within a Utility Status Letter. The letter will include the contact information and any communication that has taken place.

Deliverables:

- Utility Status Letter
- Utility Relocation Date
- Letters of Clearance
- Meeting minutes prepared, distributed to project team, and revised as needed.
- Design plans showing updated mapping of utility information, including potholing information.
- Responses to all review comments.

TASK A.6 EVALUATION AND DOCUMENTATION OF ENVIRONMENTAL IMPACTS

It is assumed that this project will proceed through environmental clearance with a categorical exclusion status. The Consultant will complete all documentation necessary to obtain environmental clearance for this project.

Task A.6.1. Environmental Coordination Meeting. The Consultant will conduct field visits of the project area and arrange a meeting with the project team to discuss issues that would assist in completing the Questionnaire for Areas of Impact and to review the Summary Impact Matrix. The Consultant will coordinate with Game and Fish regarding potential wildlife corridors.

Task A.6.2. Questionnaire for Establishing Potential Areas of Impact. The Consultant will complete the questionnaire using field visits, correspondence, other reports, specialists, and other information. All sources will be cited.

Task A.6.3. Cultural Resources Process Not Used

Task A.6.4. Summary Impact Matrix. The Consultant will complete the matrix. The Consultant will use the matrix to establish potential adverse environmental impacts. The Summary Impact Matrix will incorporate the results of the Cultural Resources review effort (by others) and Hazardous Materials Investigation. Additional data collection for zoning, planned developments, potential annexation and planned developments and relevant planning documents collected will be incorporated as necessary to consider potential design modifications.

Task A.6.5. Environmental Results Memorandum. The Consultant will prepare a memo to summarize the screening process, discuss issues noted, recommend courses of action, and identify issues that exceed the original scope of work. The Consultant will review and discuss the results of the screening with the entire project team.

Task A.6.6. Team Review. The Consultant will plan, prepare for, and attend a project team meeting to review and discuss environmental concerns.

Task A.6.7. Project Modifications/Alternatives. The Consultant will document project changes and their anticipated environmental effects.

Task A.6.8. Quality Control Review. The Consultant will provide quality control reviews of the deliverables listed below.

Deliverables:

- Meeting minutes, prepared, distributed to project team, and revised as needed.
- Completed Questionnaire for Establishing Potential Areas of Impact.
- Completed Summary Impact Matrix.
- Completed Environmental Results Memorandum.
- Memorandum detailing project changes and anticipated environmental effects.
- Responses to all review comments.

TASK A.7 SURVEY AND MAPPING

The Consultant will be responsible for providing any survey data needed to ensure that the signal plan accurately reflects the location of signal and roadway infrastructure in accordance with RDM.

Deliverables:

- Results of survey drawings by the Consultant.
- Responses to all review comments.

TASK A.8 DRAINAGE

This task is not required.

TASK A.9 GEOTECHNICAL

This task is not required.

TASK A.10 PAVEMENT DESIGN

This task is not required.

TASK A.11 BRIDGE STRUCTURE SELECTION STUDY/REPORT

This task is not required.

TASK A.12 TRAFFIC ENGINEERING

This task is not required.

TASK A.13 DESIGN CONCEPT REPORT (DCR)

Prepare and submit a Design Concept Report (DCR) that meets the requirements of the RDM.

Deliverables:

- Initial Design Concept Report
- Final Design Concept Report
- Responses to all review comments.

TASK A.14 ENVIRONMENTAL ASSESSMENT AND MITIGATION REPORT (EAMR)

This task is not required.

TASK A.15 RIGHT-OF-WAY ACQUISITION SUPPORT

This task is not required.

TASK A.16 PREPARATION OF CONSTRUCTION DOCUMENTS

The package of construction documents includes final construction plans, specifications, bid schedule, and a cost estimate in Pima County's bid sheet format. The construction documents need to be clear and unambiguous about the work to be done, the standards to be met, elements of work, method of measurement, and basis of payment. The construction documents shall reflect current Pima County design practices and standards except as previously agreed upon with Pima County. The documents shall also reflect any special recommendations or requirements stated in the RDM. The 100% Final PS&E deliverable shall be usable for federal approval, pricing, and construction.

Task A.16.1. Initial Design Phase Plans. The Consultant will prepare initial sidewalk, ramp, and striping plans. The Design Concept Plans will be at 1"=40' and will address horizontal and vertical alignment, cross sections, channelization, drainage, right-of-way, major and minor structures, utility connections, and grading.

Task A.16.2. Final Design Phase Plans. The Consultant will develop Final Design Plans per the checklist found in Chapter 3 of the RDM, including pavement, ramps, striping plans, and cross sections. Establish initial Civil 3D templates, earthwork modeling, and project cost estimate for the Final Design Phase. This will correspond with ADOT's 30% review.

Task A.16.3. Initial PS&E. The Consultant will develop Initial PS&E Plans for the project per the checklist found in Chapter 3 of the RDM, including revisions from Final Design Phase Plan submittals, adding storm drain plans, landscape and irrigation plans, staking plans and updating project cost estimate for the Initial PS&E. This will correspond with ADOT's 60% review.

Task A.16.4. Final PS&E. The Consultant will develop Final PS&E Plans per the checklist found in Chapter 3 of the RDM, including revisions from Initial PS&E, including SWPPP, construction sequencing (if applicable), special provisions, signing plans and updating project cost estimate for Final PS&E. This will correspond with ADOT's 95% and 100% reviews.

Task A.16.5. Quality Control Review of Plans. The Consultant will provide a quality control review of the Stage I Design Concept Plans and Stage II Initial Construction Plans.

Deliverables:

- Initial Design Plans per the Design Manual Checklist, including cost estimate and quantity takeoff calculations.
- 30% Final Design Plans per the Design Manual Checklist, including cost estimate and quantity takeoff calculations.
- 60% Initial PS&E Plans per the Design Manual Checklist, including cost estimate and quantity take-off calculations.
- 95% Final PS&E Plans per the Design Manual Checklist, including cost estimates, special provisions, and quantity take-off calculations.
- 100% Final PS&E Plans per the Design Manual Checklist, including cost estimates, special provisions, and quantity take-off calculations.
- Responses to all review comments.

TASK B – ADDITIONAL SERVICES

Task B is as-needed services. No work shall commence under Task B without prior written authorization from the County.

TASK B.1 ADDITIONAL UTILITY INVESTIGATION

Task B.1.1. Utility Coordination and Survey. In the event a utility is unable to provide the ground marking and certified survey data requested in Task A.7.7, the Consultant shall provide Utility Quality Level B information for the utility in accordance with ASCE Standard Guidelines for the collection and Depiction of Existing Subsurface Data (CI/ASCE 38-02), page 3.

Any ground disturbing activity shall not begin until cultural clearance has been provided.

TASK B.2 OTHER SERVICES

Task B.2.1 Other Services. The Consultant may be called upon to perform services unknown or identified subsequent to the original scoping of the project. These efforts may be caused by unforeseen issues that arise after the development of this scope of work. Potential services could include the need to attend additional meetings, provide displays or summaries, perform additional analysis, provide additional design, or other efforts associated with the project beyond those identified within this scope of work.

TASK C – POST DESIGN SERVICES

The Consultant may be called upon to provide services beyond the submittal of the final PS&E. PCDOT will coordinate all the Post-Design Services and will act as the principal initial contact for post-design questions. However, the following additional efforts may be required.

Task C.1.1 Pre-Bid Services. PCDOT will coordinate all Pre-Bid Services and will act as the principal initial contact for pre-bid questions. However, the following additional efforts may be required by the Consultant.

- Attending pre-bid meetings
- Assisting in the preparation of amendments
- Addressing questions on the plans and specifications

Task C.1.2 Construction Services. PCDOT will coordinate all Construction Services and will act as the principal initial contact for construction questions. However, the following additional efforts may be required by the Consultant.

- Attending the pre-construction meeting and partnering meetings if any
- Attending weekly construction meetings at the project site
- Making site observations of the work under construction
- Evaluating and/or recommending changes in the construction documents
- Providing design details and revised drawings as needed to support construction
- Reviewing shop drawings, erection procedure plans, form work details, and proposals for substitutions or "approved alternates"
- Evaluating value engineering proposals

Task C.1.3 Post Construction Electronic AS-Builts. The Consultant will provide the County drafting services to incorporate the Contractors redlined record documents into an electronic as-built in accordance with the requirements of PCDOT Network Management Systems Division.

END OF EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - COMPENSATION SCHEDULE (46 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.

p 520.495.4065 | 177 North Church Avenue, Suite 1000
f 602.957.2838 | Tucson, AZ 85701-1156

dibblecorp.com

November 14, 2024

Pima County Design and Construction Department
150 West Congress Street, 3rd Floor
Tucson, Arizona 85701-1207

Attn: Ms. Judy Cooper, Procurement Officer

RE: **Palo Verde Road & Michigan Street HAWK (Pima County Project No. 4PVRKH)**
ADOT TRACS No. T0576 03D | Federal Aid No. PPM-0(275)D
Palo Verde Sidewalks (Pima County Project No. 4PVRSW)
Scope of Work and Fee Proposal

Dear Ms. Cooper:

Dibble and Associates Consulting Engineers, Inc (dba Dibble) appreciates the opportunity to support the Pima County Department of Transportation (PCDOT/County) on the County's **Palo Verde Road & Michigan Street HAWK** project. Dibble will provide coordination, engineering, design, post design, bid support, and construction engineering services required to prepare construction documents and associated deliverables described within this scope of work.

The project is composed of two separate project scopes summarized below, as shown in **Figure 1**, and described with further detail in Exhibit "A" – Scope of Services

- **Project No. 4PVRKH:** A new pedestrian hybrid beacon (PHB or HAWK) will be installed at the intersection of Palo Verde Road and Michigan Street with associated sidewalk and ramp improvements to comply with Americans with Disabilities Act (ADA) requirements. The signing and marking scheme at the intersection will be updated to accommodate the PHB/HAWK improvements. **Figure 2** depicts a conceptual design layout developed by PCDOT. Drainage and erosion control designs will be included for impacts at the intersection.
- **Project No. 4PVRSW:** New sidewalks will be installed on both sides of Palo Verde Road from the northern limits of the Arizona Department of Transportation (ADOT) right-of-way on the south to the existing bus stop located north of Columbia Street. To enhance safety for multimodal users of the sidewalk, curb with gutter will be installed as the new edge of roadway condition. The sidewalk will connect into the HAWK and sidewalk ramp improvements included with Project 4PVRKH. Drainage patterns will be evaluated and design mitigation including scuppers and roadside ditches will be included in the design. Signing and striping modifications will be included to accommodate the pavement widening. Erosion control and landscape designs will be included within the right of way. Retaining walls, utilizing the ADOT standard details, will be included to minimize roadside channel impacts.

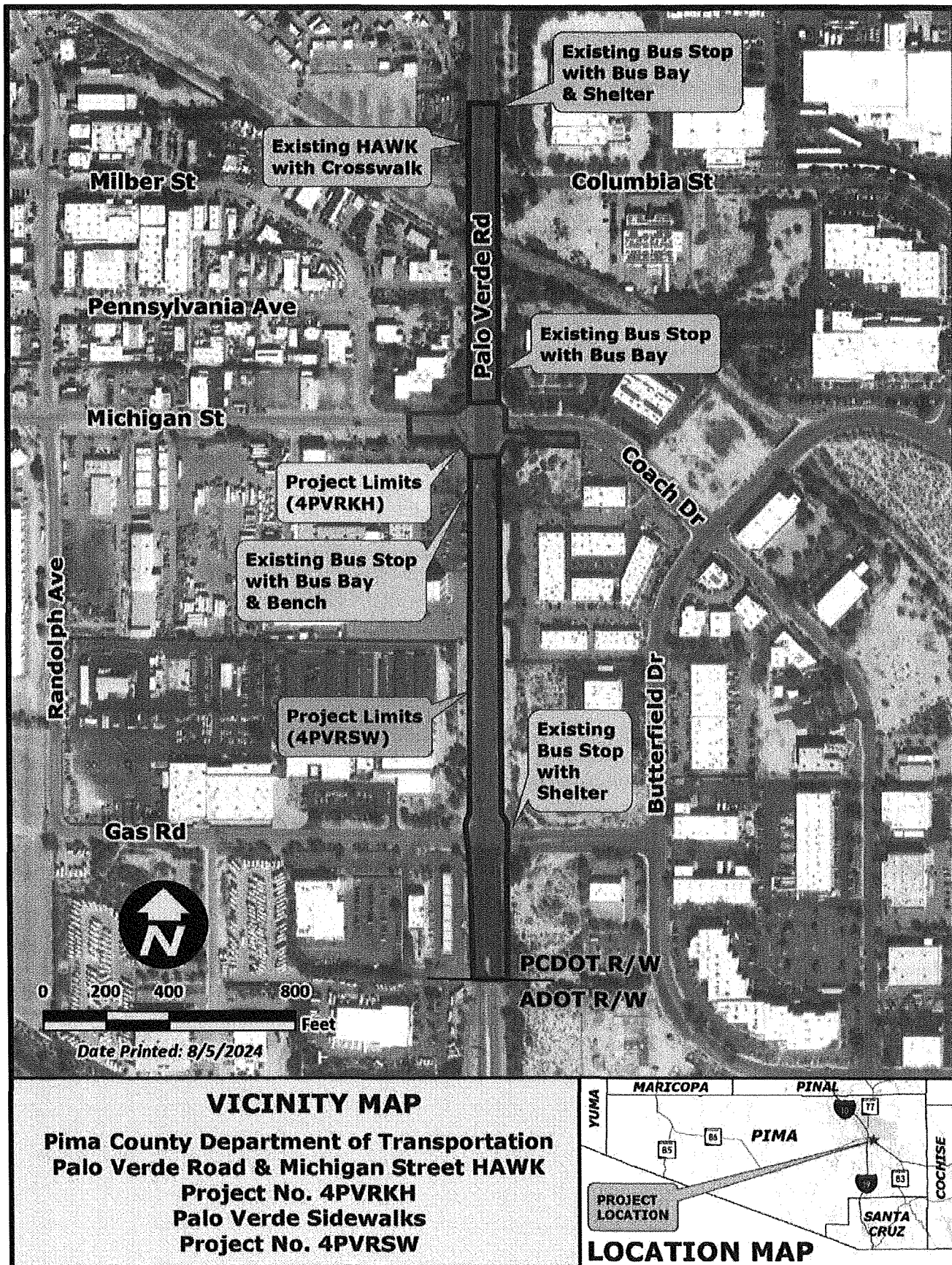


Figure 1 – Project Vicinity Map



Figure 2 – Conceptual Design of Palo Verde Road and Michigan Street PHB/HAWK

BILLING AND COMPENSATION:

This project will be billed on a cost-plus fixed fee, lump sum basis. Dibble will send monthly invoices (progress reports) to PCDOT showing the percent complete of individual tasks, a summary of previous billings, current fee due, total amount of the invoice, and a summary of works tasks completed during current billing period.

DESIGN STANDARDS:

The project improvements will be designed in accordance with the standards listed in Section B of Exhibit "A" as summarized below (in order of precedence):

- Pima County Department of Transportation, *Pima County Roadway Design Manual Fourth Edition*, 2013
- Pima County Department of Transportation, *Signing and Pavement Marking Manual*, 2020
- Arizona Department of Transportation, *Local Public Agency Project Manual*, 2013
- Arizona Department of Transportation, *Roadway Design Guidelines*, January 2021 Including Revisions through February 2022
- Arizona Department of Transportation, *Standard Specifications for Road and Bridge Construction*, 2021
- Arizona Department of Transportation, *Construction Standard Drawings*, Current Edition
- Arizona Department of Transportation, *Signals and Lighting Standard (SLS) Drawings*, Current Edition
- Arizona Department of Transportation, *Signing and Marking Standard (SMS) Drawings*, Current Edition
- Federal Highway Administration, *Manual on Uniform Traffic Control Devices for Streets and Highways, 2009 Edition Revision 2 with Arizona Supplements*
- American Association of State and Highway Transportation Officials (AASHTO), *A Policy on the Geometric Design of Highways and Streets, 7th Edition*, 2018
- American Association of State and Highway Transportation Officials (AASHTO), *Guide for the Planning, Design, and Operation of Pedestrian Facilities*, 2014
- American Association of State and Highway Transportation Officials, *Guide for the Development of Bicycle Facilities, 4th Edition*, 2012

ASSUMPTIONS:

The following assumptions were utilized by Dibble and subconsultants in the preparation of this scope of work with fee proposal:

- Curb with gutter will be constructed by sawcutting existing edge of pavement and widening to Pima Association of Governments standard cross section width. No roadway reconstruction, reprofiling, or repaving will be included.
- Drainage analysis will only evaluate roadway drainage. Regional and cross drainage will not be included in the evaluation.
- No improvements to the reinforced concrete box culvert located between Michigan Street and Columbia Street will be included in the scope of this project. Curb with gutter and sidewalk will not be constructed over the reinforced concrete box culvert crossing.
- Irrigation design will be additional services, if needed.
- Guardrail located on southwest corner of Palo Verde Road and Michigan Street will be removed to accommodate construction of the sidewalk and ramp.
- Any retaining wall structures needed will utilize ADOT standard details.
- Not subsurface utility mapping/potholing will be needed for these projects.
- Temporary Construction Easements may be needed for driveway connections to match existing conditions.

CONSTRUCTION DOCUMENTS:

Drawings will be prepared in AutoCAD 2023 format. Electronic copies of the construction documents will be submitted to the County, in electronic format, at the completion of design. An Estimated Plan Sheet Index, for sheets Dibble will be preparing, is included in **Table 1**.

Table 1 – Estimated Plan Sheet Index

DESCRIPTION	SCALE	NO OF SHEETS 4PVRKH	NO OF SHEETS 4PVRSW
Cover Sheet	-	1	1
Abbreviations and Legend Sheet	-	1	1
General Notes and Design Sheet	-	1	1
Survey Control Sheet	-	1	1
Key Map Sheet	100	1	1
Summary Sheets	-	2	2
Typical Sections Sheet	10	1	1
Roadway and Drainage Detail Sheets	Varies	3	3
Roadway Plan and Profile Sheets	20	2	7
Driveway Staking Diagram Sheets	10	0	4
Traffic Signal General Notes & Detail Sheet	-	1	0
Traffic Signal Plan Sheet	10	1	0
Traffic Signal Schedule Sheets	-	2	0
Signing and Pavement Marking General Notes, Quantities, & Legend Sheet	1	1	1

Signing and Pavement Marking Sheet (Two Views Stacked)	20	1	4
Landscape Plan Sheets and Details	20	0	8
Erosion Control/SWPPP Sheet (Two Views Stacked)	20	2	6
Roadway Cross Section Sheets	10	2	8
TOTAL		23	49

SCHEDULE:

Prior to commencing design work, Dibble’s Project Manager and the County’s Project Manager will meet to determine the project schedule. The preliminary schedule provided in **Table 2** has been developed based on discussions with the County along with past experience and is indexed to the anticipated notice to proceed (NTP) date. The design phase is anticipated to be completed within 51 weeks or 12 months after the Notice to Proceed.

Table 2 – Preliminary Design Schedule

MILESTONE	DATE
Anticipated Notice to Proceed	December 18, 2024
Data Collection and Field Survey	NTP + 6 Weeks
Initial Design Concept Report	NTP + 11 Weeks
County Review Period with Comment Resolution Meeting	NTP + 17 Weeks
Final Design Concept Report	NTP + 21 Weeks
30% Design Development with Submittal	NTP + 26 Weeks
County Review Period with Comment Resolution Meeting	NTP + 29 Weeks
60% Design Development with Submittal	NTP + 35 Weeks
County Review Period with Comment Resolution Meeting	NTP + 39 Weeks
95% Design Development with Submittal	NTP + 44 Weeks
County Review Period with Comment Resolution Meeting	NTP + 47 Weeks
100% Design Development with Submittal	NTP + 51 Weeks

CLARIFICATIONS/EXCLUSIONS:

The work listed below is specifically excluded from this scope of work, but can be added to the contract for an additional fee to be negotiated should PCDOT elect to do so:

- Subsurface Utility Exploration (Potholing)
- Traffic Counts, Analysis, or Warrant Studies
- Traffic Design (Street Lighting and ITS)
- Geotechnical and Pavement Analysis and Design
- Cultural Investigations and reports
- Asbestos, Lead Based Paint, and other Hazardous Materials Testing
- Public Outreach except for providing supporting materials to the County as needed
- Permit and Review Fees
- Hard Copy Reproduction, except Environmental Reports
- Legal Descriptions with Exhibits

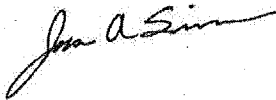
- Right-of-Way and/or Easement Staking
- Construction Staking
- Construction Management, Inspection, and Observation

Dibble will complete the services described herein for the **cost-plus fixed fee, lump sum** as summarized below:

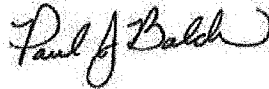
<u>Description:</u>	Palo Verde Rd & Michigan Street HAWK (4PVRKH)	Palo Verde Sidewalks 4PVRSW
TASK A – DESIGN TASKS		
Dibble Fee.....	\$ 114,031.15.....	\$ 83,558.08
Subconsultants	\$ 36,094.52.....	\$ 70,627.19
<i>TASK A Sub-Total</i>	<i>\$ 150,125.67</i>	<i>\$ 154,185.27</i>
TASK B – CONSTRUCTION TASKS		
Dibble Fee.....	\$ 25,454.40.....	\$ 20,572.03
Subconsultants	\$ 0.00.....	\$ 0.00
<i>TASK B Sub-Total</i>	<i>\$ 25,454.40</i>	<i>\$ 20,572.03</i>
Project Totals	\$ 175,580.07	\$ 174,757.30
Total Contract Amount	\$ 350,337.37	

We are excited to partner with PCDOT on this multimodal safety improvement project. Please contact us with any questions at your convenience.

Regards,



Jason A. Simmers, PE
Senior Project Manager
Dibble



Paul J. Balch, PE
Vice President/Arizona Group Leader
Dibble

Enclosures:

- GAANT Chart Schedule
- Dibble Rate Information Table
- 4PVRKH Exhibit A – Scope of Services
- 4PVRKH Consultant Fee Proposal Summary with Staff Hour Matrix
- 4PVRKH Subconsultant Scope and Fee Proposals
- 4PVRSW Exhibit A – Scope of Services
- 4PVRSW Consultant Fee Proposal Summary with Staff Hour Matrix
- 4PVRSW Subconsultant Scope and Fee Proposals



**PALO VERDE ROAD & MICHIGAN STREET HAWK (PIMA COUNTY PROJECT NO. 4PVRKH)
PALO VERDE SIDEWALKS (PIMA COUNTY PROJECT NO. 4PVRSW)
PROJECT SCHEDULE (DRAFT)**

DIBBLE

ID	Task Name	Duration	Start	Finish	Qtr 1, 2026			Qtr 2, 2026			Qtr 3, 2026			Qtr 4, 2026			Qtr 1, 2027			
					Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	
1	Final Design Development	257 days	Thu 12/18/25	Fri 12/11/26																
2	Notice to Proceed	1 day	Thu 12/18/25	Thu 12/18/25																
3	Field Survey & Processing	30 days	Mon 12/22/25	Fri 1/30/26																
4	Data Collection	10 days	Mon 12/22/25	Fri 1/2/26																
5	Base Mapping	10 days	Mon 2/2/26	Fri 2/13/26																
6	Initial Design Concept Report	35 days	Mon 2/2/26	Fri 3/20/26																
7	County Review with Resolution Meeting	20 days	Mon 3/23/26	Fri 4/17/26																
8	Final Design Concept Report	20 days	Mon 4/20/26	Fri 5/15/26																
9	30% Design Development	25 days	Mon 5/18/26	Fri 6/19/26																
10	County Review with Resolution Meeting	15 days	Mon 6/22/26	Fri 7/10/26																
11	60% Design Development	30 days	Mon 7/13/26	Fri 8/21/26																
12	County Review with Resolution Meeting	20 days	Mon 8/24/26	Fri 9/18/26																
13	95% Design Development	25 days	Mon 9/21/26	Fri 10/23/26																
14	County Review with Resolution Meeting	15 days	Mon 10/26/26	Fri 11/13/26																
15	Final Construction Documents	20 days	Mon 11/16/26	Fri 12/11/26																

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
Palo Verde Road & Michigan Street HAWK
PIMA COUNTY PROJECT NO. 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D
CONSULTANT/SUBCONSULTANT FEE PROPOSAL SUMMARY

TASK A - DESIGN SERVICES (TASKS A.1 THROUGH A.16)

DIRECT LABOR BREAKDOWN:

Classification	Hours	Hourly Rate	Labor Cost
Senior Project Manager	64	\$ 72.02	\$ 4,609.28
Senior Engineer	49	\$ 69.45	\$ 3,403.05
Senior Project Engineer	112	\$ 50.01	\$ 5,601.12
Project Engineer	158	\$ 44.77	\$ 7,073.66
Assistant Project Engineer	180	\$ 36.19	\$ 6,514.20
Senior Technician	140	\$ 45.24	\$ 6,333.60
Admin Assistant	4	\$ 28.30	\$ 113.20
SUBTOTAL (DIRECT LABOR)	707		\$ 33,648.11

<u>OVERHEAD:</u>	Overhead Rate	213.79%	\$ 71,936.29
SUBTOTAL (DL+OH)			\$ 105,584.40

<u>PROFIT:</u>	Profit Rate (Net Fee)	8.00%	\$ 8,446.75
SUBTOTAL (DL+OH+PR)			\$ 114,031.15

DIRECT EXPENSES BREAKDOWN:

Mileage and Travel Expenses	\$ -
Reproduction	\$ -
SUBTOTAL (DIRECT EXPENSES)	\$ -

SUBCONSULTANTS:

Mapping & Survey (Surveying and Mapping, LLC)	\$ 5,492.09
Environmental and Public Outreach (Westland Resources, Inc)	\$ 17,447.49
Preliminary Initial Site Assessment (Newton Environmental Consulting, LLC) (DBE)	\$ 3,372.63
ADA Investigation & Construction Cost Estimating (iSX-Inc)	\$ 9,782.31
Landscape Architecture (Norris)	
SUBTOTAL (SUBCONSULTANTS)	\$ 36,094.52

TOTAL COST + FEE (TASK A - BASE CONTRACT):	\$ 150,125.67
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PIMA COUNTY DEPARTMENT OF TRANSPORTATION

Palo Verde Road & Michigan Street HAWK

PIMA COUNTY PROJECT NO. 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

TASK B - ADDITIONAL SERVICES (CONSTRUCTION TASKS B.2)

DIRECT LABOR BREAKDOWN:

<u>Classification</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Labor Cost</u>
Senior Project Manager	38	\$ 72.02	\$ 2,736.76
Senior Engineer	2	\$ 69.45	\$ 138.90
Senior Project Engineer	12	\$ 50.01	\$ 600.12
Project Engineer	58	\$ 44.77	\$ 2,596.66
Assistant Project Engineer	16	\$ 36.19	\$ 579.04
Senior Technician	19	\$ 45.24	\$ 859.56
Admin Assistant	0	\$ 28.30	\$ -
SUBTOTAL (DIRECT LABOR)	145		\$ 7,511.04

OVERHEAD: Overhead Rate 213.79% \$ 16,057.85

SUBTOTAL (DL+OH) \$ 23,568.89

PROFIT: Profit Rate (Net Fee) 8.00% \$ 1,885.51

SUBTOTAL (DL+OH+PR) \$ 25,454.40

DIRECT EXPENSES BREAKDOWN:


Mileage and Travel Expenses	\$ -
Reproduction	\$ -
SUBTOTAL (DIRECT EXPENSES)	\$ -

SUBCONSULTANTS:

Mapping & Survey (Surveying and Mapping, LLC)	\$ -
Environmental and Public Outreach (Westland Resources, Inc)	\$ -
Preliminary Initial Site Assessment (Newton Environmental Consulting, LLC) (DBE)	\$ -
ADA Investigation & Construction Cost Estimating (iSX-Inc)	\$ -
Landscape Architecture (Norris)	\$ -
SUBTOTAL (SUBCONSULTANTS)	\$ -

TOTAL COST + FEE (TASK B - CONSTRUCTION SERVICES):	\$ 25,454.40
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TOTAL COST + FEE:	\$ 175,580.07
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 Signature
 Vice President, Dibble

 Title

11/14/2024

 Date

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
Palo Verde Road & Michigan Street HAWK
PIMA COUNTY PROJECT NO. 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

DIBBLE STAFF HOUR MATRIX

Task	Sub-Task	Task Description	\$ 72.02	\$ 69.45	\$ 50.01	\$ 44.77	\$ 36.19	\$ 45.24	\$ 28.30	Total Staff Hours	Labor Fee Subtotal	213.79% Overhead Subtotal	8.00% Profit Subtotal	Total Fee
			Senior Project Manager	Senior Engineer	Senior Project Engineer	Project Engineer	Assistant Project Engineer	Senior Technician	Admin Assistant					
TASK A - DESIGN SERVICES														
A.1	Project Management and Quality Control													\$ 14,689.73
	A.1.1.	Project Management (2 hr/month for 12 months)	24						4	28	\$ 1,841.68	\$ 3,937.33	\$ 462.32	\$ 6,241.33
	A.1.2.	Quality Control Plan	1	2						3	\$ 210.92	\$ 450.92	\$ 52.95	\$ 714.79
	A.1.3.	Meetings and Communication (10 Meetings)	10			20				30	\$ 1,615.60	\$ 3,453.99	\$ 405.57	\$ 5,475.16
	A.1.4.	Coordinate Between Participating Agencies	2			2				4	\$ 233.58	\$ 499.37	\$ 58.64	\$ 791.59
	A.1.5.	Schedule	2							2	\$ 144.04	\$ 307.94	\$ 36.16	\$ 488.14
	A.1.6.	Cost Estimating	2				4			6	\$ 288.80	\$ 617.42	\$ 72.50	\$ 978.72
A.4	Public Art (4PVRSW)													\$ -
	A.4.1.	Coordination with PCDOT for Public Art Placement												
A.5	Utility Coordination													\$ 8,054.64
	A.5.1.	Data Gathering and Utility Mapping		1	2	10	24			37	\$ 1,485.73	\$ 3,176.34	\$ 372.97	\$ 5,035.04
	A.5.2.	Design Coordination, Utility Impact Identification, Utility Status Letter	4		2	8	4			18	\$ 891.02	\$ 1,904.91	\$ 223.67	\$ 3,019.60
A.6	Evaluation and Documentation of Environmental Impacts													\$ 488.14
	A.6.6.	Team Review (Coordination w/ Westland Resources; 1 Meeting)	2							2	\$ 144.04	\$ 307.94	\$ 36.16	\$ 488.14
A.7	Survey and Mapping													\$ 1,493.37
	A.7.1.	Coordination-w/ Surveying and Mapping LLC	1		2	6				9	\$ 440.66	\$ 942.09	\$ 110.62	\$ 1,493.37
A.13	Design Concept Report													\$ 27,753.66
	A.13.1.	Initial Design Concept Report	4	4	20	34	42	28		132	\$ 5,874.96	\$ 12,560.08	\$ 1,474.80	\$ 19,909.84
	A.13.2.	Final Design Concept Report	2	2	6	12	18	12		52	\$ 2,314.54	\$ 4,948.26	\$ 581.02	\$ 7,843.82
A.16	Preparation of Construction Documents													\$ 61,551.61
	A.16.1.	Initial Design Phase Plans (30%)	2		12	14	20	20		68	\$ 2,999.54	\$ 6,412.72	\$ 752.98	\$ 10,165.24
	A.16.2.	Final Design Phase Plans (60%)	2	4	34	28	36	40		144	\$ 6,488.18	\$ 13,871.08	\$ 1,628.74	\$ 21,988.00
	A.16.3.	Initial PS&E (95%)	2	2	30	16	24	28		102	\$ 4,634.84	\$ 9,908.82	\$ 1,163.49	\$ 15,707.15
	A.16.4.	Final PS&E (100%)	2		4	8	8	12		34	\$ 1,534.64	\$ 3,280.91	\$ 385.24	\$ 5,200.79
	A.16.5.	Quality Control Review of Plans	2	34						36	\$ 2,505.34	\$ 5,356.17	\$ 628.92	\$ 8,490.43
TASK A - SUBTOTAL STAFF HOURS			64	49	112	158	180	140	4	707				
TASK A - SUBTOTAL FEE			\$ 4,609.28	\$ 3,403.05	\$ 5,601.12	\$ 7,073.66	\$ 6,514.20	\$ 6,333.60	\$ 113.20		\$ 33,648.11	\$ 71,936.29	\$ 8,446.75	\$ 114,031.15

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
Palo Verde Road & Michigan Street HAWK
PIMA COUNTY PROJECT NO. 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

DIBBLE STAFF HOUR MATRIX

Task	Sub-Task	Task Description	\$ 72.02	\$ 69.45	\$ 50.01	\$ 44.77	\$ 36.19	\$ 45.24	\$ 28.30	Total Staff Hours	Labor Fee Subtotal	213.79%	8.00%	Total Fee
			Senior Project Manager	Senior Engineer	Senior Project Engineer	Project Engineer	Assistant Project Engineer	Senior Technician	Admin Assistant			Overhead Subtotal	Profit Subtotal	
TASK B and C - ADDITIONAL SERVICES														
B.2	Other Services													
	B.2.1	Other Services												\$ 2,928.85
	B.2.1.1.	Construction Meetings	12							12	\$ 864.24	\$ 1,847.66	\$ 216.95	\$ 2,928.85
C.1	C.1.1	Post Design Services												\$ 5,519.49
	C.1.1.1	Post Design Services	2			8		4		14	\$ 683.16	\$ 1,460.53	\$ 171.50	\$ 2,315.19
	C.1.1.2	Attendance at Pre-Bid Meeting (1)	4			4				8	\$ 467.16	\$ 998.74	\$ 117.27	\$ 1,583.17
	C.1.1.3	Assist in Preparation of Amendments												
	C.1.1.4	Address Contractor Questions on Plans and Specifications	2		2	2	4			10	\$ 478.36	\$ 1,022.69	\$ 120.08	\$ 1,621.13
	C.1.2	Construction Services												\$ 13,140.59
	C.1.2.1	Attendance at Pre-Construction Meeting (1)	4			4				8	\$ 467.16	\$ 998.74	\$ 117.27	\$ 1,583.17
	C.1.2.2	Attendance at Weekly Construction Meetings (4)	2			8				10	\$ 502.20	\$ 1,073.65	\$ 126.07	\$ 1,701.92
	C.1.2.3	Site Observations with Report (4)												
	C.1.2.4	Evaluation of Changes to Construction Documents	4		4	10				18	\$ 935.82	\$ 2,000.69	\$ 234.92	\$ 3,171.43
	C.1.2.5	Develop Design Details and Revisions to Construction Documents	4			8				12	\$ 646.24	\$ 1,381.60	\$ 162.23	\$ 2,190.07
	C.1.2.6	Shop Drawing/Submittal Reviews (6)	2		6	10	12			30	\$ 1,326.08	\$ 2,835.03	\$ 332.89	\$ 4,494.00
	C.1.2.7	Evaluation of Value Engineering Proposals												
	C.1.3	Post Construction Electronic As-Builts												\$ 3,865.48
	C.1.3.1	As-Built Preparation	2	2		4		15		23	\$ 1,140.62	\$ 2,438.53	\$ 286.33	\$ 3,865.48
TASK B - SUBTOTAL STAFF HOURS			38	2	12	58	16	19		145				
TASK B - SUBTOTAL FEE			\$ 2,736.76	\$ 138.90	\$ 600.12	\$ 2,596.66	\$ 579.04	\$ 859.56			\$ 7,511.04	\$ 16,057.86	\$ 1,885.51	\$ 25,454.41
TOTAL STAFF HOURS			102	51	124	216	196	159	4	852				
TOTAL FEE			\$ 7,346.04	\$ 3,541.95	\$ 6,201.24	\$ 9,670.32	\$ 7,093.24	\$ 7,193.16	\$ 113.20		\$ 41,159.15	\$ 87,994.15	\$ 10,332.26	\$ 139,485.56

Surveying and Mapping LLC
Palo Verde Road & Michigan Street HAWK
PIMA COUNTY PROJECT NO. 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D
CONSULTANT/SUBCONSULTANT FEE PROPOSAL SUMMARY

TASK A - DESIGN SERVICES (TASKS A.1 THROUGH A.16)

DIRECT LABOR BREAKDOWN:

Classification	Hours	Hourly Rate	Labor Cost
Survey Tech	27	\$ 33.00	\$ 891.00
PLS	3	\$ 57.00	\$ 171.00
Senior PLS	1	\$ 72.00	\$ 72.00
SUE Tech	15	\$ 33.00	\$ 495.00
Draft Tech	5	\$ 33.00	\$ 165.00
Staff 6	0	\$ -	\$ -
Staff 7	0	\$ -	\$ -
SUBTOTAL (DIRECT LABOR)	51		\$ 1,794.00
<u>OVERHEAD:</u>	Overhead Rate	183.46%	\$ 3,291.27
SUBTOTAL (DL+OH)			\$ 5,085.27
<u>PROFIT:</u>	Profit Rate (Net Fee)	8.00%	\$ 406.82
SUBTOTAL (DL+OH+PR)			\$ 5,492.09
TOTAL COST + FEE (TASK A - BASE CONTRACT):			\$ 5,492.09

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
Palo Verde Road & Michigan Street HAWK
PIMA COUNTY PROJECT NO. 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

Surveying and Mapping LLC STAFF HOUR MATRIX

Task	Sub-Task	Task Description	Hourly Labor Rate only - No OH or Profit						Total Staff Hours	Labor Fee Subtotal	183.46% Overhead Subtotal	8.00% Profit Subtotal	Total Fee
			\$ 33.00 Survey Tech	\$ 57.00 PLS	\$ 72.00 Senior Pls	\$ 33.00 SUE Tech	\$ 33.00 Drafting tech	\$ - Staff 6					
TASK A - DESIGN SERVICES													
A.7	Survey & Mapping												\$ 4,243.06
	Subtask 1	Topographic Survey	27						27	\$ 891.00	\$ 1,634.63	\$ 202.05	\$ 2,727.68
	Subtask 2	SUE				15			15	\$ 495.00	\$ 908.13	\$ 112.25	\$ 1,515.38
	Subtask 3	Drafting					5		5	\$ 165.00	\$ 302.71	\$ 37.42	\$ 505.13
	Subtask 4	Admin-Final Submittal		3	1				4	\$ 243.00	\$ 445.81	\$ 55.10	\$ 743.91
TASK A - SUBTOTAL STAFF HOURS			27	3	1	15	5		51				
TASK A - SUBTOTAL FEE			\$ 891.00	\$ 171.00	\$ 72.00	\$ 495.00	\$ 165.00	\$ -	\$ -	\$ 1,794.00	\$ 3,291.27	\$ 406.82	\$ 5,492.09
TASK B - ADDITIONAL SERVICES - CONSTRUCTION TASKS													
	NA for Subs												
	Task 1												\$ -
	Subtask1												
TASK B - SUBTOTAL STAFF HOURS													
TASK B - SUBTOTAL FEE			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL STAFF HOURS			27	3	1	15	5		51				
TOTAL FEE			\$ 891.00	\$ 171.00	\$ 72.00	\$ 495.00	\$ 165.00	\$ -	\$ -	\$ 1,794.00	\$ 3,291.27	\$ 406.82	\$ 5,492.09

**Scope of Work and Cost Proposal
for the Palo Verde Road and Michigan Street HAWK Project (4PVRHK)
WestLand Proposal No. 12182 a (rev3)**

EVALUATION AND DOCUMENTATION OF ENVIRONMENTAL IMPACTS

(Task A.6 in the Scope of Services, Exhibit A)

WestLand Engineering & Environmental Services (WestLand) will complete environmental and cultural resources clearance tasks for the High Intensity Activated Crosswalk (HAWK) located at the intersection of South Palo Verde Road and East Michigan Street in unincorporated Pima County south of Tucson, Arizona and associated supporting walks, signage, and striping. This is a high-use pedestrian area, and the HAWK crossing will address safety issues and tie into the sidewalks improvement project to be done concurrent with this crossing. WestLand will provide each of the deliverables described in the Scope of Services following the Pima County Roadway Design Manual. Assumptions for each task are listed in the following sections.

PHASE 1. ENVIRONMENTAL SERVICES

Task A.6.1. Environmental Coordination Meetings

Under **Task 1.1**, WestLand will facilitate one project team meeting to review information needed to complete the Questionnaire for Establishing Potential Area of Impact (**Task 1.2**) and the Summary Impact Matrix (**Task 1.3**) and will participate in additional coordination meetings.

Cost Assumptions Task A.6.1.

- There will be 5 meetings plus one kick-off meeting. As defined in the scope of services, one meeting will be focused on obtaining needed information from the team.
- All meetings will be virtual.
- One WestLand staff will participate in each meeting.

Task A.6.2. Questionnaire for Establishing Potential Areas of Impact

WestLand will complete this Questionnaire using the format in the Pima County Roadway Design Manual.

Cost Assumptions Task A.6.2.

- Dibble will provide the detailed project description and design (description of current and proposed right-of-way [ROW] width, traffic data).
 - One WestLand biologist will conduct a 1-day site visit to characterize the project area, including land use, vegetation (including noxious weeds) and habitat for wildlife
 - WestLand will complete a Biological Evaluation Short Form (BESF) following the Arizona Department of Transportation (ADOT) format for this document. No species-specific surveys will be conducted and no consultation with the U.S. Fish and Wildlife Services is assumed to be needed.
 - Complete a Clean Water Act (CWA) Section 404 memo or jurisdictional delineation per requirements in the scope of services. No CWA Section 404 permit will be required and no coordination with the U.S. Army Corps of Engineers is included in this scope of work.

- Noise—no noise modeling will be done
- Visual resources—no visual simulations will be prepared, this will be a narrative discussion
- Neighborhood/social impact—WestLand will review census data
- Public involvement—no public outreach is being done per the Request for Proposal (RFP).
- Scoping letters will be sent to agencies as described in ADOT’s scoping guidelines.
- The hazardous materials study will be conducted by others, and the results will be provided to WestLand.

Task A.6.4. Summary Impact Matrix

WestLand will complete this Summary Impact Matrix using the format in the Pima County Roadway Design Manual.

Cost Assumptions Task A.6.4.

- The project description will be provided by Dibble.
- Land uses/community character impacts will be described in a separate technical memorandum.

Task A.6.5. Environmental Resources Memorandum

WestLand will coordinate with the design team to review and evaluate alternatives. Comments from the team will be addressed and the documents will be modified as appropriate. It is anticipated that any alternatives would result in negligible differences in impacts to natural and cultural resources.

Cost Assumptions Task A.6.5.

- WestLand will provide one draft memorandum to Dibble, one revised draft memorandum for review by ADOT and Pima County, and one final memorandum.
- All document versions will be provided in electronic format with three hard copies of the revised draft and final memorandum.

Task A.6.6. Team Review Meeting

WestLand will coordinate with Dibble to schedule a team meeting to review the environmental clearance documents.

Cost Assumptions Task A.6.6.

- One WestLand staff will attend the team review meeting virtually.

Task A.6.7. Project Modifications/Alternatives

A brief description of any project modifications or alternatives will be prepared if necessary. This will be documented in a memorandum detailing project changes and anticipated environmental effects and will include an Alternative Comparison Matrix (Appendix 3-G of Manual) if any alternatives are identified.

Cost Assumptions Task A.6.7.

- It is assumed that any alternatives will not result in changed environmental impacts.

PHASE 2. PROJECT MANAGEMENT AND ADMINISTRATION

WestLand will complete administrative tasks for monitoring project budget and schedule. This will include monthly budget review and project status updates for submittal with the invoice.

COST PROPOSAL FOR THE PALO VERDE ROAD AND MICHIGAN STREET HAWK PROJECT

The estimated fee to conduct the work is presented in the following table in accordance with approved rates. Tasks will be charged at the project level against the not-to-exceed budget and will not exceed the total amount without prior discussion and approval from the Dibble.

Table 1. Estimated Breakdown of Costs

Phase/Task	Estimated Cost
Phase 1. Environmental Clearance	
Task A.6.1. Meetings and Coordination	\$ 2,102.05
Task A.6.2. Questionnaire for Establishing Potential Areas of Impact	\$ 6,099.81
Task A.6.4. Summary Impact Matrix	\$ 797.64
Task A.6.5. Environmental Resources Memorandum	\$ 4,884.24
Task A.6.6. Team Review Meeting	\$ 661.78
Task A.6.7. Project Modifications/Alternatives	\$ 564.27
Phase 1 Total	\$ 15,109.79
Phase 2. Project Management and Administration	\$ 2,337.71
Total	\$ 17,447.49

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Westland Resources
Palo Verde Road & Michigan Street HAWK
PIMA COUNTY PROJECT NO. 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D
CONSULTANT/SUBCONSULTANT FEE PROPOSAL SUMMARY

TASK A.6 - EVALUATION AND DOCUMENTATION OF ENVIRONMENTAL IMPACTS

DIRECT LABOR BREAKDOWN:

Classification	Hours	Hourly Rate	Labor Cost
Principal Consultant	4	\$ 79.70	\$ 318.80
Senior Project Manager	26	\$ 66.36	\$ 1,725.36
Senior Technical Specialist II	2	\$ 66.36	\$ 132.72
Senior GIS	9	\$ 52.44	\$ 471.96
Senior Professional Level I	4	\$ 40.18	\$ 160.72
Biologist III	5	\$ 40.18	\$ 200.90
Professional Level III	14	\$ 36.15	\$ 506.10
Environmental Specialist II	48	\$ 36.15	\$ 1,735.20
Biologist II	5	\$ 30.69	\$ 153.45
SUBTOTAL (DIRECT LABOR)	117		\$ 5,405.21
<u>OVERHEAD:</u>	Overhead Rate	198.88%	\$ 10,749.88
SUBTOTAL (DL+OH)			\$ 16,155.09
<u>PROFIT:</u>	Profit Rate (Net Fee)	8.00%	\$ 1,292.40
TOTAL COST FOR TASK A.6 (DL+OH+PR)			\$ 17,447.49
TOTAL COST MINUS CULTURAL RESOURCES			\$ 17,447.49

**NEC SCOPE-OF-SERVICES
PALO VERDE RD AND MICHIGAN ST (HAWK)**

Task A.6.4. HAZARDOUS MATERIALS ASSUMPTIONS

The Palo Verde HAWK project will realign curb and gutter at two corners, install pedestrian ramps at all corners, restripe this intersection to define stop bars and crosswalks, add directional signage to vehicle lanes, install sections of concrete walk to connect to existing walk on Coach, and to define tie-in points for new walk associated with the South Palo Verde Road Sidewalk project, and relocate existing signage at this intersection. The scope will be limited to the HAWK and its supporting walks, signage, and striping, at this intersection. State and Vicinity Maps, as well as scope of work (SOW) will be provided by Dibble.

TASKS DESCRIPTIONS

1. *Project Management*

- Scheduling and billing services.

2. *Coordination*

- Coordination with Dibble, ADOT, and Pima County.

3. *Hazardous Materials*

- Conduct a site visit to review the project limits for PISA.

4. *Reports*

- Prepare and submit a draft PISA report for the internal team to review.
- Address comments per internal team review and revise report for final submittal.

Project No. 4PVRHK
 Project Name: Palo Verde Rd and Michigan St HAWK
 ADOT TRACS No.: T0576 03D
 Federal ID.: PPM-0(275) D

September 11, 2024

NEC Project No.: 2024-DIB_4PVRHK

DERIVATION OF COST PROPOSAL SUMMARY

DIRECT LABOR

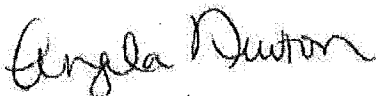
<u>Classification</u>	<u>Labor Hours</u>	<u>Average</u>	<u>Labor Cost</u>
Project Manager - Sr.	6	\$181.21	\$1,087.26
Environmental Coordinator/Program Mangager	12	\$156.00	\$1,872.00
Administrative	2	\$72.07	\$144.14
Total Hours:	20	Total Labor Cost:	\$3,103.40

OTHER DIRECT COSTS

(Listed by item at estimated actual cost - NO MARKUP)

Mileage (fieldwork)	\$174.23
ERIS Database Report	\$95.00
Total Other Direct Costs:	\$269.23

TOTAL COST: \$3,372.63



 Angela Newton
 Principal

9/11/2024
 Date

Project No. 4PVRHK
 Project Name: Palo Verde Rd and Michigan St HAWK
 Federal ID.: PPM-0(275) D

September 11, 2024

NEC Project No.: 2024-DIB_4PVRHK

TASK NO.	TASK DESCRIPTION	Project Manager - Sr.	Environmental Coordinator/Program Manager	Administrative	Task Hour
		\$181.21	\$156.00	\$72.07	
100- PROJECT MANAGEMENT					
1	Scheduling and billing services. Project supervision and close-out.	3		2	5
200- COORDINATION					
2	Coordination with Dibble, ADOT, and Pima County.	1	1		2
300- HAZARDOUS MATERIALS					
3	ERIS records check.		1		1
	Travel to and from project site. (1-person team)		2		2
	Site visit for PISA. (1-person team)		1		1
400- SAMPLING REPORT					
4	Prepare and submit a draft sampling report for the internal team to review.	1	6		7
	Address comments per internal team review and revise the sampling report for final submittal.	1	1		2
Total Hours		6	12	2	20

Project No. 4PVRHK
Project Name: Palo Verde Rd and Michigan St HAWK
Federal ID.: PPM-0(275) D

September 11, 2024

NEC Project No.: 2024-DIB_4PVRHK

OTHER DIRECT COSTS BREAKDOWN

Travel

Mileage (fieldwork)	1	trips/month x	266	miles @	<u>\$0.655 per mile = \$174.23</u>
					Subtotal Travel: \$174.23

Other Direct Costs:

ERIS Database Report	1				<u>\$95.00</u>
					Subtotal Other Direct Costs: \$95.00

TOTAL DIRECT COSTS: \$269.23

November 8, 2024

Project #: 324005

Jason Simmers
Dibble & Associates Consulting Engineers, Inc.
3020 E Camelback Road, Suite 201
Phoenix, AZ 85016

RE: Palo Verde Rd and Michigan St (HAWK)

Dear Mr. Simmers,

We are pleased to be part of the Dibble team on the Palo Verde Rd and Michigan St (HAWK). This scope of work and attached fee reflects our understanding of the Engineering tasks that we will perform to support the Dibble Team.

The Palo Verde HAWK project will realign curb and gutter at two corners, install pedestrian ramps at all corners, restripe this intersection to define stop bars and crosswalks, add directional signage to vehicle lanes, install sections of concrete walk to connect to existing walk on Coach, and to define tie-in points for new walk associated with the South Palo Verde Road Sidewalk project, and relocate existing signage at this intersection. The scope will be limited to the HAWK and its supporting walks, signage, and striping, at this intersection. State and Vicinity Maps, as well as scope of work (SOW) will be provided by Dibble.

iSX SCOPE-OF-SERVICES

Task Descriptions

A.1 Project Management and Quality Control

- Project Management, Scheduling and billing services.

A.1.6 Cost Estimating

- Cost estimates for Base and Final Design Phase Plans
- Cost estimates for Initial and Final PS&E Plans

Sincerely,
iSX Solutions, LLC



Andrew Bailey, P.E.
Engineer / Owner

Palo Verde Road & Michigan Street HAWK

PIMA COUNTY PROJECT NO. 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

Project Name: PC Palo Verde - HAWK
 Project Manager: Andrew Bailey
 ISX Project Number: 324005
 Date: Aug 09, 2024

LABOR ESTIMATE - PC Palo Verde - HAWK

Task	Notes	Staff	Andrew Bailey - PM	Rob Presuhn - Principal	DJ Gregory - Designer	Wyatt Davis - Prof Level 1	WORK TASK/ TASK HOURS	WORK TASK/ TASK COST
			ABB	RSP	DJG	WHD		
001	Task A.1 Project Management and Quality Control							
	Task A.1.1. Project Management	12 months	4		6		10	\$586.52
	Task A.1.3. Meetings and Commur	10 Meetings	4	1			5	\$346.16
							0	\$0.00
							0	\$0.00
	Reimbursable Expense							\$0.00
		Task #001 - Subtotal	8	1	6	0	0	\$932.68
002	Task A.1.6. Cost Estimating							
	Base / Final Design Phase Plans	30%	1	10		1	12	\$860.55
	Initial PS&E	60%	1	10		1	12	\$860.55
	Final PS&E	95%	1	2		1	4	\$245.19
	Final PS&E	100%	1	2		1	4	\$245.19
							0	\$0.00
							0	\$0.00
	Reimbursable Expense							\$0.00
		Task #002 - Subtotal	4	24	0	4	0	\$2,211.48
Assumptions								
	Estimating quantities provided by designer							
	Project team to participate in risk analysis							

	TOTAL HOURS					TOTAL HOURS	TOTAL LABOR
	12	25	6	4	0		
	LABOR RATE	\$67.31	\$76.92	\$52.88	\$24.04		
	LABOR COST	\$807.72	\$1,923.00	\$317.28	\$96.16	47	\$3,144.16

TOTAL REIMBURSABLES	\$0.00
SUBTOTAL (DIRECT LABOR)	\$3,144.16
OVERHEAD @ 188.08%	\$5,913.54
PROFIT @ 8%	\$724.62
TOTAL COST + FEE	\$9,782.31

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
Palo Verde Sidewalks
PIMA COUNTY PROJECT NO. 4PVRSW
CONSULTANT/SUBCONSULTANT FEE PROPOSAL SUMMARY

TASK A - DESIGN SERVICES (TASKS A.1 THROUGH A.16)

DIRECT LABOR BREAKDOWN:

Classification	Hours	Hourly Rate	Labor Cost
Senior Project Manager	55	\$ 72.02	\$ 3,961.10
Senior Engineer	35	\$ 69.45	\$ 2,430.75
Senior Project Engineer	50	\$ 50.01	\$ 2,500.50
Project Engineer	120	\$ 44.77	\$ 5,372.40
Assistant Project Engineer	154	\$ 36.19	\$ 5,573.26
Senior Technician	104	\$ 45.24	\$ 4,704.96
Admin Assistant	4	\$ 28.30	\$ 113.20
SUBTOTAL (DIRECT LABOR)	522		\$ 24,656.17

<u>OVERHEAD:</u>	Overhead Rate	213.79%	\$ 52,712.43
SUBTOTAL (DL+OH)			\$ 77,368.60

<u>PROFIT:</u>	Profit Rate (Net Fee)	8.00%	\$ 6,189.49
SUBTOTAL (DL+OH+PR)			\$ 83,558.08

DIRECT EXPENSES BREAKDOWN:

Mileage and Travel Expenses	\$ -
Reproduction	\$ -
SUBTOTAL (DIRECT EXPENSES)	\$ -

SUBCONSULTANTS:

Mapping & Survey (Surveying and Mapping, LLC)	\$ 10,552.54
Environmental and Public Outreach (Westland Resources, Inc)	\$ 18,264.32
Preliminary Initial Site Assessment (Newton Environmental Consulting, LLC) (DBE)	\$ 2,791.40
ADA Investigation & Construction Cost Estimating (ISX-Inc)	\$ 25,277.96
Landscape Architecture (Norris)	\$ 13,740.97
SUBTOTAL (SUBCONSULTANTS)	\$ 70,627.19

TOTAL COST + FEE (TASK A - BASE CONTRACT):	\$ 154,185.27
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PIMA COUNTY DEPARTMENT OF TRANSPORTATION
Palo Verde Sidewalks
PIMA COUNTY PROJECT NO. 4PVRSW

TASK B - ADDITIONAL SERVICES (CONSTRUCTION TASKS B.2)

DIRECT LABOR BREAKDOWN:

Classification	Hours	Hourly Rate	Labor Cost
Senior Project Manager	36	\$ 72.02	\$ 2,592.72
Senior Engineer	0	\$ 69.45	\$ -
Senior Project Engineer	6	\$ 50.01	\$ 300.06
Project Engineer	54	\$ 44.77	\$ 2,417.58
Assistant Project Engineer	16	\$ 36.19	\$ 579.04
Senior Technician	4	\$ 45.24	\$ 180.96
Admin Assistant	0	\$ 28.30	\$ -
SUBTOTAL (DIRECT LABOR)	116		\$ 6,070.36

<u>OVERHEAD:</u>	Overhead Rate	213.79%	\$ 12,977.82
SUBTOTAL (DL+OH)			\$ 19,048.18

<u>PROFIT:</u>	Profit Rate (Net Fee)	8.00%	\$ 1,523.85
SUBTOTAL (DL+OH+PR)			\$ 20,572.03

DIRECT EXPENSES BREAKDOWN:

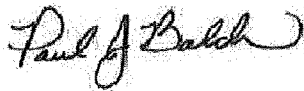
Mileage and Travel Expenses	\$ -
Reproduction	\$ -
SUBTOTAL (DIRECT EXPENSES)	\$ -

SUBCONSULTANTS:

Mapping & Survey (Surveying and Mapping, LLC)	\$ -
Environmental and Public Outreach (Westland Resources, Inc)	\$ -
Preliminary Initial Site Assessment (Newton Environmental Consulting, LLC) (DBE)	\$ -
ADA Investigation & Construction Cost Estimating (iSX-Inc)	\$ -
Landscape Architecture (Norris)	\$ -
SUBTOTAL (SUBCONSULTANTS)	\$ -

TOTAL COST + FEE (TASK B - CONSTRUCTION SERVICES):	\$ 20,572.03
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TOTAL COST + FEE:	\$ 174,757.30
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 Signature
 Vice President, Dibble

 Title

11/14/2024

 Date

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
Palo Verde Sidewalks
PIMA COUNTY PROJECT NO. 4PVRSW

DIBBLE STAFF HOUR MATRIX

Task	Sub-Task	Task Description	\$	\$	\$	\$	\$	\$	Total Staff Hours	Labor Fee Subtotal	213.79%	8.00%	Total Fee	
			72.02	69.45	50.01	44.77	36.19	45.24			28.30	Overhead Subtotal		Profit Subtotal
			Senior Project Manager	Senior Engineer	Senior Project Engineer	Project Engineer	Assistant Project Engineer	Senior Technician	Admin Assistant					
TASK A - DESIGN SERVICES														
A.1	Project Management and Quality Control													\$ 11,219.96
	A.1.1.	Project Management (2 hr/month for 12 months)	16						4	20	\$ 1,265.52	\$ 2,705.56	\$ 317.69	\$ 4,288.77
	A.1.2.	Quality Control Plan	1	2						3	\$ 210.92	\$ 450.93	\$ 52.95	\$ 714.80
	A.1.3.	Meetings and Communication (10 Meetings)	10			10				20	\$ 1,167.90	\$ 2,496.85	\$ 293.18	\$ 3,957.93
	A.1.4.	Coordinate Between Participating Agencies	2			2				4	\$ 233.58	\$ 499.37	\$ 58.64	\$ 791.59
	A.1.5.	Schedule	2							2	\$ 144.04	\$ 307.94	\$ 36.16	\$ 488.14
	A.1.6.	Cost Estimating	2				4			6	\$ 288.80	\$ 617.43	\$ 72.50	\$ 978.73
A.5	Public Art (4PVRSW)													\$ 1,095.03
	A.5.1.	Coordination with PCDOT for Public Art Placement	2			4				6	\$ 323.12	\$ 690.80	\$ 81.11	\$ 1,095.03
A.5	Utility Coordination													\$ 6,352.93
	A.5.1.	Data Gathering and Utility Mapping		1	4	8	16			29	\$ 1,206.69	\$ 2,579.78	\$ 302.92	\$ 4,089.39
	A.5.2.	Design Coordination, Utility Impact Identification, Utility Status Letter	2		4	4	4			14	\$ 667.92	\$ 1,427.95	\$ 167.67	\$ 2,263.54
A.6	Evaluation and Documentation of Environmental Impacts													\$ 1,095.03
	A.6.6.	Team Review (Coordination w/ Westland Resources; 1 Meeting)	2			4				6	\$ 323.12	\$ 690.80	\$ 81.11	\$ 1,095.03
A.7	Survey and Mapping													\$ 886.47
	A.7.1.	Coordination w/ Surveying and Mapping, LLC	1		2	2				5	\$ 261.58	\$ 559.23	\$ 65.66	\$ 886.47
A.13	Design Concept Report													\$ 19,309.59
	A.13.1.	Initial Design Concept Report	4	4	12	20	26	16		82	\$ 3,726.18	\$ 7,966.20	\$ 935.39	\$ 12,627.77
	A.13.2.	Final Design Concept Report	2	2	6	10	16	8		44	\$ 1,971.66	\$ 4,215.21	\$ 494.95	\$ 6,681.82
A.16	Preparation of Construction Documents													\$ 43,599.09
	A.16.1.	Initial Design Phase Plans (30%)	1		6	16	20	16		59	\$ 2,536.04	\$ 5,421.80	\$ 636.63	\$ 8,594.47
	A.16.2.	Final Design Phase Plans (60%)	4	4	8	20	28	32		96	\$ 4,322.36	\$ 9,240.77	\$ 1,085.05	\$ 14,648.18
	A.16.3.	Initial PS&E (95%)	2	2	6	12	28	20		70	\$ 3,038.36	\$ 6,495.71	\$ 762.73	\$ 10,296.80
	A.16.4.	Final PS&E (100%)	2		2	8	12	12		36	\$ 1,579.38	\$ 3,376.56	\$ 396.48	\$ 5,352.42
	A.16.5.	Quality Control Review of Plans		20						20	\$ 1,389.00	\$ 2,969.54	\$ 348.68	\$ 4,707.22
TASK A - SUBTOTAL STAFF HOURS			55	35	50	120	154	104	4	522				
TASK A - SUBTOTAL FEE			\$ 3,961.10	\$ 2,430.75	\$ 2,500.50	\$ 5,372.40	\$ 5,573.26	\$ 4,704.96	\$ 113.20		\$ 24,656.17	\$ 52,712.43	\$ 6,189.50	\$ 83,558.10

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
Palo Verde Sidewalks
PIMA COUNTY PROJECT NO. 4PVR5W

DIBBLE STAFF HOUR MATRIX

Task	Sub-Task	Task Description	\$	\$	\$	\$	\$	\$	Total Staff Hours	Labor Fee Subtotal	213.79%	8.00%	Total Fee	
			72.02	69.45	50.01	44.77	36.19	45.24			28.30	Overhead Subtotal		Profit Subtotal
			Senior Project Manager	Senior Engineer	Senior Project Engineer	Project Engineer	Assistant Project Engineer	Senior Technician	Admin Assistant					
TASK B and C - ADDITIONAL SERVICES														
B.2	Other Services													
	B.2.1	Other Services											\$ 2,928.85	
	B.2.1.1	Construction Meetings	12							12	\$ 864.24	\$ 1,847.66	\$ 216.95	\$ 2,928.85
C.1	C.1.1	Post Design Services											\$ 5,519.49	
	C.1.1.1	Post Design Services	2			8		4		14	\$ 683.16	\$ 1,460.53	\$ 171.50	\$ 2,315.19
	C.1.1.2	Attendance at Pre-Bid Meeting (1)	4			4				8	\$ 467.16	\$ 998.74	\$ 117.27	\$ 1,583.17
	C.1.1.3	Assist in Preparation of Amendments												
	C.1.1.4	Address Contractor Questions on Plans and Specifications	2		2	2		4		10	\$ 478.36	\$ 1,022.69	\$ 120.08	\$ 1,621.13
	C.1.2	Construction Services											\$ 12,123.69	
	C.1.2.1	Attendance at Pre-Construction Meeting (1)	4			4				8	\$ 467.16	\$ 998.74	\$ 117.27	\$ 1,583.17
	C.1.2.2	Attendance at Weekly Construction Meetings (4)	2			8				10	\$ 502.20	\$ 1,073.65	\$ 126.06	\$ 1,701.91
	C.1.2.3	Site Observations with Report (4)												
	C.1.2.4	Evaluation of Changes to Construction Documents	4		4	10				18	\$ 935.82	\$ 2,000.69	\$ 234.92	\$ 3,171.43
	C.1.2.5	Develop Design Details and Revisions to Construction Documents	4			8				12	\$ 646.24	\$ 1,381.60	\$ 162.23	\$ 2,190.07
	C.1.2.6	Shop Drawing/Submittal Reviews (6)	2			10		12		24	\$ 1,026.02	\$ 2,193.53	\$ 257.56	\$ 3,477.11
	C.1.2.7	Evaluation of Value Engineering Proposals												
	C.1.3	Post Construction Electronic As-Builts											\$ -	
	C.1.3.1	As-Built Preparation												
TASK B - SUBTOTAL STAFF HOURS			36		6	54		16	4	116				
TASK B - SUBTOTAL FEE			\$ 2,592.72	\$ -	\$ 300.06	\$ 2,417.58	\$ 579.04	\$ 180.96	\$ -		\$ 6,070.36	\$ 12,977.82	\$ 1,523.85	\$ 20,572.03
TOTAL STAFF HOURS			91	35	56	174	170	108	4	638				
TOTAL FEE			\$ 6,553.82	\$ 2,430.75	\$ 2,800.56	\$ 7,789.98	\$ 6,152.30	\$ 4,885.92	\$ 113.20		\$ 30,726.53	\$ 65,690.25	\$ 7,713.35	\$ 104,130.13

Surveying and Mapping LLC

Palo Verde Sidewalks

PIMA COUNTY PROJECT NO. 4PVRSW | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

CONSULTANT/SUBCONSULTANT FEE PROPOSAL SUMMARY

TASK A - DESIGN SERVICES (TASKS A.1 THROUGH A.16)

DIRECT LABOR BREAKDOWN:

Classification	Hours	Hourly Rate	Labor Cost
Survey Tech	40	\$ 33.00	\$ 1,320.00
PLS	4	\$ 57.00	\$ 228.00
Senior PLS	3	\$ 72.00	\$ 216.00
SUE Tech	40	\$ 33.00	\$ 1,320.00
Draft Tech	11	\$ 33.00	\$ 363.00
Staff 6	0	\$ -	\$ -
Staff 7	0	\$ -	\$ -
SUBTOTAL (DIRECT LABOR)	98		\$ 3,447.00
<u>OVERHEAD:</u>	Overhead Rate	183.46%	\$ 6,323.87
SUBTOTAL (DL+OH)			\$ 9,770.87
<u>PROFIT:</u>	Profit Rate (Net Fee)	8.00%	\$ 781.67
SUBTOTAL (DL+OH+PR)			\$ 10,552.54
TOTAL COST + FEE (TASK A - BASE CONTRACT):			\$ 10,552.54

PIMA COUNTY DEPARTMENT OF TRANSPORTATION

Palo Verde Sidewalks

PIMA COUNTY PROJECT NO. 4PVRSW | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

Surveying and Mapping LLC STAFF HOUR MATRIX

Task	Sub-Task	Task Description	Hourly Labor Rate only - No OH or Profit					Total Staff Hours	Labor Fee Subtotal	183.46% Overhead Subtotal	8.00% Profit Subtotal	Total Fee	
			Survey Tech	PLS	Senior PLS	SUE Tech	Drafting tech						Staff 6
TASK A - DESIGN SERVICES													
A.7	Survey & Mapping											\$ 8,082.01	
	Subtask 1	Topographic Survey	40					40	\$ 1,320.00	\$ 2,421.67	\$ 299.33	\$ 4,041.01	
	Subtask 2	SUE				40		40	\$ 1,320.00	\$ 2,421.67	\$ 299.33	\$ 4,041.01	
	Subtask 3	Drafting					11	11	\$ 363.00	\$ 665.96	\$ 82.32	\$ 1,111.28	
	Subtask 4	Admin		4	3			7	\$ 444.00	\$ 814.56	\$ 100.68	\$ 1,359.25	
TASK A - SUBTOTAL STAFF HOURS			40	4	3	40	11	98					
TASK A - SUBTOTAL FEE			\$ 1,320.00	\$ 228.00	\$ 216.00	\$ 1,320.00	\$ 363.00	\$ -	\$ -	\$ 3,447.00	\$ 6,323.87	\$ 781.67	\$ 10,552.54
TASK B - ADDITIONAL SERVICES - CONSTRUCTION TASKS													
	NA for Subs												
	Task 1											\$ -	
	Subtask1												
TASK B - SUBTOTAL STAFF HOURS													
TASK B - SUBTOTAL FEE			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
TOTAL STAFF HOURS			40	4	3	40	11	98					
TOTAL FEE			\$ 1,320.00	\$ 228.00	\$ 216.00	\$ 1,320.00	\$ 363.00	\$ -	\$ -	\$ 3,447.00	\$ 6,323.87	\$ 781.67	\$ 10,552.54

Scope of Work and Cost Proposal for the Palo Verde Sidewalks Project (4PVRSW) WestLand Proposal No. 12182 b (rev3)

EVALUATION AND DOCUMENTATION OF ENVIRONMENTAL IMPACTS

(Task A.6 in the Scope of Services, Exhibit A)

WestLand will complete environmental and cultural resources clearance tasks for the Palo Verde Sidewalks project which is in an area that has a significant number of pedestrians, in part associated with one of the highest volume bus routes in the City. This corridor is connected to multiple businesses and land uses that attract and generate significant pedestrian and vehicle traffic. Due to, the safety risks and conflicts that exist, Pima Association of Governments (PAG), Pima County, and City of Tucson conducted a Road Safety Analysis in 2019 that recommended continuous sidewalks among other improvements. This project will provide Americans with Disabilities Act (ADA)-compliant sidewalk for pedestrians and allow better separation of uses.

This project will develop the curb, gutter, and sidewalks to improve safety and provide access to the businesses, connect to four existing bus stops, and tie into the planned High Intensity Activated Crosswalk (HAWK) at S. Palo Verde Rd. and E. Michigan St. to create greater continuity.

PHASE 1. ENVIRONMENTAL SERVICES

Task A.6.1. Environmental Coordination Meetings

Under **Task 1.1**, WestLand will facilitate one project team meeting to review information needed to complete the Questionnaire for Establishing Potential Area of Impact (**Task 1.2**) and the Summary Impact Matrix (**Task 1.3**) and will participate in additional coordination meetings.

Cost Assumptions Task A.6.1.

- There will be 5 meetings plus one kick-off meeting. As defined in the scope of services, one meeting will be focused on obtaining needed information from the team.
- All meetings will be virtual.
- One WestLand staff will participate in each meeting.

Task A.6.2. Questionnaire for Establishing Potential Areas of Impact

WestLand will complete this Questionnaire using the format in the Pima County Roadway Design Manual.

Cost Assumptions Task A.6.2.

- Dibble will provide the detailed project description and design (description of current and proposed right-of-way [ROW] width, traffic data).
 - One WestLand biologist will conduct a 1-day site visit to characterize the project area, including land use, vegetation (including noxious weeds) and habitat for wildlife
 - WestLand will complete a Biological Evaluation Short Form (BESF) following the Arizona Department of Transportation (ADOT) format for this document. No species-specific surveys will be conducted and no consultation with the U.S. Fish and Wildlife Services is assumed to be needed.
 - Complete a Clean Water Act (CWA) Section 404 memo or jurisdictional delineation per requirements in the scope of services. No CWA Section 404 permit will be required and no coordination with the U.S. Army Corps of Engineers is included in this scope of work.

- Noise—no noise modeling will be done
- Visual resources—no visual simulations will be prepared, this will be a narrative discussion
- Neighborhood/social impact—WestLand will review census data
- Public involvement—no public outreach is being done per the Request for Proposal (RFP).
- Scoping letters will be sent to agencies as described in ADOT’s scoping guidelines.
- The hazardous materials study will be conducted by others, and the results will be provided to WestLand.

Task A.6.4. Summary Impact Matrix

WestLand will complete this Summary Impact Matrix using the format in the Pima County Roadway Design Manual.

Cost Assumptions Task A.6.4.

- The project description will be provided by Dibble.
- Land uses/community character impacts will be described in a separate technical memorandum.

Task A.6.5. Environmental Resources Memorandum

WestLand will coordinate with the design team to review and evaluate alternatives. Comments from the team will be addressed and the documents will be modified as appropriate. It is anticipated that any alternatives would result in negligible differences in impacts to natural and cultural resources.

Cost Assumptions Task A.6.5.

- WestLand will provide one draft memorandum to Dibble, one revised draft memorandum for review by ADOT and Pima County, and one final memorandum.
- All document versions will be provided in electronic format with three hard copies of the revised draft and final memorandum.

Task A.6.6. Team Review Meeting

WestLand will coordinate with Dibble to schedule a team meeting to review the environmental clearance documents.

Cost Assumptions Task A.6.6.

- One WestLand staff will attend the team review meeting virtually.

Task A.6.7. Project Modifications/Alternatives

A brief description of any project modifications or alternatives will be prepared if necessary. This will be documented in a memorandum detailing project changes and anticipated environmental effects and will include an Alternative Comparison Matrix (Appendix 3-G of Manual) if any alternatives are identified.

Cost Assumptions Task A.6.7.

- It is assumed that any alternatives will not result in changed environmental impacts.

PHASE 2. PROJECT MANAGEMENT AND ADMINISTRATION

WestLand will complete administrative tasks for monitoring project budget and schedule. This will include monthly budget review and project status updates for submittal with the invoice.

COST PROPOSAL FOR THE PALO VERDE ROAD SIDEWALKS PROJECT

The estimated fee to conduct the work is presented in the following table in accordance with approved rates. Tasks will be charged at the project level against the not-to-exceed budget and will not exceed the total amount without prior discussion and approval from the Dibble.

Table 1. Estimated Breakdown of Costs

Phase/Task	Estimated Cost
Phase 1. Environmental Clearance	
Task A.6.1. Meetings and Coordination	\$ 2,102.05
Task A.6.2. Questionnaire for Establishing Potential Areas of Impact	\$ 6,333.18
Task A.6.4. Summary Impact Matrix	\$ 797.64
Task A.6.5. Environmental Resources Memorandum	\$ 5,467.68
Task A.6.6. Team Review Meeting	\$ 661.78
Task A.6.7. Project Modifications/Alternatives	\$ 564.27
Phase 1 Total	\$ 15,926.61
Phase 2. Project Management and Administration	\$ 2,337.71
Total	\$ 18,264.32

C:\Users\KDALEY\Box\Projects\Projects\12100s\0000012182\0_Admin\PM\Proposal\20241106_Submittal_rev3\Attachments\20241106_12182b_SOW_P_Verde_Pal_Sidewalks_Project.r3.docx

**Westland Resources
Palo Verde Sidewalks**

PIMA COUNTY PROJECT NO. 4PVRSW | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

CONSULTANT/SUBCONSULTANT FEE PROPOSAL SUMMARY

TASK A.6 - EVALUATION AND DOCUMENTATION OF ENVIRONMENTAL IMPACTS

DIRECT LABOR BREAKDOWN:

Classification	Hours	Hourly Rate	Labor Cost
Principal Consultant	4	\$ 79.70	\$ 318.80
Senior Project Manager	26	\$ 66.36	\$ 1,725.36
Senior Technical Specialist II	2	\$ 66.36	\$ 132.72
Senior GIS	9	\$ 52.44	\$ 471.96
Senior Professional Level I	4	\$ 40.18	\$ 160.72
Biologist III	5	\$ 40.18	\$ 200.90
Professional Level III	14	\$ 36.15	\$ 506.10
Environmental Specialist II	55	\$ 36.15	\$ 1,988.25
Biologist II	5	\$ 30.69	\$ 153.45
SUBTOTAL (DIRECT LABOR)	124		\$ 5,658.26
<u>OVERHEAD:</u>		Overhead Rate	198.88%
	SUBTOTAL (DL+OH)		\$ 16,911.41
<u>PROFIT:</u>		Profit Rate (Net Fee)	8.00%
TOTAL COST TASK A.6	(DL+OH+PR)		\$ 18,264.32
TOTAL COST MINUS CULTURAL RESOURCES			\$ 18,264.32

**NEC SCOPE-OF-SERVICES
PALO VERDE SIDEWALKS**

Task A.6.4. HAZARDOUS MATERIALS ASSUMPTIONS

This project will develop the curb, gutter, and sidewalks to improve safety and provide access to the businesses, connect to four existing bus stops, and tie into the planned High Intensity Activated Crosswalk (HAWK) at S. Palo Verde Rd. and E. Michigan St. The project includes constructing sidewalk and curb and gutter along Palo Verde Road, from approximately 450 ft south of the intersection at East Gas Road and continuing north to terminating past the bus stop just north of East Columbia Street. State and Vicinity Maps, as well as scope of work (SOW) will be provided by Dibble.

TASKS DESCRIPTIONS

1. Project Management

- Scheduling and billing services.

2. Coordination

- Coordination with Dibble, ADOT, and Pima County.

3. Hazardous Materials

- Conduct a site visit to review the project limits for PISA.

4. Reports

- Prepare and submit a draft PISA report for the internal team to review.
- Address comments per internal team review and revise report for final submittal.

Project No. 4PVRSW
 Project Name: Palo Verde Sidewalks
 ADOT TRACS No.: T0576 03D
 Federal ID.: PPM-0(275) D

August 30, 2024

NEC Project No.: 2024-DIB_4PVRSW

DERIVATION OF COST PROPOSAL SUMMARY

DIRECT LABOR

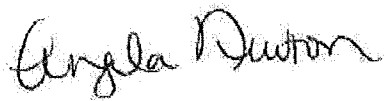
<u>Classification</u>	<u>Labor Hours</u>	<u>Average</u>	<u>Labor Cost</u>
Project Manager - Sr.	6	\$181.21	\$1,087.26
Environmental Coordinator/Program Mangager	10	\$156.00	\$1,560.00
Administrative	2	\$72.07	\$144.14
Total Hours:	18	Total Labor Cost:	\$2,791.40

OTHER DIRECT COSTS

(Listed by item at estimated actual cost - NO MARKUP)

Auto Rental (Standard Pick-Up)	\$0.00
Auto Rental (fuel)	\$0.00
Meals (full day)	\$0.00
ERIS Database Report	\$0.00
Total Other Direct Costs:	\$0.00

TOTAL COST: \$2,791.40



 Angela Newton
 Principal

8/30/2024
 Date

Project No. 4PVRSW
 Project Name: Palo Verde Sidewalks
 Federal ID.: PPM-0(275) D

August 30, 2024

NEC Project No.: 2024-DIB_4PVRSW

TASK NO.	TASK DESCRIPTION	Project Manager - Sr.	Environmental Coordinator/Program Manager	Administrative	Task Hour
		\$181.21	\$156.00	\$72.07	
100- PROJECT MANAGEMENT					
1	Scheduling and billing services. Project supervision and close-out.	3		2	5
200- COORDINATION					
2	Coordination with Dibble, ADOT, and Pima County.	1	1		2
300- HAZARDOUS MATERIALS					
3	ERIS records check.		1		1
	Travel to and from project site. (1-person team)		2		2
	Site visit for PISA. (1-person team)		1		1
400- SAMPLING REPORT					
4	Prepare and submit a draft sampling report for the internal team to review.	1	4		5
	Address comments per internal team review and revise the sampling report for final submittal.	1	1		2
Total Hours		6	10	2	18



September 6, 2024

Dibble Engineering
Jason A Simmers PE
Senior Project Manager
3020 East Camelback Road, Suite 201
Phoenix, AZ 85016
jason.simmers@dibblecorp.com

PIMA COUNTY PALO VERDE HAWK AND SIDEWALK

Pima County, Arizona

SCOPE OF WORK

Norris Design will provide professional landscape architectural services for the sidewalk improvements on both sides of Palo Verde Road approximately between Gas Road and Columbia Street, including the HAWK Improvements at Michigan Street and Coach Drive. The project length is approximately 1/2 mile along Palo Verde Road and the limit of work will be in the County's right-of-way. See the not-to-scale image below (provided by Pima County). Per Pima County's design program, we will only be providing native plant preservation letter of exception or a minor set of plans and screened rock or native hydroseeding on our landscape construction documents. This will NOT include planting or irrigation construction documents. Norris Design will provide a Native Plant Preservation Plan or Letter of Exception at the Design Concept Report Phase, additionally we will provide the 95%, Construction Documents and 100%, final sealed landscape construction documents, special provisions, and an opinion of probable cost. We will prepare the landscape construction documentation for review and approval by Pima County, and these items will be delivered to Pima County by Dibble Engineering.



TASK A.1 PROJECT MANAGEMENT, MEETINGS AND COMMUNICATION

Norris Design will be available to meet with the Design Team and other team representatives as necessary for successful implementation of this project. In addition to these meetings outlined below, project coordination will include responding to emails, phone calls and day-to-day operations. We anticipate the following:

- A. Attend three (3) team meetings



Deliverables:

1. Attend one (1) project kick-off meeting
2. Attend two (2) project team meetings

TASK A.16 CONSTRUCTION DOCUMENTS – DCR, 95%, & 100% FINAL SEALED

Norris Design shall develop the landscape construction documents for bidding and construction per all required Pima County Code related items and design standards. The landscape construction documents will be assembled for the DCR, 95%, & 100% final sealed construction documents submittals including the special provisions and estimate of probable cost to be delivered to Dibble Engineering for submittal to Pima County for their review and approval. Norris Design anticipates the following:

- A. Prepare Design Concept Report (DCR), 95%, and 100% Final Sealed Construction Documents
 - a. Native Plant Preservation Plans - DCR
 - i. Site visit(s)
 - ii. Native Plant Preservation Plan(s) or Letter of Exception
 - b. Landscape Plans - prepared in AutoCAD (95%, and 100% Final Sealed Construction Documents)
 - i. Screened rock
 - ii. Native hydroseeding
 - c. Prepare the special provisions
 - d. Prepare an estimate of probable cost
 - e. Internal Quality Assurance review

Deliverables:

1. DCR - Native Plant Preservation Plan or Letter of Exception
2. Landscape Construction Plans - 95%, and 100% Final Sealed
3. Estimate of Probable Cost - 95%, and 100% Final Sealed
4. Special Provisions - 95%, and 100% Final Sealed

AGREEMENT QUALIFICATIONS

A. Assumptions

The client shall provide to Norris Design the following information or services as required for performance of the work. Norris Design assumes no responsibility for the accuracy of such information or services and shall not be liable for errors or omissions therein. Should Norris Design be required to provide services in obtaining or coordinating compilation of this information, such services shall be billed as Additional Services. In order to begin work, we may require the following information.

1. Soils/Geology Reports
2. Surveying
3. ALTA Survey
4. Aerial Photography
5. Phase I or Other Environmental Site Assessment Report
6. Topographic Survey
7. Civil AutoCAD Base Files
8. Civil AutoCAD Sheet Files (for project continuity)

B. Exclusions

All specific deliverables for this project are identified within the Scope of Work portion of this Agreement. The following information is not a part of the Agreement and would be provided under a separate agreement or as Additional Services if required.



1. Illustrative Graphics (other than those identified within this Agreement)
2. Engineering (i.e. - Civil, Electrical, Structural, Mechanical, Traffic, etc.)
3. Irrigation Design and Construction Documents (To be added as additional services if needed)
4. Construction Documents
5. Construction Bidding
6. Construction Administration

C. Definitions

The following definitions are provided to give clear understanding of terms that may be used to describe the Scope of Work within Tasks listed throughout this Agreement.

Term	Definition
Attend	Norris Design will be present at meetings and hearings as described in the task action items
Review	Analysis of documents necessary to understand the project, provide feedback to the Owner or consultant team and to understand the impacts of the consultant teams work on the services provided by Norris Design
Assist	Provide input and/or information to the Owner or consultant team to assist them with their work and products
Develop	Plans, documents and products generated by Norris Design
Coordinate	Plans, documents, products, people, schedules and information gathered, organized and/or submitted by Norris Design
Provide	Plans, documents and products made available by Norris Design
Minor Revisions	Revisions requiring less than 25 percent of the original time spent on a drawing, document or total task item

A. Fee Schedule - See Exhibit 'A'

NORRIS DESIGN AZ, L.L.C.

Signature

Jason Kuklinski

Printed Name / Title

9.6.2024

Date

PIMA COUNTY DEPARTMENT OF TRANSPORTATION

Palo Verde Road & Michigan Street HAWK


PIMA COUNTY PROJECT NO. 4PVRKH & 4PVRKH | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

CONSULTANT/SUBCONSULTANT FEE PROPOSAL SUMMARY

DESIGN SERVICES EXHIBIT 'A'

DIRECT LABOR BREAKDOWN:

<u>Classification</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Labor Cost</u>
Project Principal	12	\$ 63.08	\$ 756.96
Project Manager	26	\$ 51.95	\$ 1,350.70
A/E	34	\$ 40.82	\$ 1,387.88
Designer	45	\$ 35.25	\$ 1,586.25
Administrative Support II	4	\$ 27.83	\$ 111.32
SUBTOTAL (DIRECT LABOR)	121		\$ 5,193.11
<u>OVERHEAD:</u>	Overhead Rate	145.00%	\$ 7,530.01
SUBTOTAL (DL+OH)			\$ 12,723.12
<u>PROFIT:</u>	Profit Rate (Net Fee)	8.00%	\$ 1,017.85
SUBTOTAL (DL+OH+PR)			\$ 13,740.97
TOTAL COST + FEE (TASK A - BASE CONTRACT):			\$ 13,740.97



 Signature

 Principal

 Title

9.6.2024

 Date

November 8, 2024

Project #: 324005

Jason Simmers
Dibble & Associates Consulting Engineers, Inc.
3020 E Camelback Road, Suite 201
Phoenix, AZ 85016

RE: Palo Verde Sidewalks

Dear Mr. Simmers,

We are pleased to be part of the Dibble team on the Palo Verde Rd Sidewalks. This scope of work and attached fee reflects our understanding of the Engineering tasks that we will perform to support the Dibble Team.

This project will develop the curb, gutter, and sidewalks to improve safety and provide access to the businesses, connect to four existing bus stops, and tie into the planned High Intensity Activated Crosswalk (HAWK) at S. Palo Verde Rd. and E. Michigan St. The project includes constructing sidewalk and curb and gutter along Palo Verde Road, from approximately 450 ft south of the intersection at East Gas Road and continuing north to terminating past the bus stop just north of East Columbia Street. State and Vicinity Maps, as well as scope of work (SOW) will be provided by Dibble.

iSX SCOPE-OF-SERVICES

Task Descriptions

A.1 Project Management and Quality Control

- Project Management, Scheduling and billing services.

A.1.6 Cost Estimating

- Cost estimates for Base and Final Design Phase Plans
- Cost estimates for Initial and Final PS&E Plans

A.16 Preparation of Construction Documents

- Provide Base and Final Design for ADA ramp details
- Provide Initial and Final PS&E Plans for ADA ramp details

Sincerely,
iSX Solutions, LLC



Andrew Bailey, P.E.
Engineer / Owner

Palo Verde Sidewalks

PIMA COUNTY PROJECT NO. 4PVRW | ADOT TRACS NO. T0576 03D | FEDERAL AID NO. PPM-0(275)D

iSX Project Name: PC Palo Verde - Sidewalk
 Project Manager: Andrew Bailey
 iSX Project Number: 324005
 Date: Aug 09, 2024

LABOR ESTIMATE - PC Palo Verde - Sidewalk

Task	Notes	Staff	Andrew Bailey - PM	Rob Presuhn - Principal	DJ Gregory - Designer	Wyatt Davis - Prof Level 1	WORK TASK/ TASK HOURS	WORK TASK/ TASK COST
			ABB	RSP	DJG	WHD		
001 Task A.1 Project Management and Quality Control								
Task A.1.1. Project Management	12 months		6		24		30	\$1,672.98
Task A.1.3. Meetings and Commun	10 Meetings		4	1			5	\$346.16
							0	\$0.00
							0	\$0.00
Reimbursable Expense								\$0.00
Task #001 - Subtotal			10	1	24	0	0	\$2,019.14
002 Task A.1.G Cost Estimating								
Base / Final Design Phase Plans	30%		1	10		1	12	\$860.55
Initial PS&E	60%		1	10		1	12	\$860.55
Final PS&E	95%		1	2		1	4	\$245.19
Final PS&E	100%		1	2		1	4	\$245.19
							0	\$0.00
							0	\$0.00
Reimbursable Expense								\$0.00
Task #002 - Subtotal			4	24	0	4	0	\$2,211.48
003 Task A.1.F Preparation of Construction Documents								
Base / Final Design Phase Plans	30%						0	\$0.00
Initial PS&E	60%		6		32	8	46	\$2,288.34
Final PS&E	95%		4		16	4	24	\$1,211.48
Final PS&E	100%		2		4	2	8	\$394.22
							0	\$0.00
							0	\$0.00
Reimbursable Expense								\$0.00
Task #003 - Subtotal			12	0	52	14	0	\$3,894.04
Assumptions								
25 ramps								
3 ramps at Circle K southern shared driveway								
4 ramps at Circle K Main Driveway								
4 ramps at Gas Rd								
6 ramps between Gas Rd and Coach Dr								
1 ramp at south side of Earhart driveway								
5 ramps at Columbia and Swap Meet driveway								
2 ramps at existing hawk								
No Ramps at Bridge								
Utility Impacts identified relayed to Dibble								
Estimating quantities provided by designer								
Project team to participate in risk analysis								
CAD Standards, support files, template and base files provided by Dibble								
iSX to print ramp plans and details and provide pdfs to Dibble								
TOTAL HOURS			26	25	76	18	0	
LABOR RATE			\$67.31	\$76.92	\$52.88	\$24.04		
LABOR COST			\$1,750.06	\$1,923.00	\$4,018.88	\$432.72		
							TOTAL HOURS	145
							TOTAL LABOR	\$8,124.66

TOTAL REIMBURSABLES	\$0.00
SUBTOTAL (DIRECT LABOR)	\$8,124.66
OVERHEAD @ 188.08%	\$15,280.86
PROFIT @ 8%	\$1,872.44
TOTAL COST + FEE	\$25,277.96

END OF EXHIBIT B - COMPENSATION SCHEDULE

EXHIBIT C - UNIFORM TERMS AND CONDITIONS (55 Pages)

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 - E)
- B. PROFESSIONAL SERVICES DBE SPECIAL PROVISIONS
- C. INSURANCE AND INDEMNIFICATION REQUIREMENTS
- D. CONSULTANT EVALUATION SCHEDULE
- E. PROMPT PAYMENT REPORTING PROVISIONS

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

The Consultant shall be in breach of this Contract if the Consultant materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subconsultants. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by 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. Payment Reporting: For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the consultant and any contract of any tier with a DBE material or service supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the Department's web-based DBE System. The DBE System can be accessed from the Department's BECO website. No later than fifteen calendar days after the Notice to Proceed is issued, the consultant shall log into the Department's web based DBE System and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the consultant shall enter them in the system. Reportable contracts shall be entered into the system no later than five calendar days after approval by the Department.

The consultant shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. In addition, the consultant shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract by the last day of the month and the consultant shall actively monitor the Department's DBE System to ensure that the verifications are input. The consultant shall proactively work to resolve any payment discrepancies in the DBE System between payment amounts it reports and payment confirmation amounts reported by others.

The consultant shall ensure that all Reportable Contract activity is reported to the Department. This includes all lower-tier Reportable Contracts, regardless of whether a DBE is involved or not.

The consultant shall maintain records for each payment explaining the amount requested by the subconsultant, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the DBE System.

The consultant shall provide information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month. In the event that no payments were made during a given month, the consultant shall identify that by entering a dollar value of zero. If the consultant does not pay the full amount of any invoice from a subconsultant, the consultant shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the DBE System.

For each Reportable Contract on which the consultant fails to submit timely payment information the Department will retain \$1,000.00 as liquidated damages, from the monies due to the consultant. Liquidated damages will be deducted each month for each Reportable Contract on which the consultant fails to submit payment information until the consultant provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the consultant fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

Payment reporting requirements apply to all contracts, federal and non-federal funded.

The consultant shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each Reportable Contract on which the consultant fails to submit timely and complete payment information the Department will retain \$1,000.00 as liquidated damages, from the monies due to the consultant. Liquidated damages will be deducted each month for each Reportable Contract on which the consultant fails to submit payment information until the consultant provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the consultant fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

6. Completion of Work: A subconsultant's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the Department.
7. Disputes: If disputes arise regarding payment of subconsultants, the consultant shall immediately provide the ADOT Project Manager with a written, verifiable explanation if:

- The consultant does not pay the full amount of any invoice from a subconsultant within seven days of receipt of a progress payment from the Department, or
- The monthly estimate does not include all work claimed by a subconsultant to have been performed.

The Department will determine whether the consultant has acted in good faith concerning any such explanations. The Department reserves the right to request and receive documents from the consultant and all subconsultants of any tier, in order to determine whether prompt payment requirements were met. The consultant shall implement and use the dispute resolution process outlined in the subcontract to resolve payment disputes.

8. 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/sfllin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of 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, ADOT's or at FHWA's request, or any other authorized representative of the Federal Government.
- b. Pursuant to A.R.S. §35-215, the Consultant and its Subconsultant(s) with intent to defraud, deceive, improperly influence, obstruct or impair an audit being conducted or about to be conducted in relation to any Contract or subcontract with the Department is guilty of a Class 5 Felony.
- c. In case of an audit and the Consultant has failed to retain records in accordance with the applicable Contract provision, it shall be presumed that the documents would not have supported the Consultant's position. Therefore, failure to retain such records shall result in the Consultant being required to reimburse ADOT for unsupported costs. The Consultant may also be disqualified per revised ECS Rules Section 2.02 from submitting future SOQ proposals.

- d. Upon completion and final closeout of the Contract, physical/paper or electronic Contract files and any supporting materials shall be maintained in accordance with COUNTY, ADOT and State Record Retention Center Records Retention/Destruction Policy and Schedules.

4.6 REVIEWS AND INSPECTIONS

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

4.7 NONDISCRIMINATION

1. During the performance of this Contract, the Consultant, for itself, its Subconsultants, assignees and successors shall:
 - a. Not discriminate on the basis of race, color, 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 Conscious Contract (With DBE Goal)

The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally funded contracts.

A DBE GOAL OF **6.47%** HAS BEEN ESTABLISHED ON THIS CONTRACT. THE CONSULTANT IS ENCOURAGED TO OBTAIN DBE PARTICIPATION ABOVE AND BEYOND THE GOAL ON THIS CONTRACT.

The contract terms, conditions and special provisions associated with the administration of the ADOT DBE Program related to this contract is documented in **APPENDIX B** of this contract.

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, ADOT and FHWA representatives to examine and review at reasonable times all Data still in the possession of the Consultant.
- c. All services, information, computer program elements, reports and other deliverables which may be patented or copyrighted and created under this Contract are the property of 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 COUNTY's Office of Audit & Analysis.
- c. Upon receipt of an ICA draft report, the Consultant has 14 calendar days to respond to the Incurred Cost Auditor with any disagreements, questions, or request for additional supporting documentation. A time extension may be allowed, if requested in writing within the 14-day timeframe, by the appropriate parties. Disagreements related to the results of the ICA draft report shall be addressed or resolved with the Incurred Cost Auditor on or before the date of the formal Exit Conference with the Incurred Cost Auditor and the Consultant. Non-response to the draft audit report after the 14-day timeframe and after the Exit Conference will be deemed by 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 registered 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.

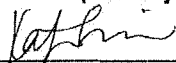
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, 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.*).

APPENDIX B TO EXHIBIT C (23 PAGES)

PROFESSIONAL SERVICES DBE PROVISIONS

(PROJECT SPECIFIC - CONTRACTS)
FOR USE ON LPA/SUBRECIPIENT FEDERAL AID PROJECTS WITH DBE GOALS
* NOTE: REFER TO EDITING INSTRUCTIONS IN SECTIONS 11.0 AND 16.0 *

(LPA PS EPRISE, 6/23/2016)

DISADVANTAGED BUSINESS ENTERPRISES:

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program; and
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined in Subsection 3.0, in USDOT-assisted contracts. The Department encourages consultants to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

Local Public Agencies (LPA) and or Subrecipients of Federal financial assistance will administer and manage the contracts from advertising, consultant selection, negotiation, contract execution, processing payment reports and contract modifications, audits, DBE compliance (e.g., reporting and monitoring) through contract closeout.

Professional Services DBE Special Provisions 06/23/2016
LPA PS EPRISE GOAL - 1/23

2.0 Assurances of Non-Discrimination:

The consultant, subrecipient, or subconsultant shall 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 DOT-assisted contracts. 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 the LPA/Subrecipient with the Department's concurrence deems appropriate, which may include, but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages;
4. Disqualifying the consultant from submitting SOQs, or any other forms of proposals, as non-responsible;
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

The consultant, subrecipient, or subconsultant shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Commercially Useful Function (CUF): Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.

(B) Committed DBE: A DBE that was identified by the consultant, typically on a DBE Affidavit, to meet an assigned DBE goal as a condition of contract award and performance, and includes any substitute DBE that has subsequently been committed work to meet the assigned contract goal.

(C) Disadvantaged Business Enterprise (DBE): a for-profit small business concern which meets both of the following requirements:

- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(D) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

- (E) Non-DBE:** any firm that is not a DBE.
- (F) Race-Conscious (RC):** a measure or program focused specifically on assisting only DBEs, including women-owned DBEs.
- (G) Race-Neutral (RN):** a measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- (H) Small Business Concern (SBC):** a business that meets all of the following conditions:
- (1) Operates as a for-profit business registered to do business in Arizona;
 - (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
 - (3) Is independently owned and operated;
 - (4) Is not dominant in its field on a national basis; and
 - (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.
- (I) Socially and Economically Disadvantaged Individuals:** any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
 - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia

(Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) "Women;"
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All proposers should contact the Department's Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction industry. BECO contact information is as follows:

Arizona Department of Transportation Business Engagement and Compliance Office
1801 W. Jefferson St, Suite 101, Mail Drop 154A Phoenix, AZ 85007
Phone (602) 712-7761
Email: LPAContractorCompliance@azdot.gov
Website: www.azdot.gov/beco

4.01 Mentor-Protégé Program

The Department has established a Mentor-Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime consultants to provide certain types of assistance to certified DBE subconsultants. ADOT encourages consultants and certified DBE subconsultants to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling requirements of 49 CFR Part 23. For guidance regarding this program refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities and is not intended to diminish nor circumvent existing DBE rules or regulations.

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the consultant uses a percentage of DBEs, as defined herein, to meet the contract-specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

The consultant shall meet the goal specified herein with DBEs, or establish that it was unable to meet the goal despite making good faith efforts to do so. Prime consultants are encouraged to obtain DBE participation above and beyond any goals that may be set for this project.

The DBE provisions are applicable to all consultants including DBE consultants.

6.0 Certification and Registration:

6.01 DBE Certification:

Certification as a DBE shall be predicated on:

- (1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise."
- (2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
- (3) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm's eligibility to participate in the DBE program.
- (4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at <http://www.azutracs.com>.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at <http://www.azutracs.com>. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for DBE certification as outlined in 49 CFR Part 26. The consultant bears all risks of ensuring that DBE firms selected by the consultant are able to perform the work.

6.02 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code

While the SBC component of the DBE program does not require utilization of goals on projects, ADOT and the LPA/Subrecipient strongly encourages consultants to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The consultant may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward the DBE contract goal.

SBCs can register online at the AZ UTRACS website.

The Department's registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part 26. The consultant bears all risks of ensuring that SBC firms selected by the consultant are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime consultants to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward the DBE contract goal.

The Department and the LPA/Subrecipient encourages prime consultants to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, Federal or State holiday. In circumstances where the LPA/Subrecipient Procurement Office is closed for all or part of the last day, the period extends to the next day on which the LPA / Subrecipient Procurement Office is open.

10.0 Consultant and Subconsultant Requirements:

10.01 General:

The consultant shall establish a DBE program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other proposers are prohibited.

10.02 DBE Liaison:

The consultant shall designate a DBE Liaison responsible for the administration of the consultant's DBE program. The name of the designated DBE Liaison shall be included on the DBE Intended Participation Affidavit Summary.

11.0 DBE Goal:

The minimum goal for participation by DBEs on this project is as follows:

___ Percent

The percentage of DBE participation shall be based on the total dollar value of the contract.

Proposers are strongly encouraged to secure and include sufficient DBE firms on their team for multiple disciplines and work categories to ensure they can meet the DBE goal on the contract and for any Contract Modifications that are executed post-award. The DBE goal requirements

extend to additional dollars added by Contract Modification to help ensure that the overall DBE goal is met on the contract. Indicating there is no DBE firm on a prime proposer's team to meet the DBE goal on Contract Modifications does not meet the criteria for Good Faith Efforts in 49 CFR 26.53, and will not be accepted by the Department as Good Faith Efforts when Contract Modifications are issued. Since proposers have been notified of the DBE goal prior to the submittal of their Statement of Qualifications (SOQ) they are required to do their due diligence to secure enough DBE participation to meet the goal or make good faith efforts on the contract and each subsequent Contract Modification. Firms will be required to locate DBEs to meet the goal on each Contract Modification even if these DBEs were not originally included as part of their team, if the LPA/Subrecipient, with BECO concurrence, determines there are qualified DBEs available to complete portions of the work of the Contract Modification.

12.0 Submission with SOQ Proposals:

12.01 DBE Assurance/Goal Declaration

In order to be awarded this contract, in addition to all other pre-award requirements, all proposers are required to certify on the DBE Assurance Project Specific form provided by the LPA/Subrecipient that:

The proposer will meet the established DBE goal or will make good faith efforts to meet the goal and that arrangements with certified DBEs have been made prior to the SOQ and/or cost proposal submission.

Failure to affirmatively make this declaration/certification in the manner outlined in the Request for Qualifications (RFQ) furnished by the LPA/Subrecipient will cause a Proposer's SOQ to be considered non-responsive.

12.02 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all consultants and subconsultants who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at <http://www.azutracs.com/> a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime consultants and all subconsultants, including DBEs listed in the SOQ must be registered in AZ UTRACS. Proposers may verify that their firm and each subconsultant is registered using the AZ UTRACS website.

Proposers may obtain additional information at the AZ UTRACS website or by contacting the LPA/Subrecipient.

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subconsultants, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer's intentions to use the those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Cost Proposal submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Cost Proposal.

FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST CONFIRMATION EMAIL WITH THE COST PROPOSAL BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED AND AS OUTLINED IN THE RFQ SHALL BE CAUSE FOR THE PROPOSER'S COST PROPOSAL TO BE REJECTED.

13.0 DBE Cost Proposal Submissions:

13.01 DBE Intended Participation Affidavits:

If the proposer indicates in the Cost Proposal submittal that it has met or exceeded the DBE goal, a DBE Intended Participation Affidavit form for each DBE firm, and the DBE Intended Participation Affidavit Summary form shall be submitted to the LPA/Subrecipient Procurement Office with each Cost Proposal as follows:

- (1) The DBE Intended Participation Affidavit Form must be submitted for each individual DBE firm at all tiers, including direct expense vendors, that is being proposed to be used to meet the DBE goal on the project. A copy of this form is available from the LPA/Subrecipient.
- (2) The DBE Intended Participation Affidavit Summary Form must be completed by the consultant summarizing information about all DBEs being proposed to meet the DBE goal that are listed on each DBE Intended Participation Affidavit Form. The DBE Intended Participation Affidavit Summary Form, along with the DBE Intended Participation Affidavit form for each individual DBE firm, must be submitted together with the Cost Proposal to the LPA/Subrecipient Procurement Office. All forms must be accurate and complete in every detail and must be signed by an officer of the consultant(s). Percentages and dollar amounts must be accurate. Percentages shall be listed to two decimal places. The DBE Intended Participation Affidavit Summary must be submitted listing all the DBEs intended to be used and the creditable amounts. Copies of these forms are available from the LPA/Subrecipient.
- (3) The DBE Intended Participation Affidavits Forms and the DBE Intended Participation Affidavit Summary Form must be submitted with the original cost proposal documents. The same documents must be submitted as part of the contract modification documentation submittals reflecting any change in the contract amount associated with the contract modification.

- (4) A proposer must determine DBE credit for the contract in accordance with DBE Special Provision Subsection 17.0 Crediting DBE Participation Toward Meeting Goals. The affidavits will be reviewed by the LPA/Subrecipient.
- (5) Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) at the time of the Cost Proposal submittal will be considered for DBE credit. It shall be the proposer's responsibility to ascertain the certification status of designated DBEs.
- (6) All DBE commitment amounts must be finalized between the DBE subconsultant and the proposer prior to affidavit submittal. Proposers shall not inflate DBE awards in order to meet contract goals. Reduction of DBE commitments after affidavit submittal and prior to execution of the contract without good cause may be grounds for the proposer to be considered nonresponsive. Scheduling conflicts are not necessarily evidence of good cause as this should have been considered prior to affidavit submittal. Proposers are required to use DBEs identified in both the SOQ and Cost Proposal to meet the contract goal, so the consultant is responsible for ensuring the DBEs listed in the SOQ and submitted with the Cost Proposal are available to meet those requirements at the time of contract execution.
- (7) Cost proposals without affidavits shall be considered incomplete and contract negotiations shall not be finalized nor will the contract be executed until affidavits are submitted and approved.

14.0 Documented Good Faith Effort:

14.01 General:

If the selected proposer has indicated in its cost proposal submittal that it will be unable to meet the DBE goal, that proposer must demonstrate, through detailed and comprehensive documentation, that good faith efforts have been made to solicit, assist, and use DBE firms to meet the DBE goal prior to submission of the SOQ and cost proposal.

Failure to demonstrate good faith efforts to the satisfaction of LPA/Subrecipient with concurrence of BECO will result in denying the award and moving to the next second highest ranked proposer.

The selected proposer who cannot meet the DBE goal at the time the cost proposal is due must submit its documentation of good faith efforts to the LPA/Subrecipient with the cost proposal. Contract negotiations will not be finalized nor will the contract be executed until the required Good Faith Effort forms and required documentation are received and approved.

The documentation of good faith efforts must include copies of each DBE and non-DBE subconsultant quotes submitted to the proposer when a non-DBE subconsultant was selected over a DBE for work on the contract. A generalized assertion that the consultant received multiple quotes is not sufficient unless copies of those quotes are provided.

Proposers are encouraged to review Appendix A of 49 CFR Part 26.

Useful information related to encouraging DBE participation and documented good faith efforts can be found in the "Good Faith Effort Guide" and other documents made available on the BECO website. The information provided in the "Good Faith Effort Guide" does not replace this specification; proposers must comply with the requirements of this specification.

In order to be awarded a contract on the basis of good faith efforts, a proposer must show that it took all necessary and reasonable steps to achieve the DBE goal, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The quality, quantity, and intensity of the different kinds of efforts the proposer has made will be evaluated. The efforts employed by the proposer should be those that one could reasonably expect a proposer to make if the proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE goal. Mere pro forma efforts are not sufficient good faith efforts to meet the DBE contract requirements.

The proposer shall, as a minimum, seek DBEs in the same geographic area in which it generally seeks subconsultants for a given project. If the proposer cannot meet the goals using DBEs from this geographic area, the proposer, as part of its effort to meet the goals, shall expand its search to a reasonably wider geographic area.

The following is a list of types of efforts a proposer must address when submitting good faith effort documentation.

- (1) Contacting the LPA/Subrecipient and BECO prior to the submission of proposals, either by e-mail, or by telephone, to inform of the firm's difficulty in meeting the DBE goals on a given project, and requesting assistance. The proposer must document its contact with the LPA/Subrecipient and BECO, and indicate the type of contact, the date and time of the contact, the name of the person(s) contacted, and any details related to the communication. The contact must be made in sufficient time before proposal submission to allow the LPA/Subrecipient and BECO to provide effective assistance. The proposer will not be considered to have made good faith efforts if the proposer failed to contact the LPA/Subrecipient and BECO.
- (2) Conducting market research to identify small business consultants and suppliers, and soliciting, through all reasonable and available means, the interest of all certified DBEs who have the capability to perform the work of the contract. This may include attendance at pre-proposal meetings and business matchmaking meetings and events, advertising and/or providing written notices, posting of "Notices of Sources Sought" and/or "Requests for Proposals" at reasonable locations, including the consultant's website, written notices or emails to all DBEs listed in the Department's directory of transportation firms that specialize in areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The proposer should solicit this interest as early in the acquisition process as practicable to

allow DBEs to respond to the solicitation and submit a timely offer for the subcontract. The proposer should determine with certainty if DBEs are interested by taking appropriate steps to follow-up initial solicitations.

- (3) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example smaller tasks or quantities) to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- (4) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for a subcontract.
- (5) Negotiating in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to the DBE subconsultants and suppliers, and to select those portions of work or material needs consistent with the available DBE subconsultants and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided from the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform work.

Pro forma mailings to DBEs requesting proposals are not alone sufficient to constitute good faith negotiation.

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

Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. The consultant must submit copies of each DBE and non-DBE subconsultant quote submitted to the proposer when a non-DBE subconsultant was selected over a DBE for work on the contract. The Department may contact rejected DBEs as part of its investigation. However, nothing in this paragraph shall be construed to require the proposer or prime consultant to accept unreasonable quotes in order to satisfy contract goals.

- (6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The consultant's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the consultant's efforts to meet the project goal. Consultant must submit documentation of past performance and with input from the PM, consultant's qualifications are then reviewed for acceptance and approval.
- (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or consultant.
- (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (9) Effectively using the services of available minority/women community organizations; minority/women consultants' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a proposer has made good faith efforts, the LPA/Subrecipient will review the documented efforts of the consultant and will review the performance of other proposers in meeting the contract goal.

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

The LPA/Subrecipient will evaluate the submittal and make a determination, with BECO concurrence, whether in fact good faith efforts have been demonstrated consistent with the specifications and the Federal regulations, 49 CFR 26, Appendix A.

14.02 Protest for Denied Good Faith Efforts:

If the LPA/Subrecipient, with BECO concurrence, determines that the proposer failed to make adequate good faith efforts, the proposer may protest the determination by submitting an appeal in writing to the ADOT State Engineer. The decision of the ADOT State Engineer is administratively final.

The proposer whose proposal was rejected for failure to meet the goal or make GFE will be given the opportunity to meet in person with the State Engineer, at the proposer's written request included in the protest, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The State Engineer shall promptly consider any appeals and notify the LPA/Subrecipient and all proposers in writing on its findings and decision.

In accordance with 49 CFR 26.53(d)(5), the result of the protest decision is not subject to administrative appeal to the USDOT.

15.0 Rejection of Proposal:

If, for any reason, the proposer's GFE is rejected or contract negotiations fail, the LPA/Subrecipient will proceed with negotiating with the second highest ranked firm. The LPA/Subrecipient, will notify the second highest ranked firm, and this firm shall submit its subsequent detailed submission as set forth in the DBE Subsections 13 or 14.

16.0 Payment Reporting:

The consultant shall report on a monthly basis indicating the amounts paid to all subconsultants, of all tiers, working on the project. Reporting shall be in accordance with Prompt Pay and Payment Reporting requirements section _____ of the contract specifications.

17.0 Crediting DBE Participation Toward Meeting Goals:

17.01 General Requirements:

To count toward meeting the goal, the DBE firms must be certified at the time of Cost Proposal submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

Credit towards the consultant's DBE goal is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subconsultant purchases or leases from the prime consultant or its affiliate will not be credited toward DBE participation.

The consultant bears the responsibility to determine whether the DBE possesses the proper consultant's license(s) to perform the work and, if DBE credit is requested, that the DBE subconsultant is certified for the requested type of work.

If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the consultant bears the responsibility to notify the LPA/Subrecipient, immediately after the consultant becomes aware of the situation, and request approval to replace the DBE with another DBE. The consultant shall follow the DBE termination/substitution requirements described in Subsection 22.0 of these DBE provisions.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The consultant bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime consultant, subconsultant, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The consultant may credit second-tier subcontracts issued to DBEs by non-DBE subconsultants. Any second-tier subcontract to a DBE used to meet the goal must meet the requirements of a first-tier DBE subcontract.

A prime consultant may credit the entire amount of that portion of a contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime consultant or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE goal only if the DBE's subconsultant is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE goal.

A prime consultant may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

17.02 DBE Prime Consultant:

When a certified DBE firm proposes on a contract that contains a DBE goal, the DBE firm is responsible for meeting the DBE goal on the contract or making good faith efforts to meet the goal, just like any other proposer. In most cases, a DBE proposer on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE proposer or any other DBE subconsultants and DBE suppliers will count toward the DBE goal. The DBE proposer shall list itself along with any DBE subconsultants and suppliers, on the DBE Intended Participation Affidavit Individual and Summary in order to receive credit toward the DBE goal.

17.03 Effect of Loss of DBE Eligibility:

If a DBE is deemed ineligible (decertified) or suspended in accordance with 49 CFR 26.87 and 26.88, the DBE may not be considered to meet a contract goal on a new contract, but may be

considered to meet the contract goal under a subcontract that was executed before the DBE suspension or decertification is effective.

When the consultant makes a commitment to use an ineligible DBE firm or the LPA/Subrecipient, made a commitment to use an ineligible DBE prime consultant, but a subcontract or contract has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward the contract goal. The consultant must meet the contract goal with an eligible DBE firm or demonstrate good faith effort. When a subcontract is executed with the DBE firm before the Department notified the firm of its ineligibility, the consultant may continue to use the firm on the contract and may continue to receive credit toward the DBE goal for the firm's work.

17.04 Notifying the Consultant of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subconsultant or supplier that is either decertified or certified during the term of the contract to immediately notify the consultant and all parties to the DBE contract in writing, with the date of decertification or certification. The consultant shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

17.05 Police Officers:

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

17.06 Commercially Useful Function:

A prime consultant can credit expenditures to a DBE subconsultant toward DBE goals only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the LPA/Subrecipient will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such

an extra participant, the LPA/Subrecipient will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, LPA/Subrecipient will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The LPA/Subrecipient will notify the consultant, in writing, if it determines that the consultant's DBE subconsultant is not performing a CUF. The consultant will be notified within seven calendar days of the LPA/Subrecipient's decision.

Decisions on CUF may be appealed to the ADOT BECO. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the ADOT BECO. The appeal must be received by ADOT BECO no later than seven calendar days after the LPA/Subrecipient's decision. LPA/Subrecipient's decision remains in place unless and until the ADOT BECO reverses or modifies LPA/Subrecipient's decision. ADOT BECO will promptly consider any appeals under this subsection and notify the consultant of the ADOT BECO findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The LPA/Subrecipient may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The consultant shall cooperate during the site visits and the LPA/Subrecipient staff will make every effort not to disrupt work on the project.

18.0 Effect of Contract Changes:

The consultant acknowledges that uncertainties can occur during the performance of the work and if for any reason it becomes apparent that the DBE goal will not be met then the consultant shall: (1) immediately notify the LPA/Subrecipient of the potential or actual decrease in DBE compensation, and (2) make good faith efforts to obtain DBE participation to meet or exceed the project DBE goal. Good faith efforts required under the provisions of this section may vary, depending on the time available, the nature of the change, and other factors as determined by LPA/Subrecipient.

LPA/Subrecipient will approve or deny the consultant's good faith efforts with BECO concurrence.

The consultant is not required to take work committed to another subconsultant and assign it to a DBE subconsultant in order to meet the committed DBE percentage.

If the resulting change increases the scope or quantity of work being done by a DBE subconsultant, the DBE shall be given the opportunity to complete the additional work and receive additional compensation beyond their original subcontract amount.

19.0 DBE Participation Above the Goal (Race-Neutral Participation):

Additional DBE participation above the DBE participation required to meet the contract DBE goal is an important aspect of the Department's DBE program. The consultant is strongly encouraged to use additional DBEs above the DBE goal requirement in the contract to assist the Department in meeting its overall DBE goal and help the Department to meet the maximum feasible portion of its DBE goals through race neutral participation as outlined in 49 CFR Part 26.

There are fewer administrative requirements on the part of the consultant when using race neutral DBEs (DBEs not listed on the DBE Intended Participation Affidavit Summary). For example, if a DBE is not listed on the DBE Intended Participation Affidavit Summary, the DBE does not have to submit an Affidavit, and the subcontract approval process follows the same process of any other subcontract. The consultant does not have to replace the DBE with another DBE subconsultant if the DBE fails to perform. Therefore these DBEs are treated as any other subconsultant on the project.

20.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subconsultant Compliance Assurances available from the LPA/Subrecipient and all of the Uniform Terms and Conditions set forth in other sections of this contract.

Consultants executing agreements with subconsultants, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the LPA/Subrecipient and ADOT deem appropriate as outlined in DBE Subsection 2.0.

The LPA/Subrecipient reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The consultant shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The Consultant shall provide electronic copies of signed subcontract agreements for all DBE Subconsultants listed on the DBE Intended Participation Affidavit Summary by uploading them within 15 calendar days of an approved contract to the LPA DBE System.

21.0 Contract Performance:

Contract items of work designated by the consultant to be awarded to DBEs shall be performed by the designated DBE or a LPA/Subrecipient, with BECO concurrence, approved DBE substitute. The Consultant or a non-DBE Subconsultant shall not perform DBE contract work items without prior approval by LPA/Subrecipient, with BECO concurrence. The DBE must perform a commercially useful function; that is, the DBE must manage, perform, and supervise a distinct element of work.

The consultant is required to use DBEs identified in the SOQ to meet the contract goal, so the prime consultant is responsible for ensuring that the DBEs are available to meet scheduling, work and other requirements on the contract.

The LPA/Subrecipient will visit the consultant's office to conduct reviews to ensure compliance with CUF and other DBE requirements. The reviews may include, among other activities, interview of DBEs and their employees and the consultant and its employees. The consultant shall cooperate in the review and make its employees available. The consultant shall inform the LPA/Subrecipient in advance when each DBE will be working on the project to help facilitate reviews.

The LPA/Subrecipient reserves the right to request and inspect all records of the consultant and all records of the DBEs and non-DBE subconsultants concerning this contract. The consultant must make available a copy of all documents related to all contracts the LPA/Subrecipient upon request.

Use of every DBE listed on the DBE Intended Participation Affidavit Summary is a condition of this contract. The consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed on the DBE Intended Participation Affidavit Summary unless the consultant obtains written consent from the LPA/Subrecipient with BECO concurrence. The consultant shall not be entitled to any payment for work or material that is not performed or supplied by the listed DBE unless the consultant obtains written consent from the LPA/Subrecipient with BECO concurrence.

22.0 DBE Termination/Substitution:

22.01 General Requirements:

The consultant shall make all reasonable efforts to avoid terminating or substituting a DBE listed on the DBE Intended Participation Affidavit Summary. At a minimum, the consultant shall negotiate in good faith, give timely notices and/or extend deadlines to the extent that it will not jeopardize the contract with the LPA/Subrecipient. Reasonable methods to resolve performance disputes must be applied and documentation provided to the LPA/Subrecipient before attempting to substitute or terminate a DBE.

22.02 Consultant Notice of Termination/Substitution:

All terminations, substitutions, and reductions in scope of work to be performed by DBEs listed on the DBE Intended Participation Affidavit Summary must be approved in writing by the LPA/Subrecipient, with BECO concurrence and by means of the executed contract modification. The consultant shall contact the LPA/Subrecipient within 24 hours from the first sign of any reason for potential DBE termination/substitution.

The consultant shall not terminate a DBE subconsultant listed on the DBE Intended Participation Affidavit Summary or complete the work contracted to the DBE with its own forces or with a non-DBE firm without the LPA/Subrecipient written consent and BECO concurrence. Before submitting a formal request to the LPA/Subrecipient for DBE termination/substitution, the consultant shall give written notice to the DBE subconsultant with a copy to the LPA/Subrecipient of its intent to terminate or substitute the DBE identifying the reason for the action. The DBE shall be allowed a minimum of five calendar days to respond to the consultant's notice advising the consultant, the LPA/Subrecipient of its position. Before making a determination for approval regarding the consultant's termination and substitution request, the LPA/Subrecipient, with BECO concurrence, will consider both the consultant's request and the DBE firm's response.

22.03 Consultant Request of Termination/Substitution:

The consultant shall formally request the termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary by submitting the DBE Termination/Substitution Request Form and supporting documentation to the LPA/Subrecipient; form is available from the LPA/Subrecipient. The submission shall include the following information:

- 1) The date the consultant determined the DBE to be unwilling, unable or ineligible to perform.
- 2) A brief statement of facts describing the situation and citing specific actions or inaction by the DBE firm giving rise to consultant's assertion that the DBE firm is unwilling, unable, or ineligible to perform.
- 3) A brief statement of the good faith efforts undertaken by the consultant to enable the DBE firm to perform.
- 4) The total dollar amount currently paid for work performed by the DBE firm.
- 5) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the consultant and the DBE firm have no dispute.
- 6) The remaining work that has not been completed by the DBE and the corresponding dollar amount
- 7) The projected date that the consultant requires a substitution or replacement DBE to commence work, if consent is granted to the request.

Written consent for terminating the performance of any DBE listed on the DBE Intended Participation Affidavit Summary will be granted only where the consultant can demonstrate

good cause showing that the DBE is unable, unwilling, or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE. Termination or substitution of a DBE listed on the DBE Intended Participation Summary will not be allowed based solely on a consultant's ability to negotiate a more advantageous contract with another subconsultant. Prior to making a determination for approval regarding the consultant's termination and substitution request, the LPA/Subrecipient, with BECO concurrence, will consider both the consultant's request and the DBE firm's response.

Any requests for substitutions or terminations of DBEs shall be made on the forms provided by LPA/Subrecipient.

22.04 Good Cause:

The LPA/Subrecipient, with BECO concurrence, will make the determination of good cause by providing written consent to the consultant after evaluating the consultant's good cause to terminate or substitute a DBE firm. Good cause for this purpose includes the following in relation to the listed DBE subconsultant:

1. Fails or refuses to execute a written contract.
2. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry practice standards. However, good cause does not exist if the failure or refusal of the DBE subconsultant to perform its work on the subcontract results from the bad faith or discriminatory action of the prime consultant.
3. Fails or refuses to meet the prime consultant's reasonable, nondiscriminatory insurance/bond requirements.
4. Becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state law.
6. Is not a responsible consultant.
7. Voluntarily withdraws from the project and provides written notice of its withdrawal to the LPA/Subrecipient.
8. Is ineligible to receive DBE credit for the type of work required
9. A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract.
10. Other documented good cause that the LPA/Subrecipient determines compels the termination or substitution of the DBE subconsultant.

If good cause is determined, the LPA/Subrecipient and will notify the Consultant of the decision and necessary modifications to the contract can be made.

22.05 DBE Replacement Good Faith Effort:

If the LPA/Subrecipient, with BECO concurrence, approves the termination of a DBE, the consultant shall make good faith efforts to find another DBE subconsultant to substitute for the original DBE. The good faith efforts as identified in DBE Subsection 17.0 shall be directed at

finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The good faith efforts shall be documented and provided, upon request, to the LPA/Subrecipient within seven calendar days from the date of the request.

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

The termination of a DBE firm shall not relieve the consultant of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal. If the LPA/Subrecipient has eliminated items of work subcontracted to a committed DBE, the prime consultant shall still make good faith efforts to replace the DBE with another DBE to the extent necessary to meet the goal. The LPA/Subrecipient will review the quality, thoroughness, and intensity of those efforts.

When a DBE substitution has been approved by the LPA/Subrecipient and concurred by BECO, the consultant shall submit an amended DBE Intended Participation Affidavit Individual and Intended Participation Affidavit Summary to the LPA/Subrecipient for approval with the substitute DBE's name, description of work, NAICS code, AZ UTRACS registration number, and dollar value of work. Approval from LPA/Subrecipient with BECO concurrence must be obtained prior to the execution of a contract modification and before substituted DBE can begin work.

22.06 Sanctions:

Failure by the consultant to carry out the requirements of these DBE Termination/Substitution specifications is a material breach of contract and will result in such remedies as LPA/Subrecipient deems appropriate, with ADOT concurrence, which will include, but are not limited to the assessment of liquidated damages. The LPA/Subrecipient will deduct from monies due or becoming due the consultant, the dollar amount of the wrongfully substituted/replaced DBE subcontract plus 25% of the amount remaining to be paid to the DBE as liquidated damages. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

23.0 Certification of Final DBE Payments:

The consultant's achievement of the goal is measured by actual payments made to the DBEs. The consultant shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract. This form shall be signed by the consultant and the relevant DBE, and submitted to the LPA/Subrecipient no later than 30 days after the DBE completes its work.

The LPA/Subrecipient and ADOT will use this certification and other information available to determine applicable DBE credit allowed to date by the Prime Consultant and the extent to

which the DBE firms were fully paid for that work. By the act of filing the forms, the consultant acknowledges that the information is supplied in order to justify the payment of state and federal funds to the consultant.

The consultant will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the LPA/Subrecipient.

24.0 Sanctions for Not Meeting Contract DBE Goal:

If the LPA/Subrecipient determines, with BECO concurrence, that the consultant has not met the DBE goal at the end of the contract, the LPA/Subrecipient will, at its discretion, may assess liquidated damages up to two times the amount of the unattained portion of the original DBE goal, based on the circumstances of the noncompliance. Not meeting the DBE goal will also be reflected in the consultant evaluation.

The LPA/Subrecipient, with BECO concurrence, will determine whether liquidated damages will be assessed and the amount of the liquidate damages, the LPA/Subrecipient will consider whether there have been other violations on this or other contracts, whether the failure was due to circumstances beyond the control of the consultant, whether the consultant has made good faith efforts to meet the goal, and other appropriate circumstances.

In addition to any other sanctions, willful failure of the consultant, DBE or other subconsultant to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in the Department's and LPA/Subrecipient projects.

25.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

APPENDIX C TO EXHIBIT C (1 PAGE)
INSURANCE AND INDEMNIFICATION REQUIREMENTS

**THIS APPENDIX OMITTED
CONTRACT ARTICLES 7 AND 8.**

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APPENDIX D TO EXHIBIT C (1 PAGE)

CONSULTANT EVALUATION SCHEDULE

Consultant evaluations provide a performance evaluation process which is intended to provide an incentive for Consultants to enhance the quality, timeliness, responsiveness, and cost effectiveness of consulting services provided to the County. The performance evaluation completed by the individual departments shall be used Countywide in the performance evaluation process.

Design Consultants

During construction and other post-design activities, the County's PM will track the impact the design has on the work and conduct a final evaluation at the end of construction that takes into account the impact on construction of design errors or omissions, owner requested changes, and changed conditions, including consideration of disruption or delays in construction, the number of change orders and additional costs attributable to each, and the consultant's response to design errors and omissions. The Project Manager shall complete a DD Form 2631 in conjunction with project closeout and send a copy to the Design and Construction Division. Completed consultant evaluations will provide an additional source of past performance information in qualifications-based selections and may also be considered as one factor in the selection of Consultants.

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APPENDIX E TO EXHIBIT C (5 PAGES)

CONSTRUCTION AND PROFESSIONAL SERVICES/DESIGN CONTRACTS PROMPT PAY AND PAYMENT REPORTING PROVISIONS

** FOR USE ON LPA FEDERAL AID PROJECTS **

(07/24/2023)

MEASUREMENTS AND PAYMENT:

(A) Partial Payments:

If satisfactory progress is being made, the contractor shall receive a payment based on the amount of work completed. Progress payments may be made by the LPA/Subrecipient Procurement Office to the contractor on the basis of an approved estimate of the work performed during a preceding period of time. The progress payments will be paid on or before 14 days after the estimate of the work is approved. The estimate of the work will be deemed received by the LPA/Subrecipient Procurement Office on submission to the person designated by the LPA/Subrecipient Procurement Office for the submission, review or approval of the estimate of the work. The LPA/Subrecipient Procurement Office by mutual agreement may make progress payments on contracts of less than 90 days and will make monthly progress payments on all other contracts. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under the contract may include payment for material and equipment.

An estimate of the work submitted will be deemed approved and certified for payment after seven days from the date of submission unless before that time the LPA/Subrecipient Procurement Office or Designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The contractor shall work with the LPA/Subrecipient or the LPA/Subrecipient Designee to finalize monthly estimate. The progress payments will be paid on or before 14 days after the estimate of the work is certified and approved in accordance with Arizona Revised Statutes Section 34-221.

The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment the respective amounts allowed the contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest.

No contract for construction services may materially alter the rights of any contractor, subcontractor, or material supplier to receive prompt and timely payment.

A subcontractor may notify the LPA/Subrecipient Procurement Office in writing requesting that the subcontractor be notified by the Subrecipient Procurement Office in writing within five days from payment of each progress payment made to the contractor.

Prompt Pay and Payment Reporting Provisions- 1/5

(B) No Retainage on Progress Payments:

- (1) This is a federally-funded project. Therefore, notwithstanding A.R.S. § 34-221, the LPA/Subrecipient Procurement Office will not withhold retainage from progress payments. Neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier.
- (2) This provision does not prevent the LPA/Subrecipient Procurement Office from withholding retainage or reducing payments where otherwise provided in the contract. These cases may include, but are not limited to:
 - (a) Delayed work;
 - (b) Work that is not satisfactorily performed; or
 - (c) A failure to submit necessary reports, certifications, or documents to the LPA/Subrecipient Procurement Office.

(C) Subcontractor Payments:

(1) No Retainage:

- (a) This is a federally-funded project. Therefore, notwithstanding A.R.S. § 34-221, neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier.
- (b) Pursuant to Subsection (B)(2) of this Specification, the contract does not prevent the LPA/Subrecipient Procurement Office from withholding retainage or reducing payments where otherwise provided in the contract. These cases may include, but are not limited to:
 - (i) Delayed work;
 - (ii) Work that is not satisfactorily performed; or
 - (iii) A failure to submit necessary reports, certifications, or documents to the LPA/Subrecipient Procurement Office.
- (c) When the LPA/Subrecipient Procurement Office withholds retainage or reduces payments under Subsection (B)(2) of this Specification, the contractor may withhold retainage on progress payments to subcontractors or suppliers of any tier. However, the contractor may only withhold a reasonable amount of retainage.
- (d) For the purpose of this section, a "reasonable amount" of retainage is based on the subcontractor's involvement or the supplier's involvement in the cause for the LPA/Subrecipient Procurement Office's reduction of payment. The final amount retained from all subcontractors and suppliers shall not be higher than the amount retained by the LPA/Subrecipient. However, tier subcontracts shall include provisions that comply with this section.

Prompt Pay and Payment Reporting Provisions- 2/5

(2) No Set-offs Arising from Other Contracts:

If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

(3) Partial Payment:

The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the LPA/Subrecipient Procurement Office. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(4) Final Payment:

The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(5) Payment Reporting:

For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the LPA DBE System which can be accessed at AZ UTRACS on the Arizona Transportation Business Portal at www.azutracs.com. No later than fifteen calendar days after the preconstruction conference, the contractor shall log into the system and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter the subcontractor information in the LPA DBE System. Reportable contracts information shall be entered into the system no later than five calendar days after approval by the LPA/Subrecipient Procurement Office.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the last day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the LPA DBE System.

Prompt Pay and Payment Reporting Provisions- 3/5

In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract within 15 days of receipt of electronic payment notification and the contractor shall actively monitor the system to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the system between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract payment activity is in the LPA DBE System. This includes all lower-tier Reportable Contracts.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the system.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each month that the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$5,000 as sanctions from the monies due to the contractor. After 90 consecutive days of non-reporting, the sanctions will increase to \$10,000 for each subsequent month which the contractor fails to report until the information is provided. These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

(6) Completion of Work:

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the LPA/Subrecipient Procurement Office.

(7) Disputes:

If there is a discrepancy between what is reported by the contractor in the LPA DBE System and what the subcontractor indicates, an alert email will automatically be sent to the contractor. The email will be sent to the email address provided by the contractor in the LPA DBE System. It is the contractor's responsibility to ensure that the email address in the system is kept current.

The contractor shall provide a verifiable explanation of the discrepancy in the LPA DBE System as early as practicable but in no case later than seven days after the date of the alert email.

The LPA/Subrecipient will determine whether the contractor has acted in good faith concerning any such explanations. The LPA/Subrecipient and ADOT BECO reserves the right to request and receive documents from the contractor and all subcontractors of any

Prompt Pay and Payment Reporting Provisions- 4/5

tier, in order to determine whether prompt payment requirements are met.

The contractor shall implement and use the dispute resolution process outlined in the subcontract or by following the LPA/Subrecipient escalation process, to resolve payment disputes.

(8) Non-compliance:

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

(a) **Sanctions:** These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

- (i) The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.
- (ii) If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
- (iii) If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as sanctions.

(b) **Additional Remedies.** If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office 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 subcontractors, subject to the sanctions described in paragraph (a) above,
- (ii) Terminate the contract for default,
- (iii) Disqualify the contractor from future bidding, temporarily or
- (iv) permanently, depending on the number and severity of violations, if applicable.

In determining whether sanctions will be assessed, the extent of the sanctions, or additional remedies assessed, the LPA/Subrecipient will consider whether there have been other violations on this or other contracts, whether the failure to make prompt payment was due to circumstances beyond the contractor's control, and other circumstances. The contractor may, within 15 calendar days of receipt of the decision of the LPA/Subrecipient, escalate the decision according to the contract's escalation process.

END OF EXHIBIT C –UNIFORM TERMS AND CONDITIONS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/22/2024

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 Edgewood Partners Insurance Agency 3780 Mansell Rd. Suite 370 Alpharetta GA 30022	CONTACT NAME: ACEC Certificates	
	PHONE (A/C, No, Ext): 770-552-4225	FAX (A/C, No): 678.824.8554
E-MAIL ADDRESS: ACECcertificates@greyling.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Sentinel Insurance Company, Ltd.		11000
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		


INSURED DIBBASS
 Dibble & Associates Consulting Engineers, Inc
 3020 E. Camelback Rd., Ste. 201
 Phoenix AZ 85016

COVERAGES **CERTIFICATE NUMBER:** 655006381 **REVISION NUMBER:** 23-24

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	
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE	\$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$
							PRODUCTS - COMP/OP AGG	\$
								\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
A	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/A	20WEGBA7Z71	11/1/2024	11/1/2025	X PER STATUTE	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

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re: + 3 years Dibble Project No. 1024186 Design Engineering Services For: Palo Verde Rd and Michigan St, HAWK (4PVRHK) and Palo Verde Sidewalks (4PVRSW); Contract No. PO2400015152. Pima County, ADOT, and FHWA, their departments, districts, boards, commissions, officers, officials, agents, and employees are named as Additional Insureds on the above referenced liability policies with the exception of workers compensation & professional liability where required by written contract. Waiver of Subrogation is applicable where required by written contract & allowed by law. Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, 30 days' written notice (except 10 days for nonpayment of premium) will be provided to the Certificate Holder.

CERTIFICATE HOLDER Pima County 150 W. Congress St., 3rd Floor Tuscon, AZ 85701	CANCELLATION 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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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

Policy Number: 20WEGBA7Z71

Endorsement Number:

Effective Date: 11/01/2024

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address:

Dibble & Associates Consulting Engineers, Inc
3020 E. Camelback Rd., Ste. 201
Phoenix, AZ 85016

This policy is subject to the following additional Conditions:

- A. If this policy is cancelled by the Company, other than for non-payment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.
- B. If this policy is cancelled by the Company for non-payment of premium, or by the insured, notice of such cancellation will be provided within ten (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the certificate holder(s) will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.

Form WC 99 03 94 Printed in U.S.A.
Process Date:

Policy Expiration Date:



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER
FROM OTHERS ENDORSEMENT**

Policy Number: 20WEGBA7Z71

Endorsement Number:

Effective Date: 11/01/2024

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: Dibble & Associates Consulting Engineers, Inc
3020 E. Camelback Rd., Ste. 201
Phoenix, AZ 85016

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 shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE Dibble & Associates Consulting Engineers, Inc
3020 E. Camelback Rd., Ste. 201
Phoenix, AZ 85016

NA

ANY PERSON OR ORGANIZATION
FROM WHOM YOU ARE REQUIRED BY
WRITTEN CONTRACT OR AGREEMENT
TO OBTAIN THIS WAIVER OF
RIGHTS FROM US.

Countersigned by

Authorized Representative



Why We Are Using the Latest ACORD 25 Certificate of Insurance

In September 2009, ACORD revised the ACORD 25 Certificate of Insurance form. One of the major changes was the removal of the cancellation notice provision. For the following reasons, we are unable to issue an older edition of this form, modify the current form, or complete a proprietary form you provide:

- Notice of cancellation is a policy right, not an unregulated service. No insurer shown on this certificate is able to provide the cancellation notice you desire by endorsement. For example, the *insured* can cancel immediately, so it would be impossible for the insurer to give you the notice you request. State law also grants the insurer the right to cancel for reasons such as nonpayment with less notice than you require.
- For the reason just cited, if our agency was to issue a certificate that provides the cancellation notice you request, we would do so with the full knowledge that it would be impossible to actually give that amount of notice under certain circumstances. As such, the certificate could be alleged to constitute a misrepresentation or fraud which could subject our agency and staff to serious civil and criminal penalties.
- If a certificate purports to provide a policy right different from that provided by the policy itself, then the certificate effectively purports to be a policy form. Policy forms must be filed and approved by our state department of insurance. Use of non-filed policy forms is illegal and could result in legal sanctions distinct from the assertion that the certificate is fraudulent.
- Under the ACORD Corporation's licensing agreement, the prior editions of superseded forms can be used for one year from the time the new forms are introduced. Beginning in September 2010, this is another reason we cannot use an older edition of the ACORD 25. Doing so would violate ACORD's licensing agreement and, as a copyrighted document, federal copyright law.
- Likewise, we are unable to modify the new certificate to add a notice of cancellation. ACORD forms are designed to be completed, not altered. ACORD's Forms Instruction Guide says that a certificate should not be used "To waive rights...To quote wording from a contract...To quote any wording which amends a policy unless the policy itself has been amended." In addition, our insurance company contracts only allow us to issue unaltered ACORD forms.
- We are often asked to issue proprietary certificates provided by the certificate requestor. Again, our insurance company contracts only allow us to issue unaltered ACORD forms. Many proprietary certificates include broad, vague or ambiguous language that may or may not be in compliance with state laws, regulations, and insurance department directives. Therefore, we cannot issue any proprietary certificates that have not been reviewed by our state insurance department.

We appreciate your understanding of the legal restrictions on our ability to fully comply with your request.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.



BLANKET ADDITIONAL INSURED BY CONTRACT

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

Except as otherwise stated in this endorsement, the terms and conditions of the Policy apply.

A. The following is added to Section C. WHO IS AN INSURED:

Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written contract or written agreement, or when required by a written permit issued by a state or governmental agency or subdivision or political subdivision that such person or organization be added as an additional insured on your Coverage Part, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by any other endorsement issued by us and made a part of this Coverage Part.

The insurance afforded to such additional insured will not be broader than that which you are required by the contract, agreement, or permit to provide for such additional insured.

The insurance afforded to such additional insured only applies to the extent permitted by law.

The limits of insurance that apply to additional insureds are described in Section **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**. How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b)** Any express warranty unauthorized by you;
- (c)** Any physical or chemical change in the product made intentionally by the vendor;
- (d)** Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

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- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
 - (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- b. Lessors Of Equipment**
- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
 - (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.
- c. Lessors Of Land Or Premises**
- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
 - (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.
- d. Architects, Engineers Or Surveyors**
- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises;
 - (b) In the performance of your ongoing operations performed by you or on your behalf; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if:
 - (i) The written contract, written agreement or permit requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
 - (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:

 - (i) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (ii) Supervisory, surveying, inspection, architectural or engineering activities.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property

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damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service.

e. State Or Governmental Agency Or Subdivision Or Political Subdivision Issuing Permit

- (1) Any state or governmental agency or subdivision or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not in one of the categories or classes listed above in Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations performed by you or on your behalf;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if:
 - (i) The written contract, written agreement or permit requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, surveying, inspection, architectural or engineering activities.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service described in Paragraphs f.(2)(a) or f.(2)(b) above.



BUSINESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the insurance company shown in the Declarations.

"Policy period", as used in this Coverage Part, means the period from the effective date of this Coverage Part to the expiration date of the Coverage Part as stated in the Declarations or the date of cancellation, whichever is earlier.

The word "insured" means any person or organization qualifying as such under Section C. Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Liability And Medical Expenses Definitions.

A. COVERAGES

1. Business Liability Coverage (Bodily Injury, Property Damage, Personal And Advertising Injury) Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:
 - (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (b) The "bodily injury" or "property damage" occurs during the policy period; and
 - (c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or



- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice**
 - (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
 - (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. Medical Expenses

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. Coverage Extension - Supplementary Payments

- a. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish, finance, arrange for, guarantee, or collateralize these bonds, whether the collateralization is characterized as premium or not.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All court costs taxed against the insured in the "suit". However, such costs do not include attorneys' fees, attorneys' expenses, witness or expert fees, or any other expenses of a party taxed against the insured.
 - (6) 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.



- (7) All interest on the full amount of any judgment that accrues 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.

Any amounts paid under (1) through (7) above will not reduce the Limits of Insurance.

- b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".



b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or
- (b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:
 - (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
- (3) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol; or
- (4) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury" or "property damage" involved that which is described in Paragraph (1), (2), (3) or (4) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving, or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.



This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this paragraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this paragraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".



However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

(1) Unmanned Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This Exclusion **g.(1)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

(2) Aircraft (Other Than Unmanned Aircraft), Auto or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Exclusion **g.(2)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "bodily injury" or "property damage" arises out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This Exclusion **g.(2)** does not apply to:

- (a) A watercraft while ashore on premises you own or rent;
- (b) A watercraft you do not own that is:
 - (i) Less than 51 feet long; and
 - (ii) Not being used to carry persons or property for a charge;
- (c) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (d) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft (other than "unmanned aircraft") or watercraft;
- (e) "Bodily injury" or "property damage" arising out of:
 - (i) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
 - (ii) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or
- (f) An aircraft (other than "unmanned aircraft") that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.



i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Pharmaceutical services including but not limited to:
 - (a) The administering, prescribing, preparing, distributing or compounding of pharmaceutical drugs, vaccinations, immunizations or any of their component parts;
 - (b) The providing of or failure to provide home health care or home infusion products or services; and
 - (c) Advising and consulting customers;
- (11) Computer consulting, design or programming services, including web site design.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "bodily injury", "property damage", or "personal and advertising injury" arises out of the rendering of or the failure to render any professional service.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;



- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section D. Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written, electronic, or any other manner of publication of material, if done by or at the direction of the insured with knowledge of its falsity;



- (2) Arising out of oral, written, electronic, or any other manner of publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of:
 - (a) Any actual or alleged infringement or violation of any intellectual property rights, such as copyright, patent, right of publicity, trademark, trade dress, trade name, trade secret, service mark or other designation of origin or authenticity; or
 - (b) Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made against you, or by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

- (i) Infringement, in your "advertisement", of:
 - a. Copyright;
 - b. Slogan; unless the slogan is also a trademark, trade dress, trade name, service mark or other designation of origin or authenticity; or
 - c. Title of any literary or artistic work; or
- (ii) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

Paragraph (7)(b)ii above shall not apply to claims or "suits" alleging infringement or violation of trademark, trade dress, trade name, service mark or other designation of origin or authenticity.

- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of web sites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section F. Liability And Medical Expenses Definitions.

For the purposes of this exclusion, the placing of frames, borders, or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
 - (a) Advertising content for others on your web site;
 - (b) Placing a link to a web site of others on your web site;



- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

(13) Arising out of a violation of any anti-trust law;

(14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities;

(15) Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information; or

(16) Arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "personal and advertising injury" arises out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

However, this exclusion does not apply if the only allegation in the claim or "suit" involves an intellectual property right which is limited to:

- (a) Infringement, in your "advertisement", of:
 - (i) Copyright;
 - (ii) Slogan; or
 - (iii) Title of any literary or artistic work; or
- (b) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

q. Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability

(1) Damages because of "bodily injury" or "property damage" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

This exclusion applies even if such damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraphs (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or



- (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, malicious prosecution or false arrest directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
 - (a) May be awarded or incurred by reason of any claim or "suit" alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
 - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
 - (c) Arise out of any claim or "suit" for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section D. Liability And Medical Expenses Limits Of Insurance.

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.



c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business, other than that described in b. through e. below, of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:



(a) Owned, occupied or used by:

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- b. Coverage under this provision does not apply to:
 - (1) "Bodily injury" or "property damage" that occurred; or
 - (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator Of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons or property for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:



- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b. above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance required in a written contract, written agreement or permit; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this Policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this Policy and the endorsements is the single highest limit of liability of all



coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured under this Coverage Part must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured under this Coverage Part must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured under this Coverage Part must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured under this Coverage Part, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with such additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured under this Coverage Part only when such "occurrence", offense, claim or "suit" is known to:



- (1) You or any additional insured under this Coverage Part that is an individual;
- (2) Any partner, if you or an additional insured under this Coverage Part is a partnership;
- (3) Any manager, if you or an additional insured under this Coverage Part is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured under this Coverage Part is a corporation;
- (5) Any trustee, if you or an additional insured under this Coverage Part is a trust; or
- (6) Any elected or appointed official, if you or an additional insured under this Coverage Part is a political subdivision or public entity.

This Paragraph f. applies separately to you and any additional insured under this Coverage Part.

3. Legal action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that 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.

4. Separation Of Insureds

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

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

5. Representations

a. When You Accept This Policy

By accepting this Policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this Policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

6. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk, Owner Controlled Insurance Program or OCIP, Contractor Controlled Insurance Program or CCIP, Wrap Up Insurance or similar coverage for "your work";



(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section B. Exclusions.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section B. Exclusions.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.



If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

7. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. 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 enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purpose of attracting customers or supporters is considered an advertisement.
2. "Advertising idea" means any idea for an "advertisement".
3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.
4. "Auto" means:
 - a. A land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.However, "auto" does not include "mobile equipment".
5. "Bodily injury" means physical:
 - a. Injury;
 - b. Sickness; or
 - c. Diseasesustained by a person and, if arising out of the above, mental anguish or death at any time.
6. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or



- (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication.

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

7. "Electronic data" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of "electronic data", means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
- A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. Liability And Medical Expenses Limits Of Insurance.
 - A sidetrack agreement;
 - Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
 - Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - An elevator maintenance agreement; or
 - That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.
- However, Paragraph f. does not include that part of any contract or agreement:
- That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or



- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered; but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law or motor vehicle registration law are considered "autos".
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:



- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written, electronic, or any other manner of publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written, electronic, or any other manner of publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement"; or
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement".
18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
20. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.



22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Unmanned aircraft" means an aircraft that is not:
- Designed;
 - Manufactured; or
 - Modified after manufacture;
- to be controlled directly by a person from within or on the aircraft.
24. "Volunteer worker" means a person who:
- Is not your "employee";
 - Donates his or her work;
 - Acts at the direction of and within the scope of duties determined by you; and
 - Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
25. "Your product":
- Means:
 - Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - You;
 - Others trading under your name; or
 - A person or organization whose business or assets you have acquired; and
 - Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
 - Includes:
 - Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - The providing of or failure to provide warnings or instructions.
 - Does not include vending machines or other property rented to or located for the use of others but not sold.
26. "Your work":
- Means:
 - Work or operations performed by you or on your behalf; and
 - Materials, parts or equipment furnished in connection with such work or operations.
 - Includes:
 - Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

Paragraph .1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add the following:

d. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

e. Employees as Insureds

- (1). Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

f. Lessors as Insureds

- (1). The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (a) The agreement requires you to provide direct primary insurance for the lessor and
 - (b) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

g. Additional Insured if Required by Contract

- (1) When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (a) During the policy period, and
- (b) Subsequent to the execution of such written contract, and

- (c) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

2. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in A.1.g. - Additional Insured If Required by Contract, the following provisions apply:

- (1) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(2) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (1) and (2) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in SECTION IV- Business Auto Conditions, B. General Conditions, Other Insurance 5.d.

3. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The SECTION IV- Business Auto Conditions, B. General Conditions, 5. OTHER INSURANCE Condition is amended by adding the following:

- e. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

4. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

5. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

6. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

7. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal

obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

8. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

9. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or
- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III, Physical Damage Coverage, Limit of Insurance, Paragraph C.2. is amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
 - (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
 - (3) An integral part of such equipment.
- c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

10. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

11. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

12. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

13. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;

- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

15. HIRED AUTO - COVERAGE TERRITORY

SECTION IV, BUSINESS AUTO CONDITIONS, PARAGRAPH B. GENERAL CONDITIONS, 7. - POLICY PERIOD, COVERAGE TERRITORY - is added to include the following:

- (6) For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

16. WAIVER OF SUBROGATION

Paragraph 5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS A. Loss Conditions is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

17. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS, C. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

18. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

19. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"
- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

20. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.