

Staff Summary Report



Council Meeting Date: 11/06/08

Agenda Item Number: _____

SUBJECT: Request award of a professional services design contract with Damon S. Williams Associates, LLC, for an upstream diversion of the Southern Regional Outflow (SRO) interceptor at the intersection of Priest Drive and 17th Street.

DOCUMENT NAME: 20081106PWDR01 WATERMAIN UPGRADES (0810-04)
PROJECT NO. 3204031

SUPPORTING DOCS: Yes.

COMMENTS: Total cost for this contract is \$98,667.

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

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

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

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

FISCAL NOTE: Sufficient funds are available in CIP Project No. 3204031.

RECOMMENDATION: Award professional services contract.

ADDITIONAL INFO: The scope of work for this contract includes preparation of plans and specifications, and other design and post design services for the construction of an upstream diversion of the SRO interceptor. The flow diversion structure will consist of two new manholes and connecting 36-inch sewer pipe. The 10 million gallon per day flow diversion will increase the capacity in the SRO between Priest Drive and 48th Street.

The contract amount was negotiated by staff and is considered reasonable for the scope of services. Damon S. Williams Associates, LLC, was selected from our consultant on-call list based on a process pursuant to A.R.S. § 41-2578.



CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made and entered into on the 6th day of November, 2008, by and between the City of Tempe, a municipal corporation, ("City"), and Damon S. Williams Associates, LLC, a limited liability company ("Consultant").

The City engages the Consultant to perform professional services for a project known and described as Southern Regional Outflow (SRO) Ten (10) Million Gallon Per Day (MGD) Diversion – Priest Drive and 17th Street, Project No. 3204031 ("Project").

1. SERVICES OF THE CONSULTANT

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

- 1.1. Consultant shall prepare plans and specifications and provide other design and post design services for the construction of a gravity sewer flow diversion structure, as described in Exhibit "A" attached.
- 1.2. Consultant has assigned Dusan Stanistic 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. Consultant shall prepare and submit a detailed opinion of probable cost of the project.
- 1.4. Consultant shall follow and comply with the Public Improvement Project Guide as directed by the City.
- 1.5. Consultant shall prepare plans and technical specifications per the requirements of the applicable chapters of the City's Engineering Design Criteria Manual, latest revision, and the Maricopa Association of Governments (MAG) Uniform Standard Details for Public Works Construction as amended by the City. All plans shall be prepared on CAD as required by the City. Final plans shall be submitted on 3 ml double matte black line mylar and shall be 24" x 36" in size.
- 1.6. Consultant shall submit all final construction documents in both hard copy and electronic format. Plans shall be MicroStation or AutoCAD compatible and all

other documents shall be Microsoft Office compatible. The software version used shall be compatible to current City standards. Other support documents, for example, structural calculations, drainage reports and geotechnical reports, shall be submitted in hard copy only.

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

2. TERM OF CONTRACT

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

3. CONSULTANT'S COMPENSATION

- 3.1. The method of payment for this Contract is payment by installments. Total compensation for the services performed shall not exceed \$98,667.00, unless otherwise authorized by the City. This fee includes the sum of \$57,935.00 for engineering design services; an amount not to exceed \$21,232.00 for design services during construction based on hourly rates established in the attached Exhibit "A" incorporated hereby by this reference; and an allowance of \$19,500.00 for sub-consultant services.
- 3.2. City shall pay Consultant by installments, each installment based upon monthly progress reports and related, detailed invoices submitted by the Consultant. If detailed invoice(s) are approved by the City, such installment payment shall be made within thirty (30) days after City's approval of the progress report and detailed invoice subject to the following limitations:
 - 3.2.1. Prior to approval of the preliminary design (30% plans), payments to the Consultants shall not exceed 30% of the total Contract amount.
 - 3.2.2. Prior to approval of the final design documents, payments to the Consultants shall not exceed 90% of the total Contract amount. The final approval and payment will be made within a reasonable period of time regardless of the project construction schedule.

3.3. 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 design submittals related to the Project by the Consultant and will endeavor to provide a prompt response to questions and rendering of decisions pertaining thereto, to minimize delay in the progress of the Consultant's work. City will also endeavor to keep the Consultant advised concerning the progress of the City's review of the work. Consultant agrees that City's inspection, review, acceptance or approval of Consultant's work shall not relieve Consultant of its responsibility for errors or omissions of Consultant or its sub-consultant(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 2355 E. Camelback Road, Suite 700, Phoenix, AZ 85016. Termination shall be effective upon fourteen (14) days of delivery of notice to Consultant. In addition, this Contract may be terminated pursuant to A.R.S. § 38-511.

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

6. INSURANCE

Without limiting any obligations or liabilities, the Consultant, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and with forms reasonably satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc. rating of not

less than A-VII. Use of alternative insurers requires prior approval from the City.

6.1. General Clauses

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

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

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

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

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

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

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

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

Such policy shall contain a "severability of interests" provision (also known as

“cross liability” and “separation of insured”).

- 6.5. Professional Liability. Consultant 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. Consultant shall carry property coverage on all-risk, replacement cost, agreed amount form with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the Consultant used in the completion of this Contract.

7. HEALTH INSURANCE REQUIREMENTS

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

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

8. WORK FOR HIRE AND OWNERSHIP OF DELIVERABLES

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

9. CONFLICT OF INTEREST

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

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

10. COVENANT AGAINST CONTINGENT FEES

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

11. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless City, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of Consultant, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services Consultant may be deemed legally liable in the performance of this Contract, or any breach of the Contract. Consultant's duty 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 are 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 rendered 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 attorneys' fees, including taxable and non-taxable costs, fees, costs and disbursements of experts, professionals, paralegals, whether at trial, appeal and/or in bankruptcy court, all of which will be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. In addition, should the City retain and/or utilize legal counsel as a result of a breach by Consultant of any term, covenant or provision of this Contract, in addition to paying any recovery owed to City and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, Consultant shall reimburse the City for reasonable attorneys' fees, taxable and non-taxable costs and disbursements, incurred by the City in enforcing the Consultant's obligations, whether or not a legal action is commenced, including but not limited to the cost of preparing and presenting

default notices, demand letters and similar non-judicial enforcement activities.

13. ADDITIONAL SERVICES

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

14. PROHIBITION ON ASSIGNMENT

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

15. MISCELLANEOUS PROVISIONS

- 15.1. Equal Opportunity. Consultant covenants for itself, its employees, agents, assigns and all persons claiming under or through it, that it shall comply with all applicable federal, state, and local laws and ordinances at the time of execution of this Contract and shall not discriminate against or segregate any person or group of persons any person on account of race, color, religion, gender, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition in the performance of this Contract and shall comply with the terms and intent of all applicable federal, state and local governance concerning nondiscrimination.
- 15.2. Legal Compliance. Consultant agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Consultant acknowledges that a breach of this warranty is a material breach of this Contract and Consultant is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the legal right to inspect the documents of any and all Consultants, subconsultants and sub-subconsultants performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Consultant. Consultant hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

- 15.3. Specially Designated Nationals and Blocked Persons List. Consultant represents and warrants to City that neither Consultant nor any affiliate or representative of Consultant (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 (“Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

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 Majure. 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 a limited liability company, licensed to do business in the state of Arizona and currently in good standing, and that it is not now in violation of any agreement, instrument, contract, law, rule or regulation by which Consultant is bound.

- 15.10. Independent Contractor. Nothing contained in this Contract shall be deemed or construed by the parties hereto or otherwise, to create the relationship of principal and agent, partnership, joint venturer, employer and employee, or any association between City and Consultant. Consultant is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Consultant hereunder or for any and all services or materials provided by or rendered to Consultant hereunder in connection with the work set forth in this Contract.
- 15.11. Severability. If any provision of this Contract shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and every other term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 15.12. Time is of the Essence. Time is of the essence in this Contract and each and every provision herein, except as may expressly be provided in writing by the City.
- 15.13. No Waiver. No breach or default hereunder shall be deemed to have been waived the City, except by a writing to that effect signed on behalf of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after written notice thereof and demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City.
- 15.14. Survival. Any and all representations, obligations, indemnities, warranties, covenants, conditions and agreements contained in this Contract which are expressed as surviving the expiration or earlier termination of this Contract, or by their nature, are to be performed, observed or survive, in whole or in part, after the termination or expiration of this Contract term, shall survive the termination or expiration of this Contract.
- 15.15. Retention of Records. City, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Contract. Consultant will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or five (5) years following termination of this Contract.
- 15.16. Antitrust Violations. City and Consultant recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the City. Therefore, the Consultant assigns to the City any and all claims for such

overcharges. Consultant in all subcontracts shall require all subcontractors to likewise assign all claims for overcharges to the City.

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

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

15.19. Notices to Parties:

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

CITY:

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

CONSULTANT:

Dusan Stanisic
Damon S. Williams Associates, LLC
2355 E. Camelback Road
Suite 700
Phoenix, AZ 85016

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

15.21. Non-Appropriation of Funds. If funds appropriated by the City Council or otherwise allocated to perform the work 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.

[SIGNATURE PAGE TO FOLLOW]

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

DATED this _____ day of _____, 2008.

CITY OF TEMPE, ARIZONA

By _____
Mayor

By _____
Public Works Manager

Recommended By:

ATTEST:

City Clerk

Au _____
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

City Attorney

CONSULTANT
Damon S. Williams Associates, LLC

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT A



DAMON S. WILLIAMS ASSOCIATES, L.L.C.
2355 East Camelback Road, Suite 700 Phoenix, Arizona 85016-3458
Phone: 602-265-5400 Fax: 602-265-5632
www.dswa.net

September 22, 2008

Mr. Philip C. Brown P.E.
City of Tempe
Public Works Department
P.O. Box 5002
31 East Fifth Street
Tempe, AZ 85281

Re: City of Tempe Water Utilities Department
Priest Drive & 17th Street Sewer Diversion project

Dear Mr. Brown,

Attached is our proposal for the City of Tempe Water Utilities Department Priest Drive & 17th Street Sewer Diversion project. Thank you for the opportunity to assist the City with this project.

Please feel free to contact me with any questions at (602) 217-1027.

Very truly yours,

DAMON S. WILLIAMS ASSOCIATES, L.L.C.

A handwritten signature in black ink that reads "Dusan Stanistic". The signature is written in a cursive style with a large initial 'D'.

Dusan Stanistic, P.E.
Principal

DSW/File

Principals
Damon S. Williams, P.E.
Dusan Stanistic, P.E.
Glen W. Roth, P.E.

Associates
Michelle D. De Haan
Kristopher J. Kile
Chad Seidel, Ph.D., P.E.



**City of Tempe
Water Utilities Department**

**Priest Drive & 17th Street
SEWER DIVERSION**

**Scope of Work
and Fee Proposal**

September 22, 2008

DSWA
DAMON S. WILLIAMS ASSOCIATES, LLC

Pub



PROJECT SCOPE OF WORK AND FEE PROPOSAL

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GENERAL

Damon S. Williams Associates, L.L.C. (DSWA) is proposing to provide engineering services for the City of Tempe (City) to design sewer flow diversion structure(s) and connecting pipe between two independent sewer trunk lines located at the intersection of Priest Drive and 17th Street in Tempe, AZ.

SCOPE OF WORK

The Project includes design of the diversion structure(s) and connecting sewer line that will redirect flows from the 48-inch trunk sewer line along Priest Drive into the 36-inch trunk sewer line along 17th Street, while maintaining minimum flow in the 48-inch sewer north of 17th Street. This will also allow additional flow capacity in the SROG SRO sewer between Priest Drive and 48th Street. Currently there is no flow in the 36-inch line upstream of the proposed location of the diversion structure. The design includes development of Construction Documents required to construct the diversion structure(s). The design will consider the following key goals:

- Divert approximately between 10.8 mgd and 18.0 mgd to the 36-inch line, while maintaining self-cleaning flows of approximately 1 to 2 mgd minimum flow in the 48-inch line. More specific design flows will be provided by the City prior to commencement of design.
- Develop new diversion structure(s) to hydraulically facilitate transfer of wastewater flows between the 48-inch and 36-inch trunk sewers without any mechanical means, e.g. valves, gates, etc.
- Minimize diversion structure turbulence to reduce Hydrogen Sulfide (H₂S) off-gassing and minimize odor production
- Minimize diversion structure dead flow zones to reduce solids/debris accumulation

SCHEDULE

A draft project schedule is included in Exhibit ~~B~~^C. November 20, 2008 is assumed for Notice to Proceed (NTP). The schedule will be adjusted based on the actual NTP date.

FEE ESTIMATE

The Fee Estimate for all services under this Scope of Work, including subconsultants, is provided in Exhibit ~~A~~^B. Our fee proposal is broken down by task and includes estimated hours by



labor category for each task. Reimbursable expenses are also identified. Based on our understanding of the project, we propose to complete design services for the referenced project for a lump sum of \$57,935.00. A number of allowances (\$19,500.00) and hourly not to exceed services (\$21,232.00) are also identified in the fee spreadsheet that can be utilized as necessary. The proposed subconsultants scope and fees are included in Exhibit ~~2~~ ^D. Additional services other than those specified herein, or those required above the amount identified for tasks may be added through a Contract Addendum with the City.

SCOPE LIMITING ASSUMPTIONS

The following scope limiting assumptions have been defined:

- Odor control design is not included in this scope; however efforts will be taken to minimize hydraulic turbulence to reduce H₂S off gassing and associated odor production.
- Traffic management and coordination during construction is not included.
- City has completed an evaluation for flow diversion impacts to pipe capacity, flow conditions, odor control, and other issues in the downstream and beyond the diversion point resulting from diverting flows from the existing 48-inch trunk sewer on Priest Drive to the existing 36-inch trunk sewer on 17th Street.
- The City will provide the design flows and diversion criteria; therefore, field flow-confirmation is not required.
- Mechanical and instrument controlled flow diversion will not be evaluated and the flow control will be fully based on hydraulics.
- City Project Manager will coordinate with other City Agencies (e.g. Development Services, Public Works, Engineering, etc.) for review comments and for obtaining any City issued permits.
- City will provide as-build drawings of the sewer and water lines in the project vicinity.
- Design for relocation of any existing utilities in conflict with this design is not included.
- Any technical specification requirements will be included on the final drawings. City will provide any other specifications required for executing the construction.
- City intends to procure a contractor under a Job Order Contracting (JOC) delivery method.



LIST OF PROJECT STAGES

A four-digit number identifies tasks and subtasks within each major Project Stage and will be used in all references in Project correspondence, meeting notes, progress payments, status reports, schedules, and filing. The major project stages are outlined as follows:

STAGE 1 – PROJECT MANAGEMENT

STAGE 2 – CONCEPTUAL DESIGN (10%)

STAGE 3 – DETAIL DESIGN

STAGE 4 – CONSTRUCTION PHASE SERVICES (ALLOWANCE)

Subtask detailed descriptions for each Stage are provided in the following sections.

LIST OF CONSULTANTS

The firms involved in this Project are listed below with their respective disciplines.

FIRM	DISCIPLINE
Damon S. Williams Associates (DSWA)	Project Management & Coordination Subconsultant Management Civil/Mechanical Maricopa County Approval to Construct
Project Engineering Consultants (PEC)	Surveying
Nabar Stanley Brown (NSB)	Structural Engineering
Acura Engineering	Geotechnical Investigation
TBE Group	Underground Utilities Potholing

STAGE 1 - PROJECT MANAGEMENT

Task 1100 General Project Management

DSWA will perform general project management duties associated with this Project effort. The efforts include preparation and monitoring of project budget and schedules, implementation of quality assurance and quality control programs, subconsultant management and preparation of monthly progress reports and invoices.

DSW



Task 1200 Project Meetings

Subtask 1210 Conceptual Design Meeting

DSWA will conduct a Conceptual Design Meeting with representatives of the City. The purpose of this meeting will be to introduce conceptual design alternatives of the diversion structure(s) and identify the recommended alternative. This meeting will take place at about 10% design. This task will include effort to prepare agendas, meeting materials and meeting notes.

Subtask 1220 Design Review Meetings

DSWA will attend meetings with the City representatives and JOC Contractor to review 30% and 90% submittal review comments. DSWA will issue corresponding meeting notes.

Deliverables: Meeting Agenda and Notes.

QA/QC Program

This program includes the development and enforcement of QA/QC procedures and design and CAD Standards. Reviews will be conducted for the 30% and 90% level of design completion.

A Senior Engineer (QC Engineer) will independently review the 30% and 90% design submittals for technical merit, completeness of the drawings and specifications, and interdisciplinary coordination prior to submittal to the City. The Design Team and QC Engineer will meet to review and resolve QC comments, and suggested modifications to the progress milestone submittals. Major comments and resolutions will be documented in a memorandum. The QC Engineer will be responsible for the following focused areas of review for each design submittal:

- Consistency with the intent of the design concepts established in the preliminary design
- Technical merit
- Conformance with Engineer's design checklist
- Conformance with regulatory agency and development services design checklists
- Constructability
- Operability and maintainability.

PWB



STAGE 2 – CONCEPTUAL DESIGN (10%)

The City's objective is to redirect flows from the 48-inch sewer line along Priest Drive into the 36-inch sewer line along 17th Street, while maintaining a portion of sewage flow in the 48-inch sewer line. The flow diversion will limit the flows to the existing downstream 48-inch sewer. The diverted flows to the 48-inch sewer will continue to provide scouring in the pipe for self-cleaning. The City will provide the 36-inch and 48-inch line design flows as well as design diverted flows. This task will evaluate up to three alternatives. The evaluation of each alternative will be based on operability, hydraulics, constructability and cost.

Task 2100 Diversion Structure(s) Design Development

The following efforts are required to develop and evaluate diversion design alternatives at the 10% design level:

Subtask 2110 Conceptual Design

DSWA will evaluate diversion schemes for up to three (3) alternatives. DSWA will recommend one diversion structure alternative based on the review with the City. Minimum construction cost, effective hydraulics for wide range of flows, minimum impact on neighborhood and existing utilities during construction will be used to select the recommended design.

Subtask 2120 Hydraulics

This task includes diversion hydraulic calculations of each alternative to determine effective hydraulic design parameters for diverting a portion of the redirected flows from the existing 36-inch sewer to the existing 48-inch sewer.

Subtask 2130 Constructability Evaluation

The structure(s) design and constructability analysis will identify existing utilities that may require potholing and determine feasibility of structure(s) construction at the project site. Additionally, the feasibility of minimizing bypass pumping and pipe down time will be reviewed. Conceptual plans for any required major utility relocations will be included. Once the diversion structure(s) design is selected, coordination to gain acceptance with affected utilities will be conducted during preliminary design.

Subtask 2140 Conceptual Construction Sequence and Bypass Concept

Conceptual construction sequencing will be evaluated in conjunction with conceptual design development. A final sequencing and scheduling plan will be prepared upon completion of the Conceptual Design. The sequencing and methods of construction planning will include



development of bypass pumping methods, examination of gravity bypasses, examination of live sewer construction methods, and determination of facility component construction to minimize construction time.

Subtask 2150 Opinion of Probable Cost

Preliminary opinion of probable cost for diversion structure(s) alternatives

Deliverables: 10% Design Sketches. Opinion of Probable Cost.

Task 2200 Survey

This task will establish a topographic map of the site and includes existing properties, right-of-ways, easements, setbacks, monuments adjacent to the project site, utilities, major features, and structures around the project site. The topographic survey of the site, including a base map file with 1-ft contours, including setbacks, easements, right-of-way, major features and structures and TIN file, will be used as the base file for the contract drawings. A copy of the survey data will be provided for City records.

Task 2300 Utility Potholing (Allowance)

This task will confirm the vertical and horizontal coordinates of the underground utilities. These utilities include the 36-inch sewer, the 48-inch sewer, communication lines such fiber optics, gas, storm water and potable water lines within the project site. The information will be used in the design to confirm pipe slopes, clearance between utilities, and will be incorporated into the design background files. A copy of the potholing results will be provided for City records.

Deliverables: Testhole Data Summary including depth, horizontal and vertical location and size and material of the utility line exposed.

Task 2400 Geotechnical Investigation (Allowance)

This task will include exploratory drilling to identify soil type and existing soil conditions of the project site. The investigation also includes lab testing for establishment of foundation bearing pressures or capacities, foundation depths and geometries, and criteria for design for the resistance of lateral loads. The resulting geotechnical engineering analysis will be documented in a Report. A copy of the geotechnical report will be provided for City records.

Deliverables: Geotechnical Report.

pot



STAGE 3 – DETAIL DESIGN

Under Stage 3, the design of the selected diversion alternative will proceed through the final design. The design drawings will be developed in AutoCAD version 2008 and converted to Microstation V8 at the completion of the design. The tasks under this stage include the following:

Task 3100 30% Design

Efforts under this task will include updating the selected conceptual design to incorporate City 10% design review comments, and further development of design to the 30% completion level. This task includes the following:

- Civil design of the diversion structure(s) and connecting sewer line incorporating survey results
- Update opinion of probable cost based on 10% review comments
- Develop Basis of Design memorandum
- Submittal to Utilities for conflict review

Deliverables: Three (3) sets of ½ scale (11x17) drawings, Opinion of Probable Cost, Basis of Design memorandum.

Task 3200 90% Design

Efforts under this task will include addressing the 30% design review comments and further development of design to 90% completion. The 90% drawings will be submitted to the City for review and to Utilities in order to obtain non-conflict letters. Any City and Utilities comments will be addressed prior to submitting the 95% design to the Maricopa County Environmental Department Services (MCESD) for obtaining Approval to Construct (ATC). The ATC fee for non-expedited review is included in this proposal. This task includes development of the following:

- Civil and structural design for diversion structure and connecting pipe
- Constructability evaluation
- Opinion of probable cost

PUB



- Basis of Design memorandum

Deliverables: Three (3) sets of 90%, ½ scale 11x17 drawings for City and Utilities review, 95% submittal to the MCESD, Opinion of Probable Cost, Basis of Design memorandum.

Task 3300 Final Design

This task comprises the development of the final submittal for the diversion structure(s) and connecting pipe. Efforts under this task will include the design updates based on final review comments by the City and MCESD and updates of the Basis of Design memorandum.

Deliverables: One (1) copy of 24x36 (with extra large margin to allow printing at ½ scale (11x17) Signed and Sealed Mylars, two (2) sets of 24x36 drawings (bond), two (2) sets of ½ scale 11x17 drawings, two (2) copies of the final Basis of Design memorandum, CD with electronic files of all deliverables.

STAGE 4 – CONSTRUCTION SERVICES (HOURLY NOT TO EXCEED)

The Design Team can provide as-needed assistance to the City during the construction. This stage may include the following tasks:

Task 4100 Shop Drawing Reviews

Review contractor prepared shop-drawing submittals for the concrete, rebar, coating, and utility relocation. This task assumes review of up to four (4) shop-drawing submittals.

Task 4200 Requests for Information and Alteration

The Engineer will prepare written responses to contractor requests for information (RFI) and requests for alteration (RFA). The responses will include diagrams and drawings if required to communicate the design intent. Communication of the responses will be through the City's construction manager. This task assumes responses to up to six (6) RFIs and RFAs.

Task 4300 Periodic Construction Meetings

When requested by the City's construction manager, the Engineer will be present for up to four (4) field construction meetings to answer questions, provide clarifications on design intent, or review contractor proposed changes.



Task 4400 Record Drawings

The Engineer will prepare a set of record drawings indicating changes made during construction. Record drawing information shall be based on hand mark-ups made to the original construction set of mylars, drawings and other data furnished by Contractor(s) to Engineer, which Engineer will review for accuracy and completeness. This task includes a submittal of the record drawings to the County submittal as part of the application for the Approval-of-Construction.

Deliverables: Record Drawings with Engineer signed certificate of completion.

STAGE 5 – SROG COORDINATION (HOURLY NOT TO EXCEED)

Task 5100 SROG Coordination

This task includes coordination with the Sub-Regional Operating Group.



EXHIBIT B – Project Fees

RMB



CITY OF TEMPE WATER UTILITIES DEPARTMENT
Priest Drive & 17t Street Sewer Diversion



EXHIBIT A - FEES

Task No.	Description	Consultant Hours							Total Hours	Total Cost
		Pnn	QA/QC	PM	Proj Eng	CAD Design	Cler			
	RATES	\$ 199.00	\$ 175.00	\$ 156.00	\$ 114.00	\$ 85.00	\$ 63.00			
1000	Project Management									
1100	General Project Management			8			2	10	\$1,374	
1200	Meetings	2		6	12			20	\$2,702	
	TOTAL HOURS	2	0	14	12	0	2	30		
TOTAL TASK 1000 COST									\$4,076	
2000	Conceptual Design (10%)									
2100	Diversion Structure(s) Design Development									
2110	Conceptual Design	1		2	24	8	4	39	\$4,179	
2120	Hydraulics			1	8			9	\$1,068	
2130	Constructability Evaluation			1	8			9	\$1,068	
2140	Construction Sequence & Bypass Concept			2	8			10	\$1,224	
2150	Opinion of Probable Cost			1	8			9	\$1,068	
2200	Survey			1	4			5	\$612	
	TOTAL HOURS	1	0	8	60	8	4	81		
TOTAL TASK 2000 COST									\$9,219	
3000	Design Phase (30%, 90% & Final)									
3100	30% Design	1	4	8	32	40	2	87	\$9,321	
3200	90% Design	1	8	8	48	64	4	133	\$14,011	
3300	Final Design	1	1	4	16	24	2	48	\$4,988	
	TOTAL HOURS	3	13	20	96	128	8	268		
TOTAL TASK 3000 COST									\$28,320	
TOTAL TASKS 1000 THROUGH 3000		6	13	42	168	136	14	379	\$41,615	
SUBCONSULTANTS										
S-1	Structural Design - NSB								\$9,710	
S-2	Survey - PEC								\$4,960	
OTHER DIRECT COSTS										
1	MCESD ATC Review Fee (Non-Expedited)								\$1,500	
2	Reproduction and Printing								\$100	
3	Counter Services								\$50	
TOTAL WITHOUT ALLOWANCES		6	13	42	168	136	14	379	\$57,935	
ALLOWANCES										
2100	Utility Pot-holing (20 holes) - TBE Group							0	\$15,000	
2400	Geotechnical Investigation - ACURA							0	\$4,500	
	TOTAL HOURS	0	0	0	0	0	0	0		
TOTAL ALLOWANCES									\$19,500	
HOURLY not to EXCEED SERVICES										
2100	Utility Pot-holing - DSWA			1	8			9	\$1,068	
2400	Geotechnical Investigation - DSWA				2			2	\$228	
4000	Construction Phase Services									
4100	Shop Drawing Reviews	1		2	16		4	23	\$2,587	
4200	Requests for Information and Clarifications	1		2	24		4	31	\$3,499	
4300	Periodic Construction Meetings				12			12	\$1,368	
4400	Record Drawings	1		2	8	24		35	\$3,463	
5000	SROG Coordination									
5100	SROG Coordination	1		20	50			71	\$9,019	
	TOTAL HOURS	4	0	27	120	24	8	183		
TOTAL HOURLY not to EXCEED SERVICES									\$21,232	
TOTAL		10	13	69	288	160	22	562	\$98,667	

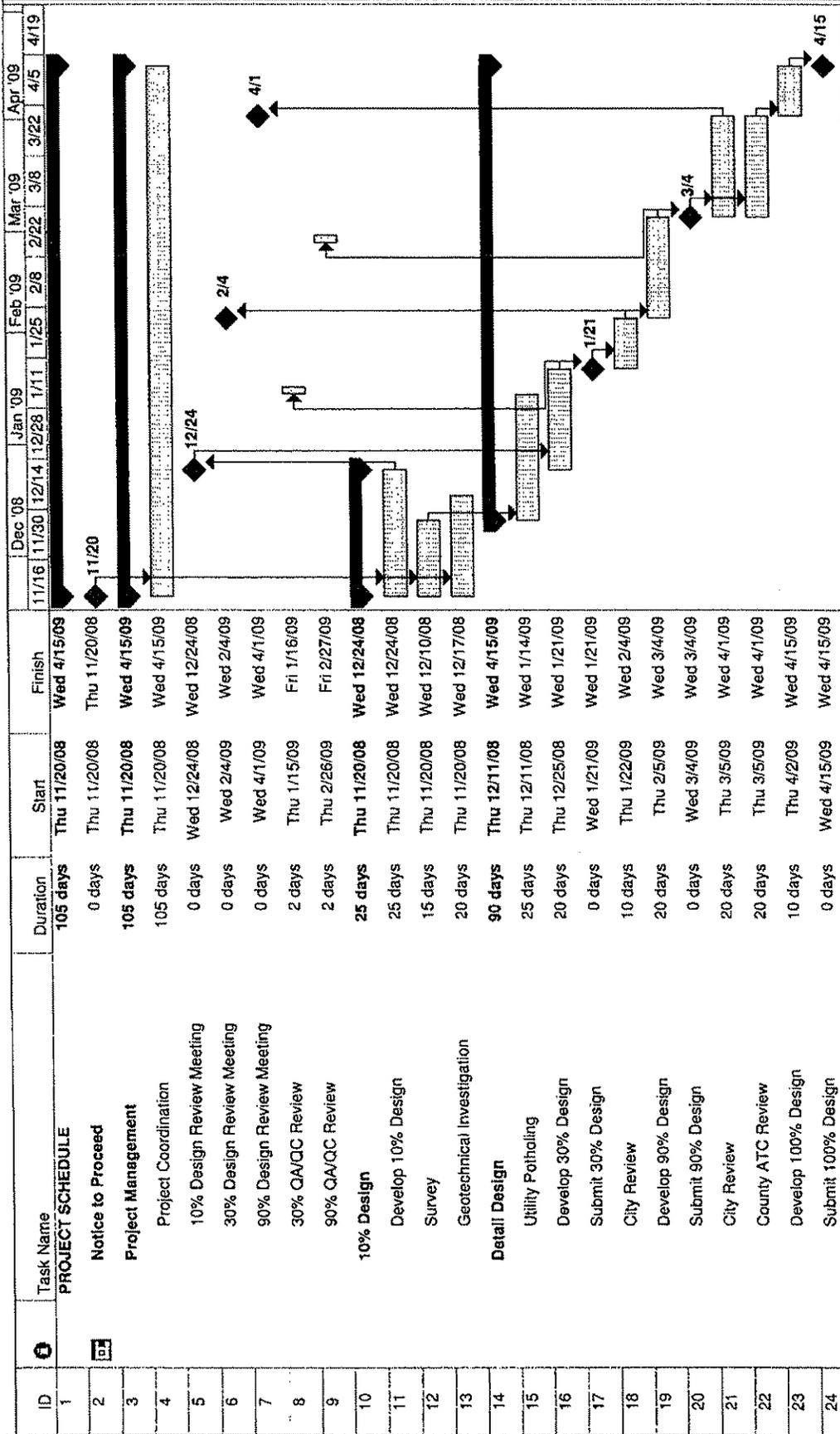
PMB



EXHIBIT C – Project Schedule

MB

EXHIBIT B
City of Tempe
Priest Drive & 17th Street Sewer Diversion



Project: Project Schedule 091208
 Date: Mon 9/8/08

Task: []
 Split: []
 Progress: []

Milestone: []
 Summary: []
 Project Summary: []

External Tasks: []
 External Milestone: []
 Deadline: []

BM



EXHIBIT D – Subconsultant Scopes & Fees

Nabar Stanley Brown, Inc.
Consulting Structural Engineers

CITY OF TEMPE

Diversion Structure and Junction Box
Structural Design Services

Scope of Services

Nabar Stanley Brown, Inc. will perform the following structural engineering design tasks on this project:

1. NSB will provide the structural design for the following elements:
 - 15' x 15' x 8' deep (approx.) cast-in-place concrete diversion box structure. This new diversion box may have a manhole structure supported on the top of the new box. The manhole structure will be designed and supplied by others.
 - 10' x 10' x 8' deep (approx.) cast-in-place concrete junction box structure. The new junction box may have a manhole structure supported on the top of the new box. The manhole structure will be designed and supplied by others.
2. NSB will prepare sealed structural calculations for final submittal.
3. NSB will prepare sealed structural drawings, with final plans and details in AutoCAD R2007 format.
4. NSB will redline the structural sections of the specification provided by the prime consultant if required.
5. NSB engineers will attend local coordination meetings as required.

General Assumptions and Conditions:

- A) A current soils report will be provided to NSB.
- B) Architectural, mechanical, electrical, civil, process design etc. will be provided by others. Design for final junction box volume requirements, floor elevations and process including piping will be provided by others.
- C) No buildings, site walls, retaining walls, vaults, gates, concrete or steel reservoirs structural design are included in this proposal.
- D) Construction Administration services such as shop drawing submittals, response to RFI's and inspection services are not included in the scope of this proposal. If required they may be included under a separate proposal.

NSB

Nabar Stanley Brown, Inc.
Structural Engineers

CITY OF TEMPE				
Diversion Structure and Junction Box				
Structural Design Services				
8/12/2008				
Task/Item	Project Engineer	Design Engineer	Structural CAD Draft	Totals
Administration				
Edit & Review Specifications		2	2	
Sheet Count / Design Hours				
S-1 General Structural Notes		2	8	8
S-2 Diversion Box Plans, Sections and Details		4	16	16
S-3 Junction Box Plans, Sections and Details		4	16	16
Total Structural Sheets = 3				
Total Hours		12	42	40
Hourly Rate	\$155.00	\$125.00	\$65.00	
	\$1,860.00	\$5,250.00	\$2,600.00	\$9,710.00
			Total Fee	\$9,710.00
Notes:				
1) This proposal includes the structural design of two c-i-p concrete box structures. The approximate sizes are 15' x 15' x 8' and 10' x 10' x 8' with pipe invert about 20' below grade.				
2.) The manhole structures above the boxes will be performance specification items and will be designed by others.				
3.) No structural construction administration services are included in this proposal.				
4.) Civil, electrical, mechanical etc. design will be provided by others.				

Tempe Boxes

Project Engineering Consultants, Ltd.



September 8, 2008

Damon S. Williams Associates, LLC
2355 East Camelback Road, Suite 700
Phoenix, Arizona 85016-3458

ATTN: Abel Ramarui

RE: Tempe Diversion Box

Dear Mr. Ramarui,

Project Engineering Consultants, Ltd. (PEC) submits herewith the following proposal to provide surveying and drafting services for the above referenced project:

Direct Labor

Survey Crew	20 hrs.	@	\$155.00/hr.	=	\$3,100.00
Survey Manager	6 hrs.	@	\$120.00/hr.	=	\$ 720.00
CADD Technician	12 hrs.	@	\$ 95.00/hr.	=	<u>\$1,140.00</u>
Total Cost				=	\$4,960.00

Scope of Work

1. A boundary and supplemental topographic survey of the entire project location, which is defined as all of the area lying within 45 feet of the centerline of 17th Street, from the intersection with Priest Drive to approximately 250 feet west of Priest Drive, and within 70 feet of the centerline of Priest Drive from approximately 250 feet north of 17th Street to approximately 250 feet south of 17th Street. The survey shall also extend far enough north, south and west to include any utilities which might impact this survey. The survey shall be Class A field survey (Requirements per Arizona Board of Technical Registration) and shall locate and identify all monuments adjacent to the project area. PEC shall identify all setbacks, easements, right-of-way, major features and structures at the plant and tie all survey work to the City of Tempe's horizontal and vertical coordinate system. Contours will be provided for every foot of elevation change, and results of this task will be presented in AutoCAD drawings which can be used as civil backgrounds. In addition, curb and gutter, edges of pavement and centerline of pavement shall be located at a minimum of every 50 feet plus at any grade breaks. Vertical survey data for elevations of water valve nuts, manhole rims and pipe inverts for sanitary sewer, storm drain, and irrigation facilities will be collected along the street corridor.
2. Contact Blue Stake for any and all existing utility maps that may affect project area.

3. The field survey will tie into at least two (2) City of Tempe recognized benchmarks. A temporary benchmark shall be set at the brass cap in the intersection of 17th Street and Priest Drive.
4. Provide Client with AutoCAD base map file with 1 foot contours. PEC shall identify all setbacks, easements, right-of-way, major features and structures within existing lift station area. Points, breaklines, and triangular irregular network (TIN) data file is to be provided to DSWA. Electronic files including all survey data, TIN, and Base Map shall be provided in a format compatible with AutoCAD 2007 or more recent with Point files in *.txt format, and any digital photos obtained from site in *.jpg format.

PEC anticipates completion of this project to be 15 consecutive working days from official Notice to Proceed.

PEC appreciates the opportunity to submit this proposal. Please call if you have any questions.

Sincerely,



Chuck Gardiner
Survey Coordinator
Project Engineering Consultants, Ltd.



August 12, 2008

Mr. Abel Ramarui
Damon S. Williams Associates, L.L.C.
2355 East Camelback Road, Suite 700
Phoenix, AZ 85016-3458

Re: **Proposal for Utility Locating Services**
City of Tempe Sewage Diversion Structure

Dear Mr. Ramarui:

TBE Group, Inc. (TBE) will provide vacuum excavation potholes (testholes) on existing subsurface utilities at locations to be determined during the design phase. Pertinent pothole data will be presented in spreadsheet format on our standard "Testhole Data Summary" form that includes the depth, horizontal and vertical location, size and material composition of the utility line exposed.

For an estimated twenty (20) potholes, the unit rate is \$575.00 each and includes project management, Blue Stake coordination, excavation and data collection, our standard backfill and pavement restoration procedures (native backfill and cold patch), survey to establish horizontal and vertical position of potholes, and a "Testhole Data Summary" in electronic format. This price covers potholes up to a maximum depth of 8 feet. If the depth exceeds 8 feet, a surcharge of \$45.00 per foot of depth over 8 feet will be added to the price of the pothole. Potholes excavated on Blue Stake marks for untraceable utilities that do not result in our finding the utility will be considered a dry hole and invoiced at the \$575.00 unit price. Additional potholes, if required, will be added to the project at the \$575.00 unit price. The estimated not-to-exceed budget for twenty (20) potholes is \$15,000.00. This allows an additional contingency amount of \$3,500.00 for permit fees, traffic control, additional potholes, dry holes or extra depth surcharges, if needed. **Special backfill or asphalt restoration requirements, i.e., asphalt hot patch, slurry backfill, AB backfill...etc., and compaction testing will be considered a reimbursable expenses and invoiced at cost plus 15%, if required. Additional office and field hours may also be required to facilitate special City of Tempe potholing requirements.** An invoice will be prepared upon completion for the actual work completed.

Prior to beginning work, TBE will require survey horizontal and vertical control signed and sealed by an Arizona Registered Land Surveyor adequate to stake the pothole locations with RTK GPS technology; a pothole request list identifying the pothole number, horizontal location in coordinate format and the type of utility to be potholed; and 11" x 17" plan sheets with background topography, existing utilities and pothole locations clearly marked and annotated with the corresponding pothole number.

TBE will provide field survey to initially stake the pothole location with P.K. nail in pavement or steel pin in natural ground marked with pothole number in white paint on pavement or on lath with white flagging off pavement. TBE will utilize the surveyed locations for Blue Stake notification/coordination and as a reference point for each pothole. After exposing the utility, TBE will measure and record adjustments from the surveyed location to the reference pin set by TBE above the centerline of each utility exposed. Potholes with large adjustments with respect to the initial surveyed location may require additional survey.

PAR

Mr. Dusan Stanisic, P.E.
Damon S. Williams & Associates
2355 E. Camelback Rd., Suite 700
Phoenix, AZ 85016

Proposal No. P08-118
August 12, 2008

**Proposal for Geotechnical Investigation
Diversion Structures
17th St & Priest Dr
Tempe, Arizona**

Dear Mr. Stanisic:

Acura Engineering thanks you for the opportunity to provide this cost estimate for a geotechnical investigation for the above-referenced project.

A Diversion Structure(s) is to be constructed over an existing 48-inch pipe whose flows will be diverted into a new 36-inch line connecting the new Diversion Structure to a new Junction Box. The new Junction Box will be built over an existing 36-inch pipe. It is anticipated that the Diversion Structure to be approximately 15x15ft by 8ft high with a manhole access to the exist grade (sizes are approximate at this time). The Junction Box will be approximately 10x10ft by 8ft high (sizes are approximate at this time). The invert of the structures will be about 20 ft below grade.

The geotechnical investigation and report for the project will include field, laboratory, and engineering phases. The purposes of the investigation are to:

- Determine subsurface conditions at the project site;
- Provide foundation design and earthwork recommendations; and
- Provide information helpful during construction.

Field Investigation

Acura proposes to drill 2 bores using conventional truck-mounted drilling equipment (CME-55 or 75, or equivalent) to depths of 30 to 35 feet below grade, or to auger refusal, whichever comes first:

Laboratory Testing

Laboratory tests will be performed to classify soil strata, evaluate plasticity, consolidation/swell potential, and soil corrosivity (pH, resistivity, soluble sulfates, chlorides).

Engineering Report

Engineering analyses of the results of the field and laboratory data will be made to develop recommendations for foundation design. The report will include the following:

1. General subsurface conditions, including boring logs with descriptions of strata, summaries of laboratory test results, and water levels obtained at the time of drilling;
2. Boring location plan;
3. Recommended foundation types and allowable bearing pressures, along with comments regarding settlement and/or heave;
4. Provide general foundation construction requirements; and
5. Recommendations for earthwork

Four (4) copies of the report will be submitted.

Cost Estimate

Based on the scope of work outlined above the proposed cost for the Geotechnical Services is a lump sum amount of **\$4,500.00**.

The above estimated fee is based on the following:

1. The site is completely accessible for a truck mounted drill rig.
2. Enough control exists on site to permit easy staking of the boring locations.
3. Right of entry is provided by client.

The fee may be exceeded if site conditions are significantly different than anticipated or changes in work are required or requested. However, the estimated maximum fee will not be exceeded without the client's prior authorization. Required additions to the above scope of services would be invoiced in accordance with our standard fee schedule.

Schedule

Weather and site conditions permitting, field operations can start 5 to 7 days after receipt of formal authorization to proceed to allow for utility clearance with Arizona BlueStake. Borings will take a day to drill. The report will be submitted about 2 to 3 weeks following completion of the fieldwork.

Terms and Conditions

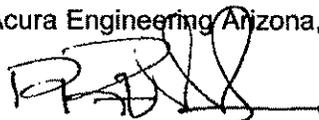
The attached Terms and Conditions describes general contractual conditions including identification of client, on-site responsibilities and risks, warranty, invoicing procedures, and record and sample maintenance.

To indicate acceptance of this proposal, please have the signature block below signed by a duly authorized representative of the client, or attach it to your standard sub-consultant agreement, and return one copy to us for our files.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please call us if we can be of any additional assistance.

Sincerely,

Acura Engineering Arizona, LLC



Peter Rupal, P.E.
President

Attachments

CLIENT:

Firm Name

Authorizing Signature

Typed Name & Title

Date



GENERAL CONDITIONS

1. Parties to This Agreement

CLIENT as used herein is the entity who authorizes performance of services by ACURA ENGINEERING ARIZONA, LLC (ACURA) under the conditions stated herein. ACURA as used herein includes its employees and officers, and its subcontractors and subconsultants (including affiliated corporations).

2. On-site Responsibilities and Risks

2.1 Right-of-Entry. Unless otherwise agreed, CLIENT will furnish unfettered rights-of-entry and obtain permits as required for ACURA to perform the fieldwork.

2.2 Damage to Property. ACURA will take reasonable precautions to reduce damage to land and other property caused by ACURA's operations. However, CLIENT understands that damage may occur and ACURA's fee does not include the cost of repairing such damage. If CLIENT desires ACURA to repair and/or pay for damages, ACURA and CLIENT will agree in a separate writing or amendment to the Scope of Services as to the nature and extent of such repairs and will add the pre-agreed cost to ACURA's fee.

2.3 Toxic and Hazardous Materials. CLIENT will provide ACURA with all information within CLIENT's possession or knowledge as to the potential occurrence of toxic or hazardous materials, or Biological Pollutants (as defined in 10 below) at the site being investigated. If unanticipated toxic or hazardous materials, or biological pollutants are encountered, ACURA reserves the right to demobilize ACURA's field operations and to take immediate measures to protect health and safety at CLIENT's expense. Remobilization will proceed following consultation with ACURA's safety coordinator and CLIENT's acceptance of proposed safety measures and fee adjustments.

CLIENT agrees to compensate ACURA for its extra work. CLIENT also recognizes there is a risk that sampling through an unknown contaminated zone may result in spread of contamination of an aquifer, underground stream, or other hydrous body not previously contaminated and in turn spreading hazardous materials off-site. CLIENT recognizes nothing can be done to prevent such an occurrence because such sampling is a necessary aspect of the work that ACURA will perform for CLIENT's benefit.

CLIENT waives any claim against ACURA and agrees to defend, indemnify and save ACURA harmless from any claim or liability for injury or loss of any type arising from ACURA's discovery of unanticipated hazardous materials on site.

2.4 Utilities and Pipelines. While performing ACURA's field work, ACURA will take reasonable precautions to avoid damage to subterranean and subaqueous structures, pipelines, and utilities. CLIENT agrees to defend, indemnify, and hold ACURA harmless for any damages to such structures, pipelines, and utilities that are not called to ACURA's attention and/or correctly shown on plans furnished to ACURA.

2.5 Site Safety. CLIENT acknowledges that it, or its construction contractor, assumes sole and complete responsibility for job site conditions during construction of the project, including specifically safety of persons and property. CLIENT further agrees to indemnify and hold ACURA harmless from any and all liability in connection with the performance or work during construction of this project, excepting liability arising directly from the negligence of ACURA. ACURA is not responsible for the job site safety of others, nor does ACURA have stop-work authority over work by others. However, ACURA will conduct its work in a safe, workman-like manner, and will observe the work-site safety requirements of CLIENT that have been communicated to ACURA in writing.

3. Standard of Care

3.1 ACURA agrees in connection with services performed under this Agreement that such services are performed with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or a similar locality. No warranty, expressed or implied, is made or intended by rendition of consulting services or by furnishing oral or written reports of the findings made.

3.2 CLIENT acknowledges that conditions may vary from those encountered at the location where borings, surveys, or explorations are made and that ACURA's data, interpretations, and recommendations are based solely on the information available to ACURA. ACURA is not responsible for the interpretation by others of the information developed or its re-use for purposes not designated in writing at the time of the Agreement.

4. Limitation of Remedies

To the greatest extent permitted by law, CLIENT's sole remedy against ACURA for claims and liabilities in any way arising out of or directly or indirectly related to ACURA's work for CLIENT will not exceed an aggregate limit of \$50,000 or the amount of ACURA's fee, whichever is less, regardless of the legal theory under which remedy is sought. In the event CLIENT does not wish to limit ACURA's remedy to this sum, and if CLIENT requests in writing prior to acceptance of this Agreement, ACURA agrees to negotiate a greater remedy amount in exchange for an increase in scope and fee appropriate to the project and remedy risks involved. Additionally, ACURA, its officers, directors, shareholders, employees and agents shall have no liability to Client for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of

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Client's property or facility, shutdowns or service interruptions, loss of use, profits or revenue, inventory or use charges or cost of capital or claims of Client's customers.

5. Invoices and Payment

Invoices will be submitted at the completion of task elements, or, at ACURA's discretion, monthly for services rendered. Payment is due upon presentation of ACURA's invoice and is past due thirty (30) days from invoice date. CLIENT agrees to pay a financing charge of one and a half percent (1 1/2%) per month (or the maximum rate allowable by law, whichever is less), on past due accounts, and agrees to pay attorney's fees or other costs incurred in collecting any delinquent amount.

6. Data, Records, Work Product and Report(s), and Samples

Data, Records, Work Product and Report(s) are ACURA's property. All pertinent records relating to ACURA's services shall be retained for a minimum of two (2) years after completion of the work. CLIENT shall have access to the records at all reasonable times during said period. CLIENT agrees that all reports and other work furnished to the CLIENT and/or his agents not paid for, will be returned upon demand and will not be used for licensing, permits, design and/or construction. CLIENT also agrees that report plans and other work prepared by ACURA for the CLIENT, are for the sole use of the CLIENT and other parties designated jointly and agreed to in writing by CLIENT and ACURA.

7. Samples

All samples of soil and rock will be discarded ten (10) days after report submittal. However, upon CLIENT's written request at the time of proposal acceptance, samples will be delivered upon issuance of our report in accordance with CLIENT's instructions, or stored for an agreed upon charge.

8. Indemnification

ACURA agrees to indemnify and hold harmless Client, and its officers, directors, and employees from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including reasonable attorneys' fees or other loss ("Loss") to the extent caused by ACURA's negligent performance of its Services under this Agreement.

9. Consequential Damages

CLIENT and ACURA each agree that neither of them will be liable to the other for any consequential damages incurred by either due to the fault of the other, their employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

10. Biological Pollutants

ACURA's scope of work does not include the investigation, detection, or design related to the presence of any Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, mold, fungi, spores, bacteria, and viruses, and the byproducts of any such biological organisms. CLIENT agrees that ACURA will have no liability for any claim regarding bodily injury or property damage alleged, arising from, or caused directly or indirectly by the presence of or exposure to any Biological Pollutants. In addition, CLIENT will defend, indemnify, and hold harmless ACURA from any third party claim for damages alleged to arise from or be caused by the presence of or exposure to any Biological Pollutants. If CLIENT requests in writing prior to acceptance of this Agreement, ACURA will negotiate a greater limitation amount, and remove CLIENT's responsibilities, in exchange for an increase in fee to develop an expanded scope of work to provide biological pollutant protection.

11. Acceptance of Agreement

These GENERAL CONDITIONS have been established in large measure to allocate certain risks between CLIENT and ACURA. ACURA will not initiate service without formal agreement on the terms and conditions set forth in these GENERAL CONDITIONS. Acceptance or authorization to initiate services shall be considered by both parties to constitute formal acceptance of all terms and conditions of these GENERAL CONDITIONS. Furthermore, all preprinted terms and conditions on CLIENT's purchase order or purchase order acknowledgment forms are inapplicable to these GENERAL CONDITIONS and ACURA's involvement in CLIENT's project.

12. Termination of Contract

CLIENT and ACURA may terminate services at any time upon ten (10) days written notice. In the event of termination, CLIENT agrees to fully compensate ACURA for services performed including reimbursable expenses to the termination date, as well as demobilization expenses. ACURA will terminate services without waiving any claims or incurring any liability.

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE

_____,
Arizona

Date _____

Southern Regional Outflow (SRO) Ten (10) Million Gallon Per Day (MGD)
Diversion - Priest Drive and 17th Street
Project No. 3204031

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

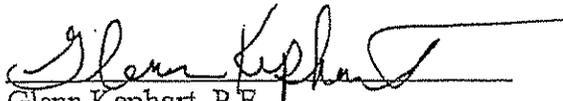
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the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