

Staff Summary Report



Council Meeting Date: 06/05/08

Agenda Item Number: _____

SUBJECT: Request award of a construction contract to ELS Construction, Inc., approval of a construction change order contingency and approval of a construction management contract with Stanley Consultants, Inc., for construction of a multi-use path along Tempe Canal.

DOCUMENT NAME: 20080605PWDR01 TRANSPORTATION PLANNING (1101-01)
PROJECT NO. 60-997018

SUPPORTING DOCS: Yes

COMMENTS: Total cost for the construction contract is the amount of \$914,805.79. Construction change order contingency shall not exceed the amount of \$91,500. The total cost for the construction management contract shall not exceed \$104,369.

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

AS TO FORM BY: Judi Morgan, Assistant City Attorney (x8227)

FISCAL NOTE: Sufficient funds are available in Capital Improvement Fund No. 7018.

RECOMMENDATION: Award construction contract, approve change order contingency and approve construction management contract.

ADDITIONAL INFO: The scope of work for the construction contract consists of a 10 foot wide concrete multi-use path, including associated hardscaping, path lighting, landscaping and irrigation improvements along the Tempe Canal from University Drive to the railroad right of way south of Apache Boulevard. Additionally, a connection at the Price Frontage Road will be constructed to complete a previously constructed section of path.

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

<u>Contractor</u>	<u>Total Bid</u>
ELS Construction, Inc.	\$914,805.79
Spire Engineering. LLC	\$932,400.01
Austin Bridge	\$956,031.78
Norquay Construction, Inc.	\$993,145.83
Recon, Inc.	\$1,028,894.99
CS Construction, Inc.	\$1,034,841.31
AAA Landscape	\$1,041,742.29
Bison Contracting Co., Inc.	\$1,086,635.67
Land-Tech Landscape Construction	\$1,089,033.00

J. Banicki Construction, Inc.	\$1,099,984.20
Visus Engineering Construction, Inc.	\$1,199,000.00
Valley Crest Landscape Development, Inc.	\$1,303,388.52
Green Landscaping & Irrigation, Inc.	\$3,744,537.27 (bid error)

The bid of ELS Construction, Inc. has been reviewed by staff and found to be in order.

The construction management fee was negotiated by staff and is considered reasonable for the scope of services. Stanley Consultants, Inc. was selected from our consultant on-call list consistent with Title 41 Arizona Revised Statutes.



CONTRACT

THIS CONTRACT, made and entered into this 5th day of June, 2008, by and between the City of Tempe, a Municipal Corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the **OWNER**, and ELS Construction, Inc., of the City of Phoenix, County of Maricopa, and State of Arizona, hereinafter designated as the **CONTRACTOR**:

WITNESSETH: That said Contractor, for and in consideration of the sum to be paid him or her by said Owner, in the manner, amount and at the time hereinafter provided in the "Bid" and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds hereto attached, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

ARTICLE I - SCOPE OF THE WORK: The Contractor shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work for the installation of the

**TEMPE CANAL MULTI-USE PATH
PROJECT NO. 60-997018
ADOT PROJECT NO. TEA-TMP-0(021)A
ADOT TRACS NO. 0000 MA TMP SL510 01C**

for the sum of Nine Hundred Fourteen Thousand Eight Hundred Five and 79/100 Dollars (Base Bid) (\$914,805.79), and to construct the same and install the material therein for the Owner, in a good and workmanlike and substantial manner and to the satisfaction of the Owner or his properly authorized agents and strictly pursuant to and in conformity with the Specifications and Plans for the above referenced project(s) and other documents that may be made by the Owner through the Engineer or his properly authorized agents, as provided herein.

ARTICLE II - CONTRACT DOCUMENTS: The Notice to Contractor, General Provisions, Special Provisions, Technical Specifications, Maricopa Association of Governments 2008 Uniform Standard Specifications for Public Works Construction and Maricopa Association of Governments 2008 Uniform Standards Details for Public Works Construction as amended by the City of Tempe, Bid, Plans, together with Bid Security, Performance Bonds, Payment Bond, and Addenda thereto, if any.

ARTICLE III - TIME OF COMPLETION: The Contractor further covenants and agrees at his own proper cost and expense, to do all work and furnish all plant, materials, labor, construction equipment, services and transportation for performing all of the work for the construction of said improvements and to construct the same and install the material therein, as called for by this Contract free and clear in all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time stated in this proposal.

Contract - continued

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereinabove named, on the date and year first herein written.

CITY OF TEMPE
a Municipal Corporation

Name

Title

Recommended by:

Deputy PW Manager/City Engineer

(Corporate Seal)

ATTEST:

Authorized Officer

Official Title

APPROVED AS TO FORM:

City Attorney

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

CONTRACTOR:

Company Name

By: _____
Name

Its: _____
Title

City of Tempe Transaction Privilege
License (Sales Tax) Permit No.

(Corporate Seal)

Certified to be a true and exact copy

Karen M. Fillmore, Records Specialist

Witness: If Contractor is an Individual



CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR CONSTRUCTION ADMINISTRATION SERVICES

This Contract is made and entered into on the 5th day of June, 2008, by and between the City of Tempe, a municipal corporation, hereinafter called City, and STANLEY CONSULTANTS, INC., an Arizona corporation, hereinafter referred to as "Consultant."

The City engages the Consultant to perform professional services for a project known and described as TEMPE CANAL MULTI-USE PATH, Project No. 60-997018, hereinafter called the "Project".

1. SERVICES OF THE CONSULTANT

The 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. Consultant's services shall include the following:

- 1.1. The Consultant shall provide construction administration and electrical inspection services as described in Exhibit "A" attached.
- 1.2. The Consultant has assigned Bill Sloan 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. The Consultant shall submit the qualifications of the proposed substituted personnel to the City for approval prior to any substitution or change.
- 1.3. The Consultant shall obtain all necessary permits required for the performance of its work. Failure of Consultant to obtain said permits prior to the commencement of its work shall constitute a default of this Contract.
- 1.4. The Consultant shall perform the work in a manner and at times which do not impede or delay the City's operations and/or functions.
- 1.5. The 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. PERIOD OF SERVICE

The Consultant shall complete all services within 210 calendar days of the "Notice to Proceed" date, which shall be issued by the City. In the event delays are experienced beyond the control of the Consultant, the period of service 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 \$104,369.00 unless otherwise authorized by the City. This fee includes an allowance of \$7,225.00 for reimbursable expenses which in no event will ever be more than actual cost.
- 3.2. The City shall pay the Consultant installments based on monthly progress reports and detailed invoices submitted by the Consultant. If detailed invoice(s) are approved by the City, such payments shall be made within thirty (30) days after City's approval of the progress report and detailed invoice.

4. CITY'S RESPONSIBILITIES

- 4.1. The 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. The City shall review submittals by the Consultant and provide a prompt response to questions and rendering of decisions pertaining thereto, to minimize delay in the progress of the Consultant's work. The City will keep the Consultant advised concerning the progress of the City's review of the work. The Consultant agrees that the City's inspection, review, acceptance or approval of Consultant's work shall not relieve Consultant's responsibility for errors or omissions of the Consultant or its sub-consultant(s).
- 4.3. Unless included in the Consultant's Services as identified in Section 1, the City may elect but is not required to furnish the Consultant, the following information or services for this Project upon reasonable request:
 - 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.

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 and/or properly performed by the Consultant. Termination shall be commenced by delivery of written notice to Consultant by the City personally or by certified mail at 1661 E. Camelback Road, Suite 400, Phoenix, AZ 85016. Termination shall be effective upon fourteen (14) days of

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

- 5.2. Upon the occurrence of Consultant's default, non-performance or breach of the Contract, City may recover any and all damages permitted by law or in equity against Consultant, in addition to termination of the Contract, including but not limited to compensatory damages, together with all costs and expenses as set forth in Section 12 herein.
- 5.3. Immediately after receiving such notice, the Consultant shall discontinue advancing the services under this Contract and proceed to close said operations under this Contract. The Consultant shall appraise the services it has completed and submit an appraisal to the City for evaluation. The City shall have the right to inspect the Consultant's work to 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, 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. 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 and approved by 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 III herein.
- 5.7. The 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 partially completed items and the final fee 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.** The 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. The 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.** The City reserves the right to request and to receive, within 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. **Sub-Consultants/Contractors.** Consultant shall include all sub-Consultants and sub-Contractors as insured under its policies or shall furnish separate certificates and endorsements for each sub-Consultant and sub-Contractor.

6.2. **Workers' Compensation.** The 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 are sub-Contracted, the Consultant shall require all sub-Consultant(s) to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by the Consultant.

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

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

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

6.5. **Professional Liability.** The 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 him, 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 years past completion and acceptance of services as evidenced by annual certificates of insurance.

- 6.6. **Property Coverage – Valuable Papers.** The 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 the Project prior to performance of any work or services pursuant to the Contract. 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 this Project, 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 Project 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 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. The 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 mylar copies of the work.

9. CONFLICT OF INTEREST

- 9.1. The Consultant agrees to promptly disclose any and all financial and/or economic interest in the Project property, or any property affected by the Project, 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 with the Project property, or any property affected by the Project, if the Consultant gains such interest during the course of this Contract.
- 9.2. If the 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. The 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. The Consultant agrees that it shall not perform services on this Project for any other Contractor, sub-contractor, or any supplier, other than the City. In addition, Consultant shall not negotiate, Contract, or make any agreement with a Contractor, sub-contractor, or any supplier with regard to any of the work under this Project, or any services, equipment or facilities to be used on this Project, other than with the City.

10. COVENANT AGAINST CONTINGENT FEES

The Consultant affirms that he 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 he 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, the Consultant shall defend, indemnify and hold harmless the 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 the Consultant, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the Consultant may be deemed legally liable in the performance of this Contract, or any breach of the Contract. Consultant's duty to defend, hold harmless and indemnify the City, its agents, officers, officials, and employees shall arise in connection with any and all claims for damage, loss, liability and/or expenses that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, willful acts or professional services in the performance of this Contract. 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 attorney's 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 hereunder, 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. The 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.

In addition, Consultant covenants that is will comply with any and all governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and completed improvements, if any, and all applicable safety laws, rules and regulations, including but not limited to the Fair Labor Standards Act, the Walsh-Healey Act, the Fair and Legal Employment Act and Arizona law concerning employment practices and working conditions. Consultant shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

The Consultant further agrees to include the foregoing provisions in any and all sub-Contracts hereunder, except sub-contracts for standard commercial supplies or raw materials. Any violation of such provisions shall constitute a material breach of this Contract.

- 15.2. 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.
- 15.3. This Contract shall be governed and interpreted by the laws of the State of Arizona.
- 15.4. 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.
- 15.5. 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 15.5, 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 sub-contractors.

- 15.6. This Contract contains all of the agreements of the parties hereto 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.
- 15.7. 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.
- 15.8. 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 any of the projects.
- 15.9. 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.
- 15.10. 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.
- 15.11. 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.

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

Ar _____
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

City Attorney's Office

CONSULTANT
Stanley Consultants, Inc.

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT A



Stanley Consultants INC.

A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

April 25, 2008

Jay Gokhale, P.E.
31 East Fifth Street
Tempe, Arizona 85281

Dear Jay:

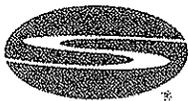
Subject: Tempe Canal Multi-Use Path , COT Project # 60-997018
University Dr. to UPRR, west to Price Rd.
Construction Administration Assistance

I have attached the detailed cost breakdown for the construction administration assistance you have requested. You indicated that you would be managing the construction administration of the project and Stanley Consultants Inc. would be providing some of the inspection duties on the project. You have estimated that the construction project would last 180 calendar days. We will provide the following:

- 1) A general construction inspector for use on the project an average of 30 hours per week during the entire construction contract. This inspector will be present during the more critical work items such as earthwork embankment construction, aggregate base placement, pavement placement, concrete placement, and utility adjustments. The inspector will spot check the landscape construction and verify the operation of the irrigation system.
- 2) An electrical construction inspector for the project during the electrical work phase for an average of 20 hours per week. He will observe the conduit backfilling/compaction, verify conductor placement, be present during light foundation placement, and be present for system start-up and any trouble shooting.
- 3) A meeting facilitator for the weekly construction meetings to prepare agendas, conduct the meeting, and prepare the meeting minutes for an average of 3 hours per week.

The estimated costs are as follows:

	<u>Estimate</u>
1) Construction Inspection	\$ 83,639
2) Electrical Inspector	\$ 9,635
2) Meeting Facilitator (3 Hours/week)	\$ 11,095
Total	\$104,369



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Please feel free to call me at 602-291-0078 and discuss this further at your convenience.

Sincerely,

Stanley Consultants, Inc.

A handwritten signature in cursive script that reads "Bill Sloan".

Bill Sloan
Constr. Services Group Manager

Attachments: Detailed Cost Breakdown "A"

cc: Tamara Clarke, Stanley Inc.
File

Handwritten initials "WS" in a cursive script.
WS

Detailed Cost Breakdown "A"

City of Tempe
 Department of Transportation
 Tempe Canal Multi-Use Path, University Dr. to UPRR, West to Price Road
 COT Project # 60-997018
 Assume 6 month Construction Duration
 Assume 3/4 time (30 hr/wk)

Member Hours Per Task

- 1.0 Pre-Construction
 - 1.1 Review of Plans/Specifications
- 2.0 Construction
 - 2.1 Construction Observation
 - 2.2 Pay Application Review
 - 2.3 Electrical Inspections
 - 2.4 Weekly Meetings
- 3.0 Post Construction
 - 3.1 As Built/Record Drawing Review
 - 3.2 Final Walk through and Punchlist Prep
 - 3.3 Warranty Walk through
- 4.0 Construction Survey
 - 4.1 Construction Staking/ Demolition
 - 4.2 Survey Calculations
 - 4.3 Survey Manager
 - 4.4 Field Asbuilts
 - 4.5 RLS Asbuilt review for City Submittal

	Hours				
	Meeting Facilitator	Construction Observer (1)	Electrical Inspection	Construction Surveyors (2)	Survey Manager
	80	8			
		792			
		40	80		
		40			
		8			
		6			
Total Hours	80	894	80	0	0
DLR	\$40	\$31	\$39		
Multiplier (OH & Profit)	2.85	2.85	2.85		
	\$9,120	\$79,189	\$8,835	\$0	\$0
Reimbursibles					
Mileage (Roundtrip to Site)*	\$975	\$2,160	\$600		
Mileage (On site)*		\$1,440	\$200		
Misc. Insp. Equip		\$350	\$0		
Office Supplies/Printing/Copying/Delivery	\$1,000	\$500			
Materials Testing (By others)		\$0			
SUB TOTAL	\$11,095	\$83,639	\$9,635	\$0	\$0
TOTAL Estimate				\$0	\$0
					\$104,369

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE

Arizona

Date _____

**Tempe Canal Multi-Use Path
Project No. 60-997018**

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