



PROFESSIONAL SERVICES AGREEMENT
Construction Management Services
Chandler Heights - Gilbert Road to Val Vista Drive
Project No. ST1804.451
Federal Project No.: CHN-0(244)D
ADOT Project No. T0203 01C
Council Date: October 17, 2024

This Agreement ("Agreement") is made and entered into on the ____ day of _____, 2024 ("Effective Date"), by and between City of Chandler, an Arizona municipal corporation, ("City"), and **Consultant Engineering, Inc.**, an Arizona corporation, ("Consultant") (City and Consultant may individually be referred to as "Party" and collectively referred to as "Parties").

RECITALS

- A. City proposes to engage Consultant to provide **Construction Management Services** for **Chandler Heights - Gilbert Road to Val Vista Drive** project as more fully described in **Exhibit "A"**, which is attached to and made a part of this Agreement by this reference.
- B. Consultant is ready, willing, and able to provide the services described in **Exhibit "A"** for the compensation and fees set forth and as described in **Exhibit "B"**, which is attached to and made a part of this Agreement by this reference.
- C. City desires to enter into an Agreement with Consultant to provide these services under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, City and Consultant agree as follows:

SECTION I--CONSULTANT'S SERVICES

Consultant must perform the services described in **Exhibit "A"** to City's satisfaction within the terms and conditions of this Agreement and within the care and skill that a person who provides similar services in Chandler, Arizona exercises under similar conditions. All work or services furnished by Consultant under this Agreement must be performed in a skilled and workmanlike manner. All fixtures, furnishings, and equipment furnished by Consultant as

part of the work or services under this Agreement must be new, or the latest model, and of the most suitable grade and quality for the intended purpose of the work or service.

SECTION II--PERIOD OF SERVICE

Consultant must perform the services described in **Exhibit "A"** for the term of this Agreement. Unless amended in writing by the Parties, the Agreement term expires **455** calendar days after the Notice to Proceed (NTP) Date.

SECTION III--PAYMENT OF COMPENSATION AND FEES

Unless amended in writing by the Parties, Consultant's compensation and fees as more fully described in **Exhibit "B"** for performance of the services approved and accepted by City under this Agreement must not exceed **\$1,035,646.10** for the full term of the Agreement. Consultant may not increase any compensation or fees under this Agreement without the City's prior written consent. Consultant must submit monthly requests for payment of services approved and accepted during the previous billing period and must include, as applicable, detailed invoices and receipts, a narrative description of the tasks accomplished during the billing period, a list of any deliverables submitted, and any subconsultant's or supplier's actual requests for payment plus similar narrative and listing of their work. Consultant must submit an Application and Certification for Payment Sheet with the monthly request for payment to: CapitalProjects.Payables@chandleraz.gov. Payment for those services negotiated as a lump sum will be made in accordance with the percentage of the work completed during the preceding billing period. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on the service during the preceding month. All requests for payment must be submitted to City for review and approval. City will make payment for approved and accepted services within 30 calendar days of City's receipt of the request for payment. Consultant bears all responsibility and liability for any and all tax obligations that result from Consultant's performance under this Agreement.

SECTION IV--CITY'S OBLIGATIONS

As part of Consultant's services under this Agreement, City will provide furnished items, services, or obligations as detailed in **Exhibit "D"**.

SECTION V--GENERAL CONDITIONS

5.1 Notices. Unless otherwise provided herein, demands under this Agreement must be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	City of Chandler - Public Works & Utilities Department Attn: CIP City Engineer: Daniel Haskins, P.E. P.O. Box 4008, Mail Stop 407 Chandler, AZ 85244-4008 Phone: 480-782-3335 Email: daniel.haskins@chandleraz.gov																							
With a copy to:	City of Chandler - Public Works & Utilities Department Attn: Jason Garcia, Project Manager P.O. Box 4008, Mail Stop 407, Chandler, AZ 85244-4008 Phone: 480-782-3453 Email: jason.garcia@chandleraz.gov																							
To Consultant:	<table border="1"> <tr> <td>LEGAL COMPANY NAME:</td> <td>Consultant Engineering, Inc.</td> </tr> <tr> <td>Mailing Address:</td> <td>PO Box 37167, Phoenix, AZ 85069</td> </tr> <tr> <td>Physical Address:</td> <td>10625 N. 25th Ave., Suite 200, Phoenix, AZ 85029</td> </tr> <tr> <td>Statutory Agent Name:</td> <td>John Patterson</td> </tr> <tr> <td>Statutory Agent Mailing Address:</td> <td>PO Box 37167, Phoenix, AZ 85069</td> </tr> <tr> <td>Statutory Agent Physical Address:</td> <td>10625 N. 25th Ave., Suite 200 Phoenix, AZ 85029</td> </tr> <tr> <td colspan="2">CONSULTANT'S AUTHORIZED PROJECT REPRESENTATIVE</td> </tr> <tr> <td>Name:</td> <td>Brian Lizzet</td> </tr> <tr> <td>Title:</td> <td>Project Manager/Principal</td> </tr> <tr> <td>Phone:</td> <td>480-689-6472</td> </tr> <tr> <td>Email:</td> <td>blizzet@cei-az.com</td> </tr> </table>		LEGAL COMPANY NAME:	Consultant Engineering, Inc.	Mailing Address:	PO Box 37167, Phoenix, AZ 85069	Physical Address:	10625 N. 25 th Ave., Suite 200, Phoenix, AZ 85029	Statutory Agent Name:	John Patterson	Statutory Agent Mailing Address:	PO Box 37167, Phoenix, AZ 85069	Statutory Agent Physical Address:	10625 N. 25 th Ave., Suite 200 Phoenix, AZ 85029	CONSULTANT'S AUTHORIZED PROJECT REPRESENTATIVE		Name:	Brian Lizzet	Title:	Project Manager/Principal	Phone:	480-689-6472	Email:	blizzet@cei-az.com
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5.2 Records/Audit. Records of Consultant's direct personnel payroll, reimbursable expenses pertaining to this Agreement and records of accounts between City and Consultant must be kept on the basis of generally accepted accounting principles and must be made available to City and its auditors for up to three years following City's final acceptance of the services under this Agreement (this requirement is increased to five years if construction of this project is federally funded). City, its authorized representative, or any federal agency, reserves the right to audit Consultant's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from Consultant following final Agreement payment on this Agreement if, upon audit of Consultant's records, the audit discloses Consultant has provided false, misleading, or inaccurate cost and pricing data. Consultant will include a similar provision in all of its Agreements with subconsultants who provide services under the Agreement to ensure that City, its authorized representative, or the appropriate federal agency, has access to the subconsultants' records to verify the

accuracy of all cost and pricing data. City reserves the right to decrease Agreement price or payments made on this Agreement or request reimbursement from Consultant following final payment on this Agreement if the above provision is not included in subconsultant agreements, and one or more subconsultants refuse to allow City to audit their records to verify the accuracy and appropriateness of all cost and pricing data. If, following an audit of this Agreement, the audit discloses Consultant has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, Consultant will be liable for reimbursement of the reasonable, actual cost of the audit.

5.3 Alteration in Character of Work. Whenever an alteration in the character of work results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by City. However, before any modified work is started, a written amendment must be approved and executed by City and Consultant. Such amendment must not be effective until approved by City. Additions to, modifications, or deletions from this Agreement as provided herein may be made, and the compensation to be paid to Consultant may accordingly be adjusted by mutual agreement of the Parties. It is distinctly understood and agreed that no claim for extra services or materials furnished by Consultant will be allowed by City except as provided herein, nor must Consultant do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by Consultant without prior written authorization will be at Consultant's own risk, cost, and expense, and Consultant hereby agrees that without written authorization Consultant will make no claim for compensation for such work or materials furnished.

5.4 Termination. City and Consultant hereby agree to the full performance of the covenants contained herein, except that City reserves the right, at its discretion and without cause, to terminate or abandon any service provided for in this Agreement, or abandon any portion of the Project for which services have been performed by Consultant. In the event City abandons or suspends the services, or any part of the services as provided in this Agreement, City will notify Consultant in writing and immediately after receiving such notice, Consultant must discontinue advancing the work specified under this Agreement. Upon such termination, abandonment, or suspension, Consultant must deliver to City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by City. Consultant must appraise the work Consultant has completed and submit Consultant's appraisal to City for evaluation. City may inspect Consultant's work to appraise the work completed. Consultant will receive compensation in full for services performed to the date of such termination. The fee will be paid in accordance with Section III of this Agreement, and as mutually agreed upon by Consultant and City. If there is no mutual agreement on payment, the final determination will be made in accordance with the "Disputes" provision in this Agreement. However, in no event may the fee exceed the fee set forth in Section III of this Agreement nor as amended in accordance with Section "Alteration in Character of Work." City will make the final payment within 60 days after Consultant has delivered the last of the partially completed items and the Parties agree on the final fee. If City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

5.5 Indemnification. To the extent permitted by law, the Consultant ("Indemnitor") must indemnify, save and hold harmless City and its officers, officials, agents and employees ("Indemnitee") from any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) ("Claims") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Consultant or any of its owners, officers, directors, agents, employees, or subconsultants in connection with this Agreement. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Consultant must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee's own negligent or willful acts or omissions. Consultant is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, Consultant agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to this Agreement. The obligations of Consultant under this provision survive the termination or expiration of this Agreement.

5.6 Insurance Requirements. Consultant must procure insurance under the terms and conditions and for the amounts of coverage set forth in **Exhibit "C"** against claims that may arise from or relate to performance of the work under this Agreement by Consultant and its agents, representatives, employees, and subconsultants. Consultant and any subconsultant must maintain this insurance until all of their obligations have been discharged, including any warranty periods under this Agreement. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. City in no way warrants that the minimum limits stated in **Exhibit "C"** are sufficient to protect Consultant from liabilities that might arise out of the performance of the work under this Agreement by Consultant, Consultant's agents, representatives, employees, or subconsultants. Consultant is free to purchase such additional insurance as may be determined necessary.

5.7 Cooperation and Further Documentation. Consultant agrees to provide City such other duly executed documents as may be reasonably requested by City to implement the intent of this Agreement.

5.8 Successors and Assigns. City and Consultant each bind itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither City nor Consultant may assign, sublet, or transfer its interest in this Agreement without the written consent of the other party. In no event may any contractual relation be created between any third party and City.

5.9 Disputes. In any dispute arising out of an interpretation of this Agreement or the duties required not disposed of by agreement between Consultant and City, the final determination at the administrative level will be made by City Engineer.

5.10 Completeness and Accuracy of Consultant's Work. Consultant must be responsible for the completeness and accuracy of Consultant's services, data, and other work prepared or

compiled under Consultant's obligation under this Agreement and must correct, at Consultant's expense, all willful or negligent errors, omissions, or acts that may be discovered. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications must be accomplished by Consultant. The cost of the design necessary to correct those errors attributable to Consultant and any damage incurred by City as a result of additional construction costs caused by such engineering or architectural errors will be chargeable to Consultant and will not be considered a cost of the Work. The fact that City has accepted or approved Consultant's work will in no way relieve Consultant of any of Consultant's responsibilities.

5.11 Reporting. Written monthly reports, along with updated work schedules, will be made by Consultant in the format prescribed by City. These reports will be delivered to City per schedule. When requested by City, Consultant will attend Council meetings and provide finished documents including correspondence for Council action, supporting charts, graphs, drawings and colored slides of same.

5.12 Withholding Payment. City reserves the right to withhold funds from Consultant's payments up to the amount equal to the claims City may have against Consultant until such time that a settlement on those claims has been reached.

5.13 City's Right of Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.14 Independent Consultant. For this Agreement Consultant constitutes an independent contractor. Any provisions in this Agreement that may appear to give City the right to direct Consultant as to the details of accomplishing the work or to exercise a measure of control over the work means that Consultant must follow the wishes of City as to the results of the work only. These results must comply with all applicable laws and ordinances.

5.15 Project Staffing. Prior to the start of any work under this Agreement, Consultant must submit to City detailed resumes of key personnel that will be involved in performing services prescribed in the Agreement. City hereby acknowledges its acceptance of such personnel to perform services under this Agreement. At any time hereafter that Consultant desires to change key personnel while performing under the Agreement, Consultant must submit the qualifications of the new personnel to City for prior approval. Key personnel include, but are not limited to, principals-in-charge, project manager, and project Consultant. Consultant will maintain an adequate and competent staff of qualified persons, as may be determined by City, throughout the performance of this Agreement to ensure acceptable and timely completion of the Scope of Services. If City objects, with reasonable cause, to any of Consultant's staff, Consultant must take prompt corrective action acceptable to City and, if required, remove such personnel from the Project and replace with new personnel agreed to by City.

5.16 Consultants or Subconsultants. Prior to beginning the work, Consultant must furnish City for approval the names of consultants or subconsultants to be used under this Agreement. Any subsequent changes are subject to City's written prior approval.

5.17 Force Majeure. If either party is delayed or prevented from the performance of any act

required under this Agreement by reason of acts of God or other cause beyond the control and without fault of the Party (financial inability excepted), performance of that act may be excused, but only for the period of the delay, if the Party provides written notice to the other Party within ten days of such act. The time for performance of the act may be extended for a period equivalent to the period of delay from the date written notice is received by the other Party.

5.18 Compliance with Federal Laws. Consultant understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. Consultant agrees to comply with these laws in performing this Agreement and to permit City to verify such compliance.

5.19 No Israel Boycott. By entering into this Agreement, Consultant certifies that Consultant is not currently engaged in, and agrees for the duration of the Agreement, not to engage in a boycott of Israel as defined by state statute.

5.20 Legal Worker Requirements. A.R.S. § 41-4401 prohibits City from awarding an Agreement to any consultant who fails, or whose subconsultants fail, to comply with A.R.S. § 23-214(A). Therefore, Consultant agrees Consultant and each subconsultant it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of the Agreement and may be subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of any Consultant's or subconsultant's employee who provides services under this Agreement to ensure that Consultant and subconsultants comply with the warranty under this provision.

5.21 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit City from awarding an Agreement to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of Agreement award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.22 Covenant Against Contingent Fees. Consultant warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the Chandler City Council, or any City employee has any interest, financially, or otherwise, in Consultant's firm. For breach or violation of this warrant, City may annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

5.23 Non-Waiver Provision. The failure of either Party to enforce any of the provisions of this Agreement or to require performance of the other Party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor must it affect the validity of this Agreement or any part thereof, or the right of either Party to thereafter enforce each and every provision.

5.24 Disclosure of Information Adverse to City's Interests. To evaluate and avoid potential conflicts of interest, Consultant must provide written notice to City, as set forth in this Section, of any work or services performed by Consultant for third parties that may involve or be associated with any real property or personal property owned or leased by City. Such notice must be given 7 business days prior to commencement of the services by Consultant for a third party, or 7 business days prior to an adverse action as defined below. Written notice and disclosure must be sent in accordance with Section 6.7 above. An adverse action under this Agreement includes, but is not limited to: (a) using data as defined in the Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against City; or (b) testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against City; or (c) using data to produce income for Consultant or its employees independently of performing the services under this Agreement, without the prior written consent of City. Consultant represents that except for those persons, entities, and projects identified to City, the services performed by Consultant under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to City's interests. Consultant's failure to provide a written notice and disclosure of the information as set forth in this Section constitute a material breach of this Agreement.

5.25 Data Confidentiality and Data Security. As used in the Agreement, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to Consultant or its subconsultants in the performance of this Agreement. The Parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to Consultant or its subconsultants in connection with Consultant's or its subconsultant's performance of this Agreement is confidential and proprietary information belonging to City. Except as specifically provided in this Agreement, Consultant or its subconsultants must not divulge data to any third party without City's prior written consent. Consultant or its subconsultants must not use the data for any purposes except to perform the services required under this Agreement. These prohibitions do not apply to the following data provided to Consultant or its subconsultants have first given the required notice to City: (a) data which was known to Consultant or its subconsultants prior to its performance under this Agreement or its subconsultants by a third party, who to the best of Consultant's or its subconsultants' knowledge and belief, had the legal right to make such disclosure and Consultant or its subconsultants are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which Consultant or its subconsultants are subject. In the event Consultant or its subconsultants are required or requested to disclose data to a third party, or any other information to which Consultant or its subconsultants became privy as a result of any other Agreement with City, Consultant must first notify City as set forth in this Section of the request or demand for the data. Consultant or its subconsultants must give City sufficient facts so that City can be given an opportunity to first give its consent or take such action that City may deem appropriate to protect such data or other information from disclosure. All data must continue to be subject to the confidentiality agreements of this Agreement. Consultant or its subconsultants assume all liability to maintain the confidentiality of the data in its possession and agrees to compensate City if any of the provisions of this Section are violated by

Consultant, its employees, agents or subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. Consultant agrees that the requirements of this Section must be incorporated into all subagreements entered into by Consultant. A violation of this Section may result in immediate termination of this Agreement without notice.

5.26 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times by Consultant or its subconsultants. At a minimum, Consultant or its subconsultants must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. In the event that data collected or obtained by Consultant or its subconsultants in connection with this Agreement is believed to have been compromised, Consultant or its subconsultants must immediately notify City contact. Consultant agrees to reimburse City for any costs incurred by City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Consultant agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Consultant. It is further agreed that a violation of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Consultant or its subconsultants under this Section must survive the termination of this Agreement.

5.27 Jurisdiction and Venue. This Agreement is made under and must be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto must be brought in the courts located in Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

5.28 Survival. All warranties, representations, and indemnifications by Consultant must survive the completion or termination of this Agreement.

5.29 Modification. Except as expressly provided herein to the contrary, no supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless in writing and signed by the Parties.

5.30 Severability. If any provision of this Agreement or the application to any person or circumstance may be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application will not be affected and will be enforceable to the fullest extent permitted by law.

5.31 Integration. This Agreement contains the full agreement of the Parties. Any prior or contemporaneous written or oral agreement between the Parties regarding the subject matter is merged and superseded.

5.32 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.33 Date of Performance. If the date of performance of any obligation or the last day of any time period provided for should fall on a Saturday, Sunday, or holiday for City, the obligation will be due and owing, and the time period will expire, on the first day after which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth in this Agreement, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Chandler time) on the day of performance.

5.34 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than City and Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and Consultant and not for the benefit of any other party.

5.35 Conflict in Language. All work performed must conform to all applicable City of Chandler codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in **Exhibit "A"**, the provisions in this Agreement prevail.

5.36 Document/Information Release. Documents and materials released to Consultant, which are identified by City as sensitive and confidential, are City's property. The document/material must be issued by and returned to City upon completion of the services under this Agreement. Consultant secondary distribution, disclosure, copying, or duplication in any manner is prohibited without City's prior written approval. The document/material must be kept secure at all times. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.37 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

Exhibit A - Scope of Services / Schedule

Exhibit B - Compensation and Fees

Exhibit C - Insurance Requirements

Exhibit D - Special Conditions

Exhibit E - Subconsultant Documents with Consultant (if applicable)

Exhibit F - Federal Requirements (if applicable)

5.38 Special Conditions. As part of the services Consultant provides under this Agreement, Consultant agrees to comply with and fully perform the special terms and conditions set forth in **Exhibit "D"**, which is attached to and made a part of this Agreement.

5.39 Non-Discrimination and Anti-Harassment Laws. Consultant must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and regulations.

5.40 Licenses and Permits. Beginning with the Effective Date and for the full term of this

Agreement, Consultant must maintain all applicable City, state, and federal licenses and permits required to fully perform Consultant's services under this Agreement.

5.41 Warranties. Consultant must furnish a one-year warranty on all work and services performed under this Agreement. Consultant must furnish, or cause to be furnished, a two-year warranty on all fixtures, furnishings, and equipment furnished by Consultant, subconsultants or suppliers under this Agreement. Any defects in design, workmanship, or materials that do not comply with this Agreement must be corrected by Consultant (including, but not limited to, all parts and labor) at Consultant's sole cost and expense. All written warranties and redlines for as-built conditions must be delivered to City on or before City's final acceptance of Consultant's services under this Agreement.

5.42 Cooperative Purchasing Agreement (S.A.V.E. – Strategic Alliance for Volume Expenditures). In addition to City of Chandler and with the approval of Consultant, this Agreement may be extended for use by other municipalities, school districts, and government agencies of the State. Any such usage by other entities must be in accordance with the ordinance, charter, or procurement rules and regulations of the respective political entity.

5.43 Budget Approval into Next Fiscal Year. This Agreement will commence on the Effective Date and continue in full force and effect until it is terminated or expires in accordance with the provisions of this Agreement. The Parties recognize that the continuation of this Agreement after the close of the City's fiscal year, which ends on June 30 of each year, is subject to the City Council's approval of a budget that includes an appropriation for this item as an expenditure. The City does not represent that this budget item will be actually adopted. This determination is solely made by the City Council.

5.44 Forced Labor of Ethnic Uyghurs Prohibited. By entering into this Agreement, Contractor certifies and agrees Contractor does not currently use and will not use for the term of this Agreement: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

5.45 License to City for Reasonable Use. With this Agreement, Consultant and its subconsultants hereby grant a license to City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Documents, works or deliverables developed or created as a result of the Project and this Agreement. This license also includes the making of derivative works.

This Agreement will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

"CITY" CITY OF CHANDLER

**"CONSULTANT"
CONSULTANT ENGINEERING, INC.**

MAYOR

Brian Lizzet September 18, 2024
Signature Date

RECOMMENDED BY:

Daniel Haskins
Daniel Haskins, P.E.
CIP City Engineer

Brian Lizzet
Print Name

Project Manager/Principal
Title

blizzet@cei-az.com
Signer Email Address

APPROVED AS TO FORM:

City Attorney *JMB*

ATTEST:

City Clerk Seal

EXHIBIT "A"
SCOPE OF SERVICES/SCHEDULE



HELPING BUILD THE SOUTHWEST SINCE 1996

Arizona
California
Nevada
New Mexico
Texas
Utah

September 11, 2024

Mr. Jason Garcia
Construction Project Manager
City of Chandler
Capital Projects Division
PO Box 4008, Mail Stop 407
Chandler, AZ 85244-4008

Email: jason.garcia@chandleraz.gov

Re: Fee Schedule
Chandler Heights Road – Gilbert Road to Val Vista Drive
City of Chandler Project No.: ST1804.451
Federal Project No.: CHN-0(244)D
ADOT Project No.: T0203 01C
CEI Project No. 0124025.00

Dear Mr. Garcia:

Consultant Engineering, Inc. (CEI) would like to thank the City of Chandler for selecting our firm for the Chandler Heights Road project, from Gilbert Road to Val Vista Drive.

Attached, please find our fee proposal, the Construction Management Scope of Services (Exhibit "A") and Fee Schedules (Exhibit "B") as well as sub consultants' fee schedules (Exhibits "C", "D", "E" and "F") for your consideration. **Our total fee for this project is \$1,035,646.10.** The proposal is based on a total construction duration of 335 calendar days as well as pre-construction assistance and typical close-out services.

As requested, the proposal effort hours for the key staff members during construction includes Brian Lizzet (Project Manager/Senior Resident Engineer) with a 3%-time commitment; Pat Mahoney (Resident Engineer) with a 49% time commitment; John Helton (COC Liaison) with a 5%-time commitment; Daniel Blount (Project Supervisor) with a 50% time commitment; Ryan Warling (Construction Inspector) with a 100%-time commitment; Shanelle Fiske-Bowser (Administrator/Manager) with a 20%-time commitment; Mark Schalliol (Landscape Architect) with a 5%-time commitment and Dan Ross (Schedule Reviewer) with a 2% time commitment. We have also included allotted time for Saturdays. Our sub-consultants' proposals include: Tristar Engineering and Management for inspection support, Quality Testing for QA Materials Testing services, MakPro for public reach-out/awareness services and Atek Engineering Consultants for Independent Assurance Testing services.

If you have any questions or require additional information, please feel free to contact me at 480-689-6472 or blizzet@cei-az.com.

CEI looks forward to continuing working with you and the City of Chandler on this contract.

Sincerely,

CONSULTANT ENGINEERING, INC.

Brian Lizzet, PE, CCM
Project Manager/Principal

Attachment: Exhibit A – Scope of Services
Exhibit B – Fee Schedule
Exhibit C – Makinen Professional Services (MakPro) Fee Schedule
Exhibit D – Quality Testing, LLC (QT) Fee Schedule
Exhibit E – Atek Engineering Consultants (Atek) Fee Schedule
Exhibit F – Tristar Engineering and Management, Inc. (Tristar) Fee Schedule
cc: Contract Administration (CEI # 0124025.00)



HELPING BUILD THE SOUTHWEST SINCE 1996

Arizona
California
Nevada
New Mexico
Texas
Utah

EXHIBIT "A"

CONSTRUCTION MANAGEMENT SCOPE OF SERVICES (FHWA FUNDED PROJECTS)

PROJECT TASKS

1. PRE-CONSTRUCTION ASSISTANCE

A. Task 1.1 Preconstruction Assistance

- i. Consultant will have general project coordination with City and contractor **(2 hours for PM, and City Liaison, 16 hours for RE)**
- ii. Consultant must attend the pre-construction meeting. **(2 hours each)**
- iii. Consultant will review project plans, documents and take pre-construction photos **(16 hours for Project Supervisor and Construction Inspector)**
- iv. Consultant must review and evaluate Contractor's initial CPM schedule and provide recommendations for acceptance. **(16 hours for Scheduler)**

2. CONSTRUCTION MANAGEMENT

A. Task 2.1 Weekly Construction Meetings

- i. Consultant must conduct weekly construction meetings. Each meeting includes agenda and minutes; Request for Information (RFI); Shop Drawing; Request for Information (RFI); Field Directive (FD); Material Certification; and Allowance Logs. Consultant assumes **45** weekly meetings will be held. **(1 to 2 hours for PM/RE/Liaison)**

B. Task 2.2 CPM Schedule

- i. Consultant must review Contractor's monthly CPM schedule updates submitted with each payment application, identify CPM tasks behind schedule that may affect critical path items, project substantial and final completion dates and initiate correspondence to City regarding those tasks. Consultant assumes **11** reviews of updated CPM schedule. **(4 hours total for PM, 2 hours each for RE, 4 hours each for Scheduler)**

C. Task 2.3 Requests for Information (RFI's)

- i. Consultant must review, evaluate, and respond to Contractor Requests for Information (RFI's); and prepare and maintain a submittal log of all RFI's. Consultant assumes a maximum of **15** RFI responses. **(4 hours each reply. Hours includes site visits, administration/coordination prior to RFI, for RE)**

D. Task 2.4 Shop Drawing Submittals

- i. Consultant must review, evaluate, and respond to Contractor shop drawing submittals; and prepare and maintain a submittal log of all shop drawing submittals. Consultant assumes a maximum of **60** reviews. **(4 hours each review for RE, 20 hours for Landscape Architect)**



E. Task 2.5 Requests for Proposal (RFP)

- i. Consultant must prepare Requests for Proposal (RFP) documents detailing requested additional work tasks; review and evaluate Contractor RFP responses (cost derivations) with approval recommendations; and prepare and maintain a submittal log list of all RFP's. Consultant assumes **10 RFPs. (4 hours each for RE)**

F. Task 2.6 Field Directives (FD's)

- i. Consultant must prepare Field Directive (FD) documents detailing requested additional work tasks; review and evaluate Contractor FD responses with approval recommendations; and prepare and maintain a submittal log list of all FD's. Consultant assumes **15 FD's. (4 hours total for PM and 2 hours for RE)**

G. Task 2.7 Contractor Payment Applications

- i. Consultant must review and evaluate Contractor monthly payment applications and make recommendation for payment; maintain a weekly record of constructed pay quantities and compile monthly totals; and coordinate payment application with the City quantity report and the inspectors' daily logs. Consultant assumes a maximum of **12** payment applications, with **2** reviews each. **(4 hours total for PM, City Liaison, 2 hours for RE each month)**

H. Task 2.8 Public Outreach

- i. Consultant must provide public outreach services, whether by Consultant or subconsultant. Tasks will include: create and maintain project website; maintain a 24-hour trilingual project hotline to respond to inquiries, complaints and maintain a call log; public weekly email updates; public interactions with property owners as a liaison between property owners and the City; coordination meetings; project meetings; public meeting coordination; federal funds required partnering process (project team partnering meeting, maintaining status). **(4 hours total for PM, 1 hour each month for RE with PRC).**

3. CONSTRUCTION ADMINISTRATION**A. Task 3.1 Federal Compliance Administration**

- i. Consultant must provide administrative support to City staff for federal reporting requirements. Consultant assumes **1** administrative Support for **11 months** at **33** hours per month.

B. Task 3.2 Administrative Support

- i. Consultant must provide administrative support to City staff throughout project for **11 months. (30 hours/month for RE, 4 hours/month for City Liaison)**

4. CONSTRUCTION INSPECTION**A. Task 4.1 Inspection Services**

- i. Consultant must provide weekly construction inspection to verify materials and installations conform to construction documents; prepare

daily inspection reports documenting Contractor construction activities and progress during field inspection visits; and perform intermittent erosion control inspections. Consultant assumes **2** inspectors; 1 full time and 1 half-time for **40 to 20** hours per week for **11** months. **Consultant assumes 10% overtime for Construction Inspector. (5 hours/month for City Liaison as well).**

B. Task 4.2 Landscape / Irrigation Inspection Services

- i. Consultant must provide Irrigation system layout and installation observations; attend and observe irrigation system pressure tests; and attend a nursery visit to tag and inspect plant material. Consultant assumes **11** site visits. **(8 hours each for Landscape Architect)**

C. Task 4.3 Project Closeout

- i. Consultant must compile non-conformance list prior to Substantial Completion; schedule and conduct Substantial Completion inspection; prepare Substantial Completion punch list generated from Substantial Completion inspection; track items on punch list and note completed items; and complete and distribute Substantial Completion certificates. **(12 hours for PM, 20 hours each for City Liaison, Project Supervisor, and Federal Support; 24 hours for Landscape Architect)**
- ii. Consultant must schedule and conduct Final Completion inspection; and complete and distribute Final Completion certificates. **(20 hours for RE).**

5. UTILITY COORDINATION

A. Task 5.1 Utility Coordination

- i. Consultant must complete Acceptance of Construction (AOC) applications and submit to MCESD for reclaimed water booster pump and potable water/sewer improvements. **(0 hours – this is completed by EOR)**
- ii. Coordination with various utilities including RWCD **(10 for PM and 40 hours for RE)**

6. MATERIALS TESTING

A. Task 6.1 Quality Control (QC) Test Program

- i. Consultant must review and verify Contractor's Quality Control material test type and frequencies are consistent with City, MAG, and ADOT requirements; review and evaluate Contractor's QC test schedule and provide recommendations on acceptance; and review and evaluate all Contractor sampling, test, and inspection results for conformance with construction documents. **(1 hour total for PM, 2 total for RE)**

B. Task 6.2 Quality Assurance (QA) Test Program

- i. Consultant must prepare and maintain a materials Quality Assurance plan per City, MAG, and ADOT requirements. QA plan will be reviewed and approved by ADOT prior to initiating construction activities. **(1 hour total for PM; 1 hour/month for RE, coordination with QA subconsultant)**

- ii. Consultant must coordinate with Contractor's testing representative to obtain required QA tests and sample; complete sampling and compaction testing of subgrade (including lime-stabilized subgrade base), aggregate base and asphalt concrete materials in new asphalt concrete pavement areas; complete sampling and compaction testing of subgrade, aggregate base (where required) and concrete for new curbs, gutters, sidewalks and concrete pavement and structures; and complete sampling and compaction testing of backfill for new irrigation, sewer, water, storm drain pipe, and dry utilities. **(Included in QA subconsultant fee)**

C. Task 6.3 Material Certifications

- i. Consultant must review and verify material certifications are met including "Buy America" requirements; and prepare and maintain materials certificate and "Buy America" requirement submittal log. **(2 hours/month for RE, remainder included in QA subconsultant fee)**

D. Task 6.4 Independent Assurance (IA) Test Program

- i. Consultant must provide 3rd party independent quality assurance sampling and testing per the approved QA program produced in task 6.2.i. **(1 hours total for PM, 0.5 hour/month for RE, coordination with IA subconsultant).**

7. RECORD DRAWINGS

A. Task 7.1 Record Drawings

- i. Review and monitor Contractor's weekly updates on red-line drawing set. **(4 hours/week for Project Supervisor, 40 hours total for City Liaison, 2 hours total for PM and RE).**

ASSUMPTION, CLARIFICATIONS, AND EXCLUSIONS

1. Application fees for City reviews and permits will be paid by CITY.
2. The Owner's Allowance will only be utilized with prior written approval from the City representative **(Shown as \$50,000)**.
3. Contract work must be performed in accordance with Exhibit D Title VI Assurances Appendix A and Exhibit E Title VI Assurances Appendix E.

EXHIBIT "B"
COMPENSATION AND FEES

EXHIBIT "B-1"
CONSTRUCTION MANAGEMENT
SCOPE OF SERVICES
FEE SCHEDULE
(FHWA FUNDED PROJECTS)

Task	Description	Cost
1	PRE-CONSTRUCTION ASSISTANCE	
1.1	Pre-Construction Assistance	\$12,530.00
	SUBTOTAL TASK 1:	\$ 12,530.00
2	CONSTRUCTION MANAGEMENT	
2.1	Weekly Construction Meetings	\$29,285.00
2.2	CPM Schedule	\$12,600.00
2.3	Requests for Information (RFI)	\$11,400.00
2.4	Shop Drawing Submittals	\$48,500.00
2.5	Requests for Proposal (RFP)	\$7,600.00
2.6	Field Directive (FD)	\$6,640.00
2.7	Contractor Payment Applications	\$6,040.00
2.8	Public Outreach	\$3,030.00
	SUBTOTAL TASK 2:	\$ 125,095.00
3	CONSTRUCTION ADMINISTRATION	
3.1	Federal Compliance Administration	\$41,745.00
3.2	Administrative Support	\$68,640.00
	SUBTOTAL TASK 3:	\$ 110,385.00

4	CONSTRUCTION INSPECTION	
4.1	Inspection Services	\$399,835.00
4.2	Landscape/Irrigation Inspection Services	\$12,760.00
4.3	Project Closeout	\$21,600.00
SUBTOTAL TASK 4:		\$ 434,195.00
5	UTILITY COORDINATION	
5.1	Utility Coordination	\$9,950.00
SUBTOTAL TASK 5:		\$ 9,950.00
6	MATERIALS TESTING	
6.1	QC Test Program	\$615.00
6.2	QA Test Program	\$2,325.00
6.3	Material Certifications	\$4,560.00
6.4	IA Test Program	\$1,375.00
SUBTOTAL TASK 6:		\$ 8,875.00
7	RECORD DRAWINGS	
7.1	Record Drawings	\$12,190.00
SUBTOTAL TASK 7:		\$ 12,190.00
SUBCONSULTANTS		
	Makinen Professional Services	\$ 34,100.00
	Quality Testing, LLC	\$ 142,815.00
	Atek Engineering Consultants	\$ 10,071.10
	Tristar Engineering and Management, Inc.	\$ 85,440.00
SUBTOTAL SUBCONSULTANTS:		\$ 272,426.10
ALLOWANCES		
	Owner's Allowance	\$ 50,000.00
SUBTOTAL ALLOWANCES:		\$ 50,000.00
PROJECT TOTAL:		\$ 1,035,646.10

Chandler Heights: Gilbert Road to Val Vista Drive City of Chandler Project No. ST1804.451 Federal Number: CHN-0(244)D ADOT Project No. T020301C			
Cost Proposal - September 2024			
Classification	Hours	Hourly Rate	Cost
Pre-construction Phase - 1 month			
Project Manager (Brian Lizzet)	4	\$235.00	\$940.00
Resident Engineer (Pat Mahoney)	18	\$190.00	\$3,420.00
COC Liaison/Oversight (John Helton)	4	\$135.00	\$540.00
Project Supervisor (Daniel Blount)	18	\$135.00	\$2,430.00
Senior Inspector (Ryan Warling)	18	\$125.00	\$2,250.00
Landscape Architect (Mark Schalliol)	0	\$145.00	\$0.00
Schedule Reviewer (Dan Ross)	16	\$170.00	\$2,720.00
Administrator/Manager (Shanelle Fiske-Bowser)	2	\$115.00	\$230.00
Subtotal Pre-construction			\$12,530.00
Construction Phase - 11 months			
Project Manager (Brian Lizzet)	55	\$235.00	\$12,925.00
Resident Engineer (Pat Mahoney)	930	\$190.00	\$176,700.00
COC Liaison/Oversight (John Helton)	93	\$135.00	\$12,555.00
Project Supervisor (Daniel Blount)	946	\$135.00	\$127,710.00
Senior Inspector (Ryan Warling)	1892	\$125.00	\$236,500.00
Senior Inspector (Ryan Warling) - Overtime	190	\$187.50	\$35,625.00
Landscape Architect (Mark Schalliol)	108	\$145.00	\$15,660.00
Schedule Reviewer (Dan Ross)	44	\$170.00	\$7,480.00
Administrator/Manager (Shanelle Fiske-Bowser)	363	\$115.00	\$41,745.00
Subtotal Construction			\$666,900.00
Post-Construction/Close-Out Phase - 3 months			
Project Manager (Brian Lizzet)	14	\$235.00	\$3,290.00
Resident Engineer (Pat Mahoney)	42	\$190.00	\$7,980.00
COC Liaison/Oversight (John Helton)	60	\$135.00	\$8,100.00
Project Supervisor (Daniel Blount)	64	\$135.00	\$8,640.00
Senior Inspector (Ryan Warling)	0	\$125.00	\$0.00
Schedule Reviewer (Dan Ross)	0	\$170.00	\$0.00
Landscape Architect (Mark Schalliol)	24	\$145.00	\$3,480.00
Administrator/Manager (Shanelle Fiske-Bowser)	20	\$115.00	\$2,300.00
Subtotal Post-Construction			\$33,790.00
TOTAL			\$713,220.00
Subconsultants			
Makinen Professional Services - Exhibit "C"			\$34,100.00
Quality Testing, LLC - Exhibit "D"			\$142,815.00
Atek Engineering Consultants - Exhibit "E"			\$10,071.10
Tristar Engineering and Management, Inc - "Exhibit F"			\$85,440.00
Subconsultants Subtotal			\$272,426.10
Owner's Allowance			
Owner's Allowance			\$50,000.00
		Total Cost	\$1,035,646.10

Limitations & Conditions and Assumptions:

All rates are loaded rates and include all equipment, trucks, cell phones, laptops, gas, maintenance, Citrx Sharefile and office supplies.

Pre-construction and post-construction hours are based on anticipated tasks as per the scope of work.

Fee based on Construction duration of 11 months / 335 calendar days + 30 days start up and 90 days close out

Inspectors will be fully equipped with vehicles, computers, cell phones, inspector tools, camera, and equipment required to perform their tasks.

Overtime hours for field staff will be billed at 1.5 times the billing rate

Subconsultants' schedule of efforts and cost break-down is attached.

EXHIBIT "C"

INSURANCE REQUIREMENTS

1. General.

- 1.1 At the same time as execution of this Agreement, Consultant must furnish City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement will not be deemed to apply to required Workers' Compensation coverage.
 - 1.2 Consultant and any of its subconsultants must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
 - 1.3 The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
 - 1.4 City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Consultant from liabilities that might arise out of the performance of the Agreement services under this Agreement by Consultant, its agents, representatives, employees, subconsultants, and Consultant is free to purchase any additional insurance as may be determined necessary.
 - 1.5 Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Consultant from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
 - 1.6 Use of subconsultants: If any work is subcontracted in any way, Consultant must execute a written Agreement with subconsultant containing the same Indemnification Clause and Insurance Requirements as City requires of Consultant in this Agreement. Consultant is responsible for executing the Agreement with the subconsultant and obtaining Certificates of Insurance and verifying the insurance requirements.
2. Minimum Scope and Limits of Insurance. Consultant must provide coverage with limits of liability not less than those stated below.

- 2.1 *Professional Liability.* If the Agreement is the subject of any professional services or work performed by Consultant, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, Consultant must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past

completion and acceptance of the work or services, and Consultant, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

2.2 *Commercial General Liability-Occurrence Form.* Consultant must maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

2.3 *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability:* Consultant must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Consultant owned, hired, and non-owned vehicles assigned to or used in the performance of Consultant’s work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

2.4 *Workers Compensation and Employers Liability Insurance:* Consultant must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant employees engaged in the performance of work or services under this Agreement and must also maintain Employers’ Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

3. Additional Policy Provisions Required.

3.1 *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by City. If not approved, City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to City, its officers, officials, agents, employees, and volunteers.

3.1.1. Consultant’s insurance must contain broad form contractual liability coverage.

3.1.2. Consultant’s insurance coverage must be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Consultant and must not contribute to it.

3.1.3. Consultant’s insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.1.4. Coverage provided by Consultant must not be limited to the liability assumed under the indemnification provisions of this Agreement.

- 3.1.5. The policies must contain a severability of interest clause and waiver of subrogation against City, its officers, officials, agents, and employees, for losses arising from Work performed by Consultant for City. (Does not apply to Professional Liability coverage.)
- 3.1.6. Consultant, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. Consultant must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3-year period containing all the Agreement insurance requirements, including naming City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.
- 3.1.7. If a Certificate of Insurance is submitted as verification of coverage, City will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

3.2. *Insurance Cancellation During Term of Agreement.*

- 3.2.1. If any of the required policies expire during the life of this Agreement, Consultant must forward renewal or replacement Certificates to City within 10 days after the renewal date containing all the required insurance provisions.
- 3.2.2. Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice must be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, Consultant or its insurance broker must notify City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

3.3 *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

- 3.3.1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, Consultant; Products and Completed operations of Consultant; and automobiles owned, leased, hired, or borrowed by Consultant.
- 3.3.2. City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by Consultant even if those limits of liability are in excess of those required by this Agreement.

EXHIBIT "D"
SPECIAL CONDITIONS

Work within City's Right-of-Way. All work performed within City's Right-of-Way by Consultant and Consultant's subconsultants must comply with City of Chandler requirements.

EXHIBIT "E"
SUBCONSULTANT DOCUMENTS WITH CONSULTANT

Any subconsultant assumptions, clarifications, exclusions, terms & conditions, signature blocks, etc. included are strictly between the Consultant and their subconsultants, and do not apply to the Agreement between the Consultant and the City.



MakPro Services, LLC
2036 N. Gentry • Mesa, AZ 85213

Office: 480-890-1927
Email: teresa@makprosvc.com

August 27, 2024

Mr. Brian Lizzet
Consultant Engineering, Inc.
135 E Chilton Dr., Suite 101
Chandler, AZ 85225

Dear Brian:

MakPro Services, LLC (MakPro) is pleased to provide the following proposal for public outreach services for the City of Chandler for the Chandler Heights Road Improvements (ST1804.451 CHN0224D T020301C), which will widen Chandler Heights Road, from Gilbert Road to Val Vista Drive, to four lanes including raised landscaped median, bike lanes, curb, gutter, and sidewalk, including ADA upgrades, traffic signals, LED streetlights, storm drainage, irrigation, and associated utility installation or relocation. Public outreach is an important element in projects that impact neighboring residents and businesses and provides a link between the project and the community it impacts. The City of Chandler has developed a strong relationship with its residents and businesses, and during design MakPro was on-team to assist in the interaction with nearby stakeholders so it will be important to continue this communication into construction. Many times, this link is all that is needed to help a project run more smoothly.

There are a variety of public outreach tools which can be used to establish appropriate communication with the effected stakeholders of a project. The services included in this scope and fee are based on my experience with the City of Chandler and CEI on similar current and previous projects, and previous experience during design for this project. This estimate is based on an estimated 11-month construction schedule. In addition, the public outreach services have been categorized into tasks; however, adjusting one task may require adjustment of other tasks as there are economies of scale and efficiencies embedded in the cost estimate.

Please take a moment to review this scope and cost estimate and if I've missed or misunderstood any of the project characteristics, or if you'd like to customize this proposal in some other way, please let me know.

Task 1: Pre-Construction Meeting, Partnering Meeting, Project Progress Meetings and Ongoing Team Communication

MakPro will prepare for and attend the pre-construction meeting, coordinate and facilitate the partnering meeting and attend progress meetings during construction (11 months ~ 48 meetings), as well as participate in ongoing team communications throughout the project. This task also includes monitoring the partnering process with monthly PEP evaluations and tracking.

Task 2: Community Construction Notices & Communications

Prior to start of construction, MakPro shall develop, print, coordinate and mail one printed pre-construction notice to project area businesses and residents, and also those property owners directly adjacent to the work area. As this is a federal project, collateral will be provided in

Mr. Brian Lizzet, Consultant Engineering, Inc.

August 27, 2024

Public Outreach Svcs – Chandler Heights Rd (Gilbert to Val Vista) (ST1804.401 CHN0224D T020301C)

English, Spanish and Mandarin languages. It is expected there may be additional notifications for access restrictions or night work, so this estimate includes one additional mailer to accommodate that effort.

MakPro will assist the construction management team with resident coordination for properties where work will take place related to walls, and compile contact information for HOAs and businesses for use by the project team to better schedule construction-related impacts. Reimbursable expenses for postage/printing of pre-construction notices are included as part of this estimate. Based on our previous experience in this area during design, this would be a 1/4-mile radius distribution area from Gilbert to Val Vista, with approx. 1,300 pieces.

Task 3: Project Communications

- *Project Webpage:* MakPro shall develop and maintain a project webpage for the project on ChandlerAz.gov, capable of multi-lingual information, which will include information about the project design, construction schedule and how to contact the project team. The site will be updated with any new information on a regular basis.
- *Project E-Updates:* MakPro shall prepare regular email updates with upcoming construction schedule information and maintain a distribution list of those interested in the project.
- *Hotline:* MakPro shall maintain a 24-hour bilingual project hotline to respond to inquiries or complaints, maintain a call log and coordinate with the project team to respond to calls.

The total cost for public outreach services as identified above and **based on an 11-month project schedule should not exceed \$34,100.00, which includes a \$6,500 estimate for printing, distribution and translation costs.** This cost estimate assumes a labor rate of \$120/hour for principal and \$100/hour for associate hours, and includes meeting preparation, materials and equipment, and local transportation. The project hotline is billed at \$300/mo for availability 24/7, and progress meetings have a one-hour minimum. Excluded from this estimate are any unusual out-of-pocket expenses requested by the sponsor. It should be noted that reimbursable expenses for this project have been estimated, based on an approximately 1/4-mile boundary for distribution. This estimate also incorporates efficiencies from one task/activity to another, so removal of an activity may require an adjustment of hours in other activities.

Activity	Principal Hrs (\$120/hr)	Associate Hrs (\$100/hr)	Total
Public Outreach Services			
Task 1: Pre-construction, Partnering, Progress Meetings	38	38	\$8,360
Task 2: Community Construction Notices & Communications	42	28	\$7,840
Task 3: Project Communications (Hotline: 12 mos @ \$300/mo)	45	24	\$7,800 \$3,600
Sub Total	125	90	\$27,600
Printing/Distribution Cost (2 mailings at approx. 1,300 pieces each)			\$5,850
Translator Cost			\$650
Grand Total			\$34,100

EXHIBIT C

Mr. Brian Lizzet, Consultant Engineering, Inc.

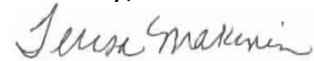
August 27, 2024

Public Outreach Svcs – Chandler Heights Rd (Gilbert to Val Vista) (ST1804.401 CHN0224D T020301C)

This proposal assumes any displays, exhibits, engineering designs or details, required for public meetings or information will be provided by the owner, the design engineer, or the contractor. MakPro is not responsible for documenting existing property conditions, project signage, traffic signage, or direct door hanger notifications for residential service interruptions, such as water outages, or access restrictions as required for the contractor's work. Changes of substance to this proposal during the project may affect the final cost.

Thank you for the opportunity to work with CEI and the City of Chandler on this project. Should you have questions or need additional information related to this proposal, please feel free to contact me at (480) 890-1927.

Sincerely,

A handwritten signature in cursive script, appearing to read "Teresa Makinen".

Teresa Makinen



Quality Testing, LLC
175 S Hamilton Place, Bldg 6, #114
Gilbert, AZ 85233
(480) 496-2000 • (480) 496-2001
www.qt-corp.com

EXHIBIT D

SUB CONSULTANT :	QT
PROJECT NAME :	ST1804.401 Chandler Heights Road; Gilbert Road to Val Vista Drive
PROJECT OWNER:	City of Chandler
ESTIMATE NUMBER:	240815-01

Project Description:

As a subconsultant to CEI, QT will be providing all acceptance testing for the Chandler Heights Road project between Gilbert Road and Val Vista Drive within the City of Chandler. QT's scope of services also includes all materials coordination for the project and any materials support necessary.

Estimate Amount Defined Scope: This cost proposal is considered an estimate, subject to the GENERAL INFORMATION/ASSUMPTIONS as defined herein. For the estimate amount, QT will perform construction materials sampling and testing, both field and lab, that is specifically identified in this cost estimate.

Cost Estimate Summary:

Total Extended QT Direct Billable Labor	\$	91,879.00
(Includes QC Supervisor, QC Reporting Tech, Field Tech, Etc.)		
Total Laboratory Testing Fees	\$	35,986.00
(Includes All Laboratory Testing)		
Total Other Direct Costs	\$	14,950.00
(Includes Vehicle, Subcontracted Services, etc. if Applicable)		
Total Estimate of All Fees	\$	142,815.00

The following pages identify the time frame, resourcing, and other assumptions used in developing this cost estimate. Assumptions are based on the information provided by your office, and QT's experience on similar projects, at the time of this proposal. If there are changes to the contractor's schedule, re-testing, additional site visits or other items that are not part of the originally assumed visits, these visits will be outside this scope of work. Items outside this scope of work will be extra work that will be billed to the contractor based on the units and rates established here within.

Jeffery M. Schaper, President
Estimator

8/16/2024
Date

Signature



EXHIBIT D
PROPOSAL SUMMARY

PROJECT NAME : **ST1804.401 Chandler Heights Road; Gilbert Road to Val Vista Drive**

SCOPE OF SERVICES: **Acceptance Testing**

LABOR FEES

CLASSIFICATION	LABOR TYPE	REG HOURS	REGULAR RATE	ASS'D % OT	OVERTIME HOURS	OVERTIME RATE ⁽¹⁾	EXTENDED LABOR COST
Registered Engineer	Direct	6	\$ 250.00			\$ 250.00	\$ 1,500.00
Materials Project Manager	Direct	41	\$ 155.00			\$ 232.50	\$ 6,355.00
Materials Data Coordinator	Direct	74	\$ 116.00			\$ 174.00	\$ 8,584.00
Materials Field Technician	Direct	920	\$ 82.00			\$ 123.00	\$ 75,440.00
Lab Trechnician	Indirect	428	\$ -				

(1) Regular Rate X Overtime Premium of 1.5

SUBTOTAL DIRECT LABOR \$ 91,879.00

VEHILE AND PER-DIEM CHARGES

DESCRIPTION	NO. UNITS	UNITS	UNIT PRICE	EXTENDED VEHICLE AND PER-DIEM
Trip Charge	230	EA	\$ 65.00	\$ 14,950.00

SUBTOTAL VEHICLE AND PER-DIEM CHARGES \$ 14,950.00

OTHER PROJECT DIRECT CHARGES

DESCRIPTION	NO. UNITS	UNITS	UNIT PRICE	EXTENDED OTHER PROJECT CHARGES
				\$ -
				\$ -
				\$ -
				\$ -

SUBTOTAL OTHER PROJECT DIRECT CHARGES \$ -

LAB TESTING FEES

DESCRIPTION	NO. UNITS	UNITS	UNIT PRICE	EXTENDED LABORATORY FEES
301 - Concrete Compressive Strength Cylinders	180	EA	\$ 16.00	\$ 2,880.00
416 - Sieve Analysis	24	EA	\$ 75.00	\$ 1,800.00
301 - Plasticity Index	24	EA	\$ 85.00	\$ 2,040.00
301 - Standard Proctor	18	EA	\$ 120.00	\$ 2,160.00
504 - Ignition Furnace Calibration	4	EA	\$ 699.00	\$ 2,796.00
505 - AC Content w/ Gradation (Ignition Method)	30	EA	\$ 200.00	\$ 6,000.00
510 - AC Gyratory Bulk Density (Set of 2)	30	EA	\$ 190.00	\$ 5,700.00
509 - AC Maximum Specific Gravity (Rice) (Set of 3)	30	EA	\$ 155.00	\$ 4,650.00
501 - AC Core Density/Thickness	30	EA	\$ 25.00	\$ 750.00
601 - AC Binder PG Verification	2	EA	\$ 980.00	\$ 1,960.00
658 - Cone Penetration	2	EA	\$ 110.00	\$ 220.00
617 - Kinematic Viscosity	2	EA	\$ 150.00	\$ 300.00
623 - Penetration	2	EA	\$ 150.00	\$ 300.00
653 - Resilience	2	EA	\$ 110.00	\$ 220.00
625 - Softening Point	2	EA	\$ 110.00	\$ 220.00
501 - Concrete Core Thickness	0	EA	\$ 20.00	\$ -
820 - Tensile Strength	6	EA	\$ 120.00	\$ 720.00
Unplanned Lab Testing Quantity Factor	1	10%	\$ 3,270.00	\$ 3,270.00

TOTAL LABORATORY TESTING FEES \$ 35,986.00

TOTAL ESTIMATE OF ALL FEES

\$ 142,815.00

Jeffery M. Schaper, President

Estimator

August 16, 2024

Date

COST PROPOSAL, 8/16/2024



EXHIBIT D
SCHEDULED PROJECTED MAN-HOURS

PROJECT NAME : ST1804.401 Chandler Heights Road; Gilbert Road to Val Vista Drive

CONSULTANT : QT

DATE: August 16, 2024

ESTIMATED FTEs IN THE MONTH																												
PROJECT PERSONNEL / SUB CONSULTANT MAN-HOURS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	SUBTOTAL REGULAR HOURS	% OT	SUBTOTAL O/T	TOTAL
JAN 2025 through DEC 2026	J-25 21	F-25 19	M-25 21	A-25 22	M-25 21	J-25 22	J-25 21	A-25 21	S-25 21	O-25 23	N-25 18	D-25 22	J-26 20	F-26 19	M-26 22	A-26 22	M-26 20	J-26 22	J-26 22	A-26 21	S-26 21	O-26 22	N-26 19	D-26 22				
Registered Engineer	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.01													6 m-h	0%	m-h	6 m-h
Materials Project Manager	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02													41 m-h	0%	m-h	41 m-h
Materials Data Coordinator	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04													74 m-h	0%	m-h	74 m-h
Materials Field Technician	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50													920 m-h	0%	m-h	920 m-h
Lab Trechnician	0.20	0.20	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.20	0.20														428 m-h	0%	m-h	428 m-h
ABOVE PERIOD - MONTHLY FULL TIME EQUIV. (FTEs)																												
TOTAL FTEs (DIRECT LABOR ONLY)	0.07	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.07	0.07	0.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	121 m-h	0%	m-h	121 m-h
TOTAL FTEs (DIRECT LABOR & VEHICLE)	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	920 m-h	0%	m-h	920 m-h
TOTAL FTEs (INDIRECT LABOR ONLY)	0.20	0.20	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.20	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	428 m-h	0%	m-h	428 m-h
TOTAL FTEs (SUBCONTRACTED LABOR)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	m-h	0%	m-h	m-h
TOTAL FTEs (ALL LABOR CLASSES)	0.77	0.76	0.81	0.81	0.81	0.81	0.81	0.81	0.82	0.77	0.77	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1469 m-h	0%	m-h	1469 m-h
TOTAL ACTUAL POSITIONS	5	4	4	4	4	4	4	4	5	5	5	2	0	0	0	0	0	0	0	0	0	0	0	0				50
TOTAL VEHICLES	1	1	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0				11



August 27, 2024
Proposal No.: 240287

Mr. Brian Lizzet, PE, CCM | Sr. Resident Engineer
Consultant Engineering, Inc.
135 E. Chilton, Suite 101
Chandler, AZ 85225

**SUBJECT: Proposal for Independent Assurance Testing
Chandler Heights Road Improvements Gilbert Road to Val Vista Drive
COC Project No.: ST1804-451
Federal Aid No.: CHN0244D
ADOT No.: T020301C
Chandler, Arizona**

Dear Mr. Lizzet:

ATEK Engineering Consultants, LLC (ATEK) is pleased to present this proposal. This proposal was developed after review of Consultant Engineer, Inc., Project Number 24101.00, Materials Sample Checklist, dated August 22, 2024 and is a preliminary understanding of the required Independent Assurance Testing Services for the subject project.

ATEK is committed to providing a high level of service to its clients, commensurate with their wants and needs. If a portion of this proposal does not meet your needs, or if those needs have changed, ATEK will consider appropriate modifications, subject to the standards of care to which we adhere as professionals. We look forward to the opportunity to provide professional services to this project.

PROJECT UNDERSTANDING

The proposed project consists of roadway improvements for Chandler Heights Road from Gilbert Road to Val Vista Drive in Chandler, Arizona

We have based our proposal on the following information:

- Review of Consultant Engineer, Inc., Project Number 24101.00, Materials Sample Checklist, dated August 22, 2024.
- No project schedule was reviewed for this proposal

Our scope of services for the referenced project includes the following:

Soil and Aggregate Testing

The testing services will include appropriate laboratory evaluation of soils and aggregates used on the project site.

Asphalt Concrete Services

ATEK will provide an Engineering Technician to sample asphalt paving for laboratory testing.

Project Management/Coordination Services

ATEK's Project Manager will conduct periodic site visits for consultation with onsite personnel and review ATEK's project documentation and laboratory testing results during construction. If requested, the Project Manager will prepare a summary presentation of the results of our laboratory tests.

ATEK will also provide the following administrative services:

- Dispatching and scheduling of field personnel;
- Word processing by administrative staff; and
- Reproduction and distribution of reports.

ESTIMATED PROJECT FEES

The above-mentioned services will be performed on an hourly and unit rate basis from portal to portal. The attached costs are estimates only and are based on time schedules, our experience with similar projects, and other information provided to us regarding this project. ATEK has no control over the project submittal process and schedule, project construction schedule and/or materials and methods which can affect the total cost of the services provided. The actual cost will depend on the amount of work requested, the contractor's schedule, delays due to weather, etc. This estimate is based on a normal 40-hour workweek. If this information or time schedule should change, please contact us immediately so we may adjust our fee accordingly.

A detailed cost estimate is included as an attachment at the end of this proposal.

SAFETY

The safety of our employees is of paramount concern to ATEK. You will be notified if project conditions represent a potential safety concern to our employees. Unsafe conditions for fieldwork will require a modification of our estimated scope of work and associated fees. If necessary, we will advise you of any additional costs required to mitigate these unanticipated conditions. Job site safety will be the sole responsibility of the contractor.

SCHEDULE

We request that our dispatch office be contacted at least 48 hours in advance of any necessary tests and observations. We will perform this work at the rates presented. If additional services are requested which were not presented, they will be charged at our current fee schedule rate.

ATEK personnel will not direct, lay out, or supervise the construction operations for the project, nor will we alter or change the project plans, specifications or reports. In addition, an onsite pre-construction meeting with all involved parties is also requested.

AUTHORIZATION

The work will be conducted in accordance with the attached General Conditions. Your signature on this proposal may indicate your acceptance of these Conditions and authorization for ATEK to proceed with the Scope of Work outlined herein. If this proposal is acceptable, we can begin work as soon as we receive an ORIGINAL signature in the "acceptance" field.

If there is a need for any change in the scope of services or schedule described in the proposal, please call us immediately. Changes may require revision of the proposed fee, which will be communicated to you upon assessment of the requested changes effect on the fee.

LIMITATIONS

Construction testing and special inspection observation are techniques employed to reduce the risk of problems arising during construction. Provision of these services by ATEK is not insurance, nor does it constitute a warranty or guarantee of any type. Even with diligent construction testing and special inspection observation, some latent construction defects may be missed. In all cases, contractors shall retain responsibility for the quality of their work, for adhering to plans and specifications, and for repairing defects regardless of when they are found. In the absence of continuous observations by ATEK personnel during site earthwork, we are not able to express an opinion regarding the adequacy of site preparation or overall fill composition or compaction.

ATEK will perform its services in a manner consistent with the standards of care and skill ordinarily exercised by members of the profession practicing under similar conditions in the geographic vicinity and at the time the services will be performed. No warranty or guarantee, express or implied, is provided as part of the services offered by this proposal. This proposal neither makes nor intends a warrantee or guarantee, express or implied, nor does it create a fiduciary responsibility to Client by Consultant.

TERMS AND CONDITIONS

All terms and conditions indicated in this proposal and in the attached General Conditions will be considered by both parties to be in effect from the effective date of the signed proposal through completion of the project. The proposal will remain in effect for 30 days from its date, and thereafter shall be null and void unless it has been signed for the work proposed.

We sincerely appreciate the opportunity to be of service and look forward to working with you on this project.

Sincerely,

ATEK Engineering Consultants, LLC.



Armando Ortega, PE
Principal

Enclosure: General Conditions 2024

Client agrees to the Scope of Work described in this Proposal and Cost Estimate and the General Conditions attached and incorporated herein.

By: _____
Consultant Engineering, Inc.

Title: _____

Date: _____

ATEK GENERAL CONDITIONS 2024 (PROFESSIONAL SERVICES)

This PROFESSIONAL SERVICES AGREEMENT is made by and between Consultant Engineering, Inc. hereinafter referred to as CLIENT, and ATEK Engineering Consultants, LLC, hereinafter called ATEK.

The PROFESSIONAL SERVICES AGREEMENT between the parties consists of these terms and conditions, the attached PROPOSAL identified as ATEK Proposal No. 240287, dated 8/27/2024, and any exhibits or attachments noted in the PROPOSAL. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this PROFESSIONAL SERVICES AGREEMENT must be mutually agreed to in writing.

SECTION 1 - SCOPE OF WORK

ATEK shall perform pursuant to the terms and conditions of this PROFESSIONAL SERVICES AGREEMENT the services as set forth in the accompanying PROPOSAL.

SECTION 2 - PERMITS & UTILITIES

1. Unless otherwise stated in the PROPOSAL, CLIENT shall apply for and obtain all required permits and licenses. CLIENT shall make all necessary arrangements for right of entry to provide ATEK access to the site for all equipment and personnel at no charge to ATEK.
2. While ATEK will take all reasonable precautions to minimize any damage to the property, CLIENT agrees to hold ATEK harmless for any damages to structures or any damage required for right of entry, in the absence of willful and gross misconduct by ATEK.

SECTION 3 - SAMPLES

Samples collected during this study will be retained for approximately 30 days after the report is submitted and then disposed.

SECTION 4 - INVOICES

ATEK will submit an invoice to CLIENT each month. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date.

SECTION 5 - OWNERSHIP OF DOCUMENTS

1. All reports, field data, field notes, calculations, estimates and other documents prepared by ATEK, as instruments of service, shall remain the property of ATEK.
2. CLIENT agrees that all reports and other work furnished to CLIENT or his agents, which are not paid for, will be returned upon demand and will not be used by CLIENT for any purpose whatsoever.
3. ATEK will retain all pertinent records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to CLIENT at reasonable times.

SECTION 6 - DISPUTES

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the CLIENT and ATEK agree that all disputes arising between them out of or relating to this Agreement or the Project shall be submitted to non-bonding mediation unless the parties mutually agree otherwise.

SECTION 7 - STANDARD OF CARE & NOTIFICATION

1. Services performed by ATEK under this PROFESSIONAL SERVICES AGREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No warranty express or implied is made.
2. ATEK agrees to notify CLIENT when unanticipated hazardous materials or suspected hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies.
3. ATEK will be responsible for data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

SECTION 8 - LIMITATION OF LIABILITY

1. CLIENT agrees to limit ATEK's liability to CLIENT and all third parties arising from ATEK's negligent acts, errors or omissions, such that the total aggregate liability of ATEK to all those named shall not exceed our fees for the project or \$50,000, whichever is greater. Neither CLIENT nor any third parties assume any liability for damages to others, which may arise solely on account of ATEK's negligent acts, errors or omissions.
2. As part of the consideration ATEK requires for provision of the Services indicated herein, CLIENT agrees that any claim for damages filed against ATEK by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against ATEK or its successors or assigns and that no individual person shall be made personally liable or liable for damages, in whole or in part.

SECTION 9 - INSURANCE

ATEK represents and warrants that it and its agents, staff and consultants employed by it are protected by worker's compensation insurance and that ATEK has such coverage under public liability and property damage insurance policies which ATEK deems to be adequate. Certificates for all such policies of insurance will be provided to CLIENT, if requested. Within the limits and conditions of such insurance, ATEK agrees to indemnify and hold CLIENT harmless from and against any loss, damage, or liability arising from any negligent acts by ATEK, its agents, staff, and consultants employed by it. ATEK shall not be responsible for any loss, damage or liability arising from any acts by CLIENT, its agents, staff, and other consultants employed by it.

SECTION 10 - TERMINATION

1. This CONSULTING SERVICES AGREEMENT may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or in the event of the parties' failure to agree upon an adjustment to this PROFESSIONAL SERVICES AGREEMENT in accordance with Section 6. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, ATEK shall be paid for services performed to the termination notice date plus reasonable termination expenses.
2. In the event of termination or suspension for more than three (3) months prior to completion of all reports contemplated by this PROFESSIONAL SERVICES AGREEMENT, ATEK may complete such analyses and records as are necessary to complete ATEK's Project files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of ATEK in completing such analyses, records and reports.

SECTION 11 - ENTIRE AGREEMENT

1. This PROFESSIONAL SERVICES AGREEMENT along with the exhibits and/or proposals appended hereto constitute the entire PROFESSIONAL SERVICES AGREEMENT of the parties with respect to the subject matter hereof.
2. The Parties have read the foregoing, understand completely the terms and conditions, and willingly enter into this PROFESSIONAL SERVICES AGREEMENT which will become effective on the date signed by the CLIENT in the "acceptance" field in the proposal.



Fee Estimate for Chandler Heights Rd : Gilbert Rd to Val Vista Dr

Professional Services	Estimated Units	Unit Rate	Service Fee
<i>Soil and Aggregate Testing Services</i>			
Project Technician	40 hours @	\$78.00 /hour	\$3,120.00
Sieve Analysis	7 tests @	\$104.00 /test	\$728.00
Atterberg Limits (PI) (Dry)	2 tests @	\$87.00 /test	\$174.00
Atterberg Limits (PI) (Wet)	3 tests @	\$132.00 /test	\$396.00
Fractured Coarse Aggregate Particles	3 tests @	\$125.00 /test	\$375.00
Vehicle Mileage	210 miles @	\$0.67 /mile	\$140.70
		Subtotal	\$4,933.70
<i>Asphalt Services</i>			
Project Technician	20 hours @	\$78.00 /hour	\$1,560.00
Max.Theoretical Specific Gravity (Rice)	2 tests @	\$175.00 /test	\$350.00
Gyratory Bulk Density (Specific Gravity)	0 tests @	\$170.00 /test	\$0.00
Ignition & Gradation of Bituminous	2 tests @	\$190.00 /test	\$380.00
Ignition Oven Calibration Facor	2 tests @	\$565.00 /test	\$1,130.00
Vehicle Mileage	160 miles @	\$0.67 /mile	\$107.20
		Subtotal	\$3,527.20
		Estimate for Site Work Services	\$8,460.90
<i>Project Management & Coordination Services</i>			
<i>Project Management/Coordination Services</i>			
Project Manager	10 hours @	\$95.00 /hour	\$950.00
Project Coordinator	8 hours @	\$50.00 /hour	\$400.00
Project Engineer	2 hours @	\$110.00 /hour	\$220.00
Vehicle Mileage	60 miles @	\$0.67 /mile	\$40.20
		Subtotal	\$1,610.20
		Project Total Estimate	\$10,071.10



September 10, 2024

Brian Lizzet, P.E., CCM
Consultant Engineering Inc.
135 E. Chilton Drive, Suite 101
Chandler, AZ 85225

Re: Chandler Heights Road (Gilbert Road to Val Vista Drive)
Project No.: ST1804-451; Federal Project No.: CHN-0(244)D; ADOT No.: T020301C
Construction Inspection Services Cost Proposal (revised)

Mr. Lizzet,

Thank you for comments related to our cost proposal. Below represents a 37% decrease to our original cost proposal, with the assumption that the contractor's schedule to perform original contract work is expected to conclude earlier than expected.

Tristar's Inspection Services scope for this project is limited to field electrical inspection during the installation of the new roadway lighting system, ITS conduit and component installation, minor signal other related dry utility work within the project limits including:

Task 1.1: Pre-Construction Assistance: Tristar's inspector will prepare for, assist and support CEI in preparation for the meeting and will attend the pre-construction meeting.

Task 4.1: Inspection Services: Assuming the signal and ITS work will be scheduled by the contractor in a reasonably sequential and continuous manner over a period of 4 months, Tristar's Electrical Inspector will daily document the contractor's work and progress on Chandler approved forms and provide an accurate accounting of the accepted work, for each item for payment and to support CEI in assembling the final Record Drawings.

Activity	Insp. Hrs (\$120 /hr)	Total
Task 1.1: Pre-Construction Assistance	8	\$960.00
Task 4.1: Inspection Services	704	\$84,480.00
Total:		\$85,440.00

Tristar's billing rate includes all direct and indirect expenses to perform field inspection on the project, which include providing Tristar's inspector with a company-owned vehicle; field computer and mobile internet access to maintain communication and provide support to CEI;

Corporate Office
10625 N. 25th Avenue
Suite 103
Phoenix, AZ 85029

Chandler Office
135 E. Chilton Drive
Suite 201
Chandler, AZ 85225

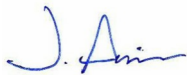
Tucson Office
3161 E. 47th Street
Tucson, AZ 85713

Mailing Address: PO Box 35278, Phoenix, AZ 85069-5278
Tel: (602) 288-5594 Fax: (602) 288-5592

common construction safety personal protective equipment; and non-specialty inspection tools to perform measurement of quantities at the project site. Excluded from this estimate are any rental or purchase of specialty electronic measuring devices or other unusual out-of-pocket expenses, which will be accounted for by CEI as the Prime Consultant.

Thank you again for including Tristar on your Team. I look forward to your favorable review and hopeful we can work together on this project. Should you have questions or need additional information, feel free to contact me at 602-568-4661.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Akin".

John Akin, PE
Principal

EXHIBIT "F"
FEDERAL REQUIREMENTS

FEDERAL REQUIREMENTS

AND

DOCUMENTS

FOR

PROFESSIONAL SERVICES

CONTRACT

With DBE Goal – DBE Race Conscious

**This is a federal funded contract with Federal Highway Administration (FHWA)
and must comply with all related federal requirements.**

FEDERAL DOCUMENTS

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1.0

**REQUIREMENTS OF THE CONSULTANT
FOR SOQ SUBMITTAL**

1.0 CONSULTANT REQUIREMENTS FOR SOQ SUBMITTAL

This contract is a federal funded contract with Federal Highway Administration (FHWA) and must comply with all related federal requirements.

1.1 REQUIRED LICENSURE AND REGISTRATION

SOQs will be accepted from any prime Consultant prequalified through the Arizona Department of Transportation (ADOT) Engineering Consultants Section (ECS) and properly registered with the Arizona Board of Technical Registration (BTR) at the time the SOQ is submitted to the City. This contract does require a Principal or Officer of the Firm responsible for this contract that is properly registered with the BTR at the time of SOQ submittal. It is the prime Consultant's responsibility to verify that all Subconsultants, in the SOQ submittal, have the proper Arizona licenses and registrations, and DBE certification if applicable, for the services to be performed under this contract.

1.2 PRE-QUALIFICATION

In order to submit an SOQ, the prime Consultant must have on file with ADOT ECS a current Prequalification Application/Statement. Subconsultants are not required by ADOT ECS or the City to be prequalified, but are encouraged to do so. ADOT ECS currently prequalifies firms on a bi-annual basis. Further information regarding the prequalification process can be found at the following ADOT ECS website:

<https://www.azdot.gov/business/engineering-consultants/consultant-prequalification>

Obtaining prequalification does not mean the firm is under contract or entitled to receive a contract. Obtaining prequalification means the firm has met minimum requirements to submit qualifications to be considered/evaluated for this project.

The City will review prequalification status with ADOT ECS at the time of SOQ due date. If the firm is not prequalified on the SOQ submittal date, the SOQ will be rejected.

1.3 AUDIT & ANALYSIS REQUIREMENTS

Within two (2) weeks after receiving notice of selection, the selected prime Consultant(s) and its Subconsultant(s) must submit financial documentation to ADOT Office of Audit & Analysis (A&A). If the selected prime Consultant(s) and its Subconsultant(s) have recently submitted their most current financial documents to ADOT A&A, contact ADOT A&A at (602) 712-7042 to inquire if you need to resubmit financial documents. Additionally, the selected prime Consultant(s) and its Subconsultant(s) are required to comply with ADOT Consultant Audit Guidelines.

<https://azdot.gov/about/audit-and-analysis>

Prime Consultants and its Subconsultants that propose on an overhead basis must have their Schedule of Indirect Costs and Financial Statements available for review by ADOT A&A **within six (6) months of the completion of the Consultant's preceding fiscal year-end (FYE)**. For example, a Consultant with December 31, 2013, FYE must have the required information available **no later than June 30, 2014**. **Noncompliance with this requirement will be considered failed negotiations unless waived in writing by the State.**

The items outlined above represent the information needed to begin the audit review process. Additional information and supporting documentation may be requested. Failure to comply with audit requirements within the established timeframes may be considered failed negotiations. Questions regarding ADOT's audit requirements or related information must be directed to ADOT A&A at (602) 712-7042.

The Consultant understands that a compliant accounting system is required in accordance with Generally Accepted Accounting Principles (GAAP), Federal Acquisition Regulation (FAR) of Title 48, Code of Federal Regulations (CFR)-Part 31, applicable Cost Accounting Standards (CAS), and ADOT Advance Agreement Guideline.

1.4 STATE OF ARIZONA LOCAL OFFICE REQUIREMENTS

All selected prime Consultant(s) must establish a local office in the State of Arizona prior to the contract Notice to Proceed (NTP) date if a local office does not already exist.

1.5 NOT ALLOWED IN SOQ SUBITTAL

Inclusion of cost, work-hour, and plan-sheet estimates are not allowed in the SOQ.

1.6 BIDDERS-PROPOSERS LIST EMAIL VERIFICATION

See the DBE Documents section for instructions. This email verification document must be submitted with SOQ and is not included in the limited page count submittal requirements.

After contract award, a firm may request a debriefing with the City's Project Manager.

2.0

SOQ PROPOSAL CERTIFICATION FORM



CITY OF CHANDLER
SOQ PROPOSAL CERTIFICATION FORM

CONSULTANT NAME: Consultant Engineering, Inc.

PROJECT NAME	Construction Management Services, Chandler Heights - Gilbert Road to Val Vista Drive				
CITY PROJECT NO	ST1804.451	FEDERAL NO	CHN-0(244)D	ADOT NO	T020301C

The statements below are to ensure Consultants are aware and in agreement with Federal, State, and City of Chandler Guidelines related to the award of this contract. Consultants shall submit the specific Certification form attached to the related SOQ advertised. Failure to sign and submit this Certification Form as specified in this SOQ with the SOQ proposal will result in the SOQ proposal being rejected.

Submission of the SOQ by the Consultant certifies that to the best of its knowledge:

1. The Consultant and its subconsultant have not engaged in collusion with respect to the contract under consideration.
2. The Consultant, its principals and subconsultants have not been suspended or debarred from doing business with any government entity.
3. The Consultant shall have the proper Arizona licenses(s) and registration(s) for services to be performed under this SOQ and contract. Furthermore, the Consultant and Key Team Members including Subconsultants are currently licensed to provide the required services as requested in the SOQ package.
4. The Consultant's signature on any SOQ proposal or contract constitutes an authorization to the City to ascertain the eligibility of the Consultant, its principals and subconsultants to enter into contract with the City and with any other governmental agency.
5. The Consultant's Project Team members are employed by the Consultant on the date of submittal.
6. All information and statements written in the proposal are true and accurate and that the City reserves the right to investigate, as deemed appropriate, to verify information contained in proposals.
7. All members of the Project Team who are former City employees did not have or provide information that gives the Consultant a competitive advantage, and either (1) concluded their employment with City at least 12 months before the date of the SOQ or (2) have not made any material decisions about this project while employed by the City of Chandler.
8. Work, equating at least 51% of the contract value, shall be completed by the Consultant unless otherwise specified in the SOQ or contract.
9. No federally appropriated funds have been paid or shall be paid by or on behalf of the Consultant for the purpose of lobbying.
10. The Consultant understands that it is required to have a compliant accounting system, in accordance with Generally Accepted Accounting Principles (GAAP), Federal Acquisition Regulation (FAR) of Title 48, Code of Federal Regulations (CFR)-Part 31, applicable Cost Accounting Standards (CAS), and ADOT Advance Agreement Guideline.

-
11. Due to the project having federal aid funds, the Consultant affirmatively ensures that in any subcontract entered into pursuant to this advertisement, disadvantaged business enterprises shall be afforded full and fair opportunity to submit proposals/bids in response to this invitation and shall not be discriminated against on the grounds of race, color, or national origin in consideration for an award, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation.
 12. The Consultant shall utilize all Project Team members, subconsultants and DBE firms, if applicable, submitted in the SOQ and shall not add other Project Team members or subconsultants, unless the Consultant has received prior written approval from the City. Furthermore, Consultant understands that each Subconsultant must be approved through a City of Chandler approval process.
 13. The Consultant shall either meet its DBE goal commitment and any other DBE commitments or make Good Faith Efforts to meet the DBE goal commitments as stated in its SOQ proposal or Cost Proposal and shall report on a timely basis its DBE utilization as detailed in the contract.
 14. If selected, the Consultant is committed to satisfactorily carry out the Consultant's commitments as detailed in the contract and its SOQ proposal.

I hereby certify that I have read and agree to adhere to the fourteen (14) statements above and/or that the statements are true to the best of my knowledge as a condition of award of this contract. This form must be signed by a Principal of the Consultant.

Name (Print): Brian C. Lizzet, PE

Title: Sr. Vice President

Name (Signature): 

Date: 7/24/2024

3.0

LOBBY CERTIFICATION FORM

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0048

1. Type of Federal Action: [N/A] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: [N/A] a. bid/offer/application b. initial award c. post-award	3. Report Type: [N/A] a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known: N/A Congressional District, if known: 4c	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: N/A Congressional District, if known:	
6. Federal Department/Agency: N/A	7. Federal Program Name/Description: N/A CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI): N/A	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): N/A	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: <u>Brian C. Lizzet</u>	
	Print Name: <u>Brian C. Lizzet, PE</u> Title: <u>Sr. Vice President</u> Telephone No.: <u>480.689.6472</u> Date: <u>7/24/2024</u>	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

PRINT

4.0

VERIFICATIONS STATEMENT



**VERIFICATION STATEMENT
FOR
STATUS OF FEDERAL TAX LIENS
USE OF E-VERIFY FOR EMPLOYMENT HIRING
STATUS OF DEBARMENT
UTRACS REGISTRATION/STATUS**

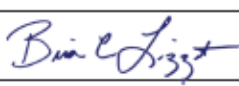
This form represents certifying compliance for items listed below:

- a) This company has no outstanding unresolved federal tax liens, and,
- b) This company uses E-Verify for employment verifications, and
- c) This company has not been suspended or debarred from working on a federal funded contract, does not have a proposed debarment pending, has not been indicted, convicted, or had a civil judgement 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 specific by Code of Federal Regulations 49 CFR.
- d) This company has a current UTracs Registration/Profile.

Website: <https://utracs.azdot.gov>

****It is recommended that all companies working on a federal funded contract be registered on the SAM website. (www.sam.gov)**

If unable to certify to the statements above, company is ineligible to enter into an agreement for federal funded contracts with the City of Chandler.

Company Name:	Consultant Engineering, Inc.		
Company UTracs No:	10192	Renewal/Expiration Date:	06/15/2026
Name of Person Signing:	Brian C. Lizzet, PE		
Title of Person Signing:	Sr. Vice President		
Signature:			
Date	7/24/2024		

5.0

PROMPT PAY PROVISION

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

**** FOR USE ON LPA FEDERAL AID PROJECTS ****

(07/24/2023)

MEASUREMENTS AND PAYMENT:

(A) Partial Payments:

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

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

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

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

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

(B) No Retainage on Progress Payments:

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

(C) Subcontractor Payments:

(1) No Retainage:

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

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

(6) Completion of Work:

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

(7) Disputes:

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

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

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

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

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

(8) Non-compliance:

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

- (a) Sanctions: These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.
 - (i) The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.
 - (ii) If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
 - (iii) If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as sanctions.
- (b) Additional Remedies. If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:
 - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the sanctions described in paragraph (a) above,
 - (ii) Terminate the contract for default,
 - (iii) Disqualify the contractor from future bidding, temporarily or
 - (iv) permanently, depending on the number and severity of violations, if applicable.

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

6.0

TITLE VI

TITLE VI ASSURANCE

TITLE VI APPENDIX A

TITLE VI APPENDIX E

City of Chandler
Title VI / Non-Discrimination Assurances
DOT Order No 1950.2A

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

Statutory/Regulatory Authorities

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

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

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda and/or guidance, the Recipient hereby gives 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 **City of Chandler**, 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 bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

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

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

5. That where the Recipient receives Federal financial assistance to 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. .

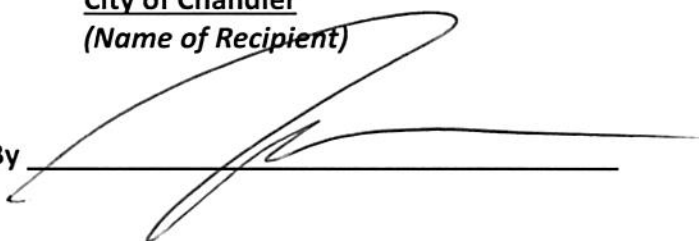
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, The **City of Chandler** 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.

The **City of Chandler** 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.

City of Chandler
(Name of Recipient)

By



DATED

6/11/2024

APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Federal Highway Administration or the Arizona Department of Transportation*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the 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 respect 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 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. 1681 *et seq.*).

7.0

RECORDS RETENTION

RECORDS RETENTION
Contractor and Subcontractor Project Records
(Reference to A.R.S.35-214)

The contractor, subcontractors and all suppliers shall keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, including electronic data, and all other material relating to the contract and project for five (5) years following completion and acceptance of the work.

All of the above material shall be made available for auditing, inspection, and copying and shall be produced upon request to the Agency.

The City of Chandler – Capital Projects
215 E Buffalo Street, Mail Stop 407
Chandler, Arizona 85225.

The contractor shall insert the above requirement in each subcontract purchase order and lease agreement and shall also include in all subcontracts, a clause requiring subcontractors to include the above requirement in any lower-tier subcontract, purchase order, or lease agreement.

8.0

FEDERAL IMMIGRATION

AND

NATIONALITY ACT

Federal Immigration and Nationality Act
(Reference to Arizona Executive Order 2005-30)

The contractor, including all subcontractors, 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. The Agency (City of Chandler) shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance.

By submission of a bid, the contractor warrants that the contractor and all proposed subcontractors are and shall remain in compliance with all federal, state, and local immigration laws and regulations relating to the immigration status of their employees who perform services on the contract. The Agency may, at its sole discretion, require evidence of compliance from the contractor or subcontractor. Should the Agency request evidence of compliance, the contractor or subcontractor shall have ten (10) working days from receipt of the request to supply adequate information. The Department and Agency (City of Chandler) will accept, as evidence of compliance, a showing by the contractor or subcontractor, that it has followed the employment verification provisions of the Federal Immigration and Nationality Act as set forth in Sections 274A and 274B of that Act, including implementation of regulations and agreements between the Department of Homeland Security and the Social Security Administration's verification service. The contractor shall include the requirements of this provision in all subcontracts for this project.

Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of contract. The Agency will recue the contractor's compensation by \$10,000 for the initial instance of non-compliance by the contractor or a subcontractor. Should the same contractor or subcontractor commit subsequent violations within a two (2) year time period from the initial violation, the contractor's compensation will be reduced by \$50,000 for each violation. The third instance by the same contractor or subcontractor within a two (2) year period may result, in addition to the \$50,000 reduction in compensation, in removal of the offending contractor or subcontractor, suspension of work in whole or in part or, in the case of a third violation by the contractor, termination of the contract for default in addition, the Department may debar a contractor or subcontractor who has committed three (3) violations within a two (2) year period for up to one (1) year. For purposes of this paragraph, a violation by a subcontractor does not count as a violation by the contractor.

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

9.0

BUY AMERICA REQUIREMENTS

On May 14, 2022 - Build America, Buy America: This new law governs domestic preferences for iron and steel, manufactured products and construction materials for infrastructure projects that use federal dollars for funding.

BUY AMERICA / BUILD AMERICA BUY AMERICA / MATERIAL CERTIFICATION
REQUIREMENTS
For City of Chandler Federal Funded Projects Per FHWA

The City of Chandler will follow Buy America requirements and the Build America Buy America requirements.

A. REGULATIONS

1. FHWA - BUY AMERICA AND THE NEW BUILD AMERICA, BUY AMERICA REGULATION EFFECTIVE NOVEMBER 1, 2022.

https://www.transportation.gov/sites/dot.gov/files/docs/buy_america_provisions_side_by_side.pdf

Federal Highway Administration (FHWA) - 23 U.S.C. § 313 – Buy America; 23 C.F.R. § 635.410

The Secretary of Transportation shall not obligate any funds unless steel, iron, and manufactured products used in such project are produced in the United States.

2. MAG SPECIFICATION SECTION 106.2.1
3. ADOT SPECIFICATION 106, 106.05 AND 106.15

B. PROCEDURE FOR MATERIAL CERTIFICATION REQUIREMENTS – CITY OF CHANDLER

1. All material for a federal funded project must have a material certification.
2. All material delivered to jobsite must be accompanied by a material certification.
3. Material Certifications must be submitted to the City of Chandler representative for review and approval and is not deemed accepted until City of Chandler representative approval.
4. Buy America Material – All Iron and Steel products. (See Item A above)
5. Buy America Material Installation: All Buy America Iron and Steel Products **MUST NOT be installed without Material Certification received and approval from City of Chandler.**
6. All non-Buy America Material Installation: All non-Buy America material, if installed without material certification receipt and approval is at the Prime Contractor's risk and WILL NOT BE PAID until approval of material certification for that material.

C. MATERIAL CERTIFICATIONS – Every Material Certification must have the following– Items 1-11

1. Project Name
2. City Project Number
3. Federal Project Number
4. ADOT Number (previously known as Tracs Number) (if FHWA funded project)
5. Supplier Information: Name, Address, Telephone Number
6. Description of the material supplied
7. Quantity of material represented by the certificate
8. Means of material identification, such as label, lot number, or marking
9. A Statement that the material complies in all respects with the requirements of the cited specifications. Certificates shall state compliance with the cited specification, such as AASHTO M 320, ASTM C 494; or specific table or subsection of the Arizona Department of Transportation Standard Specifications or Special Provisions. Certificates may cite both, if applicable.
10. Authorization Signature Statement: A statement that the individual signing has the legal authority to bind the manufacturer or the supplier of the material.
11. The name, title, signature, and date of signature of the signing-responsible individual.
12. Statement that that Federal Requirements for Buy America / BABA have been followed.

SECTION 106 CONTROL OF MATERIALS: of the Standard Specification is modified to add:

106.17 Construction Materials

A construction material, when used on a federal-aid construction project shall comply with the requirements of Build America Buy America (BABA) Act specific in Title IX, Subtitle A, Part 1, Sections 70901 and 70911-70918 of the Infrastructure Investment and Job Act (ILJA).

A ‘construction material’ that is permanently incorporated on the project shall include an article, material, or supply that is or consists primarily of the following:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall

Items manufactured through a combination of either two or more materials listed above, or at least one of the materials list above and a material not listed shall be considered as a manufactured product, rather than as a construction material.

Build America Buy America provisions specified for manufactured products in Section 70912(6)(B) of the ILJA, do not apply to federal-aid construction projects per FHQWA's existing statutory requirement applicable to manufactured products. A “manufactured product” is considered to be an item that undergoes one or more manufacturing processes before the item can be used on a federal-aid construction project.

Construction materials shall not include cement and cementitious materials; bituminous materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

All construction materials shall be produced in the United States. This means, all manufacturing processes to produce the construction materials shall occur in the United States. All manufacturing processes for construction materials shall mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.

The contractor shall furnish the Engineer with Certificate of Compliance, conforming to the requirements of Subsection 106.05 of the ADOT specifications, which shall state that the construction materials incorporated in the project meet the requirements specified herein.

Certificates of Compliance shall also certify that all manufacturing processes to produce construction materials occurred in the United States.

Convict-produced materials are prohibited in accordance with the requirements of 23 CFR 635.417.

Bipartisan Infrastructure Law – Build America, Buy America Act

Questions and Answers

Updated 2/1/2023

Except for any statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind States or the public in any way. This document is intended only to provide clarity regarding existing requirements under the law or agency policies.

1. What does the Build America, Buy America Act (BABA or the Act) require?

The BABA, part of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (Nov. 15, 2021), establishes several procedural and substantive requirements with respect to Buy America.

The procedural requirements under BABA, generally focused on Buy America implementation, include requirements for agencies to review existing Buy America preference requirements, submit reports to the Office of Management and Budget (OMB) and to Congress, review waivers of general applicability, and coordinate with the Made in America Office (MIAO) within OMB in the processing of waivers. See BABA Sections 70913(a) and (b); 70914(d); and 70923(b).

The substantive requirements under BABA include a Buy America preference that all Federal agencies must apply to any Federal financial assistance program for infrastructure that is not already subject to existing Buy America requirements for the relevant categories. See BABA Sections 70914(a) and 70917(a).

2. Do FHWA's existing requirements for steel/iron items and manufactured products continue to apply?

Yes. BABA Section 70917(a) provides that the Buy America requirements under Section 70914 apply only to the extent that Federal agencies do not already apply a Buy America preference as described in Section 70914 to steel, iron, manufactured products, and construction materials. This provision clarifies that Section 70914 of the Act does not supplant FHWA's existing Buy America policies and provisions that meet or exceed the standards required by the Act, such as its requirements for iron and steel under 23 U.S.C. 313. BABA Section 70914(d) also provides a process for reviewing existing waivers of general applicability, such as FHWA's general waiver for manufactured products.

3. Does BABA require the application of Buy America to any new categories of products for Federal-aid highway projects?

Yes. BABA Section 70914(a) requires FHWA to extend coverage of Buy America to "construction materials." Since 23 U.S.C. 313 does not specifically apply to construction materials, the BABA requirements for construction materials apply to Federal-aid highway projects.

Contact

- **Edwin Okonkwo**
[Office of Preconstruction,](#)
[Construction and Pavements](#)
202-366-1558
[E-mail Edwin](#)

4. What guidance is available concerning the application of Buy America to construction materials?

On April 18, 2022, OMB issued Memorandum M-22-11 titled "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure." The Memorandum provides initial guidance on the implementation of BABA, including preliminary guidance addressing the requirement at BABA Section 70915(b) for OMB to define the term "all manufacturing processes" for construction materials. This Memorandum can be found at: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>.

5. When did the BABA requirement for construction materials become effective on Federal-aid highway projects?

BABA Section 70914(a) provided that the new domestic preference requirements (including the requirement for construction materials) would become effective on May 14, 2022, which is 180 days after the date of enactment of the Act. However, DOT also issued a temporary transitional waiver of the BABA construction materials requirement to allow a reasonable adjustment period for recipients of DOT financial assistance — including States, local communities, Tribal nations, and industrial vendors — to develop and transition to new compliance and certification processes for construction materials. See <https://www.transportation.gov/regulations/temporary-waiver-buy-america-requirements-construction-materials>. The Temporary Construction Materials Waiver is applicable to awards that were obligated on or after May 14, 2022, and before November 10, 2022.

6. What is a construction material?

According to preliminary guidance in OMB Memorandum M-22-11, "construction materials" includes an article, material, or supply — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives — that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

7. What are the Buy America standards that apply to the manufacturing process for construction materials?

According to OMB Memorandum M-22-11, pending issuance of final standards, agencies should consider "all manufacturing processes" for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material.

OMB Memorandum M-22-11 is preliminary guidance. OMB has sought additional stakeholder input and will be issuing further guidance identifying which products should be considered construction materials and the manufacturing processes that should be considered as part of "all manufacturing processes" for those products. FHWA plans to issue updated guidance once OMB has finalized its guidance.

10.0

DBE EPRISE

FOR CONTRACTS WITH DBE GOAL

(RACE CONSCIOUS)

**PROFESSIONAL SERVICES
DBE PROVISIONS**

(PROJECT SPECIFIC - CONTRACTS)
FOR USE ON LPA/SUBRECIPIENT FEDERAL AID PROJECTS WITH DBE GOALS

DBE GOAL FOR ST1804-451: 1.99%

(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 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:

1.99 % Percent

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

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

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

12.0 Submission with SOQ Proposals:

12.01 DBE Assurance/Goal Declaration

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

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

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

12.02 Bidders/Proposers List and AZ UTRACS Registration Requirement:

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

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

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

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

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

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

13.0 DBE Cost Proposal Submissions:

13.01 DBE Intended Participation Affidavits:

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

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

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

14.0 Documented Good Faith Effort:

14.01 General:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.02 Protest for Denied Good Faith Efforts:

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

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

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

15.0 Rejection of Proposal:

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

16.0 Payment Reporting:

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

17.0 Crediting DBE Participation Toward Meeting Goals:

17.01 General Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

17.02 DBE Prime Consultant:

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

17.03 Effect of Loss of DBE Eligibility:

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

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

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

17.04 Notifying the Consultant of DBE Certification Status:

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

17.05 Police Officers:

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

17.06 Commercially Useful Function:

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

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

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

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

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

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

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

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

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

18.0 Effect of Contract Changes:

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

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

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

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

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

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

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

20.0 Required Provisions for DBE Subcontracts:

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

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

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

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

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

21.0 Contract Performance:

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

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

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

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

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

22.0 DBE Termination/Substitution:

22.01 General Requirements:

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

22.02 Consultant Notice of Termination/Substitution:

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

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

22.03 Consultant Request of Termination/Substitution:

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

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

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

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

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

22.04 Good Cause:

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

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

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

22.05 DBE Replacement Good Faith Effort:

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

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

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

11.0

DBE

FORMS/DOCUMENTS

- INSTRUCTIONS / GUIDE
- BIDDERS PROPOSER LIST INSTRUCTIONS
- DBE FORM 3212PS
- DBE FORM 3206PS
- DBE FORM 3205PS
- DBE FORM 3210PS
- DBE FORM 3108C
- DBE FORM 3203PS

DBE Documents Instructions/Guide
Race Conscious DBE Goal % Assessed For This Contract

*Important Note: City of Chandler DBE Forms and ADOT DBE Forms are not always the same. The forms provided with the RFQ/Contract must be used. Do not go to ADOT Website to obtain DBE Forms (Forms 3212PS, 3206PS, 3205PS, 3203PS, 3210PS, 3208PS). Also, forms are updated at unspecified dates. Do not use previously saved City of Chandler forms.

SUBMIT WITH SOQ:

Bidders –Proposers List

This is an ADOT On Line Submittal Process.
An Email Verification / Confirmation will be provided to you by the system after you submit.
A copy of this Email Verification is the document that must be submitted with SOQ.

DBE Form 3212PS DBE Assurance

Fill out, sign, and submit with SOQ.

SUBMIT AT SCOPE & FEE FINALIZATION:

DBE Form 3206PS

Consultant Participation Affidavit

At Scope & Fee Finalization.

To be filled out and submitted to
City of Chandler Federal Compliance
for approval packet that will be submittal
to ADOT BECO.

DBE Form 3205PS

Subconsultant Participation Affidavit

At Scope & Fee Finalization.

To be filled out and submitted to
City of Chandler Federal Compliance
for approval packet that will be submittal
to ADOT BECO.

*note: A packet of all DBE documentation is prepared and submitted to ADOT BECO by City of Chandler. This DBE Packet must be approved by ADOT BECO prior to City of Chandler Council Date for approval of the contract.

SUBMIT AS APPLICABLE:

DBE Form 3203PS Good Faith

To be submitted at any time Consultant determines that the DBE Goal will be unobtainable. This can be submitted with SOQ, or submitted at Scope and Fee.

DBE Form 3210PS – Final Payment

This DBE Form is required for every DBE Subconsultant, whether or not listed as the dedicated DBE of 3206PS and/or whether or not there is a DBE Goal Assessment for this contract.

DBE Form 3108C

DBE Substitution/Termination

At any time throughout the life of the contract, a designated contract goal DBE subconsultant (from Forms 3206PS) needs to be substituted or terminated, immediately notify the City of Chandler Federal Compliance to start the Federal required process - Form 3108C and other backup documents will be required.

Important Note:

The “Joint Check” process – where the Prime pays a subconsultant’s lower tier or vendor – is not allowed by ADOT BECO on FHWA Federal Funded Professional Services contracts.

BIDDERS/PROPOSERS LIST

FEDERAL DOCUMENT REQUIRED: Email Verification Print Out

Email Verification Print Out Received from Utracs/AzDOT.gov confirms your electronic submittal Of Bidders/Proposers List. The email confirmation should be a submitted document. Do not forward the email.

From: [ADOT Business Engagement and Compliance Office](#)
To: [Carla Silvernale](#)
Cc: ContractorCompliance@azdot.gov
Subject: Bidders List for Consultant Engineering, Inc.
Date: Monday, July 22, 2024 10:53:56 AM

Caution: This email originated outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Consultant Engineering, Inc., AZUTRACS Number: [10192](#) has submitted a Bidder/Proposer list for **T020301C-CM** on 07/22/2024 at 10:53 AM MST (UTC - 07:00).

Bidders/Proposers for this firm include:

Firm Name	AZUTRACS #	Expiration Date	Email Address	Phone Number
ATEK Engineering Consultants, LLC.	11395	08/31/2025	aortega@atekec.com	480-659-8065
Mak Pro Services LLC	10670	10/05/2025	teresa@makprosvc.com	602-421-3069
Quality Testing, LLC	10910	02/20/2027	bizdev@qt-az.com	480-496-2000
Tristar Engineering and Management, Inc.	11222	11/15/2025	jakin@tristar-az.com	602-568-4661



CITY OF CHANDLER

**PROFESSIONAL SERVICES
PROJECT SPECIFIC CONTRACT**

Disadvantaged Business Enterprise (DBE)
Goal Assurance

ADOT TRACS No.: T020301C Agency Project/Contract No.: ST1804.451

Project Name: Construction Management Services, Chandler Heights - Gilbert Road to Val Vista Drive

Prime: Consultant Engineering, Inc. AZ UTRACS Vendor #: 10192

The undersigned, fully cognizant of the requirements and of the goal established, hereby certifies that in the preparation of the proposal for the above stated federal aid project,

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

THIS CERTIFICATE MAY NOT BE REVISED OR CORRECTED AFTER SUBMISSION OF THE PROPOSAL.

FAILURE TO AFFIRMATIVELY MAKE THIS DECLARATION/CERTIFICATION IN THE MANNER OUTLINED IN THE REQUEST FOR QUALIFICATIONS (RFQ) FURNISHED BY THE LPA/SUBRECIPIENT WILL CAUSE A PROPOSER'S SOQ TO BE CONSIDERED NON-RESPONSIVE.

Brian C. Lizzet, PE

(Name of Authorized Officer)

(Authorized Officer Signature)

Sr. Vice President

(Title)

7/24/2024

(Date)



City of Chandler
PROFESSIONAL SERVICES
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit – Summary

Contract No.: ST1804-451 TRACS No. T020301C Mod No.: N/A Task No.: N/A
Consultant Name: Consultant Engineering, Inc. AZ UTRACS Registration No.: 10192
DBE Liaison Name: Janece Ray Contact Phone Number: (480) 782-3331
Contract or Task Amount: \$ 1,035,646.10 Contract DBE Goal %: 1.99

Note: Total Contract/Task Amount must include the original and any additional amount applied to the Contract or Task Order.

A	B	C	D	E	F	G
DBE Firm Name	Vendor Type	Work Description	Total Contract/Task Amount	Adjustments	Total Amount Toward DBE Goal	DBE Performing at Least 30%? Y/N
MakPro Services, LLC	Subconsult	Public Outreach and Information Services	\$ 34,100.00		\$ 34,100.00	NO
ATEK Engineering Consultants	Subconsult	Independent Quality Assurance	\$ 10,071.10		\$ 10,071.10	NO
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
(H) Total Amount Toward DBE Goal					\$ 44,171.10	
(I) Total % of DBE Commitment					4.27%	
(J) Contract DBE Goal %					1.99	

By signature below, the undersigned agrees that formal agreements/subcontracts with the listed DBE firms will occur for the work cited herein should this contract be awarded.

Brian Lizzet, PE, CCM

(Name of Principal/Officer)

Brian Lizzet

(Principal/Officer Signature)

Project Manager

(Title)

Sep 11, 2024

(Date)



City of Chandler
PROFESSIONAL SERVICES
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit

Refer to instructions
on Page 2

Prime Contractor: Consultant Engineering, Inc. Project Name: Chandler Heights Rd Improvements
Contract No.: ST1804-451 TRACS No.: T020301C Mod No.: N/A Task No.: N/A
DBE Firm Name: ATEK Engineering Consultants AZ UTRACS Registration No.: 11395
Type of Firm: ☐ Consultant ☒ Subconsultant ☐ Lower-tier Subconsultant ☐ Vendor ☐ Broker (Fees/Commission)

1. The undersigned is prepared to perform the following scope(s) of work on the above referenced project.

- Total Contract/Task Amount must include the original and any additional amount applied to the Contract or Task Order
- DBE firm listed above must complete at least 30% of its own contract amount

A	B	C	D	E
NAICS Code	Work Description	Total Contract/ Task Amount	Adjustments	Total Amount Toward DBE Goal
541330	Independent Quality Assurance	\$ 10,071.10		\$ 10,071.10
				\$ 0.00
				\$ 0.00
				\$ 0.00
Total Amount Toward DBE Goal:				\$ 10,071.10

2. (Broker Only) The undersigned affirms that the amount of fees and commissions for work quoted above are as follows:

Total Contract Amount: \$ 0.00 Fees/Commissions Assessed on Award: \$ 0.00

3. The undersigned will sublet and/or award \$ 0.00 of work bid to a non-DBE firm.

Firm Name(s): N/A

4. The undersigned will sublet and/or award \$ 0.00 of work to another certified DBE firm. (Attach signed DBE affidavit.)

Firm Name(s): N/A

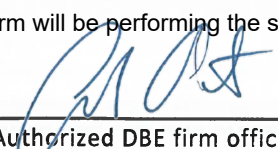
Confirmation of Participation

By signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should this contract/task be awarded.

I, Armando Ortega, Principal confirm that ATEK Engineering Consultants
(Authorized DBE firm officer, print name and title) (Name of DBE firm)

will be participating in the above project.

The DBE firm will be performing the scope as described above for a DBE credit of \$10,071.10
(Total Amount Toward DBE Goal)


(Authorized DBE firm officer, Signature)

9/11/2024
(Date)



City of Chandler
PROFESSIONAL SERVICES
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit

Refer to instructions
on Page 2

Prime Contractor: Consultant Engineering, Inc. Project Name: Chandler Heights Rd Improvements
Contract No.: ST1804-451 TRACS No.: T020301C Mod No.: N/A Task No.: N/A
DBE Firm Name: MakPro Services, LLC AZ UTRACS Registration No.: 10670
Type of Firm: ☐ Consultant ☒ Subconsultant ☐ Lower-tier Subconsultant ☐ Vendor ☐ Broker (Fees/Commission)

1. The undersigned is prepared to perform the following scope(s) of work on the above referenced project.

- Total Contract/Task Amount must include the original and any additional amount applied to the Contract or Task Order
- DBE firm listed above must complete at least 30% of its own contract amount

A	B	C	D	E
NAICS Code	Work Description	Total Contract/ Task Amount	Adjustments	Total Amount Toward DBE Goal
541820	Public Outreach and Information Services	\$ 34,100.00		\$ 34,100.00
				\$ 0.00
				\$ 0.00
				\$ 0.00
Total Amount Toward DBE Goal:				\$ 34,100.00

2. (Broker Only) The undersigned affirms that the amount of fees and commissions for work quoted above are as follows:

Total Contract Amount: \$ 0.00 Fees/Commissions Assessed on Award: \$ 0.00

3. The undersigned will sublet and/or award \$ 0.00 of work bid to a non-DBE firm.

Firm Name(s): N/A

4. The undersigned will sublet and/or award \$ 0.00 of work to another certified DBE firm. (Attach signed DBE affidavit.)

Firm Name(s): N/A

Confirmation of Participation

By signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should this contract/task be awarded.

I, Teresa Makinen, Principal confirm that MakPro Services, LLC
(Authorized DBE firm officer, print name and title) (Name of DBE firm)

will be participating in the above project.

The DBE firm will be performing the scope described above for a DBE credit of \$34,100.00
(Total Amount Toward DBE Goal)
Sep 11, 2024
(Date)

Teresa Makinen
(Authorized DBE firm officer, Signature)



City of Chandler

CERTIFICATION OF FINAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PAYMENTS

Professional Services Contracts

(Submit one form for each DBE involved in the contract)

The undersigned consultant on **Agency Project No:** _____ **ADOT TRACS No:** _____ herby, certifies that full payment was made, to the firm indicated for material and/or work performed under this project's contract as follows:

DBE FIRM AZ UTRACS Vendor Registration # _____

Name of DBE Firm _____ was paid the amount of _____

This certificate is made under Federal and State Laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime consultant, all documentation supporting the consultant's position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Consultant Company Name: _____

Check One: ☐ Prime Consultant ☐ Sub Consultant

Name: _____

Title: _____

Signature: _____

Date: _____

The undersigned sub consultant/supplier/manufacture for the above named project hereby certified that payments were received and/or justification by consultant is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

DBE Firm Name: _____

Check One: ☐ Sub Consultant/Supplier/Manufacturer ☐ Lower-tier Sub Consultant/Supplier/Manufacturer

Name: _____

Title: _____

Signature: _____

Date: _____



-Select Agency-
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
TERMINATION/SUBSTITUTION/REDUCTION (TSR) REQUEST

Contract/TRACS No.: _____ Federal #: _____ Task Order: _____

Prime: _____ DBE Firm: _____

Requestor: _____ Email: _____ Phone Number: _____

Type of request: ☐ Termination ☐ Substitution ☐ Reduction

1. Is this request due to an ADOT reduction of work?

- ☐ **Yes**, explain the change or reduction impact on DBE participation
- ☐ **No**, select below the fact(s) and the reason(s) for the request (see attached instructions).

- DBE: ☐ Fails or refuses to execute written contract
- ☐ Fails or refuses to perform work in accordance with normal industry standards
- ☐ Fails or refuses to meet prime contractor's reasonable, nondiscriminatory bond requirements
- ☐ Becomes bankrupt, insolvent or exhibits credit unworthiness
- ☐ Is ineligible to work because of suspension or debarment proceedings
- ☐ Is not a responsible contractor
- ☐ Voluntarily withdraws from the project and provides to the Department written notice of its withdrawal
- ☐ Is ineligible to receive DBE credit for the type of work required
- ☐ Owner dies or becomes disabled resulting in inability to complete its work on the contract
- ☐ Other documented good cause (Attach documentation)

Attach a brief statement of facts describing the situation and any supporting documentation to substantiate selection above

2. Date determined the DBE is unwilling, unable or ineligible to perform: _____

3. Date of Written Notice to DBE: _____ *Attach notice with this request, along with the DBE response*

4. a. Original DBE affidavit amount: \$ _____ **b. Amount of work completed to date: \$** _____

c. Remaining DBE amount: \$ _____

For DBE Substitution only, answer questions 5 thru 7:

5. Proposed DBE Name(s): _____

6. Proposed DBE dollar amount to be substituted: \$ _____

7. Projected date for substitute DBE to commence work: _____

Good Faith Effort Documentation to be submitted with this request or within 7 calendar days from approval of this request:

- DBE Affidavits and/or
- Other documentation to substantiate efforts made to replace the same amount of DBE work

All signatures must be obtained before request is submitted.

Prime Contractor Signature

Date:

Original DBE Subcontractor Signature

Date:

Agency RE/PM Signature

Date:

FOR BECO USE ONLY

Request is: Approved ☐ Not Approved ☐

BECO Representative: _____

Signature: _____

Date: _____



City of Chandler

**PROFESSIONAL SERVICES/DESIGN
CERTIFICATION OF GOOD FAITH EFFORTS**

Submit completed GFE Form (pages 1 – 6 only) with backup documentation, if any)

General

Complete all sections of the form and include all back-up documentation. Incomplete forms will be returned unprocessed. For the purpose of this form, project specific contracts shall be evaluated on a contract basis and on-call contracts will be evaluated on a task order by task order basis. **For on-call contracts, consultants must complete this form by detailing efforts made to find additional DBEs if their current DBEs are unable to perform the work needed for this task order.** If the information does not relate to the task order in review, this GFE will be denied. The Agency reserves the right to request further documentation from the Consultant/ Subconsultant(s) to support and validate actions undertaken to secure DBE participation to meet the DBE goal for this contract/task order.

Attestation

I, (Name) _____, do hereby acknowledge that I am the (Title) _____
of (Name of Firm) _____ and the Consultant selected for the Agency project listed below:

Contract No.	Mod No.	Task Order No.	TRACS No.	Project Name	Total Contract/Task Amount *	DBE Percentage	
						Contract Goal	Committed Goal

* Total Contract/Task Amount must include any previous amounts of the Contract or Task Order.

Provide a brief summary on why you believe your firm is unable to meet the DBE participation goals on this contract/task order. Attach additional pages if necessary.

I hereby certify I demonstrated comprehensive good faith efforts to solicit and utilize DBE firms to meet the DBE participation requirements of this contract/task order in accordance with Section 14.0 of the LPA DBE Contract Specifications by my responses to the following:

GFE Activities

1. Contacting Agency and BECO For Assistance

Date contacted: _____ Agency Staff contacted: _____ Phone Number: _____

Prime Contact Name: _____ BECO Staff contacted: _____ Phone Number: _____

Brief summary of discussion and resolution:

Was a DBE Supportive Services Solicitation Request submitted? Yes No Submission Date _____



PROFESSIONAL SERVICES/DESIGN
CERTIFICATION OF GOOD FAITH EFFORTS

Submit completed GFE Form (pages 1 – 6 only) with backup documentation, if any

2. Market Research and Soliciting Through All Reasonable Means

List all DBE solicitations made for this contract/task order.

Solicitation Activity	Date	Name of Interested DBEs	Follow-Up Date

3. Selecting Portions of Work to be Performed by DBEs

List work items needed to be performed and include how work items were broken down into economically feasible units to facilitate DBE participation.

4. Provide Interested DBEs With Project Information

Explain how interested DBEs were provided with access to project information.

--



PROFESSIONAL SERVICES/DESIGN
CERTIFICATION OF GOOD FAITH EFFORTS

Submit completed GFE Form (pages 1 – 6 only) with backup documentation, if any

5. Negotiate In Good Faith With Interested DBEs – When a non-DBE is selected over a DBE, attach copies of the DBE and non-DBE firms' quotes.

A. Identify DBE firms in which negotiations were considered but were unsuccessful.

DBE Firm Name & Contact Person	Address	Phone Number

B. Explain why negotiations above were unsuccessful.

DBE Firm Name	Explanation

6. Having Sound Reason For Rejecting DBEs

Explain why any DBE(s) was rejected for being unqualified.

DBE Firm Name	Explanation



PROFESSIONAL SERVICES/DESIGN
CERTIFICATION OF GOOD FAITH EFFORTS

Submit completed GFE Form (pages 1 – 6 only) with backup documentation, if any)

7. Assisting Interested DBEs – Bonding, Credit, Insurance

Identify interested DBE firms in which assistance was provided in obtaining bonding, credit or insurance.

DBE Firm Name	Assistance Offered

8. Assisting Interested DBEs – Equipment, Supplies, Materials, Related Services

Identify interested DBE firms in which assistance was provided in obtaining necessary equipment, supplies, materials, or related assistance or services.

DBE Firm Name	Assistance Offered

9. Minority/Women Community Organizations

Identify minority/women community organizations used for providing assistance in the recruitment and placement of DBEs.

Organization Name	Contact Person	Assistance Requested



**PROFESSIONAL SERVICES/DESIGN
CERTIFICATION OF GOOD FAITH EFFORTS**

Submit completed GFE Form (pages 1 – 6 only) with backup documentation, if any

This is not intended to be a mandatory checklist nor is it intended to be an exclusive or exhaustive list of good faith efforts. Other factors or types of efforts may be relevant on a case-by-case basis as determined by ADOT BECO.

10. Other comments or information you want the Agency and ADOT BECO to consider as part of your good faith effort.

Affidavit

The undersigned, (Name) _____, attest and declare under penalty of perjury in the second degree, and any other applicable state or federal laws, that the information provided on this certificate is true and correct to the best of my knowledge and belief.

Signature: _____
Consultant Representative/DBE Liaison

Date: _____

Note: *The GFE form must be signed by an authorized signatory for the Consultant/Subconsultant.*

AGENCY/BECO INTERNAL USE ONLY	
Date Received: _____	Received by: _____
Date Approved / Denied: _____ (Circle one)	Signature: _____
Date Received: _____	Received by: _____
Date Approved / Denied: _____ (Circle one)	Signature: _____
Comments: 	

PROFESSIONAL SERVICES/DESIGN

CERTIFICATION OF GOOD FAITH EFFORTS

Submit completed GFE Form (pages 1 – 6 only) with backup documentation, if any

APPENDIX A TO PART 26 — GUIDANCE CONCERNING GOOD FAITH EFFORTS

Note: *“YOU” means the Agency (ADOT) in the following sections of this requirement.*

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient 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, you have the responsibility 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, based on the regulations and the guidance in this Appendix.

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. Determinations should not be made using quantitative formulas.

- 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.

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Submit completed GFE Form (pages 1 – 6 only) with backup documentation, if any

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

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

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation



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to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

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

[79 FR 59600, Oct. 2, 2014]

Note: Contacting ADOT BECO (602 712-7761) 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.

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Good Faith Efforts Tips

The intent of the Good Faith Effort Form is to document the good faith efforts undertaken by the Consultant in soliciting and utilizing DBE firms to meet the DBE participation requirements for the contract/project. The completed form will assist the Agency and ADOT in determining if the Consultant performed its due diligence, took all necessary and reasonable steps to secure DBE participation for the referenced contract/project and resulted in obtaining comprehensive good faith efforts. The Agency and ADOT Business Engagement & Compliance Office (BECO) will determine if the Consultant made satisfactory good faith efforts to secure sufficient DBE participation to meet the DBE goal. The burden of proof rests with the Consultant. **Failure to provide good faith efforts to ADOT BECO's satisfaction will result in the rejection of the proposal/modification.** However, ADOT BECO will reconsider Consultant's GFE resubmittal if Consultant has adequately and sufficiently documented its good faith efforts in obtaining DBE participation.

Tips for Documenting Good Faith Efforts

1. Review Scope of Work (SOW) for subcontracting opportunities.
2. Make reasonable efforts to designate economically feasible and meaningful units of work for a DBE(s) that meets or exceeds the DBE goal.
3. Keep in mind that selected DBEs must perform *commercially useful function* (CUF) as required by [49 CFR §26.55](#).
4. Determine if there are DBE firms on the contract team that can do the work. If not, the Consultant must solicit other DBEs through the DBE Directory to perform work to meet or exceed the goal.
5. Some projects may be too small or do not provide meaningful units of work for subcontracting opportunities. Any reason for this must be thoroughly explained.
6. When providing good faith documentation, it is not good enough to say that project is too small to include DBEs. Consultants must explain the project SOW and why no subcontracting opportunities are possible.
7. Consultants must keep in mind that DBEs must be utilized when developing their SOWs and cost proposal. Arranging and planning work items to circumvent the utilization of Subconsultants and DBEs violates the federal regulations.
8. For on-call contracts, consultants must complete this form by detailing efforts made to find additional DBEs if their current DBEs are unable to perform the work needed for this task order.
9. When providing good faith documentation, Consultants must include:
 - a. Date, contact name of staff they contacted at BECO for assistance
 - b. List of DBE firms contacted to do the work
 - c. Any evidence of negotiations with the DBE firms
 - d. Evidence of efforts to reach out to DBE firms
10. Assistance provided to DBEs should include efforts to assist the DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project-related assistance.

12.0

PAY REQUESTS

- PAYMENT APPLICATION
- SUBCONSULTANT SUMMARY FORM



**PROFESSIONAL SERVICES AGREEMENT
APPLICATION AND CERTIFICATION FOR**

PAYMENT # _____

Check if FINAL payment: _____

**Official City of Chandler
Use Only**

Date Rec'd: _____

Record ID: _____

Date Recorded: _____

Project Name: _____

Project No.: _____ Federal/ADOT No. (if applicable): _____

Pay Period Beginning: _____ Ending: _____ City Contact Name: _____

Total Time Elapsed: _____ %

Consultant Information:

Name: _____ Invoice #: _____

Remit to Address: _____

Contact Name: _____ Phone: _____ Email Address: _____

Contract Amendment Summary

No.	Date	Amount	Calendar Days
		\$	
		\$	
		\$	
		\$	

Application is made for payment as shown below and on the attached Payment Schedule Summary Sheet in accordance with the Contract Documents.

**RED FIELDS AUTO CALCULATE
Do not enter amount manually**

1. Original Contract Price: \$ _____

2. Contract Amendments to Date: \$ _____

3. Adjusted Contract Price (Line 1 + 2): \$ _____

4. Total Amount Due to Date: \$ _____
(per attached Payment Schedule)

Work Completed to Date: _____ %

5. Total Previous Certificates for Payment: \$ _____

6. Federal Penalties if Applicable (per City): \$ _____
Deduct Penalties (-) or Credit Reimb (+)

7. Current Payment Due (Line 4 - 5 - or +6): \$ _____

Contract Time Summary

(applicable milestones per contract)

Notice to Proceed (NTP) Date:	
Original Contract Duration:	Calendar Days
Contract Amendments:	Calendar Days
Revised Contract Duration:	Calendar Days
Contract Expiration Date:	

Consultant's/Engineer's Certification

The undersigned certifies that the work covered by this Application for Payment has been completed in accordance with the Contract Documents; that all amounts have been paid for work which previous Certificates of Payment were issued and payments received from the Owner; and that the current payment requested as shown is current, accurate, and complete.

Authorized Signature

Date

Official City of Chandler Use Only PO #:

Approved By:

Budget Account #'s:

Project Manager

Date

CIP Supervisor

Date

Email PDF Signed Payment Application to: CapitalProjects.Payables@chandleraz.gov

Revised: 4/14/23

Or Submit to: City of Chandler, Capital Projects MS 407, PO Box 4008, Chandler, AZ 85244

Consultant	
Project Name	
Project Numbers	
Month	

[illegible]

13.0

SUBCONSULTANT SUBCONTRACTS REQUIREMENTS

SUBCONSULTANTS – PROFESSIONAL SERVICES REQUIREMENTS AND SUBCONTRACTS

1. Subconsultants will be required to be approved by the City. Required forms will be provided.
2. Subconsultants must have a current AZUTracs registration 5-digit number and current profile.
<https://utracs.azdot.gov/>
3. Subconsultants must be registered/have a current/up to date profile in the DOORS reporting system for Payment Reporting, DBE Reporting, and Prompt Pay Reporting. (link is on the AZUTracs web page).
4. Subconsultants (including lower tiers) will be required to report into the DOORS system on a monthly basis during the life of their subcontract.
5. No Consultant/Subconsultant can work on a federal funded contract if they have been debarred and/or have unresolved federal tax liens.
6. The “Joint Check” process – where a Prime pays a subconsultant’s lower tier or vendor is not allowed on FHWA Federal Funded Professional Services Contracts.
7. DBE Subconsultants subcontract tasks must be applicable to their registered NAICS code(s).
8. Subconsultants for QA/QC/IA Testing – must be on the ADOT Accredited Laboratories / ADOT Accredited Material Testing Laboratories List.
<https://azdot.gov/business/engineering-and-construction/materials/materials-quality-assurance/adot-accredited>
9. Subconsultants will be required to submit timely/monthly invoices to the Prime on a calendar monthly basis. The Prime Consultant’s monthly pay application to the City must include all work performed during the work period the pay application is being submitted for.
10. No work can be started prior to the Prime’s Contract Notice to Proceed date.

SUBCONTRACTS

All Subcontracts:

1. There are specific federal documents that must be included in all subcontracts.
2. A set of these federal documents will be provided by the City. There will be a required set of federal documents for a DBE Subconsultant Subcontract and a Non-DBE Subconsultant Subcontract.
3. Subcontract tasks must be applicable to/related to the Prime’s Contract Task Detail with the City.
4. DBE Subcontract Task Detail must show breakdown pricing for each task item.
5. Subcontract must show both parties name and address.

END OF FEDERAL DOCUMENTS SECTION