



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 12/19/17

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Greenlight Traffic Engineering, LLC (Headquarters: Phoenix, Arizona)

***Project Title/Description:**

Sign Inventory and Panel Replacement

***Purpose:**

Award: Contract No. CT-TR-18-153. This award of contract is recommended to the highest qualified consultant in the amount of \$667,673.72 for a contract term from 12/19/17 to 12/30/19 for the Sign Inventory and Panel Replacement Project. Administering Department: Transportation.

***Procurement Method:**

Solicitation for Qualifications No. 270243 was conducted in accordance with A.R.S § 34-603 and the Pima County Board of Supervisors Policy D 29.1. Two (2) responsive statements of qualifications were received and evaluated by a four (4) member committee using qualifications and experience-based selection criteria. One (1) statement of qualifications was deemed non-responsive. Based upon the evaluation of the respondents' written representations of their qualifications and necessary due diligence, a short list of two (2) respondents were invited to interviews. As a result of the combined scoring of the written statements of qualifications and interviews, the highest qualified consultant is recommended for award.

Attachments: Notice of Recommendation for Award and Consultant Services Contract.

***Program Goals/Predicted Outcomes:**

The project goal is to update the County's sign inventory database and replace existing non-compliant signs with new signs that meet the retroreflectivity requirements of the 2009 Manual on Uniform Traffic Control Devices (MUTCD).

***Public Benefit:**

Replacing the signs will improve retroreflectivity making the signs more visible to drivers and thereby improving public safety.

***Metrics Available to Measure Performance:**

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

***Retroactive:**

No

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Procure Dept 12/05/17 PM 01:57

Contract / Award InformationDocument Type: CT Department Code: TR Contract Number (i.e., 15-123): 18-153Effective Date: 12/19/17 Termination Date: 12/30/19 Prior Contract Number (Synergen/CMS): _____☒ Expense Amount: \$* 667,673.72 ☐ Revenue Amount: \$ _____*Funding Source(s) required: Highway Safety Improvement Program (HSIP)Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____Contract is fully or partially funded with Federal Funds? ☒ Yes ☐ No

*Is the Contract to a vendor or subrecipient? _____

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 22-73.

Amendment / Revised Award Information

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

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ 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): _____

Effective 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: Anthony V. Schiavone 12-1-17Department: Procurement 12/1/17 Telephone: (520) 724-3245Department Director Signature/Date: Ana M. Olivera 12/04/17Deputy County Administrator Signature/Date: [Signature] 12/4/17County Administrator Signature/Date: [Signature] 12/5/17
(Required for Board Agenda/Addendum Items)



NOTICE OF RECOMMENDATION FOR AWARD

Date of Issue: November 30, 2017

The Pima County Procurement Department – Design & Construction Division hereby issues formal notice to respondents to Solicitation No. 270243 - Design Engineering Services for Sign Inventory and Panel Replacement that the following listed respondent will be recommended for award as indicated below. The award action is scheduled for the Board of Supervisors meeting to be held on or after December 19, 2017.

Award is recommended to the Most Qualified Respondent:

AWARDEE NAME:

Greenlight Traffic Engineering, LLC

OTHER RESPONDENT NAMES: (In alphabetical order)

EPS Group, Inc. **
Lee Engineering, LLC

** EPS Group, Inc. deemed non-responsive.

Issued by: Anthony V. Schiavone, Procurement Officer

Telephone Number: (520) 724-3245

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

Copy to: Pima County DBE Coordinator

PIMA COUNTY DEPARTMENT OF TRANSPORTATION	
PROJECT:	SIGN INVENTORY AND PANEL REPLACEMENT
CONSULTANT:	GREENLIGHT TRAFFIC ENGINEERING, LLC 7600 N. 15TH STREET, STE 150 PHOENIX, AZ 85020
AMOUNT:	\$667,673.72
FUNDING:	HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP)

CONTRACT
NO. <u>CT-TR-18-153</u>
AMENDMENT NO. _____
This number must appear on all invoices, correspondence and documents pertaining to this contract.

(STAMP HERE)

CONSULTANT SERVICES CONTRACT

This Contract is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and Greenlight Traffic Engineering, LLC, 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 Sign Inventory and Panel Replacement 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. 270243, 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 19, 2017, and terminates on December 30, 2019, 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 Engineering Services for the COUNTY as described in **EXHIBIT "A" – SCOPE OF SERVICES (10 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** and **ARTICLE 6**.

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

This Contract is funded by federal funds and is subject to the additional Federal requirements in **EXHIBIT "C" – Uniform Terms and Conditions Federal Contract Requirements (Project Specific Contract with Goals) (37**

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pages), hereinafter referred to as "UTC", and EXHIBIT "D" – Professional Services DBE Provisions (18 pages), which are attachments to and hereby made part of this Contract. For this Contract, the Federal Granting Agency is Federal Highway Administration and the State Agency is Arizona Department of Transportation.

ARTICLE 3 - DEFINITIONS

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

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

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 (19 pages)**. 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 Six Hundred Sixty-Seven Thousand Six Hundred Seventy-Three Dollars and Seventy-Two Cents (\$667,673.72).

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 twenty-one (21) calendar days after receipt of a correct invoice. In addition, CONSULTANT will pay subconsultants within seven (7) calendar days after receiving payment from COUNTY, unless exceptions exist within the agreed-upon consultant/subconsultant agreement. CONSULTANT shall not withhold subconsultants' payment if COUNTY has paid for the full value of services rendered. Failure by the CONSULTANT to invoice COUNTY in accordance with the terms of the Contract and/or pay subconsultants in accordance with A.R.S. § 28-411 shall be constituted as a

material breach of contract. COUNTY reserves the right to request that CONSULTANT provides proof of payment to subconsultants if a complaint of non-payment is made to COUNTY by the subconsultant.

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

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

In order for COUNTY to enter into a Contract with a Consultant for services, CONSULTANT shall meet the insurance requirements prior to the execution of the Contract as evidenced by a Certificate of Insurance with the required endorsements.

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.
2. CONSULTANT is responsible for certifying that any Subconsultant, included as part of their Contract, meet the insurance requirements outlined in the Contract. Any variations to current insurance requirements shall be submitted to COUNTY and the State of Arizona, for review and approval.
3. An "indemnification" clause will be included in the Contract which will be signed by CONSULTANT, to protect COUNTY, State of Arizona, ADOT, FHWA and their employees (see **ARTICLE 8**).

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

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

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

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

A. Minimum Scope and Limits of Insurance:

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

1. Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage.
2. Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.
3. Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$1,000,000. Note: The Workers' Compensation requirement 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.

4. Professional Liability (Errors and Omissions) Insurance – Professional Liability to include professional misconduct and negligent acts of anyone performing professional services under this Contract with policy limits not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. A Claims-Made policy is acceptable.

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 two (2) years beginning at the time work under this Contract is completed.

B. Additional Insurance Requirements:

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

1. Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include Pima County, State of Arizona, Arizona Department of Transportation (ADOT), Federal Highway Administration (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 CONSULTANT.
2. Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of CONSULTANT.
 - a. Primary Insurance Endorsement: CONSULTANT'S policies will stipulate that the insurance afforded CONSULTANT will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY, or FHWA will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
 - b. Insurance provided by CONSULTANT will not limit CONSULTANT'S liability assumed under the indemnification provisions of this Contract.

C. Notice of Cancellation:

CONSULTANT'S insurance policies and endorsements shall not be permitted to expire, be cancelled, suspended or materially changed from the agreed upon Insurance Requirements for any reason without thirty (30) days advance written notice to COUNTY of the policy cancellation, suspension or material change. CONSULTANT must provide written notice to COUNTY within two (2) business days of receipt of notice. For cancellation of non-payment, Insurer is to provide COUNTY with written notice ten (10) days prior to cancellation of policy. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement, Design and Construction Division, 130 W. Congress, 3rd Floor, Tucson, AZ 85701.

D. Verification of Coverage:

CONSULTANT will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An insurance certificate submitted to COUNTY representing insurance coverage must include an original signature from an authorized representative.

1. All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
2. All certificates required by this Contract will be sent directly to COUNTY. 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.

E. Approval and Modifications:

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

ARTICLE 8 – INDEMNIFICATION

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

All warranty and indemnification obligations under this Contract shall survive expiration or termination of the Contract, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with 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 consultant 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 ten (10) calendar days prior to the change, and shall inform the Department of the reasons 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 thirty (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 4.20.

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, provided that COUNTY will not unreasonably withhold such approval.
- 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 **ten (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 **ten (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 ten (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 4.21.

ARTICLE 18 – TERMINATION OF CONTRACT FOR DEFAULT

See Exhibit "C", UTC Article 4.18.

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:

Ana Olivares, P.E. Director
Department of Transportation
201 N. Stone Ave.
Tucson, AZ 85701
Tel: (520) 724-6410

CONSULTANT:

Mike Blankenship, P.E. Project Principal
Greenlight Traffic Engineering, LLC
S. 7600 N. 15th St. Ste 150
Phoenix, AZ 85020
Tel: (620) 499-1339

ARTICLE 22 – OTHER DOCUMENTS

The Parties in entering into this Contract have relied upon information provided in Solicitation for Qualifications # 270243, and on representations and information in CONSULTANT'S response to said SFQ. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract. CONSULTANT will perform services in accordance with the terms of the Contract and at a level of care consistent with prevailing industry standards. In the event any provision of this Contract is inconsistent with those of any other document, the Contract provisions will prevail.

ARTICLE 23 – REMEDIES

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

ARTICLE 24 – SEVERABILITY

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

ARTICLE 25 – BOOKS AND RECORDS

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

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

ARTICLE 26 – DELAYS

Neither Party hereto will be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such Party.

ARTICLE 27 – DISPUTES

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

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

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

ARTICLE 28 – OWNERSHIP OF DOCUMENTS

See Exhibit "C", UTC Article 4.14.

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 4.16.

ARTICLE 31 – ISRAEL BOYCOTT CERTIFICATION

CONSULTANT hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Consultant may result in action by COUNTY up to and including termination of this Contract.

Remainder of this page is left intentionally blank

ARTICLE 32 - 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:

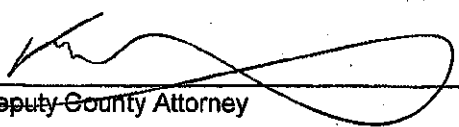
Chair, Board of Supervisors

Date

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney

TOBIN ROSEN

Name (Please Print)

12/4/17
Date

CONSULTANT:

Mike Blankenship
Signature

Mike Blankenship, Principal
Name and Title (Please Print)

December 4, 2017
Date

EXHIBIT "A" - SCOPE OF SERVICES (10 pages)



November 29, 2017

Mr. Steve Wilson, PE
Pima County Department of Transportation
Traffic Engineering Division
1313 S Mission Rd, Bldg 9
Tucson, AZ 85713

Re: Pima County Sign Inventory and Panel Replacement
Final Signed Scope of Work and Fee Proposal

Dear Mr. Wilson:

Greenlight Traffic Engineering, LLC (Greenlight) has prepared our scope of work and fee proposal for the **Pima County Sign Inventory and Panel Replacement** project.

The total fee requested for executing this work is **\$667,673.72**. The estimate Disadvantaged Business Enterprise (DBE) participation for this project is **3.00%**, which exceeds the Business Engagement and Compliance Office (BECO) established goal of 2.62%. The following text, derivation of cost proposal summary, man-hour derivation and subconsultant scopes of work and fee proposals outline the anticipated tasks and effort to complete the project.

PROJECT DESCRIPTION

Pima County (County) has obtained Federal Highway Safety Improvement Program (HSIP) funds to inventory, prioritize and replace signs failing to meet minimum Manual on Uniform Traffic Control Devices (MUTCD) retroreflectivity criteria to improve roadway safety.

This project will inventory all signs for which County has maintenance responsibility, prioritize signs that need replacement and develop design plans to procure signing materials. In addition, an independent subconsultant will perform a field verification of signs collected as part of the primary inventory. Following completion of the design plans, the County will advertise and procure a vendor to provide the materials. The County will install the signs and hardware using in-house forces.

The major work elements include project management and coordination; sign inventory data collection and extraction; engineering design plans, specifications and estimate; and field verification.

ITEMS TO BE FURNISHED BY PIMA COUNTY

- Pima County Standards with revisions that need to be incorporated into this project
- Pima County TOSS database
- Pima County GIS for ROW, Roadways and Linear Referencing System (LRS) geodatabases
- Pima County annexation documentation

PRIME CONSULTANT SCOPE OF WORK

1.0 PROJECT MANAGEMENT

1.1 Invoicing and PM reports

Greenlight will prepare and electronically transmit monthly invoices to Pima County finance department. Greenlight will include a Project Manager's report summarizing:

- Past work effort
- Planned work effort
- Scope changes/value added to date
- Schedule status
- Budget status
- Input needed from County
- Other issues and/or concerns

This task includes preparation of up to 18 invoices and project manager reports.

1.2 Pima County Coordination

Greenlight will coordinate with the County's project manager and functional groups to address day-to-day project items that need input from County staff. Time for these efforts includes 6 emails or phone calls per month (estimated at 0.5 hours each) for the 18-month project duration.

1.3 Subconsultant Coordination

Greenlight will coordinate with DBi Services (DBi) and Darling Geomatics (Darling) to address day-to-day project items that need input. Time for these efforts includes four (4) emails or phone calls per month (estimated at 0.5 hours each) for the 18-month project duration.

1.4 Identify Stakeholders

Greenlight will coordinate with Pima County and ADOT to identify all individuals and/or groups that will need to be included in project planning and status updates.

1.5 Develop Contact List

Greenlight will use the list of identified stakeholders to complete a comprehensive list of all individuals involved in the project. Greenlight will update this list and maintain prior versions when individuals are added or dropped from the project team. This list will also be used as the sign-in sheet for any formal in-person, teleconference or video conference team meetings, as well as for creating and updating master email distribution lists. This task includes updating the document during the originally established period of performance.

1.6 Develop Responsibility Assignment Matrix

Many individuals from various organizations will be involved in completing, reviewing and approving the multitude of activities associated with the project. Greenlight will develop a Responsible/Accountable/Consult/Inform (RACI) matrix to specify everyone's role by activity. Greenlight will update the RACI matrix and maintain prior versions when individuals are added or dropped from the project team. Updates will be completed for the originally established period of performance. Developing the RACI matrix includes coordination with key organization staff for revisions and buyoff on individual staff roles. This task includes updating the document during the originally established period of performance.

1.7 Develop Escalation Ladder Matrix

Greenlight will develop an escalation ladder matrix. The primary function of the matrix will be to establish increasing levels of authority for a more efficient issue resolution and decision-making process. If lower levels of personnel are not available or unable to serve as the decision maker, the escalation ladder will identify the next level to consult to finalize a decision. This task includes updating the document during the originally established period of performance.

1.8 Develop Detailed Schedule

Greenlight will develop a detailed schedule with an established baseline, predecessors and successors to track progress and critical path items. Greenlight will update the schedule and maintain prior versions when changes are made. This task includes updating the document during the originally established period of performance.

1.9 Develop Draft and Final Project Management Plan

Greenlight will develop a project management plan (PMP). The PMP will summarize the following:

- Cover
- Revision Log
- Introduction
- Scope
- Deliverables
- Organization and Staffing
- Schedule
- Quality Management Plan
- Human Resources Plan
- Communications Plan
- Risk Management Plan

This task includes updating the document during the originally established period of performance.

1.10 Develop Issue Tracking Matrix

Greenlight will develop an issue tracking matrix. This document will be updated and monitored to confirm that all issues are resolved in a timely and acceptable manner. This task includes updating the document during the originally established period of performance.

1.11 Develop Decision Log

Greenlight will develop a decision log that will track the following items related to decisions made including:

- Decision maker/owner (e.g., team, group, individual) - Who
- Decision description and details (alternatives considered, if applicable) - What
- Dates of decision identified and finalized - When
- Decision rationale - Why
- Sources of decision/approval (e.g., meeting, phone call, email) – Where
- Overriding decision

This task includes updating the document during the originally established period of performance.

1.12 Obtain ADOT Environmental Clearance

Greenlight will coordinate with ADOT Environmental Planning Group (EPG) staff to ensure timely completion of the environmental clearance documentation. The environmental work will be prepared by EcoPlan (see attached scope of work and fee proposal).

1.13 Obtain ADOT Utilities and Railroad Clearance

Greenlight will prepare documentation and coordinate with ADOT staff to obtain a Utilities and Railroad (URR) clearance.

1.14 Obtain ADOT Right of Way Clearance

Greenlight will prepare documentation and coordinate with ADOT staff to obtain a ROW clearance.

TASK 1.0 DELIVERABLES:

- 18 Invoices and Project Manager reports
- ADOT Environmental Clearance
- ADOT URR Clearance
- ADOT ROW Clearance

2.0 MEETINGS**2.1 Kickoff Meeting, Draft Meeting Summary, Final Meeting Summary**

Greenlight will coordinate with ADOT and the County to organize the project kickoff meeting. This may consist of a video conference in lieu of an in-person meeting at a single location. Greenlight will document notes from the meeting and distribute a draft to the team for review. Draft comments will be incorporated, and a final summary will be distributed.

2.2 Coordination Meetings, Draft Meeting Summaries, Final Meeting Summaries

Greenlight will coordinate with appropriate parties to organize coordination meetings to discuss project issues and provide status updates. Meetings will be documented with summary notes distributed to the project team in draft and final forms. This task includes up to two (2) coordination meetings. Meeting prep, attendance and summary notes are estimated at six (6) hours each meeting.

2.3 Design Memo Comment Resolution Meeting

Greenlight will attend one (1) comment resolution meeting to discuss design memo draft comments with project team members and resolve any outstanding issues. This includes meeting prep, attendance and summary notes.

2.4 Design Plan Review Comment Resolution Meetings

Greenlight will attend up to two (2) comment resolution meeting to discuss design plan comments with project team members and resolve any outstanding issues. This includes meeting prep, attendance and summary notes.

TASK 2.0 DELIVERABLES

- 6 Draft Meeting Summaries
- 6 Final Meeting Summaries

3.0 DESIGN MEMO**3.1 Data Discovery and Review**

Greenlight will compile and review relevant existing project data, reports and design standards.

3.2 Develop Pima County Requirements

Greenlight will work with County staff to develop a list of the detailed technical requirements the County would like used for this project. This includes attributes to be collected in the sign inventory, details for sign replacement (e.g., special requirements for the County for color, size, etc.), requirements for field verification, traffic control requirements, and the staffing plan for installation.

3.3 Develop Approach to Procurement of Signs and Sign Storage

Greenlight will work with County Traffic Engineering Division staff and Procurement staff to develop a recommended approach for procuring and storing signs. This will also include a discussion of the advanced payment for the signs required by ADOT and the County's approach for the financials.

3.4 Develop Approach to Sign Replacement

Greenlight will work with County Traffic Engineering Division staff to develop and document the approach to be used for replacing signs. This includes developing the methods for prioritization and upsizing signs to the latest MUTCD requirements.

3.5 Develop Sign Code Master Key

Greenlight will develop a sign code master key that will include a summary of the signs designated in the 2003 and 2009 MUTCD, ADOT MOAS and Pima County standards. The following will be included:

- Sign picture
- Sign code including special designations needed for manufacturing (e.g., speed, left/right direction, distance, etc.)
- Sign size for replacement sign
- Sign color for replacement sign

3.6 Develop Sign Post Decision Guidance

Greenlight will work with County staff to identify requirements for posts that will not meet standards when sign sizes are increased. This will be used to flag posts that will need to be upgraded/replaced prior to installing a new sign. Replacement of sign posts is not a part of this project.

3.7 Graphics Development

Greenlight will develop graphics and design drawings to depict project location, illustrate technical details and provide examples of sign design to be used on this project.

3.8 Draft Memo

Greenlight will develop the design memo document to outline the criteria to be used on the project. The design memo will only be submitted to Pima County for review and comment.

3.9 Final Memo

Greenlight will revise the draft memo based on Pima County's comments.

TASK 3.0 DELIVERABLES

- Draft Memo
- Final Memo

4.0 SIGN PANEL REPLACEMENT – STAGE IV DESIGN

4.1 Validate Signs Provided by DBi

Greenlight will review each sign identified by DBi as failing and in need of replacement. Greenlight will use DBi's online inventory database to backcheck the sign code, size, color, and street name spelling.

4.2 Cover Sheet

Greenlight will prepare the cover sheet in conformance with Pima County standards. It will include:

- Project name
- Federal / ADOT / County Project numbers
- State vicinity map
- County Vicinity map
- Construction and Record Drawing block
- North arrow

4.3 Sheet Index, Notes, Quantities

Greenlight will prepare one (1) sheet that will include the sheet index, signing notes, and quantities summary.

4.4 Sign Identification Detail Sheet

Greenlight will prepare one (1) sheet that will include the sign identification decal details that shall be placed on each sign. The tags shall identify each sign as "Property of Pima County", manufacturer, date of installation and location of placement on the sign.

4.5 Sign Schedule Sheets

Greenlight will prepare four (4) sheets to summarize the quantities of each sign by code and size.

4.6 Sign Summary Sheets

Greenlight will prepare approximately 125 sign summary sheets. These sheets will summarize the details of each sign that will be procured by the County to replace existing failed signs.

4.7 Street Name Sign Layout Sheets

Greenlight will prepare approximately 40 sign layout sheets for street name signs. This includes design of individual street name signs using SignCAD.

4.8 Cost Estimate

Greenlight will prepare a cost estimate consistent with Pima County bid item numbering and historical costs.

4.9 Specifications

Greenlight will work with County Traffic Engineering Division staff and Procurement staff to develop the specifications that will be used in the Procurement advertisement. Items to be specified include applicable standards, sheeting material, ink material, thickness, hardware type, packaging, delivery location, material performance life, warranty, etc.

4.10 QC Review and Revisions

Greenlight will perform quality control checks and revise plans as appropriate prior to submittal to the team.

TASK 4.0 DELIVERABLES

- Stage IV Plans, Specifications and Estimate package

5.0 SIGN PANEL REPLACEMENT – STAGE V DESIGN

5.1 Stage IV PS&E Summary of Comments and Responses

Greenlight will develop a summary of comments (SOC) document based on Stage IV comments from ADOT and Pima County. The SOC will include responses to each comment received.

5.2 Stage V PS&E Revisions

Greenlight will revise the plans, specifications and estimate based on comments received from ADOT and Pima County.

5.3 Stage V PS&E QC Review and Revisions

Greenlight will perform quality control checks and revise plans as appropriate prior to submittal to the team.

TASK 5.0 DELIVERABLES

- Stage IV Summary of Comments
- Stage V Plans, Specifications and Estimate package

6.0 SIGN REPLACEMENT – FINAL DESIGN

6.1 Stage V PS&E Summary of Comments and Responses

Greenlight will develop a summary of comments (SOC) document based on Stage V comments from ADOT and Pima County. The SOC will include responses to each comment received.

6.2 Final PS&E Revisions

Greenlight will revise the plans, specifications and estimate based on comments received from ADOT and Pima County.

6.3 Final PS&E QC Review and Revisions

Greenlight will perform quality control checks and revise plans as appropriate prior to submittal to the team.

6.4 Final Sealed Plans and Estimate

Following approval of Final PS&E documents from Pima County and ADOT, Greenlight will seal the project plans. The project estimate and specifications will not be sealed; however, they will be updated and provided to Pima County procurement for use in advertising the project.

TASK 6.0 DELIVERABLES

- Stage V Summary of Comments
- Final Sealed Plans
- Final Specifications and Estimate

SUBCONSULTANT SCOPES OF WORK AND FEE PROPOSALS

Sign Inventory – DBi Services’ scope of work and fee proposal is attached for reference. Their fee has been included as “Outside Services” in the Derivation of Cost Proposal Summary.

Field Verification – Darling Geomatics’ scope of work and fee proposal is attached for reference. Their fee has been included as “Outside Services” in the Derivation of Cost Proposal Summary.

PRELIMINARY SCHEDULE MILESTONES

See attached schedule for more detailed information.

Milestone	Estimated Completion
Draft SOW & Fee	Tuesday, November 21, 2017
Board of Supervisors Approval	Tuesday, December 19, 2017
Notice to Proceed	Friday, December 29, 2018
Kickoff Meeting	Tuesday, January 2, 2018
All Failed Sign Data Delivered to Greenlight	Friday, March 2, 2018
Sign Inventory - Stage I	Friday, March 2, 2018
Field Verification - Stage I Final QC Report	Friday, April 13, 2018
Sign Inventory - Stage II	Friday, June 29, 2019
Field Verification - Stage II Final QC Submittal	Friday, March 1, 2019
Environmental Clearance Issued	Friday, April 6, 2018
Utilities and Railroad Clearance Issued	Friday, May 4, 2018
Right of Way Clearance Issued	Friday, May 4, 2018
Design Memo – Draft Submittal	Tuesday, January 23, 2018
Design Memo – ADOT / Pima County Review Returned	Friday, February 2, 2018
Design Memo – Final Submittal	Friday, February 16, 2018
Stage IV PS&E – Design Submittal	Friday, April 6, 2018
Stage IV PS&E - ADOT / Pima County Review Returned	Friday, April 20, 2018
Evaluate need for ADOT Dispensation	Friday, April 20, 2018
Stage V PS&E - Design	Friday, May 11, 2018
Stage V PS&E - ADOT / Pima County Review Returned	Friday, May 25, 2018
Final PS&E	Friday, June 8, 2018
Federal Obligation	Friday, June 29, 2018

EXCLUSIONS

The below exclusions are planning and design capabilities for which Greenlight can perform services; however, they are specifically excluded from this scope of work:

- Traffic and traffic safety studies
 - Intersection capacity
 - Signal and/or stop warrants
 - Signal progression
 - Traffic calming
 - Crash summaries
 - Crash diagrams
 - Safety performance functions (SPFs)
 - Before / After safety analysis
 - Safe routes to school (SRTS)
 - Strategic transportation safety plans
 - Road safety assessments (RSAs)
- Transportation planning
 - Transportation master plans
 - Pedestrian plans
 - Bike plans
- Traffic Engineering Design
 - Utility coordination
 - Construction sequencing
 - Traffic control
 - Pavement marking
 - Traffic signals
 - Lighting
 - Intelligent transportation systems (ITS)
 - Horizontal geometric design
 - Parking lot layout
- Tort liability support
- 3rd party study and design plan review

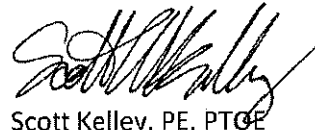
On behalf of the Greenlight team, we look forward to working with the Pima County to complete this important project.

Sincerely,

Greenlight Traffic Engineering, LLC



Michael Blankenship, PE
Principal
mikeb@greenlightte.com
(623) 308-6523



Scott Kelley, PE, PTOE
Project Manager
scottk@greenlightte.com
(602) 499-1339

END OF EXHIBIT "A"

Contract No.:	TBD
Project No.:	TBD
Project:	Sign Inventory and Panel Replacement
Route:	Countywide
Submittal:	Final Signed
Date:	November 29, 2017

DERIVATION OF COST PROPOSAL SUMMARY
DIRECT LABOR

	Man	Hours	Hourly Rate	Labor Costs	
Classification					
Sr QC Reviewer (Mike Blankenship)		16	\$ 74.10	\$ 1,185.60	
Project Manager (Scott Kelley)		419	\$ 57.88	\$ 24,251.72	
Traffic Designer (Alyssa Whitten)		704	\$ 28.90	\$ 20,345.60	
Total Labor				\$ 45,782.92	EC10
Overhead ¹ @			140.00%	\$ 64,096.09	EC20

Notes:

1. Overhead estimate. New firm without full year of overhead expenses.

Direct Labor Sub-Total	\$ 109,879.01
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DIRECT EXPENSES

Item	Units	Unit Cost	Cost	
		\$ -	\$ -	
Direct Expenses Sub-Total			\$ -	EC30

OUTSIDE SERVICES

Firm	Units	Unit Cost	Cost	DBE %
DBi Services	1	\$ 524,985.82	\$ 524,985.82	
Darling Geomatics (DBE)	1	\$ 20,000.00	\$ 20,000.00	3.00%
EcoPlan	1	\$ 1,820.99	\$ 1,820.99	

Outside Services Sub-Total	\$ 546,806.81	EC40
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Total Cost to Consultant	\$ 656,685.82	
Net Fee = (Labor + Overhead) x	10%	\$ 10,987.90

Total Fee	\$ 667,673.72	EC65
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Mike Blankenship
 Michael Blankenship, PE

Principal
 Greenlight Traffic Engineering, LLC

11/29/17

Date

Client: Pima County Department of Transportation
 Contract No.: TBD
 Project No.: TBD
 Project: Sign Inventory and Panel Replacement
 Route: Countywide
 Submittal: Final Signed
 Date: November 29, 2017

DERIVATION OF MAN-HOURS

TASK DESCRIPTION	Classification			Total Hours
	Sr QC Reviewer (Mike Blankenship)	Project Manager (Scott Kelley)	Traffic Designer (Alyssa Whitten)	
1.0 PROJECT MANAGEMENT	0	231	0	231
1.1 Invoicing and PM reports (1 per month for 18 months)		18		18
1.2 Pima County Coord - PM and Functional Groups (5 emails or phone calls per month for 18 months)		45		45
1.3 SubConsultant Coord (4 emails or phone calls per month for 18 months)		36		36
1.4 Identify Project Stakeholders		4		4
1.5 Develop and update Contact List for Project life		12		12
1.6 Develop and update Responsibility Assignment Matrix for Project life		8		8
1.7 Develop and update Escalation Ladder Matrix for Project life		6		6
1.8 Develop and update Detailed Schedule for Project life		24		24
1.9 Develop and update Project Management Plan (PMP) for Project life		12		12
1.10 Develop and update Issue Tracking Matrix for Project life		12		12
1.11 Develop and update Decision Log for Project life		16		16
1.12 Obtain ADOT Environmental Clearance (See EcoPlan's attached SOW for Enviro Clearance)		10		10
1.13 Obtain ADOT Utilities and Railroad Clearance		12		12
1.14 Obtain ADOT Right of Way Clearance		16		16
2.0 MEETINGS	6	26	0	32
2.1 Kick Off Meeting, Draft and Final Meeting Summaries (1 total)	1	6		7
2.2 Coordination Meetings, Draft and Final Meeting Summaries (2 total)	2	12		14
2.3 Design Memo Comment Resolution Meeting (1 total)	1	0		1
2.4 Design Plan Comment Resolution Meetings (2 total)	2	8		10
3.0 DESIGN MEMO	2	18	103	123
3.1 Data Discovery and Review		2	8	10
3.2 Develop Pima County Requirements		2	8	10
3.3 Develop Approach to Procurement of Signs / Storage		2	8	10
3.4 Develop Approach to Sign Replacement		4	5	9
3.5 Generate Sign Code Master Key		2	32	34
3.6 Develop Sign Post Decision Guidance		2	6	8
3.7 Graphics Development (Cover, Figures, SignCAD)		1	8	9
3.8 Draft Memo	1	2	20	23
3.9 Final Memo	1	1	8	10

TASK DESCRIPTION	Sr QC Reviewer (Mike Blankenship)	Project Manager (Scott Kelley)	Traffic Designer (Alyssa Whitten)	Total Hours
4.0 SIGN REPLACEMENT - STAGE IV DESIGN	3	117	521	641
4.1 Validate signs provided by DBi (up to 5,000)		16	160	176
4.2 Cover (1 Sheet)		1	4	5
4.3 Signing Sheet Index, Notes, Quantities Summary (1 Sheet)		4	8	12
4.4 Sign Identification Sheet (1 Sheet)		1	4	5
4.5 Sign Schedule Sheets (4 Sheets)		5	20	25
4.6 Sign Summary Sheets (125 Sheets)		42	125	167
4.7 Street Name Sign Layout Sheets (40 Sheets)		12	160	172
4.8 Cost Estimate		6	16	22
4.9 Specifications		24	12	36
4.10 QC Review and Revisions	3	6	12	21
5.0 SIGN REPLACEMENT - STAGE V DESIGN	3	14	46	63
5.1 Stage IV PS&E Summary of Comments and Responses		2	8	10
5.2 Stage V PS&E Revisions		6	30	36
5.3 Stage V QC Review and Revisions	3	6	8	17
6.0 SIGN REPLACEMENT - FINAL DESIGN	2	13	34	49
6.1 Stage V PS&E Summary of Comments and Responses		2	8	10
6.2 Final PS&E Revisions		4	16	20
6.3 Final QC Review and Revisions	2	3	6	11
6.4 Final Sealed Plans and Estimate		4	4	8
Greenlight Total Man-Hours	16	419	704	1139



PROJECT				Number	January	February	March	April	May	June	July	August	September	October	November	December	January	February	March	April	May	June	July
Name	Begin date	End date	Duration																				
• NTP	12/29/17	12/29/17	0																				
• Kickoff Meeting	1/2/18	1/2/18	0																				
• Sign Inventory (DBI)	1/2/18	6/28/19	382																				
• Sign Inventory - Stage I	1/2/18	3/2/18	43																				
• Failed Sign Data Delivery - Pkg 1	1/19/18	1/19/18	0																				
• Failed Sign Data Delivery - Pkg 2	2/2/18	2/2/18	0																				
• Failed Sign Data Delivery - Pkg 3	2/16/18	2/16/18	0																				
• Failed Sign Data Delivery - Pkg 4	3/2/18	3/2/18	0																				
• Sign Inventory - Stage II	3/5/18	6/28/19	339																				
• Field Verification - Stage I (Darling)	2/19/18	4/13/18	40																				
• Data Collection	2/19/18	3/9/18	15																				
• Draft QC Report Development	3/12/18	3/23/18	10																				
• Draft QC Report Submittal	3/23/18	3/23/18	0																				
• Pima County Review	3/26/18	4/6/18	10																				
• Final QC Report Development	4/9/18	4/13/18	5																				
• Final QC Report Submittal	4/13/18	4/13/18	0																				
• Field Verification - Stage II (Darling)	1/7/19	3/1/19	40																				
• Data Collection	1/7/19	1/25/19	15																				
• Draft QC Report Development	1/28/19	2/8/19	10																				
• Draft QC Report Submittal	2/8/19	2/8/19	0																				
• Pima County Review	2/11/19	2/22/19	10																				
• Final QC Report Development	2/25/19	3/1/19	5																				
• Final QC Report Submittal	3/1/19	3/1/19	0																				
• Project Management (Greenlight)	1/2/18	6/28/19	382																				
• Administration and Coordination	1/2/18	6/28/19	382																				
• Evaluate Need for Dispensation	4/20/18	4/20/18	0																				
• Environmental Clearance (EcoPlan)	1/2/18	4/6/18	68																				
• Draft Report Development	1/2/18	2/16/18	33																				
• Draft Report Submittal to ADOT EPG	2/16/18	2/16/18	0																				
• ADOT EPG Review	2/19/18	3/2/18	10																				
• ADOT EPG Comments	3/2/18	3/2/18	0																				
• Final Report Development	3/5/18	3/16/18	10																				
• Final Report Submittal to ADOT EPG	3/16/18	3/16/18	0																				
• ADOT EPG Review and Clearance Prep	3/19/18	4/6/18	15																				
• Environmental Clearance Issued	4/6/18	4/6/18	0																				
• Right of Way Clearance	1/16/18	5/4/18	79																				
• Right of Way Certification and Letter	1/16/18	2/23/18	29																				
• Draft Submittal to ADOT ROW	4/6/18	4/6/18	0																				
• ADOT ROW Review	4/9/18	4/20/18	10																				
• ADOT ROW Comments	4/20/18	4/20/18	0																				
• Letter Revisions	4/23/18	4/27/18	5																				
• Final Submittal to ADOT ROW	4/27/18	4/27/18	0																				
• ADOT ROW Review and Clearance Prep	4/30/18	5/4/18	5																				
• ROW Clearance Issued	5/4/18	5/4/18	0																				
• Utilities and Railroad Clearance	1/16/18	5/4/18	79																				
• Utilities Certification Letter	1/16/18	2/23/18	29																				
• Draft Submittal to ADOT URR	4/6/18	4/6/18	0																				
• ADOT URR Review	4/9/18	4/20/18	10																				
• ADOT URR Comments	4/20/18	4/20/18	0																				

Letter Revisions	4/23/18	4/27/18	5	
Final Submittal to ADOT URR	4/27/18	4/27/18	0	
ADOT ROW Review and Clearance Prep	4/30/18	5/4/18	5	
ROW Clearance Issued	5/4/18	5/4/18	0	
Design Plans & Advertisement (Greenlight)	1/2/18	8/17/18	161	
Design Memo Development	1/2/18	1/23/18	15	
Design Memo Draft Submittal	1/23/18	1/23/18	0	
Pima County and ADOT Review	1/23/18	2/2/18	9	
Pima County and ADOT Memo Comments	2/2/18	2/2/18	0	
Design Memo Revisions	2/5/18	2/16/18	10	
Design Memo Final Submittal	2/16/18	2/16/18	0	
Stage IV PS&E Development	1/2/18	4/6/18	68	
Stage IV PS&E Submittal	4/6/18	4/6/18	0	
Pima County and ADOT Review	4/9/18	4/20/18	10	
Pima County and ADOT Stage IV Comments	4/20/18	4/20/18	0	
Stage V PS&E Development	4/23/18	5/11/18	15	
Stage V PS&E Submittal	5/11/18	5/11/18	0	
Pima County and ADOT Review	5/14/18	5/25/18	10	
Pima County and ADOT Stage V Comments	5/25/18	5/25/18	0	
Final PS&E Revisions	5/29/18	6/8/18	9	
Final PS&E Submittal	6/8/18	6/8/18	0	
FHWA Obligation	6/11/18	6/29/18	15	
Pima County Advertisement	7/2/18	8/17/18	34	

Draft of Statement of Work: DBi Services

This Statement of Work ("SOW") is entered as of the SOW between DBi Services and PIMA County
SOW Effective Date: TBD

1. Scope of Professional Services to be provided.

Under this SOW, DBi Services will provides services and defined deliverables during the Service Period (as defined below) to PIMA County.

1.1 Sign Retroreflectivity and associated attributes

Following the Federal Highway Administration (FHWA) Approved Inspection Method for collecting sign reflectivity assessment information (2007 MUTCD Section 2A.09 Maintaining Minimum Retroreflectivity F. Other Methods – Other methods developed based on engineering studies can be used.), DBi Services will record in a geodatabase format, retro reflectivity assessment and associated visually inspected attributes (defined in the deliverables) for 80,000 traffic sign panels, on county maintained roadways within the ROW jurisdiction of PIMA County. In the event the inventory exceeds 80,000 sign panels, the pricing contingency outline in section 4 shall come into effect based on available funding.

2. Deliverables.

DBi Services will deliver the following deliverables to PIMA County. Pima County will own all data collected under this contract.

2.1 Sign Retroreflectivity and associated attributes

Traffic Sign Inventory The sign inventory database will include the required attributes of each sign panel as described in the table below. The Photo Image field of the sign panel data table in the deliverable will link to the physical storage location where the sign photos will be stored. In addition to the actual retroreflectivity assessment, each sign will be rated as "Good", "Fair", and "Critical" based on Matrix in Figure 1. The sign database will be in a format suitable to be imported into the Region's existing GIS system or other defined maintenance management system.

Sign Attributes to be collected

Table 1

Attribute	Description
X	Coordinate in Decimal Degrees
Y	Coordinate in Decimal Degrees
Milepost	Milepost of the sign in relation to the LRS
MUTCD code	MUTCD Code
Sign ID	Unique sign identifier assigned during data extraction
orientation	Facing direction: N,NE,E,SE,S,SW,W, or, NW
sign height	Sign Height in inches
sign width	Sign Width in inches
route	Route Name in relation to the LRS
route ahead	Road in front of sign based on travel direction
route behind	Road behind sign based on travel direction
travel direction	When sign is in view: N,NE,E,SE,S,SW,W, or, NW
post ID	Unique post identifier assigned during data extraction
Sings On Post	Number of signs on post
post type	Types to be determined by PIMA county
sign image	Sign Photo
Sign Rating	Sign rating of Good, Fair, Critical in relation to Figure 1
Ra Background	Retro of Background
Co background	Color of Background
Ra Legend	Retro of Legend
Co Legend	Color of Legend
Ra Third Color	Retro of Third Color if applicable
Co Third Color	Color of Third Color if applicable
Ratio	Ratio of White \ Red
Color Day	Color rating of Good, Fair, Critical in relation to Figure 1
Damage Day	Damage rating of Good, Fair, Critical in relation to Figure 1

Obstructed Day	Obstructed rating of Good, Fair, Critical in relation to Figure 1
Post Maintenance Day	Post Maintenance rating of Good, Fair, Critical in relation to Figure 1
Fabrication Day	Fabrication rating of Good, Fair, Critical in relation to Figure 1

Figure 1

RATING	ACTION	RETRO	COLOR	DAMAGE ①	OBSTRUCTED	MAINTENANCE ②	FABRICATION ③
GOOD	Nothing	At least 25% higher than the MUTCD pre-scribed Minimum Levels	Like new	None	No obstruction	No maintenance needed	None
FAIR	Recommend attention within 3-5 years	Within 25% of the MUTCD Minimum Levels	Adequate (some faded allowed)	Some but no impact to sign message	Obstructed but beyond limits of Pima spec	Minor leaning or sign twist evident	Some but no impact to sign message
CRITICAL	Needs immediate attention	At or below MUTCD Minimum Levels	Severely faded	Sign message is damage	Obstructed as per Pima spec	Major leaning or sign twist evident	Sign message is damaged
① Includes bent, bullet holes, scraped (mowing equipment), vandalism, paintball marks, etc. ② Sign is twisted, leaning, or severely dirty and needs maintenance ③ Legend peeling, border peeling, loose sign panels, sheeting cracking, etc.							

2.2 TOSS Database integration

Using the collected data, the TOSS database attributes will be updated to the sign attributes extracted under this scope (See Table 1). Duplicate signs within the TOSS Database will be identified and eliminated, missing signs will be identified, non-conforming signs will be identified and inappropriate signs will be identified. In some cases, the TOSS database will need to include new attributes specific to our retroreflectivity assessment. All database changes will be coordinated with the PCDOT's Traffic Engineering Division. Any fields included in the current TOSS database that will not be extracted under the scope of this project will retain the information that is currently listed in the TOSS Database.

2.3 Sign Sheeting Material Predictive Modeling

DBi will provide a predictive modeling formula for sign sheeting degradation based upon thresholds set by the County and our team. Our model data comes from an accelerated sign sheeting weathering deck at the Texas A&M Transportation Institute (TTI), that includes samples of all current and most former sign sheeting materials. This accelerated sign sheeting weathering deck is different from AASHTO NTPEP in that the materials on the TTI test deck remain on the test deck until they literally start to disintegrate (NTPEP exposes material for 3 years maximum). Some of the material on the test deck is now over 14 years old. The accelerated sign sheeting weathering deck is oriented to the south and 45 degrees from vertical, which doubles the degradation of the materials. This model will provide PIMA county with sign sheeting degradation data to promote a long-term cost-effective life cycle management approach to maximize their sign infrastructure while meeting the needs of the nighttime drivers.

2.4 Unable to calculate retro signs

In some cases signs falling within the ROW will not have measured retro from the mobile unit. These signs include, twisted or leaning signs, Signs parallel to the travel of the vehicle, Rear facing signs, and signs positioned outside the field of view from the driver's perspective. These signs will require a manual field visit from a mobile data operator to collect retro with a hand held unit.

2.5 Higher Accuracy Lidar

LIDAR collection be done with the Maverick unit. Using the maverick Lidar unit will yield a denser point cloud for measurements. The relative accuracy between points (locations) in the Maverick point cloud ranges from 1 to 3cm (x,y,z) in most cases less than one inch. That accuracy is more than adequate for the extraction of right of way assets and to make measurement and evaluation of those assets. This data set is not what is referred to as engineering grade for design/build purposes. That level of accuracy requires considerably more sophisticated equipment with associated on the ground surveyed control points to maintain engineering accuracy requirements. This data would be sufficient for preliminary planning and design but cannot be used for final design drawings.

3. Fees

Below are the fees and their associated Task and Labor Category

Task	Labor Category	Hours	Hourly Rate	Labor Costs	Directs	Overhead	Profit	Total Cost
Mobile Retro Data Collection	Mobile Data Operator II	1215	\$27.19	\$33,032.81	\$34,738.13	\$21,554.19	\$9,331.28	\$98,656.41
Retro Data Extraction	Asset Management Analyst II	5000	\$17.90	\$89,500.00	\$35,800.00	\$41,560.00	\$17,590.00	\$184,450.00
360 Data Collection	Mobile Data Operator I	560	\$24.17	\$13,533.33	\$21,013.33	\$9,909.33	\$4,864.00	\$49,319.99
360 Inventory Extraction	Asset Management Analyst I	3100	\$16.50	\$51,150.00	\$20,460.00	\$22,822.00	\$9,983.00	\$104,415.00
Toss Integration	Asset Management Analyst I	832	\$16.50	\$13,728.00	\$5,491.20	\$6,343.84	\$2,743.26	\$28,306.30
Unable to calculate retro signs	Mobile Data Operator I	360	\$24.17	\$8,700.00	\$13,980.00	\$4,536.00	\$2,948.40	\$30,164.40
Higher Accuracy LiDAR Data Collection	Mobile Data Operator II	80	\$27.19	\$2,175.20	\$10,999.41	\$16,499.11	0	\$29,673.72
Total Project				\$212,145.62	\$142,482.07	\$123,224.47	\$47,459.94	\$524,985.82.

4.1 Additional Sign Contingency

Additional Sign Contingency, upon available funding, additional sign extraction can occur for signs panels exceeding 80,000 at a rate of \$4.02 / sign.



November 6, 2017

Greenlight Traffic Engineering
Attn: Scott Kelley
Principal
7600 N. 16th Street, Ste. 150
Phoenix, AZ 85020

RE: Pima County Sign Inventory and Replacement
Draft Scope of Work and Fee

Scott,

I've reviewed the documents that were available for the referenced Project. I am pleased to forward this draft scope of work for land surveying services to provide quality control on work performed by DBi. Darling Geomatics is an award winning certified WBE, WOSB and SBE land surveying company.

SCOPE OF WORK PHASE I:

- 1) Field survey to check locations and attribute information of signs identified by DBi. This field check will be performed on a blind set of roadways representative of a variety of roadway types, i.e. Rural Paved, Rural unpaved, Urban and Suburban, Main thoroughfares, and any other road types as determined by DBi.
- 2) Darling will perform those checks on 1% to 2% of the signs identified by DBi. The percentage of signs checked will be driven by budget.
- 3) Complete tables to include GIS coordinates, sign facing direction, sign code, post type and color, and condition notes.
- 4) Prepare a short memo summarizing the data comparison and difference between the two sets of data.
- 5) Registered Land Surveyor's supervision throughout the Project duration.

The fixed fee for work outlined in the Scope of Work shall be: **\$7,000.00**

Cost break down:

a. 10 – 8 hour man days with vehicle (\$75 per day) @529.38 per day	\$5,294.00
b. 2 – 8 hour man days office computations and report prep	\$1,706.00

SCOPE OF WORK PHASE II:

- 1) Field survey to check locations and attribute information of signs identified by DBi. This field check will be performed on a blind set of roadways representative of a variety of roadway types, i.e. Rural Paved, Rural unpaved, Urban and Suburban, Main thoroughfares, and any other road types as determined by DBi.
- 2) Darling will perform those checks on 1% to 2% of the signs identified by DBi. The percentage of signs checked will be driven by budget.
- 3) Complete tables to include GIS coordinates, sign facing direction, sign code, post type and color, and condition notes.
- 4) Prepare a short memo summarizing the data comparison and difference between the two sets of data.
- 5) Registered Land Surveyor's supervision throughout the Project duration.

The fixed fee for work outlined in the Scope of Work shall be: **\$13,000.00**

Cost break down:

- | | |
|--|------------|
| c. 18 – 8 hour man days with vehicle (\$75 per day) @ \$529.38 per day | \$9,530.00 |
| d. 4 – 8 hour man days office computations and report prep | \$3,470.00 |

DEFENITION:

A man day is one man for 8 hours. Darling would provide two collection crews to perform the scope of work as defined. Thus, the number of days to complete the field portion of each phase would be divided by 2.

EXCLUSIONS:

- 1) Any work due to changes in the documents used to generate this proposal.
- 2) Meeting attendance.

ADDITIONAL WORK:

Any work not defined in the Scope of Work as written above shall be considered additional work. Additional work shall be agreed upon in writing prior to its start or the additional field work can be completed upon request if it is agreed that a Darling Change Order Form will be signed by the Client's representative on site the day that the additional field survey services are provided. Additional work may include office support and supervision.

MISCELANEOUS:

Payment of invoices by the Client using a pay service, i.e. Textura, or a credit card, that both charge the payee a fee, shall not be an acceptable method of payment of Darling invoices without Darling charging the Client the fees that are associated with use of those services.

All work shall be performed under the direct supervision of an Arizona Registered Land Surveyor and shall conform to the current Standards for the practice of land surveying in the State of Arizona.

Should work be authorized and begin and then be terminated for any reason, all work completed prior to notice of termination shall be due and payable at the hourly rates in effect when the work was completed.



There are no understandings or agreements, written or verbal, other than those written herein.

In lieu of a separate subcontract agreement accepted by both parties, the Terms & Conditions outlined below shall apply.

Thank you for the opportunity to provide this proposal. Please call if you have any questions. If acceptable, you can sign where indicated below or forward a separate agreement for our review.

Sincerely,



Richard D. Darling
President
Darling Geomatics

ACCEPTANCE AND AUTHORIZATION TO PROCEED:

Accepted by: _____

On behalf of: _____

Date: _____



Terms and Conditions

Performance of Services: The Consultant shall perform the services outlined on page one (1) of this Agreement in consideration of the stated fee and payment terms.

Access to Site: Unless otherwise stated, the Consultant will have access to the site for activities necessary for the performance of the services. The Consultant will take reasonable precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage and will not be responsible for such costs.

Retainer/Billing/Payment: The Client agrees to pay the Consultant for all services performed and all costs incurred. Prior to the provision of services, the Client shall deposit a retainer of \$N/A with the Consultant. Invoices for the Consultants' services shall be submitted, at the Consultant's option, either upon completion of such services or on a monthly basis. Invoices shall be due and payable upon receipt. If any invoice is not paid within 30 days, the Consultant may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, suspend or terminate the performance of such services. The retainer shall be credited on the final invoice. Accounts unpaid 45 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum legal rate) on the unpaid balance. In the event any portion of an account remains unpaid 60 days after the billing the consultant may institute collection action and the Client shall pay all costs of collection, including reasonable attorneys' fees.

Indemnification: The Client shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant, his or her officers, directors, employees, agents, and sub consultants from and against all damage, liability and cost, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of the services under this Agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Consultant.

Waiver: In addition, the Client agrees, to the maximum extent permitted by law, to waive any claims against the Consultant arising out of the performance of these services, except for the sole negligence or willful misconduct of the Consultant.

Information for the Sole Use and Benefit of the Client: All opinions and conclusions of the Consultant, whether written or oral, and any plans, specifications or other documents and services provided by the Consultant are for the sole use and benefit of the Client and are not to be provided to any other person or entity without the prior written consent of the Consultant. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Consultant or the Client.

Limitation of Liability: In recognition of the relative risks, rewards and benefits of the project to both the Client and the Consultant, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Consultant's total liability to the Client for any and all injuries, damages, claims, losses, expenses or claim expenses arising out of this Agreement from any cause or causes, shall not exceed the amount of the contract. Such causes include, but are not limited to, the Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty. Initialed _____

Ownership of Instruments of Service: The Client acknowledges the Consultant's construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Consultant. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Client or any person or entity that acquires or obtains the construction documents from or through the Client without the written authorization of the Consultant.

Dispute Resolution: Any claims or disputes between the Client and the Consultant arising out of the services to be provided by the Consultant or out of this Agreement shall be submitted to nonbinding mediation. The Client and the Consultant agree to include a similar mediation agreement with all contractors, subconsultants, subcontractors, suppliers and fabricators, providing for mediation as the primary method for dispute resolution among all parties.

Termination of Services: This Agreement may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, the Client shall pay the Consultant for all services rendered to the date of termination, and all reimbursable expenses incurred prior to termination and reasonable termination expenses incurred as the result of termination.

Upon default of terms and conditions, applicant agrees to pay any collection cost incurred by Darling Geomatics in the collection of the amount balance, including reasonable attorney fees.

It is agreed the above terms and conditions are incorporated into and made a part of the Agreement.





U of A Tech Park
9040 South Rita Road, Ste #2350
Tucson, AZ 85747
Ph (520) 298-2725 / Fax (520) 298-2767
www.darlingltd.com

Contract No.: TBD
Project No.: TBD
Project: Sign Inventory and Panel Replacement
Route: Countywide
Submittal: Draft 1
Date: November 21, 2017

DERIVATION OF COST PROPOSAL SUMMARY

DIRECT LABOR

Classification	Man Hrs	Direct Rate	Labor Costs
Prof. Level III, RLS	48	\$45.61	\$2,189.14
Survey Crew 1 Man	224	\$27.98	\$6,267.52
Total Labor			<u>\$8,456.66</u>
Overhead (115%)			<u>\$9725.16</u>
Profit (10%)			<u>\$1,818.18</u>
Direct Labor Total			<u>\$20,000.00</u>



EcoPlan Associates, Inc.
Environmental Science & Resource Economics

November 21, 2017

Scott M. Kelley, P.E., PTOE
Greenlight Traffic Engineering
7600 N. 15th Street, Suite 150
Phoenix, AZ 85020

RE: Pima County Sign Replacement – Environmental Services
ADOT TRACS No.: T0146 03D
Federal Project No.: HSIP-PPM-0(264)D
EcoPlan Proposal No.: 17-01152

Dear Mr. Kelley:

EcoPlan Associates, Inc. (EcoPlan) is pleased to submit this proposal in support of the Pima County Department of Transportation (PCDOT) sign replacement project. EcoPlan understands the project to be a countywide sign panel replacement of about 800 signs. The sign replacement consists of panels only, no sign posts removed or replaced; thus no new surface disturbance required. The county will utilize federal funding for the design effort and to cover costs of panel fabrication. Installation will be by Pima County forces based on priority needs across the county.

Due to federal funding under Federal Highway Administration (FHWA) Project No: HSIP-PPM-0(264)D and Arizona Department of Transportation (ADOT) No: T0146 03D; the project requires environmental clearance through the National Environmental Policy Act (NEPA). Based on our coordination with ADOT (Sarah Karasz, ADOT Environmental Planning) and Pima County (Karla Reeve-Wise, Pima County Department of Environmental Quality) the project meets the criteria of a Group One Categorical Exclusion (CE) under 23 CFR 771.117(c) and the Arizona Programmatic CE.

To support the CE, EcoPlan will provide a technical memorandum covering the disciplines of Biological Resources, Cultural Resources, Water Resources, and Hazardous Materials. This memorandum will document the limited scope of actions required to replace the sign panels and address the lack of potential impacts to those resources. We anticipate participating in one kick-off meeting and providing the memorandum within one month or less from receipt of a Notice to Proceed. EcoPlan will coordinate with ADOT Environmental Planning as needed.

We have included a detailed scope of work, assumptions and cost estimate in this proposal for your review and approval. We estimate the cost of our services will be \$1,820.99. Invoices will be submitted monthly for work completed to date.

Please contact Michael Dawson at 520-624-4326, extension 177 or me at extension 117 if you have any questions. Thank you for your time and consideration.

Sincerely,

George A. Ruffner, Ph.D.
President

Enclosures: As noted



EcoPlan Associates, Inc.
Environmental Science & Resource Economics

SCOPE OF WORK

Pima County Sign Replacement – Environmental Services

ADOT TRACS No.: T0146 03D

Federal Project No.: HSIP-PPM-0(264)D

EcoPlan Proposal No.: 17-01152

Task 1: Project Coordination and Meetings

This task includes the overall management of the work, internal assignment of tasks, quality control, scheduling, coordination with the project team and participation in project-related meetings.

EcoPlan anticipates participation in a kick-off meeting at PCDOT Public Works Building located at 201 N. Stone Avenue, Tucson.

Task 1 Deliverables: None

Task 2: National Environmental Policy Act Compliance

EcoPlan will undertake data collection, evaluate the project, document lack of potential impacts and prepare materials in support of a Group One CE, including project location and project vicinity maps. The memorandum will cover Biological Resources, Cultural Resources, Water Resources, and Hazardous Materials. EcoPlan will submit the technical document to Greenlight and the PCDOT. EcoPlan will coordinate with ADOT Environmental Planning as needed.

Task 2 Deliverables: Environmental Overview Memorandum in electronic version (Word and pdf) will be provided within 30 days of Notice to Proceed.

Assumptions

Assumptions used to generate this scope of work and cost estimate are summarized below. Should additional services be required that are not described in this scope of work, EcoPlan will provide a supplemental scope and cost.

- Compliance with NEPA will be required with the use of federal funding. Environmental approval/clearance by ADOT/FHWA will be required. It is assumed that a CE Group 1C (ADOT approved) Environmental Clearance is the appropriate document.
- One EcoPlan representative will attend one kick-off meeting.
- No field visits or survey will be required.
- No Clean Water Act permitting will be required.
- No USFWS Section 7 Consultation will be required.
- No consideration of historic buildings/structures will be necessary.
- No cultural resources Class I records review will be required.

Firm: EcoPlan Associates, Inc.
701 West Southern Avenue, Suite 203
Mesa, Arizona 85210
Phone: (480) 733-6666
FAX: (480) 383-6915

Project Name: Pima County Sign
Replacement -
Environmental Services
EcoPlan No.: 17-01152
TRACS No.: T0146 03D
ADOT Contract No.: TBD

DERIVATION OF COST PROPOSAL - SUMMARY
Estimated Direct Labor

Classification	Estimated Person-Hours	Average Hourly Rate	Labor Costs
Environmental Coordinator/Program Manager	3	\$ 57.75	\$ 173.25
Environmental Planner/Scientist - Senior	4	\$ 44.13	\$ 176.52
Environmental Planner/Scientist	10	\$ 28.00	\$ 280.00
GIS Analyst/Technician - Senior	2	\$ 31.50	\$ 63.00
Total	19		\$ 692.77

Overhead Rate (Negotiated @)	138.96%	Total Estimated Labor	\$ 692.77	EC-10
		of Total Estimated Labor	\$ 962.67	EC-20
			\$ -	
		Subtotal	\$ 1,655.44	

Estimated Direct Expenses


(Listed by Item at Estimated Actual Cost -- No Mark-up)

Total Estimated Expenses	\$ -	EC-30
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Estimated Outside Services and Consultants

(Listed by Firm or Name at Estimated Cost -- No Mark-up)

Total Estimated Outside Services	\$ -	EC-40
Total Estimated Cost to Consultant	\$ 1,655.44	
Net Fee [Direct Labor + Overhead] x Multiplier	10% \$ 165.54	EC-50
TOTAL ESTIMATED COST	\$ 1,820.99	


Signature

11/21/2017
Date

Staff Hours
Pima County Sign Replacement – Environmental Services
T0146 03D
TBD

Description	Environmental Coordinator/Program Manager	Environmental Planner/Scientist - Senior	Environmental Planner/Scientist	GIS Analyst/Technician - Senior	Total
Task Management					
Task 1: Project Coordination and Meetings	2	0	2	0	4
Task 2: National Environmental Policy Act Compliance	1	4	8	2	15
Total	3	4	10	2	19

END OF EXHIBIT "B"

**UNIFORM TERMS AND CONDITIONS
FEDERAL AND STATE CONTRACT REQUIREMENTS
(Project Specific Contract With Goals)
EXHIBIT "C" (37 pages)**

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 (DBE)--
COMMITMENT, COMPLIANCE AND REPORTING
- 4.10 COUNTING DBE PARTICIPATION
- 4.11 PARTICIPTION BY SMALL BUSINESS CONCERNS (SBCs)
- 4.12 ENVIRONMENTAL PROTECTION
- 4.13 ENERGY CONSERVATION
- 4.14 OWNERSHIP OF DATA
- 4.15 FRAUD AND FALSE STATEMENTS
- 4.16 FEDERAL IMMIGRATION AND NATIONALITY ACT
- 4.17 ERRORS AND OMISSIONS
- 4.18 TERMINATION FOR DEFAULT OR CONVENIENCE
- 4.19 PROMPT PAY (A.R.S. §28-411)
- 4.20 FINAL/INCURRED COST AUDIT
- 4.21 CONFLICT OF INTEREST
- 4.22 CONSULTANT/CONTRACTOR CONFLICT OF INTEREST
- 4.23 CONSULTANT OR SUBCONSULTANT ENDORSEMENT OF PLANS
- 4.24 PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

SECTION APPENDICES

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

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

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

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

The Consultant shall be in breach of this Contract if the Consultant materially modifies the federal regulations and

State statutes in its subcontract agreements terms and conditions with its Subconsultants. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by COUNTY.

4.4 ANTI-LOBBYING

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

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty 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 Commodity/Contracts 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 ADOT/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, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the State deems appropriate, which may include, but are not limited to:
 - i. Withholding monthly progress payments;
 - ii. Assessing sanctions;
 - iii. Liquidated damages;
 - iv. Disqualifying the consultant from future bidding as non-responsible;
 - v. Cancellation, termination, or suspension of the Contract, in whole or in part.

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

- b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.

- c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

- d. Post in conspicuous places available to employees and applicants for employment, the following notice:

"It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the-job training. Also, it is the policy to insure and maintain a working environment free of harassment, intimidation and coercion."

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

- 2. The Consultant shall include the provisions of Section 4.08 of this Contract, paragraph 1.a. through 1.e. and Appendix B of this Contract in every subcontract with Subconsultants, DBEs and Non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.
- 3. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

4.8 AFFIRMATIVE ACTION (FOR FEDERAL-AID CONTRACTS)

The Consultant shall take the following affirmative action steps with respect to securing supplies, equipment or services under the terms of this Contract:

- 1. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.
- 2. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.
- 3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.
- 4. Where the requirement permits, establish delivery schedules which shall encourage participation by firms owned by socially and economically disadvantaged individuals.

5. Use the services and assistance of ADOT DBE Supportive Services Program, the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as needed.

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

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

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

- a. Ensure nondiscrimination in the award and administration of federally-funded contracts;
- b. Create a level playing field on which DBEs can compete fairly for federally-funded contracts;
- c. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- d. Ensure that only firms that fully meet 49 CFR Part 26 eligibility requirements are counted as DBEs;
- e. Help remove barriers to the participation of DBEs in federally-funded contracts; and
- f. Assist in the development of firms that can compete successfully in the marketplace.
- g. It is also ADOT's policy to facilitate and encourage participation by all Business Concerns (SBCs) in COUNTY and ADOT contracts. ADOT encourages Consultants to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts. See section 4.49.

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends to meet the goal with a combination of race-conscious efforts and race-neutral efforts. Race-conscious participation occurs where the Consultant uses a percentage of DBEs to meet a contract-specified goal. Race-neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses.

The Consultant is required to adhere to the commitment made to utilize certified Disadvantaged Business Enterprises (DBE) as indicated in the firm's Statement of Qualifications (SOQ) or subsequently agreed to by COUNTY during negotiations. The State, at its discretion on a case by case basis, may waive the above limitations.

2. DBE GOAL/COMMITMENT AND DOCUMENTATION:

- a. DBE GOAL OF 2.62% HAS BEEN ESTABLISHED ON THIS CONTRACT. THE CONSULTANT IS ENCOURAGED TO OBTAIN DBE PARTICIPATION ABOVE AND BEYOND THE GOAL ON THIS PROJECT AND COMPLY WITH THE DBE PROVISIONS ATTACHED HERETO AS EXHIBIT "D".
- b. The Consultant is required to adhere to the commitment made to utilize certified DBEs as indicated in the firm's Statement of Qualifications (SOQ) or the Consultant and Subconsultant

DBE Affidavits submitted, or subsequently agreed to by the State during negotiations. The State, at its discretion on a case-by-case basis, may waive the above limitations.

- c. The Consultant is also required to utilize DBEs at or above the DBE goal established in this Contract if Contract Modifications increase the value of the Contract. If ADOT determines that the Consultant has not met the DBE goal or has not made an adequate good faith effort to meet the DBE goal as Contract Modifications increase the value of the Contract, ADOT reserves the right to disapprove the Contract Modification negotiations with the firm. If the Consultant wishes to dispute the Good Faith Effort determination, the Consultant may escalate the decision according to the levels outlined in Article 27 (DISPUTES) of this Contract. The ADOT Business Engagement Compliance Office (BECO) will be represented at each escalation level with the goal of resolving the matter at the lowest possible level. **The decision of the BECO is final.**

3. **COMPLIANCE:**

- a. This Contract is subject to DBE compliance tracking for the Consultant and its Subconsultants. Lower-tier Subconsultants and Vendors are required to provide any requested DBE Contract compliance-related data in hard copy or electronically as determined by the State, including written agreements between the Consultant and Subconsultant DBEs. The Consultant shall report the amount earned by and paid to each DBE and Non-DBE Subconsultants working on the project for the preceding month on each monthly Progress Payment Report. The Consultant is responsible for ensuring that the Consultant and all its Subconsultants and lower-tier Subconsultants have completed all requested items and that their contact information is accurate and up-to-date.
- b. The Consultant's achievement of the DBE goal is measured by actual payments made to the DBEs. At the completion of the project, the Consultant shall complete and submit a *Certification of Payments to DBE Firms* affidavit for each DBE firm working on the project. This affidavit shall be signed by the Consultant and the relevant DBE Subconsultant and submitted to COUNTY and BECO.

4. **REPORTING AND SANCTIONS:**

- a. ADOT is required to collect DBE participation data on all Federal-aid projects, whether or not there is a stated DBE goal/commitment on this Contract. Therefore, the Consultant shall report the monthly payments made to all DBE, Non-DBE Subconsultants and Direct Expense Vendors, including all lower-tier Subconsultants, for labor, equipment, and materials. If the Consultant and its Subconsultants do not provide all required DBE usage and payment information with the monthly Progress Payment Reports (PRs) submittals for the preceding month, COUNTY shall deduct \$1,000 for each delinquent report, whether from the Consultant or any of its Subconsultants, from the progress payment for the current month, not as a penalty but as liquidated damages. If by the following month, the required DBE payment information for the previous month has still not been provided, COUNTY shall deduct an additional \$1,000 for each delinquent report. Such deductions shall continue for each subsequent month that the Consultant or its Subconsultants fail to provide the required payment information.
- b. DBEs shall confirm the payments received from the Consultant through the LPA Contract Management System (LPA System).

- c. After execution of this Contract and before the first Payment Report/Invoice is submitted to COUNTY, the Consultant is required to log into the LPA System (<https://adot.dbesystem.com>) and enter the name, contact information, and subcontract amounts for all Subconsultants, lower-tier Subconsultants and Direct Expense vendors performing any work on the project to help ADOT track and monitor payments to DBE and Non-DBE Subconsultants on the project and to confirm that the scope of services and commitments made via the DBE Intended Participation Affidavits are being met.
- d. All DBE and non-DBE subcontracting activities and payments shall be reported by the Consultant. All DBE subcontracting activities will be counted toward DBE participation. This includes lower-tiers subcontracting activities regardless of whether or not the DBE is under contract with another DBE.
- e. At the completion of this Contract, the Consultant shall submit a *Certification of Payments to DBE Firms* affidavit certifying that all DBEs were paid in full for material and/or work promised and performed under the terms of this Contract.

5. DBE SUBSTITUTION OR REPLACEMENT:

- a. The Consultant shall not terminate a DBE Subconsultant listed in the SOQ or in the Consultant or Subconsultant DBE Affidavit submitted with each approved Task Order without the prior written approval by COUNTY and BECO.
- b. If a Subconsultant is terminated, or fails to complete its work on this Contract for any reason, the Consultant shall make a good faith effort to find another DBE to perform at the least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the DBE commitment percentage established in this Contract.
- c. COUNTY, at its sole discretion, may terminate the Contract at any time if the Department determines that the Consultant is not satisfactorily meeting the DBE goal/commitment stated in the Contract or is not making satisfactory good faith efforts to meet the goal.

4.10 COUNTING DBE PARTICIPATION

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

- 1. Contracts created to artificially create DBE participation are not acceptable; the arrangement shall be within normal industry practices. The DBE shall perform a commercially useful function.
- 2. Count the entire amount of that portion of a Contract (or other Contract not covered by paragraph (2) of this section) that is performed by the DBE's own forces. Firms shall include the cost of supplies and materials obtained by the DBE for the work on the Contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE Subconsultant purchases or leases from the Consultant or its affiliate).
- 3. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specially required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with the fees customarily allowed for similar services.

4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the lower-tier Subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE does not count toward DBE goals.
5. It is presumed that the DBE is not performing a **commercially useful function** if: (a) a DBE does not perform or exercise responsibility for **at least 30 percent (30%)** of the total cost of its Contract with its own work force; or (b) the DBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved.

4.11 PARTICIPATION BY SMALL BUSINESS CONCERNS (SBC)

It is ADOT's policy to facilitate and encourage participation by Small Business Concerns (SBCs) in COUNTY and ADOT contracts. ADOT encourages Consultants to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts.

Consultant shall take all reasonable steps to remove obstacles to SBC participation in the Contract. ADOT encourages the Consultant to utilize SBCs. SBCs are registered in AZ UTRACS.

4.12 ENVIRONMENTAL PROTECTION

(This clause is applicable if this Contract exceeds \$100,000. It applies to Federal-aid contracts only.)

The Consultant is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).

4.13 ENERGY CONSERVATION

(This clause is applicable to Federal-aid contracts only.)

The Consultant is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency, which is contained in the State Energy Conservation Plan issued by the Department in compliance with the Energy Policy Conservation Act (Public Law. 94-163).

4.14 OWNERSHIP OF DATA

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

4.15 FRAUD AND FALSE STATEMENTS

The Consultant understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Consultant represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Consultant and any company that the Consultant represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

4.16 FEDERAL IMMIGRATION AND NATIONALITY ACT

a. GENERAL

The Consultant, including all Subconsultants, shall comply with all federal, state and local immigration laws and regulations, as set forth in Arizona Executive Order 2005-30, relating to the immigration status of their employees who perform services on the Contract during the duration of the Contract. COUNTY shall retain the right to perform random audits of Consultant and Subconsultants' records or to inspect papers of any employee thereof to ensure compliance.

The Consultant shall include the provisions of this Section in all its subcontracts. In addition, the Consultant shall require that all Subconsultants comply with the provisions of this Section, monitor such Subconsultants' compliance, and assist the Department in any compliance verification regarding its Subconsultant(s).

b. COMPLIANCE REQUIREMENTS

The Department retains the legal right to inspect the papers or records of the Consultant and its Subconsultants who works on this Contract to ensure compliance with A.R.S. §41-4401, Government Procurement, E-Verify Requirements; Sanctions.

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

1. All federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the Contract; and
2. A.R.S. §23-214 (A) which states "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer."

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

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

c. **COMPLIANCE VERIFICATION**

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

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

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

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

d. **SANCTIONS FOR NONCOMPLIANCE**

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

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

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

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

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

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

4.17 ERRORS AND OMISSIONS

If 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.

4.18 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.

4.19 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.

4.20 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.
http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Procurement/Vendor%20Relations/Pima%20County%20Design%20Contract%20Guidelines%20for%20FHWA%20Projects_Oct2016.pdf
- 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.

4.21 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.

4.22 CONSULTANT/CONTRACTOR CONFLICT OF INTEREST

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

4.23 CONSULTANT OR SUBCONSULTANT ENDORSEMENT OF PLANS

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

4.24 PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

The Consultant shall comply with the "Rules of Professional Conduct" provision pursuant to A.A.C. R4-30-301, which is incorporated herein by reference and hereby made a part of this Contract.

The Consultant shall comply with the "Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor" provision pursuant to A.A.C. R4-30-201, which is incorporated herein by reference and hereby made a part of this Contract.

APPENDIX "A" TO EXHIBIT "C" (6 PAGES)

TITLE 49 - TRANSPORTATION

Subtitle A – Office of the Secretary of Transportation

PART 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

[Code of Federal Regulations]; [Title 49, Volume 1]; [Revised as of October 1, 2008]

From the U.S. Government Printing Office via GPO Access; [CITE: 49CFR26.55]; [Page 300-302]

Subpart C Goals, Good Faith Efforts, and Counting

§26.55 - How is DBE participation counted toward goals?

- (a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
 - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you shall examine similar transactions, particularly those in which DBEs do not participate.
 - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

- (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- (d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - (1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it shall obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- (6) For purposes of this paragraph (d), a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.
- (e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
 - (1) (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
 - (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - (2) (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
 - (ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - (A) To be a regular dealer, the firm shall be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of

business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

- (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).
- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- (f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in Sec. 26.87(i).
- (g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
- (h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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

APPENDIX A.1 to Part 26

GUIDANCE CONCERNING GOOD FAITH EFFORTS

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

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own

forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

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

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

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

[79 FR 59600, Oct. 2, 2014]

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

APPENDIX "B" 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);
- 23 C.F.R. Part 200 Subchapter C-Civil Rights (Title VI program implementation and related statutes)

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

General Assurances

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

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

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

Specific Assurances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pima County Department of Transportation
(Name of Recipient)

by *Quarrell Oliver*
(Signature of Authorized Official)

DATED 7/27/17

APPENDIX A

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

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

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

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

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 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.

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 "C" TO EXHIBIT "C" – INSURANCE AND INDEMNIFICATION
REQUIREMENTS**

**THIS APPENDIX OMITTED – REFER TO ARTICLES 7 AND 8
OF THE CONTRACT.**

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.

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 ****

(09/20/2016)

MEASUREMENTS AND PAYMENT:

Partial Payments:

If satisfactory progress is being made, the contractor will 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 shall be paid on or before 14 days after the estimate of the work is approved. The estimate of the work shall 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 shall 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 shall 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 shall 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, except that 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.

Subcontractor Payments:

(1) Retention:

If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the LPA/Subrecipient may retain under the prime contract.

(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.

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 Reportable Contract on which the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor 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 contractor 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 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 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) Liquidated Damages: These liquidated damages shall 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 liquidated damages.
- (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 liquidated damages described in paragraph (a) above,
- (ii) Terminate the contract for default,
- (iii) Disqualify the contractor from future bidding, temporarily or permanently, depending on the number and severity of violations, if applicable.

In determining whether liquidated damages will be assessed, the extent of the liquidated damages, or additional remedies assessed, the LPA/Subrecipient will consider whether there have been other violations on this or other federal-aid 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.

EXHIBIT "D"

PROFESSIONAL SERVICES

DBE PROVISIONS (18 Pages)

(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.

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 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
FAX (602) 712-8429
Email: ContractorCompliance@azdot.gov
Website : www.azdot.gov/bec

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:

2.62 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 form (SFQ Section III, Attachment 1) provided by the LPA/Subrecipient (COUNTY) 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 Solicitation for Qualifications (SFQ) 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, Appendix "E" to Exhibit "C" to this Contract.

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 Department and 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.

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 perspective 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.



GREEN-2

QP ID: JM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/30/2017

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 Professional Underwriters of Arizona, Inc. P.O. Box 6419 Scottsdale, AZ 85261-5419 Prof. Underwriters of Arizona	480-483-0440	CONTACT NAME: Prof. Underwriters of Arizona PHONE (A/C, No, Ext): 480-483-0440 FAX (A/C, No): 480-948-7752 E-MAIL ADDRESS: jeff@prounderwriters.com
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: RLI Insurance Company		13056
INSURER B: Trav Cas&Surety Co America		31194
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED Greenlight Traffic Engineering, LLC 7809 N. 16th Lane Phoenix, AZ 85021	
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COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Bikt AI & WOS <input checked="" type="checkbox"/> Contractual Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	PSB0007239	08/28/2017	08/28/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Bikt AI <input checked="" type="checkbox"/> Bikt WOS	Y	Y	PSB0007239	08/28/2017	08/28/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	<input type="checkbox"/> Professional Liab. Architect/Engineer	Y		106793738	11/13/2018	08/28/2018	Per Claim \$ 2,000,000 Ann. Agg. \$ 2,000,000

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

RE: Sign Inventory and Panel Replacement. Federal Project No. HSIP-PPM-0 (264)D, ADOT TRACS No. T0146 03D
Pima County, State of Arizona, Arizona Department of Transportation, FHWA, their departments, districts, boards, commissions, officers, officials, agents, and employees are additional insured (Cont'd)

CERTIFICATE HOLDER

CANCELLATION

PIMAC01 Pima County Design&Construction Division Pima County Procurement 130 W Congress St 3rd Fl Tucson, AZ 85701	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2016/03)

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NOTEPAD:

HOLDER CODE PIMAC01
INSURED'S NAME Greenlight Traffic

GREEN-2
OP ID: JM

PAGE 2
Date 11/30/2017

as indicated. Coverages afforded are primary and non-contributory basis.
Waiver of subrogation included.

Attached:

FPB304 02 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**RLIPack® FOR PROFESSIONALS
BLANKET ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM - SECTION II – LIABILITY

1. **C. WHO IS AN INSURED** is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "product-completed operations hazard".

2. The insurance provided to the additional insured by this endorsement is limited as follows:

- a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
- b. This insurance does not apply to the rendering of or failure to render any "professional services".
- c. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.

3. The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

However, if you specifically agree in a contract or agreement that the insurance provided to an

additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
- b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.

4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE TO ONLY TO SECTION II – LIABILITY)**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/30/2017

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 PAYCHEX INSURANCE AGENCY INC/PAC 76250881 150 SAWGRASS DRIVE ROCHESTER NY 14620	CONTACT NAME:	
	PHONE (A/C, No, Ext): (877) 467-8730	FAX (A/C, No): (888) 443-6112
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Trumbull Insurance Company	NAIC# 27120
INSURED GREENLIGHT TRAFFIC ENGINEERING LLC 7809 N 16TH LN PHOENIX AZ 85021-7005	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						\$
	DED RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			76 WEG AA8KT4	10/03/2017	10/03/2018	X PER STATUTE OTH-ER \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						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)

Those usual to the Insured's Operations. Blanket Waiver of Subrogation applies in favor of the Certificate Holder per the Waiver of Our Right to Recover from Others Endorsement WC000313, attached to this policy.

CERTIFICATE HOLDER

PIMA COUNTY DESIGN AND CONSTRUCTION DIVISION
PIMA COUNTY PROCUREMENT
130 W CONGRESS ST FL 3
TUCSON AZ 85701-1317

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

Susan L. Castaneda



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

Policy Number: 76 WEG AA8KT4

Endorsement Number:

Effective Date: 10/03/17

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

Named Insured and Address: Greenlight Traffic Engineering LLC
7809 N 16TH LN
PHOENIX AZ 85021

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

Any person or organization from whom you are required by contract or agreement to obtain this waiver from us. Endorsement is not applicable in KY, NH, NJ or for any MO construction risk

Countersigned by _____

Authorized Representative