

DESIGN CONSULTANT AGREEMENT FOR SR347 GRADE SEPARATION PROJECT

THIS AGREEMENT is made and entered into this 1st day of April, 2014, by and between the City of Maricopa, Arizona, an Arizona Municipal Corporation (“CITY”), and RailPros, Inc., a California Corporation (“DESIGN CONSULTANT”), to provide track design services related to the SR347 Grade Separation Project.

RECITALS

WHEREAS, the SR347 Grade Separation Project ("Project") involves a joint effort between the CITY, Union Pacific Corporation (“UPRR”), and the National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak") to improve public safety and traffic congestion; and

WHEREAS, Phase I of the Project involves relocating the existing Amtrak Station and requires the design and engineering of rail and track siding to connect the future Amtrak Station to the Union Pacific Railroad track referred to as the Sunset Route; and

WHEREAS, the CITY received a grant from the Gila River Indian Community for the design and engineering of rail and track siding; and

WHEREAS, the design of rail and track siding requires the consultant to be selected on the basis of demonstrated competence and qualifications for the type of professional services to be rendered without regard to fees and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, in procuring these design services, CITY has complied with the procedures set forth in Section 3-220 of the City of Maricopa’s City Code.

NOW, THEREFORE, CITY agrees to retain and does hereby retain DESIGN CONSULTANT and DESIGN CONSULTANT agrees to provide the services required according to the terms and conditions and for the consideration hereinafter set forth:

AGREEMENT

1. **DESCRIPTION OF PROJECT**: The Project known as the SR347 Grade Separation Project will involve construction of a grade-separated crossing of SR 347 and the Union Pacific Railroad. Phase I of the Project involves the relocation of the existing Amtrak Station approximately 2200 feet northwest to the Estrella Gin Site and the construction of rail and track siding to connect the future Amtrak Station to the UPRR track referred to as the Sunset Route. The design requirements for Phase I of the Project are more specifically described in Exhibit A (Request for Statement of Qualifications), Exhibit B (First Amendment to the Request for Statement of Qualifications), Exhibit C (Contractor's Response), Exhibit D (Fee Schedule), and Exhibit E (Scope of Work), which are attached hereto and incorporated herein by reference.

2. **SCOPE OF WORK**: DESIGN CONSULTANT agrees to perform the following professional engineering services ("Services"):

See attached Exhibit A, Exhibit B, Exhibit C, and Exhibit E, which are incorporated into this Agreement.

3. **DESIGN TEAM**: DESIGN CONSULTANT shall be a part of and participate together with the

Design Team and shall attend meetings with, provide information to and cooperate with the person retained by CITY to construct Phase I of the Project as more specifically described in Exhibit A, Exhibit B, Exhibit C and Exhibit B attached hereto and incorporated herein by reference..

4. TERM: The term shall commence upon the execution of this Agreement and shall continue until the Services are completed, unless terminated, cancelled or extended as otherwise provided herein.

5. FEE FOR SERVICES: For services described in Section 2, Scope of Work, the CITY shall pay DESIGN CONSULTANT a fee not to exceed the sum of Three Hundred Ninety Nine Thousand Eight Hundred Fifteen and 00/100 Dollars (\$399,815.00) at the rates shown in and in accordance with the fee schedule attached hereto as Exhibit D and made a part hereof by reference. Payment will be made monthly on the basis of progress reports corresponding with the rates and charges listed on the Fee Schedule and showing the number of hours or other basis to determine the fee earned to that date. On a monthly basis, DESIGN CONSULTANT must prepare and submit to City an Application and Certification for Payment Sheet ("Application for Payment"). The following must also be included with each Application for Payment: a clear, detailed invoice reflecting items being billed for reimbursables; a summary sheet showing percentage of work completed to date; amount/percent billed to date; current status of all tasks; and, any/all backup documentation supporting the above items. Work schedule updates shall also be included in the monthly progress payment requests.

6. REPORTS & APPROVALS: All Services shall be subject to the approval of CITY and each phase of the Services will be submitted to CITY in accordance with a mutually agreed upon schedule and in the format prescribed by CITY. In addition, the design of the track and siding requires plan approval from the CITY and UPRR. When requested by CITY, DESIGN CONSULTANT will attend Council meetings and provide necessary documentation including, but not limited to, correspondence for Council action, supporting charts, graphs, drawings and colored slides of same.

7. STANDARD OF PERFORMANCE:

A. This Agreement has been awarded to DESIGN CONSULTANT based on its proposal that those personnel and consultants listed in Exhibit C and D attached hereto will perform the portions of the Services listed on said exhibits. DESIGN CONSULTANT shall not deviate nor substitute any of these team members without prior written approval by CITY.

B. DESIGN CONSULTANT shall be responsible for the technical accuracy of its Services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. DESIGN CONSULTANT shall correct any such deficiencies without additional compensation or cost to CITY, except to the extent any such deficiency is directly attributable to deficiencies in CITY-furnished information.

C. DESIGN CONSULTANT shall be familiar with all applicable standard details and specifications and other relevant CITY, UPRR, state and federal regulations. DESIGN CONSULTANT shall ensure there are no conflicts among the documents including, but not limited to, the CITY'S General Conditions for Construction Projects, the plans and specifications prepared by DESIGN CONSULTANT, any standard details or specifications incorporated therein by reference and any applicable regulations.. The DESIGN CONSULTANT is responsible, along with his designers, for attesting to the design correctness and scaling the design documents.

D. DESIGN CONSULTANT shall be responsible for the completeness and accuracy of his/her work prepared or compiled under obligation for the Services and shall correct, at his/her expense, all errors or omissions therein, which may be disclosed. Correction of negligent errors disclosed and determined to exist during any construction of the Project on architectural or engineering drawings and

specifications shall be accomplished by the DESIGN CONSULTANT. The cost of the design necessary to correct those negligent errors attributable to the DESIGN CONSULTANT shall be chargeable to the DESIGN CONSULTANT. The fact that the CITY has reviewed or approved the DESIGN CONSULTANT's Services shall in no way relieve the DESIGN CONSULTANT of any of DESIGN CONSULTANT's responsibilities.

8. INDEMNIFICATION: To the fullest extent allowed by law, DESIGN CONSULTANT shall indemnify and hold CITY, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses, and expenses (including but not limited to reasonable attorney fees, court costs, and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the negligent errors or negligent omissions of DESIGN CONSULTANT, its employees, agents, or any tier of subcontractors or subconsultants in the performance of this Agreement, notwithstanding that City may have benefitted from their services. This indemnification provision is limited to any and all negligent acts or omissions, willful misconduct, whether active or passive, on the part of DESIGN CONSULTANT or DESIGN CONSULTANT'S employees, subcontractors or agents. This section shall survive the expiration or early termination of the Agreement.

9. INSURANCE:

9.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of the DESIGN CONSULTANT, DESIGN CONSULTANT shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to CITY. Failure to maintain insurance as specified herein may result in termination of this Agreement at the CITY'S option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect DESIGN CONSULTANT. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve DESIGN CONSULTANT from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the CITY, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by CITY, unless specified otherwise in this Agreement.

e. Primary Insurance. DESIGN CONSULTANT'S insurance shall be primary insurance with respect to performance of this Agreement and in the protection of CITY as an Additional Insured.

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in

force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against CITY, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of the DESIGN CONSULTANT. DESIGN CONSULTANT shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to CITY. DESIGN CONSULTANT shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, DESIGN CONSULTANT shall execute written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by CITY in CITY's sole discretion) set forth herein protecting CITY and DESIGN CONSULTANT. DESIGN CONSULTANT shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, DESIGN CONSULTANT shall furnish CITY with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by DESIGN CONSULTANT'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, CITY shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be DESIGN CONSULTANT'S responsibility to forward renewal certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

(1) The CITY, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- (b) Auto Liability - Under ISO Form CA 2048 or equivalent.
- (c) Excess Liability - Follow Form to underlying insurance.

(2) DESIGN CONSULTANT'S insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for

any claims arising out of work or services performed by the DESIGN CONSULTANT under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

9.2 Required Insurance Coverage.

a. Commercial General Liability. DESIGN CONSULTANT shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$4,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury or death, personal injury, advertising injury and property damage. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 03 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the CITY, its agents, representatives, officers, officials, volunteers and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. DESIGN CONSULTANT shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on DESIGN CONSULTANT'S owned, hired and non-owned vehicles assigned to or used in the performance of DESIGN CONSULTANT'S work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the CITY, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

c. Professional Liability (Errors and Omissions Liability). DESIGN CONSULTANT shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by DESIGN CONSULTANT, or anyone employed by DESIGN CONSULTANT, or anyone for whose negligent acts, mistakes, errors and omissions DESIGN CONSULTANT is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, DESIGN CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

d. Workers' Compensation Insurance. DESIGN CONSULTANT shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of DESIGN CONSULTANT'S employees engaged in the performance of work or services

under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

9.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to CITY.

10. MEDIATION: In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The matter in dispute shall be submitted to a mediator mutually selected by DESIGN CONSULTANT and CITY. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, CITY and DESIGN CONSULTANT shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent mediator. The cost of any such mediation shall be divided equally between CITY and DESIGN CONSULTANT. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the mediator.

11. RECORDS: Records of DESIGN CONSULTANT'S labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to CITY for inspection on request. DESIGN CONSULTANT shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by CITY personnel during regular business hours.

12. RIGHT OF CITY TO CONTRACT WITH OTHERS: Nothing in this Agreement shall imply CITY is obligated to obtain the services described herein with only this particular DESIGN CONSULTANT.

13. AMENDMENTS: Whenever a change in the Scope of Work contemplated in this Agreement is determined to be necessary, the services will be performed in accordance with this Agreement provided, however, that BEFORE such services are started, an amendment shall be executed by CITY and DESIGN CONSULTANT. Additions to, modifications of, or deletions from the Services provided herein may be made and the compensation to be paid to DESIGN CONSULTANT may be adjusted accordingly by mutual written agreement of the contracting parties. It is agreed that no claim for extra services by DESIGN CONSULTANT will be allowed by CITY except as provided herein, nor shall DESIGN CONSULTANT provide any services not covered by this Agreement unless such services are authorized through an executed amendment.

14. TERMINATION WITHOUT CAUSE: CITY may at any time and for any or no reason, at its convenience, terminate this Agreement or any part of the services to be rendered pursuant thereto by ten (10) day written notice to DESIGN CONSULTANT specifying the termination date. Immediately after receiving such notice, DESIGN CONSULTANT shall discontinue advancing the Services under this Agreement and shall deliver to CITY all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by CITY.

DESIGN CONSULTANT shall receive as compensation in full for services performed to date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of DESIGN CONSULTANT(S) fee described in this Agreement under paragraph 5 and shall be in an amount to be agreed mutually by DESIGN CONSULTANT and CITY. CITY shall make this final payment within sixty (60) days after DESIGN CONSULTANT has delivered the last of the partially completed items. DESIGN CONSULTANT shall be entitled to reasonable costs to deliver materials to CITY and to close-out the Agreement.

15. TERMINATION WITH CAUSE: This Agreement may be terminated by CITY for cause should the DESIGN CONSULTANT fail to perform any provision of this Agreement, including without limitation, for any of the following reasons:

- a. DESIGN CONSULTANT abandons the Services to be provided;
- b. DESIGN CONSULTANT assigns or attempts to assign its rights or obligations under this Agreement or any part thereof to any third-party (without the prior written consent of CITY);
- c. DESIGN CONSULTANT is adjudged bankrupt or insolvent, makes a general assignment for the benefit of creditors, has a trustee or receiver appointed for its property, or files a petition to take advantage of any debtor's act;
- d. DESIGN CONSULTANT fails or refuses to perform any obligation under the Agreement, or fails to remedy such nonperformance within seven (7) days after notification by CITY of failure of performance;
- e. DESIGN CONSULTANT fails to comply with any applicable Laws and fails to remedy such nonperformance within seven (7) days after notification by CITY of failure of performance; or
- f. DESIGN CONSULTANT fails to achieve the required dates for performance required pursuant to the Agreement.

The CITY'S right of termination for cause as set forth herein shall be in addition to, and not a limitation of, any and all other remedies available to CITY at law, in equity, or under the terms and provisions of this Agreement.

16. CONFIDENTIALITY: DESIGN CONSULTANT, and any subcontractors or individuals hired by DESIGN CONSULTANT to perform the services under this Agreement, shall keep any information concerning CITY matters confidential and agree that they will not make any statement, give an interview or provide any information to any person, corporation or other entity, including without limitation any media source, in relation to the project or the services to be provided under this Agreement without the prior written consent of CITY. DESIGN CONSULTANT, and any subcontractors or individuals hired by DESIGN CONSULTANT, agree not to disclose to any other person or entity (unless required by law) any confidential information concerning CITY matters during and after this Agreement.

17. NOTICES: All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to CITY:

City of Maricopa
Attn: City Manager
39700 W. Civic Center Plaza
Maricopa, AZ 85138

If to DESIGN CONSULTANT:

RailPros Inc.

Attn: Buzz Berger, P.E.

1 Ada Parkway, Suite 200

Irvine, CA 92618

18. OWNERSHIP OF DOCUMENTS: All documents, including, but not limited to, preliminary designs, tracings, drawings, original mylars, estimates, field notes, investigations, design analysis, communications (e-mail, Minutes, Telephone, memos, etc.) and studies which are prepared in the performance of this Agreement are to be, and shall remain the property of CITY. DESIGN CONSULTANT shall furnish CITY, upon its request, originals or reproducible copies of technical specifications and copies of all other documents listed above. DESIGN CONSULTANT shall endorse, by his professional seal, all plans and engineering data furnished by it.

19. RE-USE OF DOCUMENTS: The parties agree the documents, drawings, specifications and designs, although the property of CITY, are prepared for Phase I of this specific Project and are not intended nor represented by DESIGN CONSULTANT to be suitable for re-use for any other project. Any reuse without written verification or adaptation by DESIGN CONSULTANT for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to DESIGN CONSULTANT.

20. CONFLICT OF INTEREST: The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this agreement.

21. RIGHT OF CITY TO CONTRACT WITH OTHERS: Nothing in this Agreement shall imply CITY is obligated to obtain the services described herein with only this particular DESIGN CONSULTANT.

22. UNCONTROLLABLE FORCES: CITY and DESIGN CONSULTANT shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

23. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

24. WAIVER OF TERMS AND CONDITIONS: The failure of CITY of DESIGN CONSULTANT to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

25. INDEPENDENT CONTRACTOR: DESIGN CONSULTANT shall at all times during performance of the services retain their status as independent contractor. DESIGN CONSULTANT's employees shall under no circumstances be considered or held to be employees or agents of CITY, and CITY shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or DESIGN CONSULTANT.

26. LICENSE: DESIGN CONSULTANT represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Consultant understands that the activity described herein may constitute "doing business in the "City of Maricopa" and DESIGN CONSULTANT agrees to obtain a business tax license pursuant to Article 8-1 of the City of Maricopa's City Code, if necessary, and keep such license current during the term of this Agreement. Any activity by subconsultants within the corporate city limits, will invoke the same business tax regulations on any subconsultants, and DESIGN CONSULTANT ensures its subconsultants will obtain any required business tax license.

27. NONASSIGNMENT: This Agreement has been entered into based upon the personal reputation, expertise and qualifications of DESIGN CONSULTANT. Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part without the prior written consent of the other party. DESIGN CONSULTANT shall not assign any monies due or to become due to it hereunder without the prior written consent of CITY.

28. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between CITY and DESIGN CONSULTANT and supersede all prior negotiations, representations or agreements, express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

29. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

30. AMERICANS WITH DISABILITIES ACT: This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. (Non-Discrimination: DESIGN CONSULTANT shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans with Disabilities Act. DESIGN CONSULTANT shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

31. FEDERAL REGULATIONS: Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. DESIGN CONSULTANT acknowledges, by signature to this agreement, that: DESIGN CONSULTANT is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions; DESIGN CONSULTANT'S principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Arizona or any of its political subdivisions.

32. UNDOCUMENTED WORKERS: DESIGN CONSULTANT understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986. Under the provisions of A.R.S. §41-4401, DESIGN CONSULTANT hereby warrants to the City that the DESIGN CONSULTANT and each of its subcontractors (“Subcontractor”) will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter “Immigration Warranty”). A breach of the Immigration Warranty shall constitute a material breach of this Agreement and shall subject the DESIGN CONSULTANT to penalties up to and including termination of this Agreement at the sole discretion of the CITY. CITY retains the legal right to inspect the papers of any DESIGN CONSULTANT or Subcontractor employee who works on this Agreement to ensure that the DESIGN CONSULTANT or Subcontractor is complying with the Immigration Warranty. DESIGN CONSULTANT agrees to assist the CITY in regard to any such inspections. CITY may, at its sole discretion, conduct random verification of the employment records of the DESIGN CONSULTANT and any of subcontractors to ensure compliance with Immigration Warranty. DESIGN CONSULTANT agrees to assist CITY in regard to any random verification(s) performed.

Neither DESIGN CONSULTANT nor any Subcontractor shall be deemed to have materially breached the Immigration Warranty if they establish that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this paragraph must be included in any contract DESIGN CONSULTANT enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor.

33. NO KICK-BACK CERTIFICATION: DESIGN 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 City Council or any employee of CITY has an interest, financially or otherwise, in the DESIGN CONSULTANT'S firm. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid DESIGN CONSULTANT hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this 1st day of April, 2014.

CONSULTANT
RailPros, Inc.
a California Corporation

By: _____
Title: _____

CITY OF MARICOPA
an Arizona municipal corporation

Christian Price
Mayor

ATTEST:

Vanessa Bueras
City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons
City Attorney

EXHIBIT A
REQUEST FOR STATEMENT OF QUALIFICATIONS

EXHIBIT B
FIRST AMENDMENT TO THE
REQUEST FOR STATEMENT OF QUALIFICATIONS

EXHIBIT C
CONTRACTOR'S RESPONSE

EXHIBIT D
FEE SCHEDULE

EXHIBIT E
SCOPE OF WORK