

## Staff Summary Report



Council Meeting Date: 10/16/08

Agenda Item Number: \_\_\_\_\_

**SUBJECT:** Request award of a professional services design contract with Burns & McDonnell Engineering for water line upgrades and replacement along 22<sup>nd</sup> and 24<sup>th</sup> Streets between Hardy and Roosevelt Drives.

**DOCUMENT NAME:** 20081016PWDR04 WATERMAIN UPGRADES (0810-04)  
**PROJECT NO. 3209341**

**SUPPORTING DOCS:** Yes.

**COMMENTS:** Total cost for this contract shall not exceed \$87,482.

**PREPARED BY:** Donna Rygiel, Engineering Contract Administrator (x8520)

**REVIEWED BY:** Andy Goh, Deputy PW Manager/City Engineer (x8896)

**APPROVED BY:** Glenn Kephart, Public Works Manager (x8205)

**LEGAL REVIEW BY:** Judi Morgan, Assistant City Attorney (x8227)

**FISCAL NOTE:** Sufficient funds are available in the Water Utilities Department Capital Improvement Fund No. 32.

**RECOMMENDATION:** Award professional services contract.

**ADDITIONAL INFO:** The scope of work for this contract includes preparation of plans and specifications, and other design and post design services for the construction of approximately 2,500 feet of 8-inch water line along 22<sup>nd</sup> and 24<sup>th</sup> Streets between Hardy and Roosevelt Drives. The existing 6-inch, cast iron water line will be replaced with an 8-inch water line to increase water supply/fire flow to this industrial area. New fire hydrants, gate valves, on-site fire suppression connections and service meters will be included in this work.

The contract amount was negotiated by staff and is considered reasonable for the scope of services. Burns & McDonnell Engineering was selected through a qualifications based process consistent with A.R.S. § 34-601-611.



CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

**CONTRACT FOR PROFESSIONAL SERVICES**

This Contract is made and entered into on the 16th day of October, 2008, by and between the City of Tempe, a municipal corporation ("City"), and Burns & McDonnell Engineering Company, Inc., an Arizona corporation ("Consultant").

The City engages the Consultant to perform professional services for a project known and described as Water Line Upgrade/Replacement – 22<sup>nd</sup> and 24<sup>th</sup> Streets between Hardy Drive and Roosevelt Street, Project No. 3209341 ("Project").

**1. SERVICES OF THE CONSULTANT**

Consultant shall perform the following professional services to City in conformance with applicable professional standards and in accordance with the degree of care and skill that a registered professional in Arizona would exercise under similar conditions:

- 1.1. Consultant shall prepare plans and specifications, and provide other design and post design services for the construction of approximately 2,500 feet of 8-inch water line in 22<sup>nd</sup> and 24<sup>th</sup> Streets between Hardy Drive and Roosevelt Street, as described in Exhibit "A" attached.
- 1.2. Consultant has assigned Roger Greaves as the Project Manager for this Contract. Prior written approval by the City is required in the event the Consultant needs to change the Project Manager. Consultant shall submit the qualifications of the proposed substituted personnel to the City for approval prior to any substitution or change.
- 1.3. Consultant shall prepare and submit a detailed opinion of probable cost of the project.
- 1.4. Consultant shall follow and comply with the Public Improvement Project Guide as directed by the City.
- 1.5. Consultant shall prepare plans and technical specifications per the requirements of the applicable chapters of the City's Engineering Design Criteria Manual, latest revision, and the Maricopa Association of Governments (MAG) Uniform Standard Details for Public Works Construction as amended by the City. All plans shall be prepared on CAD as required by the City. Final plans shall be submitted on 3 ml double matte black line mylar and shall be 24" x 36" in size.

- 1.6. Consultant shall obtain all necessary permits and licenses required for the performance of its work. Failure of Consultant to obtain said permits prior to the commencement of its work shall constitute a breach of this Contract.
- 1.7. Consultant shall perform the work in a manner and at times which do not impede or delay the City's operations and/or functions.
- 1.8. Consultant shall be solely responsible for any repair, replacement, remediation and/or clean-up of any damage done by Consultant including any impairment of access to City or other lawful invitees, by such work performed on this Project.

## **2. TERM OF CONTRACT**

Consultant shall complete all services within 365 calendar days of the date appearing on the "Notice to Proceed" issued by the City. In the event delays are experienced beyond the control of the Consultant, the schedule may be revised as determined by the City in its sole discretion.

## **3. CONSULTANT'S COMPENSATION**

- 3.1. The method of payment for this Contract is payment by installments. Total compensation for the services performed shall not exceed \$87,482.00, unless otherwise authorized by the City. This fee includes the sum of \$56,682.00 for engineering design services; an amount not to exceed \$17,018.00 for design services during construction based on hourly rates established in the attached Exhibit "A" incorporated hereby by this reference; an allowance of \$11,532.00 for potholing; and an allowance of \$2,250.00 for reimbursable expenses, which in no event will ever be more than actual cost.
- 3.2. City shall pay the Consultant in installments based upon monthly progress reports and detailed invoices submitted by the Consultant subject to the following limitations:
  - 3.2.1. Prior to approval of the preliminary design (30% plans), payments to the Consultants shall not exceed 30% of the total Contract amount.
  - 3.2.2. Prior to approval of the final design documents, payments to the Consultants shall not exceed 90% of the total Contract amount. The final approval and payment will be made within a reasonable period of time regardless of the project construction schedule.
  - 3.2.3. Payment for reimbursable expenses shall be made during all phases based on actual expenses.
- 3.3. City at its discretion may, by written notification, waive the above limitations.

- 3.4. City shall make payments to the Consultant within thirty (30) days after receipt of the progress report and detailed invoice.

#### **4. CITY'S RESPONSIBILITIES**

- 4.1. City shall designate a project manager during the term of this Contract. The project manager has the authority to administer this Contract and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by the City on any aspect of the work shall be directed to the project manager.
- 4.2. City shall review requests for information related to the Project by the Consultant and will endeavor to provide a prompt response to questions and rendering of decisions pertaining thereto, to minimize delay in the progress of the Consultant's work. City will also endeavor to keep the Consultant advised concerning the progress of the City's review of the work. Consultant agrees that City's inspection, review, acceptance or approval of Consultant's work shall not relieve Consultant of its responsibility for errors or omissions of Consultant or its subconsultant(s).
- 4.3. Unless included in the Consultant's services as identified in Section 1, the City may furnish with or without charge, upon the Consultant's reasonable request, the following information to the extent it is within the City's possession for control:
  - 4.3.1. One copy of its maps, records, laboratory tests, survey ties, and benchmarks, or other data pertinent to the services. However, the Consultant shall be solely responsible for searching the records and requesting specific drawings or information and independently verifying said information.
  - 4.3.2. Available City data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.
  - 4.3.3. When required, title searches, legal descriptions, detailed ALTA Surveys, and environmental assessments.

#### **5. TERMINATION AND DEFAULT**

- 5.1. City shall be entitled to terminate this Contract at any time, in its discretion. In addition, the City may terminate this Contract for default, non-performance, breach or convenience, or abandon any portion of the Project for which services have not been fully or properly performed by the Consultant. Termination shall be commenced by delivery of written notice delivered to Consultant, personally or by certified mail at 4742 N. 24<sup>th</sup> Street, Suite 355, Phoenix, AZ 85016. Termination shall be effective upon fourteen (14) days of delivery of notice to

Consultant. In addition, this Contract may be terminated pursuant to A.R.S. § 38-511.

- 5.2. Upon the occurrence of Consultant's default, non-performance or breach of the Contract, City may recover any and all damages permitted by law or in equity against Consultant, in addition to termination of the Contract, including but not limited to compensatory damages, together with all costs and expenses as set forth in Section 12 herein.
- 5.3. Immediately after receiving such notice, the Consultant shall discontinue advancing the services under this Contract and proceed to close said operations under this Contract. Consultant shall appraise the services it has completed and submit a detailed appraisal to the City for evaluation. City shall have the right to inspect the Consultant's work to analyze and appraise the services completed. Payment to Consultant shall be determined by City upon approval or disapproval of the services completed as of the date of delivery of notice of termination.
- 5.4. Within ten (10) days of receipt of notice of termination as set forth herein, the Consultant shall deliver to the City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the Consultant under the Contract, entirely or partially completed, together with all unused materials supplied by the City.
- 5.5. In the event of such termination or abandonment, the Consultant shall be paid only for those services performed in a good and workmanlike manner, in accordance with all plans, specifications and governmental requirements completed prior to receipt of said notice of termination, subject to approval by City. To the extent permitted by this Contract, such payment may include reimbursable expenses then incurred by Consultant, in City's sole discretion.
- 5.6. If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by the Consultant as approved by the City based upon the scope of work set forth in Exhibit "A", as determined by the City. However, in no event shall the fee exceed that set forth in Section 3 of this Contract.
- 5.7. City shall make a determination as to approval or denial of any requested final payment within sixty (60) days after the Consultant has delivered the last of the completed items and the final appraisal has been submitted to the City.

## 6. INSURANCE

Without limiting any obligations or liabilities, the Consultant, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and with forms reasonably

satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

6.1. General Clauses

- 6.1.1. Additional Insured. The insurance coverage, except workers' compensation and professional liability, required by this Contract, shall name the City, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded the Consultant shall be primary insurance, and that any self insured retention and/or insurance coverage carried by the City or its employees shall be excess coverage, and not contributory coverage to that provided by the Consultant.
- 6.1.2. Coverage Term. All insurance required herein shall be maintained in full force and effect until services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so shall constitute a material breach of this Contract.
- 6.1.3. Primary Coverage. Consultant's insurance shall be primary insurance as respects the City, and any insurance or self insurance maintained by the City shall be in excess of the Consultant's insurance and shall not contribute to it.
- 6.1.4. Claim Reporting. Consultant shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect the City.
- 6.1.5. Waiver. The policies for workers' compensation and general liability shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the Consultant.
- 6.1.6. Deductible/Retention. The policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. Consultant shall be solely responsible for deductible or self-insured retentions and the City may require the Consultant to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- 6.1.7. Policies and Endorsements. City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.

6.1.8. Certificates of Insurance. Prior to commencing services under this Contract, Consultant shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by Consultant's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract by referencing the project number and/or project name and shall provide for not less than thirty (30) days advance written notice by certified mail to City of cancellation or termination of insurance.

6.1.9. Subconsultants/Contractors. Consultant shall include all subconsultants and subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant and subcontractor.

6.2. Workers' Compensation. Consultant shall carry workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of the services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case services under this Contract are subcontracted, the Consultant shall require all subconsultant(s) to provide workers' compensation and employer's liability to at least the same extent as provided by the Consultant.

6.3. Automobile Liability. Consultant shall carry commercial/business automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Consultant services. Coverage will be at least as broad as coverage Code 1 "any auto" (Insurance Service Office policy form CA 0001 1/87 or any replacements thereof). Such coverage shall include coverage for loading and unloading hazards.

6.4. Commercial General Liability. Consultant shall carry commercial general liability insurance with a combined single limit of not less than \$1,000,000. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office policy form CG 0002 1-11-88 or any replacement thereof.

In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a “severability of interests” provision (also known as “cross liability” and “separation of insured”).

- 6.5. Professional Liability. Consultant will maintain professional liability insurance covering errors and omissions arising out of the services performed by the Consultant or any person employed by it, with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims, or 10% of the construction budget, whichever is larger. In the event the insurance policy is written on a “claims made” basis, coverage shall extend for two (2) years past completion and acceptance of services as evidenced by annual certificates of insurance.
- 6.6. Property Coverage – Valuable Papers. Consultant shall carry property coverage on all-risk, replacement cost, agreed amount form with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the Consultant used in the completion of this Contract.

## **7. HEALTH INSURANCE REQUIREMENTS**

- 7.1. Consultant must certify that it has or will offer health insurance to all eligible employees working on services set forth in this Contract prior to the performance of any work or services. An affidavit certifying such offering must be signed in a form approved by the City. All required health insurance must be maintained during the entire time of the Contract with the City. Health insurance pursuant to this Section 7 is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.
- 7.2. The health insurance requirements herein shall apply to all of Consultant’s eligible employees directly involved with the services set forth in this Contract, including support and administrative personnel.
- 7.3. Any and all complaints concerning violations of the health insurance requirements shall be filed, in writing, with the City’s Public Works Department, within thirty (30) days from discovery of a potential violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.
- 7.4. Penalties for failing to comply with this Section 7 include, but are not limited to the following: Consultant may be barred from bidding on, or entering into any Public Works contract with the City for a period of three (3) years from the execution of the contract.

- 7.5. All Consultants subject to the health insurance requirements shall post in English, notice of the health insurance requirements at their office and at the job site.

## **8. WORK FOR HIRE AND OWNERSHIP OF DELIVERABLES**

- 8.1. Consultant shall ensure that all the results and proceeds of Consultant's and any and all work on the Project and any projects, including that of all agents, employees, officers, and contractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason, such results and proceeds are not deemed work for hire, Consultant shall be deemed hereby to have assigned to City all of its right, title and interest in such results and proceeds and content to City, without limitation.
- 8.2. All work products (electronically or manually generated), including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Contract, are the property of the City and are to be delivered to the City on the particular type of storage media on which they are stored (e.g. CD, thumb drive, etc.) before the final payment is made to the Consultant. City shall retain ownership of these original works. If approved in writing by the City, the Consultant may retain the originals and supply the City with reproducible copies of the work.

## **9. CONFLICT OF INTEREST**

- 9.1. Consultant agrees to promptly disclose any and all financial and/or economic interest in the property, or any property affected by the work, or the Project itself other than as set forth herein, existing prior to the execution of this Contract. Further, the Consultant agrees to promptly disclose any financial or economic interest in the Project property or any property affected by the work, if the Consultant gains such interest during the course of this Contract.
- 9.2. If Consultant gains any financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract at the sole discretion of the City.
- 9.3. Consultant shall not engage the services on this Contract of any present or former City employee who was involved as a decision maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this Contract.
- 9.4. Consultant agrees that it shall not perform services on this Project for any other contractor, subcontractor, or any supplier, other than the City. In addition, Consultant shall not negotiate, contract, or make any agreement with a contractor,

subcontractor, or any supplier with regard to any of the work under this Contract, or any services, equipment or facilities to be used on this Project other than with the City.

#### **10. COVENANT AGAINST CONTINGENT FEES**

Consultant affirms that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this clause, the City may terminate this Contract without liability, or in its discretion may deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

#### **11. INDEMNIFICATION**

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless City, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of Consultant, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services Consultant may be deemed legally liable in the performance of this Contract, or any breach of the Contract. Consultant's duty herein shall arise in connection with any and all claims for damage, loss, liability and/or expenses attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of any person or property including loss of use resulting therefrom. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

#### **12. DISPUTE RESOLUTION**

In the event of a dispute concerning or in any way connected to the Contract or subject Project, the parties agree that the unsuccessful party shall pay to the prevailing party a reasonable sum for attorneys' fees, including taxable and non-taxable costs, fees, costs and disbursements of experts, professionals, paralegals, whether at trial, appeal and/or in bankruptcy court, all of which will be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. In addition, should the City retain and/or utilize legal counsel as a result of a breach by Consultant of any term, covenant or provision of this Contract, in addition to paying any recovery owed to City and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, Consultant shall reimburse the City for reasonable attorneys' fees, taxable and non-taxable costs and disbursements, incurred by the City in enforcing the Consultant's obligations, whether or not a legal action is commenced, including but not limited to the cost of preparing and presenting default notices, demand letters and similar non-judicial enforcement activities.

### 13. ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this Contract shall not be performed by the Consultant without prior written authorization from the City, at the City's sole discretion. Additional services, when authorized by an executed contract or an amendment to this Contract shall be compensated for by a fee mutually agreed upon between the City and the Consultant.

### 14. PROHIBITION ON ASSIGNMENT

This Contract and all duties and obligations of Consultant set forth in this Contract shall not be assignable except by prior written consent of the City, and such prohibition shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the Consultant.

### 15. MISCELLANEOUS PROVISIONS

- 15.1. Equal Opportunity. Consultant covenants for itself, its employees, agents, assigns and all persons claiming under or through it, that it shall comply with all applicable federal, state, and local laws and ordinances at the time of execution of this Contract and shall not discriminate against or segregate any person or group of persons any person on account of race, color, religion, gender, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition in the performance of this Contract and shall comply with the terms and intent of all applicable federal, state and local governance concerning nondiscrimination.
- 15.2. Legal Compliance. Consultant agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Consultant acknowledges that a breach of this warranty is a material breach of this Contract and Consultant is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all Consultants, subconsultants and sub-subconsultants performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Consultant. Consultant hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
- 15.3. Specially Designated Nationals and Blocked Persons List. Consultant represents and warrants to City that neither Consultant nor any affiliate or representative of Consultant (i) is listed on the Specially Designated Nationals and Blocked

Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 (“Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

Consultant further agrees to include the provisions set forth in Sections 15.2 and 15.3 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

- 15.4. Effective Date. This Contract shall be in full force and effect only when it has been approved by the City Council of the City of Tempe, Arizona and when executed by the duly authorized City officials and the duly authorized agent of the Consultant.
- 15.5. Governing Law. This Contract shall be governed and interpreted by the laws of the State of Arizona.
- 15.6. Exhibits. All exhibits attached to this Contract are made a part of and are incorporated into, this Contract. If any inconsistencies exist between this Contract and any exhibit hereto, the terms of this Contract shall govern.
- 15.7. Force Majeure. Any prevention, delay or stoppage of this Project for a cause beyond the reasonable control of Consultant due to acts of God, acts of war or terrorism, fire or other casualty, shall, notwithstanding anything to the contrary contained herein, excuse the performance of Consultant, for a period equal to such prevention, delay or stoppage. For purposes of this Section 15.7, a cause shall not be deemed beyond a party’s control if it is within the control of such party’s agents, employees, assigns, contractors or subcontractors.
- 15.8. Entire Agreement. This Contract contains all of the agreements of the parties with respect to the Project and related matters, and no prior agreement, negotiations, postings, offerings, or understanding pertaining to any such matter shall be effective for any purpose unless expressly contained herein.
- 15.9. Consultant’s Good Standing. Consultant hereby warrants and represents that it is an Arizona corporation, licensed to do business in the state of Arizona and currently in good standing, and that it is not now in violation of any agreement, instrument, contract, law, rule or regulation by which Consultant is bound.
- 15.10. Independent Contractor. Nothing contained in this Contract shall be deemed or construed by the parties hereto or otherwise, to create the relationship of principal and agent, partnership, joint venturer, employer and employee, or any association

between City and Consultant. Consultant is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Consultant hereunder or for any and all services or materials provided by or rendered to Consultant hereunder in connection with the work set forth in this Contract.

- 15.11. Severability. If any provision of this Contract shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and every other term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 15.12. Time is of the Essence. Time is of the essence in this Contract and each and every provision herein, except as may expressly be provided in writing by the City.
- 15.13. No Waiver. No breach or default hereunder shall be deemed to have been waived the City, except by a writing to that effect signed on behalf of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after written notice thereof and demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City.
- 15.14. Survival. Any and all representations, obligations, indemnities, warranties, covenants, conditions and agreements contained in this Contract which are expressed as surviving the expiration or earlier termination of this Contract, or by their nature, are to be performed, observed or survive, in whole or in part, after the termination or expiration of this Contract term, shall survive the termination or expiration of this Contract.
- 15.15. Retention of Records. City, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Contract. Consultant will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or five (5) years following termination of this Contract.
- 15.16. Antitrust Violations. City and Consultant recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the City. Therefore, the Consultant assigns to the City any and all claims for such overcharges. Consultant in all subcontracts shall require all subcontractors to likewise assign all claims for overcharges to the City.

15.17. Headings. The heading use in this Contract is for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

15.18. No Construction Against Drafting Party. Each party acknowledges that it has had an opportunity to review the Contract with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.

15.19. Notices to Parties:

All notices pursuant to this Contract shall be made in writing and delivered or mailed by certified mail to the parties at the following addresses:

CITY:

Andy Goh, City Engineer  
City of Tempe  
Public Works/Engineering Dept.  
P.O. Box 5002  
Tempe, AZ 85280

CONSULTANT:

Roger Greaves  
Burns & McDonnell  
Engineering Company, Inc.  
4742 N. 24<sup>th</sup> Street, Suite 355  
Phoenix, AZ 85016

15.20. Liquidated Damages. City reserves the right to assess liquidated damages in the sum set forth below per calendar day for failure to comply with the conditions of the Contract, including but not limited to failure of the Consultant to complete the work and/or services by the time specified herein. This sum may be deducted from the Consultant's payment or anticipated payment for failure to deliver and/or perform as specified. No premium will be awarded to the Consultant for delivery and/or performance by the specified time. Permitting the Consultant to complete work and/or services pursuant to the Contract, or by extension thereof, shall in no way be deemed to waive or diminish the City's rights available by law or in equity, under the Contract.

15.21. Non-Appropriation of Funds. If funds appropriated by the City Council or otherwise allocated to perform the work become unavailable for payment by the City under this Contract, the City may delay the work for a period up to six (6) months, after which date if no funds are legally available, City may terminate the Contract at the City's sole option. In case of any such delay by City, Consultant may suspend performance of work or services as applicable. However, nothing herein shall be construed to allow termination of the Contract by Consultant for such delay.

[SIGNATURE PAGE TO FOLLOW]

The Consultant warrants that the person who is signing this Contract on behalf of the Consultant is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF TEMPE, ARIZONA

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Public Works Manager

ATTEST:

Recommended By:

\_\_\_\_\_  
City Clerk

 \_\_\_\_\_  
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

CONSULTANT  
[Burns & McDonnell Engineering Company,  
Inc.]

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal I.D. No. /Social Security No.

Certified to be a true and exact copy.

\_\_\_\_\_  
Karen M. Fillmore  
Records Specialist

# EXHIBIT A



## City of Tempe – 24<sup>th</sup> and 22<sup>nd</sup> Streets Waterline Replacement

### SCOPE OF SERVICES

#### Task 1 PROJECT DESCRIPTION

The City of Tempe desires to replace the existing potable waterlines on 22<sup>nd</sup> and 24<sup>th</sup> streets between Hardy Dive and Roosevelt Street. At the time of replacement, the size of the lines will be increased from 6 inch to 8 inch. All existing services, both potable and fire protection will be connected to the new lines. The City will take the opportunity to have additional isolation valves and hydrants installed to create a better overall system.

#### Task 2 PROJECT MANAGEMENT

##### A. Task Description

1. This task consists of Burns & McDonnell providing project management of the various aspects of the project. Specifically the project manager (PM) will oversee the project budget and schedule, ensuring that project milestones are met. Issues concerning the budget and schedule will be addressed with the City's Project Manager. Additionally, the PM will also prepare invoices.
2. Project Meetings will be organized and coordinated by the PM. The PM will prepare agendas and any handout materials needed for the meeting. The PM will prepare and distribute meeting minutes.
  - a. Design Progress Meetings – the purpose of the design progress meetings will be to review the progress of the design, discuss design issues and features. These meetings will take place after submittal of the project milestone submittals and the City has had an opportunity to review the submittal.
  - b. Utility Coordination Meetings – a meeting or meetings will be held to coordinate the design with the existing utilizes that may be affected by the construction of this project. These meetings will be held on an as needed basis. We will work to answer the utility company questions through correspondence rather than meeting face to face.
  - c. Permitting Agency Meetings – meetings will be held with Maricopa County Environmental Services Department to discuss the project. These meetings will be held on an as needed basis to ensure the project design is completed on schedule. We will work to answer the County's questions through correspondence rather than meeting face to face

##### B. Services

1. Project Management
  - a. Oversee project budget and schedule.
  - b. Ensure timeliness of deliverables.

4742 N. 24th, Suite 355  
Phoenix, Arizona 8501  
Tel: 602-977-2623  
Fax: 602-977-2660  
<http://www.burnsmcd.com>

PM 1/18



- c. Communicate with City Project Manager and client departments.
- d. Prepare invoices.
- 2. Project Meetings
  - a. Organize, coordinate, and conduct project meetings.
  - b. Provide meeting agendas, meetings handouts, and minutes.
  - c. Design progress meetings will be held at 30%, 90% and 95% milestones.
  - d. Utility coordination meetings will be held as needed. Communication with the utility companies will be by correspondence if possible.
  - e. Permitting agency meetings will be held as needed. Communication with the permitting agency will be by correspondence if possible.

**C. Deliverables**

- 1. The following Deliverables will be provided by Burns & McDonnell:
  - a. Monthly invoice.
  - b. Meeting agendas, handouts, and minutes.

**D. Owner Supplied Items**

- 1. The City of Tempe shall provide the following items to Burns & McDonnell in connection with the performance of Task 1 and this Scope of Work:
  - a. Contact information for all persons that may need to be included in design progress meetings or other meetings as required.

**Task 3 DATA COLLECTION**

**A. Task Description**

- 1. This task consists of Burns & McDonnell collecting the pertinent data for the design of the project. The data that will need to be collected includes City as-builts of the utilities in the project area, a design level survey, and potentially utility potholing information.

**B. Services**

- 1. Collecting City As-builts. Existing as-builts for the project area will be requested from the City.
- 2. Preliminary field investigation. The project design team will perform a preliminary field investigation of the project area to identify possible design issues.
- 3. Utility Locating. The existing utilities will be located through Blue Stake.
- 4. Survey. A design level survey will be conducted. The survey will include topography, location of monument and centerlines, property (lot lines), right-of-way, valves, water meters, backflow preventers, and other pertinent items. The survey will extend 5 feet beyond the R.O.W. in both directions. The design survey will also include the sub-surface utilities.
- 5. Potholing the existing utilities will be done on an as-needed basis. Burns & McDonnell will work with the City to determine which, if any, utilities need be identified with

*pub*  
*2/8*



potholing. The scope of services cost proposal estimates eight (8) potholes to be excavated via vacuum extraction.

**C. Deliverables**

1. The following Deliverables will be provided by Burns & McDonnell:
  - a. Submit electronically the design survey.

**D. Owner Supplied Items**

1. The City of Tempe shall provide available as-built drawings of the project area.

**Task 4 DETAILED DESIGN**

**A. Task Description**

1. The purpose of the detailed design task is to prepare contract documents, including drawings and specifications, required per contract for use in the construction of the project. The detailed design will entail utilizing the information gathered during data collection task to create the contract documents. Through the design process, Burns & McDonnell will elicit review comments from the involved parties as well as carry out our internal quality control program. As part of the design process, an Engineering Design Report will be produced which will be submitted to the County along with the contract documents to receive approval.
2. The following design assumptions have been made:
  - a. The design will adhere to MAG standard specifications and City of Tempe revisions to the MAG specifications. Project specifications will be by reference to the MAG and Tempe standards and will be included on the project contract drawings.
  - b. Final plans will be submitted on 24" x 36" mylar sheets. The drawings will be scalable to 11 x 17 size.
  - c. The plans and specifications will be prepared as a single contract award.
  - d. The City will indicate the locations of new valves and hydrants.
  - e. Piping will be Class 52 D.I.P.
  - f. Bury depth of new line will be a nominal 3.5 feet.
  - g. As-built information will be provided by City.
  - h. Drawings will be produced with AutoCAD.

**B. Services**

1. Provide 30% contract documents for City review. 30% documents will generally consist of plan view drawings with the design survey information as background. Existing utilities, water meters, topography, hardscape items, lot lines, and driveways will be shown. The proposed alignment of the new lines will be shown. A preliminary cost estimate will be provided as well. At the 30% level a field walk will be conducted with representatives of the City and the contractor.
2. Provide 90% contract documents for City review. 90% documents will generally include

POF 3/8



all information included with the 30% documents plus valves, hydrants, connections, notes and detail callouts. Additionally, any review comments received from the City for the 30% submittal will be addressed. A cost estimate will be provided as well. A measurement and payment tabulation will provided.

3. Provide 95% contract documents for City review. 95% documents will generally include all information included with the 90% documents plus addressing any review comments received from the City.
4. Provide 100% contract documents. The 100% documents are intended to be final and complete. All review comments received from all involved entities will be addressed. A measurement and payment tabulation will provided.
5. Burns & McDonnell will carry out our quality control program for all stages of the design process. Our quality control program consists of 6 distinct steps. The first two steps take place prior to 30% design and are intended to ensure that the scope of work meets the needs of the client. The third step is the review process that the design engineer will perform on their own drawings and specifications. The fourth step is a review completed prior to the 90% submittal. This review is done by a qualified engineer that has not been involved with the project to ensure an un-biased review. The last two steps take place between the 90 and 100% reviews. They are intended to be constructability reviews.
6. Burns & McDonnell will produce an Engineering Design Report for submittal to the County.

#### **C. Deliverables**

1. The following deliverables will be provided by Burns & McDonnell:
  - a. Submit one set of 30% contract documents on 24" x 36" paper and one set on 11" x 17" paper. Provide one disc with 30% contract documents.
  - b. Submit four (4) sets of 90% contract drawings on 11 x 17 sheets and one disc.
  - c. Submit four (4) sets of 95% contract drawings on 11 x 17 sheets and one disc.
  - d. Submit one (1) set of reproducible 100% contract documents. Drawings shall be on 24" x 36" mylar, scalable to 11 x 17. One disc containing 100% contract documents will be provided.
  - e. Submit 4 copies of Engineering Design Report.

#### **D. Owner Supplied Items**

1. The City of Tempe shall provide all review comments from all involved parties.
2. The City of Tempe shall provide existing hydraulic modeling output for inclusion in the Engineering Design Report.

### **Task 5 PERMITTING & APPROVAL**

#### **A. Task Description**

1. Burns & McDonnell will provide services required to obtain approvals from Maricopa County Environmental Services Department for the design of the project. Permits normally considered to be obtained by the Contractor shall be obtained by the



contractor. For this project, it is anticipated that an "Approval to Construct" will be needed from Maricopa County. The City of Tempe will also provide an approval. Additionally, conflict reviews will be required from the affected utilities in the project area.

**B. Services**

1. Burns & McDonnell will meet with County reviewers and with representatives of the affected utility companies as needed to discuss project.
2. Burns & McDonnell will submit 90% contract documents and the Engineering Design Report to the County to obtain the "Approval to Construct". Comments received from the County will be incorporated into the 100% submittal.
3. Burns & McDonnell will also submit 90% documents to the Utility companies for their approval and issuance of "No Conflicts" letters.
4. Burns & McDonnell will pay the review fees to Maricopa County.

**C. Deliverables**

1. Maricopa County "Approval to Construct".
2. Approvals from the affected utilities.

**Task 6 BID PHASE SERVICES**

**A. Task Description**

1. This project will most likely utilize a Job-Order-Contract or Construction Manager at Risk delivery mechanism. In either case, Burns & McDonnell will assist the City by answering the contractors questions and providing clarification where needed prior to the receipt of the guaranteed maximum price. Burns & McDonnell will also provide assistance evaluating the GMP.

**B. Services**

1. Burns & McDonnell will provide written responses to contractor's questions received prior to the GMP.
2. Burns & McDonnell will evaluate the GMP and provide written recommendations to the City concerning the pricing.

**C. Deliverables**

1. Provide written responses to Contractor questions prior to GMP.
2. Provide written evaluation of the GMP.

**Task 7 CONSTRUCTION PHASE SERVICES**

**A. Task Description**

1. During construction, Burns & McDonnell will assist the City by providing review for submittals; addressing RFI's, making site visits, and attending construction progress meetings as requested.

**B. Services**

*PJB*  
*5/18*



1. Burns & McDonnell will provide written responses to contractor submittals and RFI's.
2. Burns & McDonnell will review construction progress with site visits and will attend construction progress meetings as requested. The scope of services cost proposal has assumed a total of eight (8) site visits and eight (8) construction progress meetings.

**C. Deliverables**

1. Written reviews of submittals. Written responses to RFI's.
2. Written notes of observations taken during site visits.

**Task 8 AS-BUILT PREPARATION**

**A. Task Description**

1. Once the construction is completed, Burns & McDonnell will prepare the as-built drawings for submittal to the City.

**B. Services**

1. Burns & McDonnell will obtain the Contractors as-builts and will prepare final as-built documents based on the contractor's as-builts.
2. Burns & McDonnell will prepare the Engineers Certificate of Completion and will obtain the approval of construction from Maricopa County.

**C. Deliverables**

1. The final as-built documents will be plotted on reproducible mylar. The sheet size will be 24" x 36". The drawing will be scalable to 11 x 17.
2. Engineers Certificate of Completion.
3. Approval of Construction from Maricopa County.

**Scope of Services Assumptions**

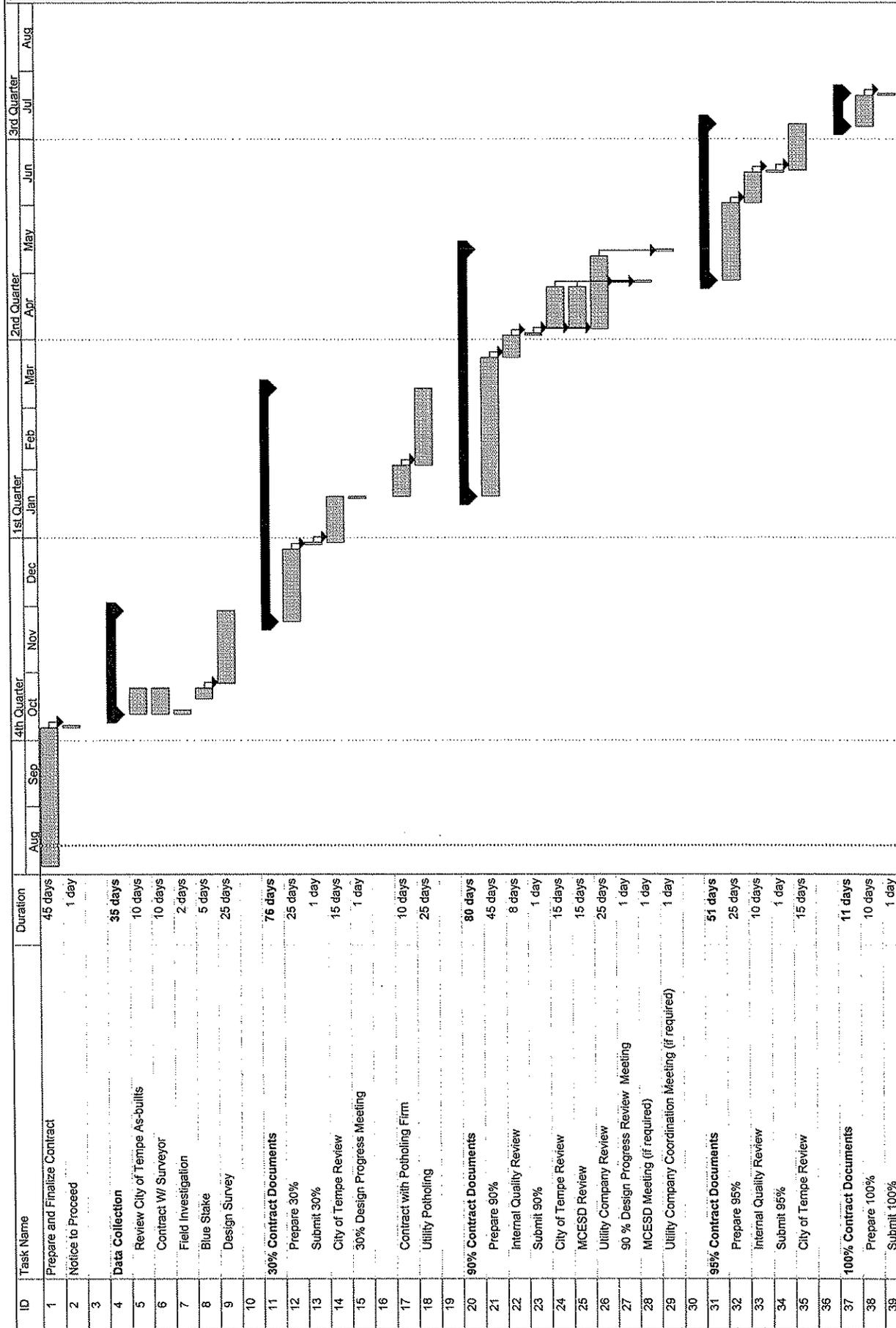
1. Burns & McDonnell will pay the review fees to Maricopa County. All other plan review fees will be paid for by the City of Tempe. The City of Tempe's plan review fees will be waived.
2. The City of Tempe will pay for the reproduction and distribution of contract documents to prospective bidders.

*PMB  
6/8*



Personnel	Hours						Total
	PM	PE	CAD 1	CAD 2	Clerical	QA/QC	
Hourly Rates	\$168	\$131	\$80	\$107	\$131	\$182	
<b>Project Management</b>	20				6		\$4,146
							<u>\$4,146</u>
<b>Data Collection</b>							
As-built Review	2	16					\$2,432
Field investigation	4	8					\$1,720
							<u>\$4,152</u>
<b>Detailed Design</b>							
30% Documents	12	40	60	24			\$14,624
90% Documents	6	28	36	20			\$9,696
95% Documents	1	4	6	6			\$1,814
100% Documents	1	4	6	6		12	\$3,998
Engineering Design Report	6	8					\$2,056
							<u>\$32,188</u>
<b>Permitting &amp; Approvals</b>							
Permitting Agency Coordination	4	8					\$1,720
Utility Company Coordination	2	8					\$1,384
							<u>\$3,104</u>
<b>Bid Phase Services</b>							
Assist COT w/ JOC	4	8					\$1,720
							<u>\$1,720</u>
<b>Sub-Contractors</b>							
Survey Management	4						\$672
Survey							\$10,700
							<u>\$11,372</u>
Total Hrs	66	132	108	56	6	12	
Labor Revenue	\$11,088	\$17,292	\$8,640	\$5,992	\$786	\$2,184	
Total Labor							\$45,982
Sub Contractor - Survey							\$10,700
<b>Lump Sum</b>							<u>\$56,682</u>
<b>Direct Costs</b>							
							(Not to Exceed)
Printing & Reproduction							\$1,000
Postage							\$250
County Review Fees							\$1,000
							<u>\$2,250</u>
<b>Allowances</b>							
Potholing Management	4						\$672
Utility Potholing	2	4					\$860
Potholing Contractor							\$10,000
							<u>\$11,532</u>
<b>Total Allowances (Not To Exceed)</b>							<u>\$13,782</u>
<b>Construction Phase Services</b>							
							(Hourly not to exceed)
Submittal and RFI Review							6
							\$786
Progress Meetings (8 meetings)	4	24					\$3,816
Site Visits (8 visits)	8	16					\$3,440
<b>As-Built Preparation</b>	8	24	24	24			\$8,976
<b>Total Hourly Cost (Not to Exceed)</b>							<u>\$17,018</u>
<b>Total Project Cost</b>							<u>\$87,482</u>

PUB 7/18



ID	Task Name	Duration
1	Prepare and Finalize Contract	45 days
2	Notice to Proceed	1 day
3		
4	<b>Data Collection</b>	<b>35 days</b>
5	Review City of Tempe As-builts	10 days
6	Contract W/ Surveyor	10 days
7	Field Investigation	2 days
8	Blue Stake	5 days
9	Design Survey	25 days
10		
11	<b>30% Contract Documents</b>	<b>76 days</b>
12	Prepare 30%	25 days
13	Submit 30%	1 day
14	City of Tempe Review	15 days
15	30% Design Progress Meeting	1 day
16		
17	Contract with Pottholing Firm	10 days
18	Utility Pottholing	25 days
19		
20	<b>90% Contract Documents</b>	<b>80 days</b>
21	Prepare 90%	45 days
22	Internal Quality Review	8 days
23	Submit 90%	1 day
24	City of Tempe Review	15 days
25	MCESD Review	15 days
26	Utility Company Review	25 days
27	90 % Design Progress Review Meeting	1 day
28	MCESD Meeting (if required)	1 day
29	Utility Company Coordination Meeting (if required)	1 day
30		
31	<b>95% Contract Documents</b>	<b>51 days</b>
32	Prepare 95%	25 days
33	Internal Quality Review	10 days
34	Submit 95%	1 day
35	City of Tempe Review	15 days
36		
37	<b>100% Contract Documents</b>	<b>11 days</b>
38	Prepare 100%	10 days
39	Submit 100%	1 day

Task  
 Split  
 Progress  
 Milestone  
 Summary  
 Project Summary  
 External Milestone  
 Deadline

Project: Tempe Waterline Schedule.m  
Date: Thu 8/14/08

*Handwritten initials/signature*

CITY OF TEMPE  
TEMPE, ARIZONA  
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT  
REGARDING  
HEALTH INSURANCE

\_\_\_\_\_,  
Arizona

Date \_\_\_\_\_

Water Line Upgrade / Replacement – 22<sup>nd</sup> and 24<sup>th</sup> Streets between Hardy Drive and Roosevelt Street  
Project No. 3209341

I hereby certify that \_\_\_\_\_ (name of company) currently has, and all of its major subcontractors/subconsultants, defined as doing work in excess of \$30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company: \_\_\_\_\_

Type of Insurance (PPO, HMO, POS, INDEMNITY): \_\_\_\_\_

Policy No.: \_\_\_\_\_

Policy Effective Date (MM/DD/YY): \_\_\_\_\_

Policy Expiration Date (MM/DD/YY): \_\_\_\_\_

Signed and dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
General Contractor/Prime Consultant

By: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss  
COUNTY OF MARICOPA        )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

## **City of Tempe**

### **Guidelines for Implementation of Health Insurance**

These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of \$30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of \$30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.
2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours, that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120<sup>th</sup> day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.
3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.
4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.
5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.
6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.
8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.

  
Glenn Kephart, P.E.  
Public Works Manager

Council Meeting Date: 10/16/08

Agenda Item Number: \_\_\_\_\_

**SUBJECT:** Request award of a construction contract to Sunland Asphalt and approval of a project contingency for rehabilitation of neighborhood streets.

**DOCUMENT NAME:** 20081016PWDR05 STREET UPGRADING-MAINT-CONSTRUCTION (0809-05) PROJECT NO. 5405001

**SUPPORTING DOCS:** Yes

**COMMENTS:** Total cost for the construction contract is \$1,412,415.08 and the project contingency shall not exceed \$200,000.

**PREPARED BY:** Donna Rygiel, Engineering Contract Administrator (x8520)

**REVIEWED BY:** Andy Goh, Deputy PW Manager/City Engineer (x8896) *AS*

**APPROVED BY:** Glenn Kephart, Public Works Manager (x8205)

**LEGAL REVIEW BY:** Judi Morgan, Assistant City Attorney (x8227)

**FISCAL NOTE:** Sufficient funds are available in Capital Improvement Fund No. 5405001.

**RECOMMENDATION:** Award construction contract and approve project contingency.

**ADDITIONAL INFO:** The scope of work for this project includes milling and overlay, removing and replacing asphalt concrete pavement, adjustment of manholes and valve boxes and replacement of survey monuments. The work location is in the general area bounded by Rural Road on the west, McClintock Drive on the east, Baseline Road on the south, and US60 on the north.

On September 22, 2008, the following bids were received:

<u>Contractor</u>	<u>Total Bid</u>
Sunland Asphalt	\$1,412,415.08
M.R. Tanner Construction	\$1,419,355.50
Nesbitt Contracting Company, Inc.	\$1,422,051.45
J. Banicki Construction	\$1,497,198.45
Construction 70, Inc.	\$1,524,253.55
FNF Construction, Inc.	\$1,666,401.72

The bid of Sunland Asphalt has been reviewed by staff and found to be in order. Sunland Asphalt was selected based on the bidding process set forth in Title 34 of the Arizona Revised Statutes.

The project contingency has been established at \$200,000, which is approximately 14 percent of the construction services contract amount, to cover possible unforeseen conditions during construction.