

Staff Summary Report



Council Meeting Date: 1/08/09

Agenda Item Number: 33

SUBJECT: Request award of a design contract with Kennedy/Jenks Consultants, Inc., for improvements to City of Tempe Well No. 4 and to a Salt River Project well.

DOCUMENT NAME: 20090108PWDR10 WELLS-CONSTRUCTION/MAINT (8011-01)
PROJECT NO. 3203231

SUPPORTING DOCS: Yes.

COMMENTS: Total cost for this contract is \$149,920.

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

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)
Don Hawkes, Water Utilities Manager (x2660)

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

LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (x8814)

FISCAL NOTE: Sufficient funds are available in Capital Improvement Fund No. 3203231.

RECOMMENDATION: Award professional services contract.

ADDITIONAL INFO: The Water Utilities Department is planning to add well capacity in order to improve water quality, meet emergency supply needs and supplement drought supply. City owned well no. 4 will be upgraded to meet current safety and regulatory requirements and tied into the distribution system. In addition, one existing Salt River Project well, located in Tempe, will be renovated and connected into the City's distribution system. The scope of this contract is to provide design services for this work.

The contract amount was negotiated by staff and is considered reasonable for the scope of services. Kennedy/Jenks Consultants, Inc. was selected from our consultant on-call list based on a process 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 8th day of January, 2009, by and between the City of Tempe, a municipal corporation ("City"), and Kennedy/Jenks Consultants, Inc., an Arizona corporation ("Consultant").

City engages Consultant to perform professional services for a project known and described as City of Tempe Well No. 4 and Salt River Project Well Improvements, Project No. 3203231 ("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 assist in planning, develop plans and specifications, and assist in permitting and other design and post design services as required in order to connect two wells into City's water distribution system, as described in Exhibit "A" attached.
- 1.2. Consultant has assigned Kim Tanner as the Project Manager for this Contract. Prior written approval by 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 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 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 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 \$149,920, unless otherwise authorized by the City. This fee includes the sum of \$19,580 for development of a Design Basis Memorandum; the sum of \$95,890 for design services; an amount not to exceed \$16,030 for project management coordination; and an amount not to exceed \$18,420 for post design services based on hourly rates established in the attached Exhibit "C" incorporated hereby by this reference.
- 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 (70% plans), payments to Consultants shall not exceed 70% 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.

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 3003 N. Central Avenue, Suite 1150, Phoenix, Arizona 85012.

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 determined and approved by the City based upon the scope of work set forth in Exhibit "A." 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, 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 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:

Kim Tanner
 Kennedy/Jenks Consultants, Inc.
 3003 N. Central Avenue
 Suite 1150
 Phoenix, AZ 85012

- 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 _____, 2009.

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
Kennedy/Jenks Consultants, Inc.

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

Kennedy/Jenks Consultants**Engineers & Scientists**

3003 N. Central Avenue, Suite 1150
Phoenix, Arizona 85012
T- 602-274-0886
F- 602-274-0764

25 September 2008

Mr. Phil Brown, P.E.
Senior Civil Engineer
City of Tempe Public Works / Engineering
31 East Fifth Street
Tempe, Arizona 85281

Subject: Lemon Street Well (Well No. 4) and SRP Well Improvements
K/J B10930046

Dear Mr Brown:

Kennedy/Jenks Consultants is pleased to submit this proposal for professional engineering services to document a design basis and provide construction documents for chlorine tablet feeders and other miscellaneous improvements at the subject well facilities.

SCOPE OF SERVICES

Based on our discussions with you and our experience with similar projects, we have developed the Scope of Services shown in Exhibit A attached. Please note that the Scope includes all possible improvements discussed in our site meeting of 15 August, including possible site structure upgrades, security improvements, electrical and I/C improvements, and SCADA interface.

SCHEDULE

Kennedy/Jenks personnel are available to immediately begin work on this project. We understand that design development for the two sites may progress at separate rates. Depending upon coordination requirements with the City and SRP, PART I – DESIGN BASIS will be completed within 16 weeks from notice to proceed. PART II – DETAILED DESIGN is anticipated to require 12 weeks assuming successful coordination with SRP and timely review by City Development Services. Note that County and State approvals may require additional time beyond this schedule.

Mr. Phil Brown, P.E.
City of Tempe Public Works / Engineering
25 September 2008
Page 2

COMPENSATION

Based on our understanding of the work to be provided, we have developed a Proposal Fee Estimate attached as Exhibit B. The total budget established for each major part of the SCOPE OF WORK is shown below.

We propose to provide services on a time and expense reimbursement basis for PART I – PROJECT MANAGEMENT and PART IV – POST DESIGN SERVICES since the level of effort cannot be specifically defined. Work for these tasks will be billed in accordance with our Schedule of Charges dated January 1, 2008, attached as Exhibit C, and the budgets listed will not be exceeded without the City's prior authorization.

We propose that compensation for PART II and PART III be paid on a lump sum basis. These tasks will be invoiced monthly based on the percentage of completion.

<u>SCOPE OF WORK</u>	<u>PROPOSED FEE</u>	
PART I – PROJECT MANAGEMENT	\$ 16,030	Hourly NTE
PART II – DESIGN BASIS MEMORANDUM	\$ 19,580	Lump Sum
PART III – DETAILED DESIGN	\$ 95,890	Lump Sum
PART IV – POST DESIGN SERVICES	<u>\$ 18,420</u>	Hourly NTE
PROJECT TOTAL	\$149,920	

CLOSING

We look forward to working with you on this important project. Please contact me if you have questions or need additional information.

Very truly yours,
KENNEDY/JENKS CONSULTANTS



Kim A. Tanner, P.E.
Vice President

Enclosures

POP

**SCOPE OF PROFESSIONAL SERVICES
FOR
LEMON STREET WELL (WELL NO. 4) AND SRP WELL BOOSTER
IMPROVEMENTS**

I. GENERAL

The City of Tempe (City) desires to re-commission the Lemon Street Well (Well No. 4) and the water supply from a Salt River Project (SRP) Well which will be identified by SRP through discussions with the City. These well sources have not been used in the water supply system for more than two years. The Lemon Street Well will be cleaned, inspected and placed back in service by the City. The SRP well will be brought into service in coordination with the City, with most improvements being accomplished by SRP forces. The following project tasks outline the steps to plan design improvements associated with re-commissioning these well sources.

II. SCOPE OF SERVICES

PART I – PROJECT MANAGEMENT

Task 1 – Project Management, Review of Background Information, City & SRP Meetings

Overall project management shall be provided through all phases of the work including supervision of in-house staff and subconsultants, quality assurance and quality control, monitoring of budgets and schedules, and coordination with the City's staff. To establish baseline project requirements, the following information shall be collected and reviewed for the well facilities.

- Water quarter section maps and/or water system model data.
- Record drawings.
- Property ownership information.
- Historical operating data.
- Security requirements.
- SCADA upgrades to well sites by others.
- Water quality data (hardness, pH, temperature, alkalinity).

Meetings with City staff and SRP shall be attended to identify project objectives, identify design requirements, and document improvements to be provided by the City for the SRP Well.

PART II – DESIGN BASIS MEMORANDUM

Task 2 – Permitting Requirements

Project permitting requirements shall be identified. The investigation shall include potential requirements from State and local agencies as follow.

- Arizona Department of Water Resources
- Maricopa County
- City of Tempe

Assistance shall be provided to the City on an as-needed basis so that the required permits can be obtained in a timely manner. This task includes identifying requirements for Maricopa County's "APPLICATION FOR NEW DRINKING WATER SOURCE APPROVAL" that must be completed for wells that have been out of service for several years.

Task 3 – Design Basis Memorandum

A Design Basis Memorandum for each well site shall be prepared in technical memorandum format documenting the project design requirements. The document will include the following:

- a) Chlorine tablet feeder size based on a choice of two vendors.
- b) Tablet feeder installation requirements.
- c) Service entrance and power requirements.
- d) Site security improvements and site requirements.
- e) SCADA interface.

The Memorandum shall document the recommended project; summarize permitting; present a project completion schedule; provide estimated capital costs; and present 30 percent layout drawings for the well facility improvements. Other well head improvements not associated with re-commissioning the wells are assumed to be provided by the City or SRP.

Task 3 Deliverables:

- 1. Task 3 - Draft Design Basis Memorandums (6 hard copies).
- 2. Task 3 - Final Design Basis Memorandums (6 hard copies and one electronic copy).

PART III – DETAILED DESIGN

With approval of the Design Basis Memorandums, the detailed design will be initiated in accordance to the approved site recommendations, design criteria, and City standards. Work under Task 4 is described as follows.

Subtask 4.1 – Site Survey: Survey shall be provided for the facility sites as required for City of Tempe Development Services' site plan approval requirements, equipment requirements, security improvements, etc.

Subtask 4.2 – Detailed Design and Construction Drawings. Design calculations and design details shall be completed and construction drawings shall be prepared for each site in accordance with City standards covering the following disciplines.

- General/civil
- Architectural
- Mechanical
- Structural
- Electrical/Instrumentation

Subtask 4.3 – Technical Specifications and Contract Documents: Technical Specifications and Contract Documents suitable for bidding and construction for each site will be compiled based on preferred City front-end documents and CSI format.

Subtask 4.4 –Construction Cost Estimate: Two (2) detailed opinions of estimated construction cost shall be prepared for each site to update costs presented in the Design Basis Memorandums. These estimates will be prepared when the design is at the 70 and 100 percent completion levels. Estimates shall be prepared based on the price levels projected for the anticipated midpoint of construction.

Subtask 4.5 – Permit Assistance: Permit applications shall be prepared and submitted for obtaining review and approval from City of Tempe Development Services, Maricopa County, and Arizona Department of Water Resources. Permit application activities will be coordinated and scheduled to obtain timely approvals. Review meetings will be attended to receive and discuss reviewer comments. Permit application fees for Development Services will be paid by the City. Application fees for Maricopa County and Arizona Department of Water Resources are included in the project fee as an allowance.

Task 4 Deliverables:

1. Task 4 – 70 percent Drawings and Technical Specifications (One electronic set of 22"X34" and one set of 11"x17" transmitted electronically in .pdf format).
2. Task 4 – 100 percent Drawings and Technical Specifications (6 hard copies).
3. Task 4 – Final Drawings and Technical Specifications (24"x36" mylar reproducible hard copy and one electronic copy).
4. Task 4 – 70 percent and 100 percent opinions of probable construction cost.
5. Task 4 – Permit applications (to be submitted for permits).

PART IV – POST DESIGN

Task 5 – Post Design Services

Post design services shall be provided including record drawing preparation for replacing the sanitary seal on the Lemon Street Well (Well No. 4); coordination with the improvements contractor during cost quote; periodic construction observation; shop drawing review; response to RFI's; and preparation of as-built drawings based on field observations and contractor redlines. Periodic construction observation will include limited site visits and witness of start-up and operational testing.

Task 5 Deliverables:

1. Task 5 – Construction phase documentation including shop drawing reviews, response to RFIs, field observation memorandums, and start-up & testing reports.
2. Task 5 – As-built drawings including the well contractor's installation of the sanitary seal and work by the improvements contractor based on field observations and the contractor's redlines (On original mylar).

CITY PROVIDED SERVICES

The following project related services are assumed to be provided by the City.

1. Investigation of property ownership and recorded easements.
2. Inspection, cleaning & rehabilitation of the Lemon Street Well (Well No.4).

Exhibit A

3. Installation of sanitary seal on the Lemon Street Well (Well No. 4).
4. Coordination with SRP for well selection and improvements.
5. Equipment testing startup & re-commissioning.
6. Water quality testing.

Proposal Fee Estimate

Exhibit B

Kennedy/Jenks Consultants

CLIENT: City of Tempe
 PROJECT: Lemon Street Well (Well No. 4) and SRP Well Booster Improvements

January 1, 2008 Rates	Eng-Sci-3	Eng-Sci-7	Eng-Sci-4	Designer	Project Admin	Total	KJ Total Labor	Sub Elec. & I/C	Sub Architect	Sub Survey	KJ Expenses	Total Labor + Expenses
Classification:												
Part I - PROJECT MANAGEMENT												
Task 1 - Project Management, Background Review, Meetings	32	32	16		2	82	\$15,930	\$0	\$0	\$0	\$100	\$16,030
Part I - Subtotal	252	232	161	120	87	82	\$15,930	\$0	\$0	\$0	\$100	\$16,030
Part II - DESIGN BASIS MEMORANDUM												
Task 2 - Permitting Requirements		12			2	14	\$2,570	\$0	\$0	\$0	\$100	\$2,670
Task 3 - Design Memorandum	8	2	43	52	6	108	\$14,710	\$2,000	\$0	\$0	\$200	\$16,910
Part II - Subtotal	40	46	56	52	10	204	\$33,210	\$2,000	\$0	\$0	\$400	\$19,580
Part III - DETAILED DESIGN												
Task 4.1 - Survey			2		2	4	\$460	\$0	\$0	\$3,000	\$0	\$3,460
Task 4.2 - Drawings	8	24	80	220		332	\$44,560	\$12,000	\$5,000	\$0	\$0	\$61,560
Task 4.3 - Specifications	8	16	40		10	74	\$11,610	\$5,000	\$2,500	\$0	\$0	\$19,110
Task 4.4 - Cost Estimate	2	2	8		0	12	\$2,000	\$0	\$0	\$0	\$0	\$2,000
Task 4.5 - Permitting Assistance (with Permit Fee Allowance)	2	2	24		0	28	\$4,320	\$0	\$0	\$0	\$1,150	\$5,530
Task 4 - Deliverables			8	8	16	32	\$3,480	\$0	\$0	\$0	\$750	\$4,230
Part III - Subtotal	20	44	162	228	28	482	\$66,430	\$17,000	\$7,500	\$3,000	\$1,850	\$95,880
Part IV - POST DESIGN												
Task 5 - Post Design Services	4	24	40	16	12	96	\$14,420	\$3,000	\$0	\$0	\$1,000	\$18,420
Part IV - Subtotal	4	24	40	16	12	96	\$14,420	\$3,000	\$0	\$0	\$1,000	\$18,420
All Parts Total	64	114	258	296	50	782	\$114,060	\$22,000	\$7,500	\$3,000	\$3,250	\$149,920

Exhibit C

Contract/Proposal Date: September 25, 2008

Schedule of Charges

January 1, 2008

Personnel Compensation

Classification	Hourly Rate
CAD-Technician	\$95
Designer-Senior Technician	\$120
Engineer-Scientist-Specialist 1	\$110
Engineer-Scientist-Specialist 2	\$115
Engineer-Scientist-Specialist 3	\$130
Engineer-Scientist-Specialist 4	\$145
Engineer-Scientist-Specialist 5	\$160
Engineer-Scientist-Specialist 6	\$180
Engineer-Scientist-Specialist 7	\$200
Engineer-Scientist-Specialist 8	\$220
Engineer-Scientist-Specialist 9	\$225
Project Administrator	\$85
Administrative Assistant	\$70
Aide	\$55

In addition to the above Hourly Rates, a three percent Communications Charge will be added to Personnel Compensation for normal and incidental copies, communications and postage.

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- a. Maps, photographs, reproductions, printing, equipment rental, and special supplies related to the work.
- b. Consultants, soils engineers, surveyors, contractors, and other outside services.
- c. Rented vehicles, local public transportation and taxis, travel and subsistence.
- d. Specific telecommunications and delivery charges.
- e. Special fees, insurance, permits, and licenses applicable to the work.
- f. Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for vehicles used in connection with the work will be at the federally approved mileage rates or at a negotiated monthly rate.

Reimbursement for use of computerized drafting systems (CAD), geographical information systems (GIS), and other specialized software and hardware will be at the rate of \$12 per hour

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Other in-house charges for prints and reproductions, equipment usage, laboratory analyses, etc. will be at standard company rates.

Excise and gross receipts taxes, if any, will be added as a direct expense

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective January 1, 2008 through December 31, 2008. After December 31, 2008, invoices will reflect the Schedule of Charges currently in effect.

**CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS**

**AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE**

_____,
Arizona

Date _____

**City of Tempe Well No. 4 and Salt River Project Well Improvements
Project No. 3203231**

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

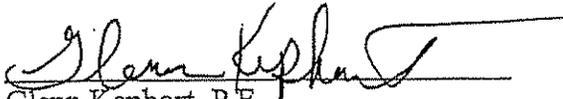
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the 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 120th 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