

# Staff Summary Report



Council Meeting Date: 11/20/08

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

**SUBJECT:** Request to award a professional services design contract with Project Engineering Consultants, Ltd. for replacement of the sewer on Scottsdale Road between Curry Road and the Gilbert Drive metering station.

**DOCUMENT NAME:** 20081120PWDR03 WATERMAIN UPGRADES (0810-04)  
**PROJECT NO.** 3209391

**SUPPORTING DOCS:** Yes.

**COMMENTS:** Total cost for this contract is \$89,815.

**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 Capital Improvement Fund No. 32.

**RECOMMENDATION:** Award professional services contract.

**ADDITIONAL INFO:** The scope of work includes design of a new sewer to replace the existing 12-inch sewer in Scottsdale Road between Curry Road and the Gilbert Drive metering station. Sewer capacity will be increased to meet projected future needs. The new sewer will be approximately 1,500 feet long with a diameter up to 18-inches, depending on the location and slope of the reach.

The contract amount was negotiated by staff and is considered reasonable for the scope of services. Project Engineering Consultants, Ltd. was selected from our consultant on-call list pursuant to A.R.S. § 34-103.



CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

**CONTRACT FOR PROFESSIONAL SERVICES**

This Contract is made and entered into on the 20th day of November, 2008, by and between the City of Tempe, a municipal corporation ("City"), and Project Engineering Consultants, Ltd., an Arizona limited liability company ("Consultant").

The City engages the Consultant to perform professional services for a project known and described as Scottsdale Road Sewer Replacement – Curry Road to the Gilbert Drive Metering Station, Project No. 3209391 ("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, as described in Exhibit "A" attached.
- 1.2. Consultant has assigned Tom Braatlien 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 submit all final construction documents in both hard copy and electronic format. Plans shall be MicroStation or AutoCAD compatible and all other documents shall be Microsoft Office compatible. The software version used

shall be compatible to current City standards. Other support documents, for example, structural calculations, drainage reports and geotechnical reports, shall be submitted in hard copy only.

- 1.7. 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.
- 1.8. Consultant shall perform the work in a manner and at times which do not impede or delay the City's operations and/or functions.
- 1.9. 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 \$89,815.00, unless otherwise authorized by the City. This fee includes the sum of \$51,468.00 for design services; an amount not to exceed \$15,881.00 for post-design services based on hourly rates established in the attached Exhibit "A" incorporated hereby by this reference; an allowance of \$21,016.00 for potholing, boring and CCTV exploration; and an allowance of \$1,450.00 for reimbursable expenses and permit fees, which in no event will ever be more than actual cost.
- 3.2. City shall pay Consultant by installments, each installment based upon monthly progress reports and related, detailed invoices submitted by the Consultant. If detailed invoice(s) are approved by the City, such installment payment shall be made within thirty (30) days after City's approval of the progress report and detailed invoice subject to the following limitations:
  - 3.2.1. Prior to approval of the preliminary design (30% plans), payments to Consultants shall not exceed 30% of the total Contract amount.
  - 3.2.2. Prior to approval of the final design documents, payments to 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.

#### **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 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 or 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 2310 W. Mission Lane, Suite 4, Phoenix, AZ 85021. 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 performance 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 (2) 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 retained by the City to provide the engineering services required by the Contract 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 any Project and any related 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 legal 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. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

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 limited liability company, 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:

Tom Braateliën  
 Project Engineering Consultants, Ltd  
 2310 W. Mission Lane  
 Suite 4  
 Phoenix, AZ 85021

- 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 becomes 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.

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  
Project Engineering Consultants, Ltd.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

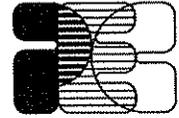
\_\_\_\_\_  
Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

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

# EXHIBIT A

**Project Engineering Consultants, Ltd.**



September 19, 2008

City of Tempe Public Works  
31 East Fifth Street  
Tempe, Arizona 85281

Attn: Phil Brown

Subject: City of Tempe Gravity Sewer Replacement/Upsize Scottsdale Rd. from  
Curry to Gilbert M.S.

Re: Fee Proposal

Gentlemen:

Project Engineering Consultants, Ltd. (PEC) is pleased to offer this proposal to provide engineering services for the above referenced project.

The project entails preparation of engineering plans for the installation of approximately 1,500 feet of 15 inch to 18 inch diameter vitrified clay sewer pipe to be installed in Scottsdale Rd. from E. Curry Rd. to the Gilbert Dr. Metering Station. The size of the new sewer will depend on design flows (to be provided by WUD) and the final design slope/configuration. The new sewer is to be designed deep enough to allow connections from future laterals and the existing sewer is to be protected and left in service during the work until the new parallel sewer is put on-line. During the design phase the existing sewer and stubs are to be CCTV'd and the existing sewer is to be cleaned, capped and

Project Engineering Consultants, Ltd.  
Engineers • Planners • Surveyors  
2310 W. Mission Lane, Suite 4, Phoenix, Arizona 85021 (602) 906-1901 Fax (602) 906-3080 e-mail:  
pec@pecaz.com

✓

MB

abandoned after the new sewer is in service. Filling the abandoned 12 inch will not be required. PEC is to research all utility mapping, provide all utility agency coordination and approvals. It is understood that status meetings will be held at each submittal. It is also our understanding that prior to the design contract NTP, the City of Tempe will provide PEC with the average and peak design flows for the new sewer in addition to WGIS mapping and available as-builts for the existing 36 inch sewer.

Our estimate for completing the direct labor portion of the Design Services work is a lump sum fee of \$51,468 ✓

Our estimate for completing the Post Design Services portion of the work is hourly not to exceed fee of \$15,881 ✓

Additional proposed allowances are:

Reprographics \$250

MCESD Fee for Application for Approval to Construct (expedited review) \$1,200

Subsurface Exploration (6 potholes) \$5,916

Geotechnical Investigation (3 Borings) \$8,500 ✓

CCTV Exploration (1800 LF) \$6,600 ✓

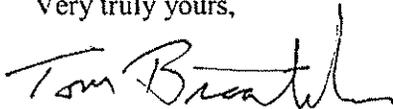
TOTAL ALLOWANCES = \$22,466

Attached are the following exhibits:

- Exhibit A- Scope of Services
- Exhibit B- Design Services Fee Estimate
- Exhibit C- Post Design Services Estimate
- Exhibit D- Estimated Design Schedule
- Exhibit E- Subsurface Exploration Allowance Estimate
- Exhibit F- Geotechnical Investigation Allowance Estimate
- Exhibit G- CCTV Exploration Allowance Estimate

Please call if you have any questions with our proposal.

Very truly yours,



Tom Braatlien



City of Tempe  
Public Works/Engineering  
31 East Fifth Street,  
Tempe, Arizona 85281

## EXHIBIT A

### City of Tempe Gravity Sewer Replacement/Upsize Scottsdale Rd. from Curry to Gilbert M.S.

September 19, 2008

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#### SCOPE OF SERVICES

The project entails preparation of engineering plans for the installation of approximately 1,500 feet of 15 inch to 18 inch diameter vitrified clay sewer pipe to be installed in Scottsdale Rd. from E. Curry Rd. to the E. Gilbert Dr. Metering Station. The new sewer will replace the existing 12 inch sewer. The size of the new sewer will depend on design flows (to be provided by WUD) and the final design slope/configuration. The new sewer is to be designed deep enough to allow connections from future laterals and the existing sewer is to be protected and left in service during the work until the new parallel sewer is put on-line. During the design phase the existing 12 inch sewer and stubs are to be CCTV'd and the existing sewer is to be cleaned, capped and abandoned after the new sewer is in service. Filling the abandoned 12 inch will not be required. PEC is to research all utility mapping, provide all utility agency coordination and approvals. It is understood that status meetings will be held at each submittal. It is also our understanding that prior to the design contract NTP, the City of Tempe will provide PEC with the average and peak design flows for the new sewer in addition to WGIS mapping and available as-builts for the existing 36 inch sewer and Gilbert metering station.

#### DESIGN SERVICES

##### **Task A1 Perform Topographic Survey**

Project Engineering Consultants, Ltd.(PEC) shall perform a topographical survey along the proposed project corridor. Survey will include full topo of all surface features 5 feet beyond R/W each side and shall include dips at catch basins, sewer manholes and water valve nuts. Lot lines, R/W and easements are to be included on the survey mapping. Survey to be on City of Tempe Datum.

##### Deliverables:

No deliverables are associated with this task.

##### **Task A2 Engineering Field Investigation**

PEC shall conduct an engineering field investigation to determine site constraints and special requirements.

##### Deliverables:

No deliverables are associated with this task.

PAB

**Task A3 Subsurface Utility Exploration**

PEC shall obtain the services of a Subsurface Utility Exploration (potholing) Contractor and shall prepare subsurface utility requests and exhibits as required for the exploration. PEC shall coordinate with and manage the services of the contractor. The effort required for coordination, management, preparation of pothole exhibits and requests is covered under this task. The scope and fees associated with the potholing work itself are attached at the end of this fee proposal. The allowance item covers the fee proposed by Saf-r-Dig Utility Surveys, Inc.

**Deliverables:**

No deliverables are associated with this task. Pothole data will be shown on project plans.

**Task A4 Geotechnical Investigation**

PEC shall obtain the services of a Geotechnical Engineer. PEC shall coordinate with and manage the services of the Geotechnical Engineer. PEC's effort required for coordination and management is covered under this task. The scope and fees associated with the geotechnical investigation and report itself are attached at the end of this fee proposal. The allowance item covers the fee proposed by Ninyo and Moore.

**Deliverables:**

Two hard copies of the geotechnical investigation will be submitted to the City of Tempe.

**Task A5 CCTV Exploration**

PEC shall obtain the services of a sewer pipe cctv exploration contractor. PEC shall coordinate with and manage the services of the cctv exploration contractor. The cctv exploration contractor will cctv approximately 1800 feet of the existing 12 inch sewer and all lateral stubs and connections within the project corridor and will determine the locations of all active services tied to the 12 inch sewer within the project corridor. The cctv contractor will provide a log report with complete data and results of the exploration including all stub and lateral connection locations. PEC's effort required for coordination and management as well as interpretation of the cctv report is covered under this task. The scope and fees associated with the cctv and report itself are attached at the end of this fee proposal. The allowance item covers the fee proposed by Prop-pipe.

**Deliverables:**

One DVD of the CCTV will be submitted to the City of Tempe at completion of project. The locations of all stubs and lateral connections determined from the exploration will be indicated on the project design plans.

**Task A6 Utility Agency Coordination & Mapping**

PEC will contact Blue Stake and request a list of known utilities in the project area. Upon receipt of the Blue Stake list, PEC will contact the respective utility agencies and request the utility mapping and request project representative contact information for the plan review and approvals. PEC will interpret the utility mapping and plot the utilities on the project plans. PEC will coordinate with the utility agencies as required throughout the design. PEC will submit 60% plans to the utility agencies along with a request for "No Conflict" review. PEC will list the names of the agencies and representatives and "No Conflict" confirmation dates on the project cover sheet.

Deliverables:

No deliverables are associated with this task. Utility information will be shown on plans.

**Task A7 Prepare 30% Plans**

PEC shall prepare 30% plans in AutoCAD 2000 format at 1"=20' HZ scale sized for 22 inch x 34 inch plan sheets. The City will provide the base cover sheet and cover sheet in AutoCAD format via the City Website. The 30% plans will consist of a cover sheet, note sheet and a preliminary alignment shown on base topo. Existing utilities will be shown. Profile, quantities, specific notes and details will not be shown.

Deliverables:

Two sets of full size blackline plans and one CD of pdf'd drawing files submitted to the City of Tempe.

**Task A8 Prepare 60% Plans**

Upon receipt of the City review red lines of the 30% plans with agreed upon final alignment identified, PEC shall prepare and submit 60% plans. The 60% plans will include the final alignment and profile (profile at 1"=5' scale) with all necessary construction notes, quantities, and details.

Deliverables:

Two sets of full size blackline plans and one CD of pdf'd drawing files submitted to the City of Tempe.

**Task A9 Prepare 90% Plans**

Upon receipt of the City review red lines of the 60% plans, PEC shall prepare and submit 90% plans.

Deliverables:

Two sets of full size blackline plans and one CD of pdf'd drawing files, Engineer's construction estimate, 90% special provisions (standard specifications, details and general notes placed on plans where possible) submitted to the City of Tempe.

**Task A10 Prepare Final Plans**

Upon receipt of the City review red lines of the 90% plans, PEC shall prepare and submit Final Plans.

Deliverables:

One set of 24"x36" Wet Sealed Original Contract Drawing Mylars (drawings sized for 22"x34") and one CD of CADD files (unsealed plans) submitted to the City of Tempe.

**Task A11 Prepare Preliminary Construction Cost Estimate**

PEC shall prepare a preliminary cost estimate for the construction of the water line and associated improvements.

Deliverables:

One Preliminary Construction Cost Estimate to be submitted at the 60%, 90% and the final plan submissions. Submittal made electronically (MSExcel) to the City of Tempe via email.

*PLB*

**Task A12 Project Meetings**

PEC shall meet with the City of Tempe subsequent to each plan review (3 meetings) during the design phase of the project.

Deliverables:

No deliverables are associated with this task.

**Task A13 MCESD Design Report and Application for Approval to Construct**

PEC shall prepare the MCESD Design Report and the Application for Approval to Construct and submit to MCESD for approval. The cost of the application for an expedited MCESD review is included as an allowance item.

Deliverables:

One 8-1/2x11 copy of the MCESD Approval to Construct submitted to the City of Tempe upon receipt.

**Task A14 Quality Assurance/Quality Control**

PEC shall perform an in-house peer review and in-house QA/QC review on all project plans prior to each submittal.

**POST DESIGN SERVICES (Hourly Not to Exceed)**

Construction management, inspection, and certification will be provided by the City of Tempe.

**Task B1 Review CM@R GMP**

PEC shall review the CM@R GMP where requested by the City of Tempe.

Deliverables:

PEC will submit review comments to City of Tempe via email.

**Task B2 Attend preconstruction conference**

PEC shall attend the preconstruction conference.

Deliverables:

No deliverables are associated with this task..

**Task B3 Shop Drawing Review**

PEC shall review sewer line component shop drawings where requested by the City of Tempe.

Deliverables:

PEC shall stamp and return shop drawings to the City of Tempe.

**Task B4 Respond to Contractor's Requests for Information (RFI)**

PEC shall respond to RFI's.

Deliverables:

PEC shall respond to the RFI's via email.

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**Task B5 Site Visit**

PEC shall send one engineer to make two site visits during the construction.

**Deliverables:**

No deliverables are associated with this task.

**Task B6 Project Coordination**

Upon agreement between the City and PEC, PEC shall perform work on as needed hourly basis when requested by the City of Tempe.

**Deliverables:**

Deliverables will be discussed at time of work request.

**Task B7 Record Drawings**

Red line as-builts are to be prepared, verified and certified by the Contractor. Upon receipt of the contractor's red line as-builts, PEC shall place (via AutoCAD) the red line as-built information on an electronic scan of the Wet Sealed Original Contract Drawing Mylars. The City of Tempe will provide PEC with the Wet Sealed Original Contract Drawing Mylars (PEC will return after scanning).

**Deliverables:**

One set of 24"x36" Mylar "Record Drawings" submitted to the City of Tempe.

**Task B8 MCESD Approval of Construction**

PEC shall assist the City of Tempe with obtaining the MCESD Approval of Construction Certificate. PEC is neither doing the construction management, the inspection, nor the certifications on this project. Therefore, PEC cannot obtain the MCESD Approval of Construction Certificate directly and will serve only to assist the City on an as needed basis.

**Deliverables:**

No deliverables are associated with this task.

**EXHIBIT B**

**CITY OF TEMPE  
CITY OF TEMPE GRAVITY SEWER REPLACEMENT/UPSIZE SCOTTSDALE RD. FROM CURRY TO GILBERT M.S.**

**DESIGN SERVICES FEE ESTIMATE**

Last Revised By: T. Braatellen on: 9/19/2008

TASK	Project Principal		Project Manager/Senior Engineer		Project Engineer		CADD Technician		Survey Manager		Survey Crew		Total Direct Labor Fees	
	202.01 /HR		146.92 /HR		106.40 /HR		94.74 /HR		125.49 /HR		160.33 /HR		HRS	AMT
	HRS	AMT	HRS	AMT	HRS	AMT	HRS	AMT	HRS	AMT	HRS	AMT		
<b>Design Services</b>														
A1 Perform Topographic Survey and DTM Mapping			1	\$147			32	\$3,032	12	\$1,506	40	\$6,413	85	\$11,097
A2 Engineering Field Investigation			4	\$588									4	\$588
A3 Subsurface Utility Exploration			2	\$294			6	\$568					8	\$862
A4 Geotechnical Investigation			2	\$294			2	\$189					4	\$483
A5 CCTV Exploration			2	\$294	4	\$426							6	\$719
A6 Utility Agency Coordination & Mapping			4	\$588	12	\$1,277	16	\$1,516					32	\$3,380
A7 Prepare and Submit 30% Plans			8	\$1,175	24	\$2,554	44	\$4,168					76	\$7,897
A8 Prepare and Submit 60% Plans			8	\$1,175	24	\$2,554	36	\$3,411					68	\$7,139
A9 Prepare and Submit 90% Plans			4	\$588	20	\$2,128	24	\$2,274					48	\$4,969
A10 Prepare and Submit Final Plans			4	\$588	16	\$1,702	24	\$2,274					44	\$4,564
A11 Prepare Preliminary Construction Estimate			4	\$588	4	\$426	8	\$758					16	\$1,771
A12 Attend Project Meetings	12	\$2,424	12	\$1,763									24	\$4,187
A13 Prepare & submit MCESD App. for App. to Construct			1	\$147	8	\$851							9	\$998
A14 Peer Review and Quality Assurance/Quality Control	8	\$1,616	8	\$1,175									16	\$2,791
<b>TOTAL</b>	<b>20</b>	<b>\$4,040</b>	<b>64</b>	<b>\$9,403</b>	<b>112</b>	<b>\$11,917</b>	<b>192</b>	<b>\$18,190</b>	<b>12</b>	<b>\$1,506</b>	<b>40</b>	<b>\$6,413</b>	<b>440</b>	<b>\$51,468</b>

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**EXHIBIT C**

**CITY OF TEMPE**

CITY OF TEMPE GRAVITY SEWER REPLACEMENT/UPSIZE SCOTTSDALE RD. FROM CURRY TO GILBERT M.S.

POST DESIGN SERVICES FEE ESTIMATE

Prepared by By: T. Braatellen

September 19, 2008

TASK	Project Principle		Project Manager/Senior Engineer		Project Engineer		CADD Technician		Total Direct Labor Fees	
	202.01 /HR		146.92 /HR		106.40 /HR		94.74 /HR		HRS	AMT
	HRS	AMT	HRS	AMT	HRS	AMT	HRS	AMT		
<b>Post Design Services (Hourly Not to Exceed)</b>										
B1 Review CM@R GMP			1	\$147	2	\$213			2	\$360
B2 Attend Preconstruction Conference	3	\$606	3	\$441					3	\$1,047
B3 Shop Drawing Review			4	\$588	8	\$851			8	\$1,439
B4 Respond to Contractor's RFI's			4	\$588	8	\$851			8	\$1,439
B5 Site Visit			4	\$588	4	\$426			4	\$1,013
B6 Project Coordination			24	\$3,526	48	\$5,107			48	\$8,633
B7 Record Drawings			2	\$294	8	\$851	16	\$1,516	24	\$2,661
B8 Assist with MCESD Approval of Construction			2	\$294	2	\$213	2	\$189	4	\$696
<b>TOTAL</b>	<b>3</b>	<b>\$606</b>	<b>44</b>	<b>\$6,464</b>	<b>80</b>	<b>\$8,512</b>	<b>18</b>	<b>\$1,705</b>	<b>101</b>	<b>\$15,881</b>

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EXHIBIT D

CITY OF TEMPE

CITY OF TEMPE GRAVITY SEWER REPLACEMENT/UPSIZE SCOTTSDALE RD. FROM CURRY TO GILBERT M.S.

ESTIMATED SCHEDULE

Last Revised by: T. Braatenien on: 9/9/2008

TASK	DESCRIPTION	Milestone Date	2008	2009									
			DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG		
	<b>NOTICE TO PROCEED</b>	<b>12/1/2008</b>	◁										
<b>A1</b>	Perform Topographic Survey		XXXX										
<b>A3</b>	Subsurface Utility Investigation							XXXX	XXXX				
<b>A4</b>	Geotechnical Investigation				XXXX	XXXX							
<b>A5</b>	CCTV Exploration			XXXX	XXXX								
<b>A6</b>	Utility Agency Coordination		XXXX										
<b>A7</b>	Prepare 30% Plans			XXXX									
	Submit 30% Plans to City of Tempe	<b>2/6/2009</b>			◁								
	Review of 30% Plans by City of Tempe				XXXX								
<b>A8</b>	Prepare 60% Plans					XXXX							
	Submit 60% Plans to City of Tempe	<b>4/3/2009</b>						◁					
	Review of 60% Plans by City of Tempe						XXXX						
<b>A9</b>	Prepare 90% Plans, Specs & Construction Cost Estimate (PS&E)							XXXX					
	Submit 90% Plans, Specs & Construction Cost Estimate (PS&E)	<b>6/5/2009</b>							◁				
	Review of 90% PS&E by City of Tempe								XXXX				
<b>A10</b>	Prepare Final PS&E										XXXX		
	Submit Final PS&E to City of Tempe	<b>8/8/2009</b>										◁	

PA

CITY OF TEMPE  
TEMPE, ARIZONA  
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT  
REGARDING  
HEALTH INSURANCE

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

Date \_\_\_\_\_

**Scottsdale Road Sewer Replacement – Curry Road to the Gilbert Drive Metering Station  
Project No. 3209391**

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**

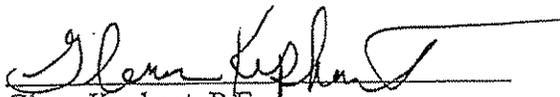
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the 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