

Staff Summary Report



Council Meeting Date: 2/19/09

Agenda Item Number: _____

SUBJECT: Request award of a professional services contract with Kimley-Horn and Associates, Inc. for a feasibility study of First Street improvements between Farmer Avenue and Ash Avenue.

DOCUMENT NAME: 20090219PWTG01 **TRAFFIC STUDIES (0112-11) PROJECT NO. 6909141**

SUPPORTING DOCS: Yes.

COMMENTS: Total cost for this contract is \$93,219.

PREPARED BY: Theresa Galindo, Acting Engineering Contract Administrator (x8518)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8854)
Shelly Seyler, Traffic Engineer (x2660)

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

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

FISCAL NOTE: Sufficient funds are available in Capital Improvement Project No. 6909141.

RECOMMENDATION: Award professional services contract.

ADDITIONAL INFO: The purpose of this study is to identify improvement alternatives and evaluate the feasibility of those alternatives to realign First Street west of Farmer Avenue with Rio Salado Parkway east of Ash Avenue.

~~The scope of work for this contract includes preparation of a feasibility report and collection and analysis of data from prior traffic reports, studies and plans.~~

The design fee was negotiated by staff and is considered reasonable for the scope of services. Kimley-Horn and Associates, Inc. was selected by a review committee as the most qualified firm for these services using a qualification based process set forth in A.R.S. § 34-601 through 611.



CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made and entered into on the 19th day of February, 2009, by and between the City of Tempe, an Arizona municipal corporation (“City”), and Kimley-Horn and Associates, Inc., a North Carolina corporation (“Consultant”).

The City engages the Consultant to perform professional services for a project known and described as First Street Alignment Feasibility Study, Project No. 6909141 (“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 a feasibility study, as described in Exhibit “A” attached.
- 1.2. Consultant has assigned Michael Grandy as the Project Manager for this Contract. Prior written approval by the City is required in the event the Consultant needs to change the Project Manager. Consultant shall submit the qualifications of the proposed substituted personnel to the City for approval prior to any substitution or change.

2. TERM OF CONTRACT

Consultant shall complete all services within 200 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 \$93,219.00, unless otherwise authorized by the City. This fee includes the sum of \$72,086.00 for professional services; an allowance of \$5,000.00 for potholing; and an allowance of \$16,133.00 for reimbursable expenses, which in no event will ever be more than actual cost.
- 3.2. City shall pay Consultant by installments, each installment based upon monthly progress reports and related, detailed invoices submitted by the Consultant. If detailed invoice(s) and progress report(s) are approved by the City, installment

payments will be made within thirty (30) days after City's approval.

4. CITY'S RESPONSIBILITIES

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

5. TERMINATION AND DEFAULT

- 5.1. City shall be entitled to terminate this Contract at any time, in its discretion. In addition, the City may terminate this Contract for default, non-performance, breach or convenience, or abandon any portion of the Project for which services have not been fully or properly performed by the Consultant. Termination shall be commenced by delivery of written notice delivered to Consultant, personally or by certified mail at 1255 W. Baseline Road, Suite 258, Mesa, Arizona 85202. Termination shall be effective upon fourteen (14) days of delivery of notice to Consultant. In addition, this Contract may be terminated pursuant to A.R.S. § 38-511.

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

6. INSURANCE

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

6.1. General Clauses

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

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

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

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

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

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

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

In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

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

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

7. **HEALTH INSURANCE REQUIREMENTS**

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

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

8. WORK FOR HIRE AND OWNERSHIP OF DELIVERABLES

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

9. CONFLICT OF INTEREST

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

or any services, equipment or facilities to be used on this Project other than with the City.

10. COVENANT AGAINST CONTINGENT FEES

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

11. INDEMNIFICATION

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

12. DISPUTE RESOLUTION

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

13. ADDITIONAL SERVICES

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

14. PROHIBITION ON ASSIGNMENT

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

15. MISCELLANEOUS PROVISIONS

- 15.1. Equal Opportunity. Consultant covenants for itself, its employees, agents, assigns and all persons claiming under or through it, that it shall comply with all applicable federal, state, and local laws and ordinances at the time of execution of this Contract and shall not discriminate against or segregate any person or group of persons any person on account of race, color, religion, gender, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition in the performance of this Contract and shall comply with the terms and intent of all applicable federal, state and local governance concerning nondiscrimination.
- 15.2. Legal Compliance. Consultant agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Consultant acknowledges that a breach of this warranty is a material breach of this Contract and Consultant is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the legal right to inspect the documents of any and all Consultants, subconsultants and sub-subconsultants performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Consultant. Consultant hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
- 15.3. Specially Designated Nationals and Blocked Persons List. Consultant represents and warrants to City that neither Consultant nor any affiliate or representative of Consultant (i) is listed on the Specially Designated Nationals and Blocked

Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 (“Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

Consultant further agrees to include the provisions set forth in Sections 15.1 through 15.3 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

- 15.4. Effective Date. This Contract shall be in full force and effect only when it has been approved by the City Council of the City of Tempe, Arizona and when executed by the duly authorized City officials and the duly authorized agent of the Consultant.
- 15.5. Governing Law. This Contract shall be governed and interpreted by the laws of the State of Arizona.
- 15.6. Exhibits. All exhibits attached to this Contract are made a part of and are incorporated into, this Contract. If any inconsistencies exist between this Contract and any exhibit hereto, the terms of this Contract shall govern.
- 15.7. Force Majeure. Any prevention, delay or stoppage of this Project for a cause beyond the reasonable control of Consultant due to acts of God, acts of war or terrorism, fire or other casualty, shall, notwithstanding anything to the contrary contained herein, excuse the performance of Consultant, for a period equal to such prevention, delay or stoppage. For purposes of this Section 15.7, a cause shall not be deemed beyond a party’s control if it is within the control of such party’s agents, employees, assigns, contractors or subcontractors.
- 15.8. Entire Agreement. This Contract contains all of the agreements of the parties with respect to the Project and related matters, and no prior agreement, negotiations, postings, offerings, or understanding pertaining to any such matter shall be effective for any purpose unless expressly contained herein.
- 15.9. Consultant’s Good Standing. Consultant hereby warrants and represents that it is a North Carolina corporation, licensed to do business in the state of Arizona and currently in good standing, and that it is not now in violation of any agreement, instrument, contract, law, rule or regulation by which Consultant is bound.

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

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

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

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

15.19. Notices to Parties:

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

CITY:

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

CONSULTANT:

Michael Grandy
Kimley-Horn and Associates, Inc.
1255 W. Baseline Road
Suite 258
Mesa, AZ 85202

15.20. Liquidated Damages. City reserves the right to assess liquidated damages on a per calendar day basis 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]

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

DATED this _____ day of _____, 2009.

CITY OF TEMPE, ARIZONA

By: _____
Mayor

By: _____
Public Works Manager

ATTEST:

Recommended By:

City Clerk

Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

City Attorney

CONSULTANT
Kimley-Horn and Associates, 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



Kimley-Horn
and Associates, Inc.

City of Tempe
1st Street Alignment Feasibility Study
Exhibit "A"

City of Tempe 1st Street Alignment Feasibility Study Scope of Services November 25, 2008

INTRODUCTION

This scope of services describes the services that Kimley-Horn and Associates, Inc. (the "CONSULTANT" or "KHA") will provide to the City of Tempe (the "CITY") for the 1st Street Alignment Feasibility Study. The purpose of this study is to identify improvement alternatives – and evaluate the feasibility of those alternatives – to realign 1st Street between Farmer Avenue and Ash Avenue to better align with 1st Street west of Farmer Avenue and with Rio Salado Parkway east of Ash Avenue. The anticipated project time frame is 150 calendar days from notice to proceed to submittal of the Final Feasibility Report.

STUDY AREA

The study area for the 1st Street Alignment Feasibility Study is the following intersections and their approaches:

- 1st Street/Farmer Avenue (south intersection);
- 1st Street/Farmer Avenue (north intersection);
- 1st Street/Ash Avenue; and
- Rio Salado Parkway/Ash Avenue.

SERVICES TO BE PERFORMED

The following is a description of the tasks and deliverables to be performed.

Task 1.0 – Project Initiation

Task 1.1 – Kick-Off meeting and project start-up

The CONSULTANT will schedule a project kick-off meeting with the CITY as soon as possible following issuance of notice to proceed. The project scope, schedule, and responsibilities will be reviewed in detail and may be modified depending on discussion and input provided as part of the contract award. Existing data, drawings, and reports relevant to the study will be identified and responsibilities will be assigned for the CITY securing this information. Administrative details regarding progress reporting, invoicing,

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TEL 480 755 4444
FAX 480 755 4445

MHW



lines of communication, and project management will be discussed and agreed upon.

Deliverables: Agenda for the kick-off meeting and updated project scope and schedule.

Task 1.2 – Collect existing reports and data

The CONSULTANT will collect relevant information from prior traffic reports, studies, plans, and data provided by the CITY for use as study resources. The CITY will provide an aerial photograph of the study area and a quarter-section map in GIS or CAD format showing known utility, roadway, and right-of-way information. The CITY will also provide available relevant traffic counts, traffic signal timing plans, as-built drawings, and planned improvements in the area. The CONSULTANT assumes that the data received from the CITY can be used as-is and is accurate.

Deliverables: List of data collected. Review and analysis of the available reports, studies, plans, and data for the study area will be performed and documented in Task 3.0 and Task 4.0.

Task 2.0 – Stakeholder Involvement

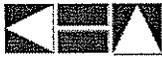
Task 2.1 – Technical Advisory Committee meetings

The CONSULTANT will prepare for and attend up to four Technical Advisory Committee (TAC) meetings. The TAC will be assembled by the CITY. It is anticipated at this time that the TAC will consist of CITY engineering and planning staff. The CONSULTANT will provide PowerPoint presentation slides, high-level concept drawings, and handouts for the TAC meetings as needed. The CITY will be responsible for scheduling the TAC meetings and providing a facility in which to hold the TAC meetings. It is anticipated that the TAC meetings will generally be held on a monthly basis to update the TAC on the status of the project.

Deliverables: Presentation materials consisting of PowerPoint presentation slides, high-level concept drawings, and handouts for up to four TAC meetings.

Task 2.2 – Transportation Commission meeting

The CONSULTANT will prepare for and attend one Tempe Transportation Commission meeting to present the methodology, findings, and preliminary recommendations of the study. The CONSULTANT will bring display boards showing the high-level concept drawings of the improvement alternatives, the evaluation findings, and the preliminary recommendations.



The CONSULTANT will compile and summarize input obtained from the Transportation Commission meeting regarding the evaluation process and the preferred alternative.

Deliverables: Presentation materials consisting of PowerPoint presentation slides and display boards showing the high-level concept drawings of the improvement alternatives, the evaluation findings, and the preliminary recommendations. Summary of input received from the Transportation Commission.

Task 2.3 – Public open house

The CONSULTANT will prepare for and attend one public open house to present the methodology, findings, and preliminary recommendations of the study. The CONSULTANT will bring display boards showing the high-level concept drawings of the improvement alternatives, the evaluation findings, and the preliminary recommendations.

The CITY will provide a location for the public open house and will be responsible for publishing public notices and any direct mailings, as well as their cost, regarding the public open house to property owners in the study area.

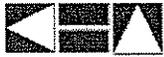
The CONSULTANT will compile and summarize input obtained from the public open house regarding the evaluation process and the preferred alternative.

Deliverables: Presentation materials consisting of PowerPoint presentation slides and display boards showing the high-level concept drawings of the improvement alternatives, the evaluation findings, and the preliminary recommendations. Summary of input received from the public open house.

Task 3.0 – Existing Conditions

Task 3.1 – Conduct topographic and ALTA survey

The CONSULTANT will, in conjunction with subconsultant survey staff, prepare and provide a topographic base map in AutoCAD format as well as a hard copy of the map. The base map will indicate the location and elevation of improvements within the limits of topography. Included will be surface utilities, physical structures, and trees. Elevations of utilities will indicate the rim and invert of all accessible manholes and any found culverts with sizes and materials, if able to be determined. Roadway cross section grades will be provided every 50 feet. Utility blue-stake markings will be located and shown.



The CONSULTANT will, in conjunction with subconsultant survey staff, complete an ALTA/ACSM Land Title Survey for the study area parcels. Refer to the attached Survey Innovation Group, Inc. proposal for additional scope and fee information regarding the survey.

Task 3.2 – Review collected data and conduct traffic counts

The CONSULTANT will compile, review, analyze, and summarize the data collected under Task 1.2.

Based on the CAD data provided by the CITY and the survey data provided by survey staff, the CONSULTANT will create an AutoCAD base map of the study area showing roadway geometry, right-of-way, and utilities on an aerial photo. The base map will include the recently constructed median on 1st Street near the railroad crossings. The CONSULTANT will work with the CITY to resolve conflicting information between the linework provided by the CITY and the linework provided by the survey staff.

In addition, the CONSULTANT will, through the use of video recordings and subconsultant data collection staff, conduct AM (7-10am) and PM (3-6pm) intersection movement counts at the four study area intersections. During these same study periods, the CONSULTANT will record the number of freight trains and light-rail trains that cross 1st Street, the duration of their crossing, and the associated queues that develop due to the trains crossing. Pedestrian and bicycle movements will also be counted. Refer to the attached Field Data Services of Arizona, Inc. proposal for additional scope and fee information regarding the traffic counts.

The CONSULTANT will, through subconsultant data collection staff, also provide seven bidirectional daily classification counts at the following locations:

- 1st Street approx. 300' west of Farmer Avenue;
- 1st Street approx. 150' east of Farmer Avenue;
- Farmer Avenue approx. 200' south of 1st Street;
- Farmer Avenue approx. 75' north of 1st Street;
- Ash Avenue approx. 325' north of 1st Street;
- Ash Avenue approx. 350' south of Rio Salado Parkway; and
- Rio Salado Parkway approx. 400' east of Ash Avenue.

All traffic count data will be submitted to the CITY in electronic format.

The CONSULTANT will conduct a field review of the study area to verify the principal features shown on the AutoCAD base map match existing conditions and to observe any noticeable features or traffic operational issues that were not previously identified.



Deliverables: Survey data, AutoCAD base map, and traffic count data in electronic format. Information will be included in the study's final report.

Task 3.3 – Assessment of existing conditions

Based on the data collected in Task 3.1, the CONSULTANT will develop existing conditions AM and PM peak hour traffic volumes based on the previously collected AM and PM peak period volumes. The CITY will provide the CONSULTANT with any adjustment factors to apply to the traffic volumes such as seasonal and heavy vehicle adjustment factors.

VISSIM models of the study area intersections for the existing AM and PM peak hours will be developed. The VISSIM models will include a three-dimensional (3D) simulation of traffic movements for cars, trains, busses, bikes, and pedestrians overlaid on the aerial photo, but the 3D simulation will not include 3D renderings of buildings, trees, or other features. The CONSULTANT will perform a capacity analysis of the study area intersections using VISSIM that determines the level of service (LOS), delay, and queue lengths during the AM and PM peak hours under existing conditions. The findings of the capacity analysis will be summarized in tabular format.

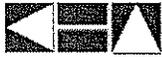
Deliverables: VISSIM existing AM and PM peak hour models and associated tables of capacity analysis findings.

Task 4.0 – Future Conditions

Task 4.1 – Assessment of future conditions

The CONSULTANT will develop future AM and PM peak hour traffic volumes for the study area intersections for a design horizon year, which is assumed to be 2020. The CITY will provide the CONSULTANT with an assumed growth rate to use in developing the future traffic volumes from the existing traffic volumes.

VISSIM models of the study area intersections for the future AM and PM peak hours will be developed. The VISSIM models will include a 3D simulation of traffic movements for cars, trains, buses, and pedestrians overlaid on the aerial photo. The 3D simulation will not include 3D renderings of buildings, trees, or other features. The CONSULTANT will perform a capacity analysis of the study area intersections using VISSIM that determines the LOS, delay, and queue lengths during the AM and PM peak hours under future conditions. The findings of the capacity analysis will be summarized in tabular format.



Deliverables: VISSIM future AM and PM peak hour models and associated tables of capacity analysis findings.

Task 5.0 – Intersection-Type Alternatives Development

Task 5.1 – Identify intersection-type alternatives and evaluation criteria

Based on input received at the kick-off meeting and the CONSULTANT's assessments of existing and future conditions, the CONSULTANT will develop up to three preliminary potential improvement intersection-type alternatives for the study area. Intersection-type alternatives to be considered (in addition to the "no-build" option) could include such things as a roundabout, a one-way couplet, or a realignment of existing curves. For all of these preliminary improvement alternatives, it is assumed that the existing at-grade railroad crossing will remain in its current location and that vertical grade separation of roadways is not a viable option.

The CONSULTANT will bring high-level concept drawings of up to three preliminary potential improvement intersection-type alternatives to help stimulate discussion. These high-level concept drawings will show sufficient detail to give TAC members a general idea of the main features of the intersection-type alternatives and how they would impact existing roadway geometry and adjacent right-of-way. At the end of the discussion, the TAC will select up to three intersection-type alternatives for the CONSULTANT to evaluate.

The CONSULTANT will present draft evaluation criteria to the TAC. It is anticipated that the evaluation criteria will address traffic impacts, right-of-way impacts, estimated construction costs, and TAC support. The TAC will provide input on what the evaluation criteria should be.

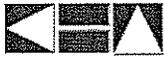
Deliverables: High-level concept drawings of preliminary potential improvement intersection-type alternatives.

Task 6.0 – Alternatives Evaluation

Task 6.1 – Assessment of anticipated impacts of intersection-type alternatives

Based on the input received from the TAC, the CONSULTANT will evaluate the feasibility and impacts of up to three potential improvement intersection-type alternatives using the agreed upon evaluation criteria.

The CONSULTANT will develop existing and future AM and PM peak hour traffic volumes and VISSIM models for the study area intersections for each of the intersection-type alternatives. The VISSIM models will include a 3D



simulation of traffic movements for cars, trains, buses, and pedestrians overlaid on the aerial photo. The 3D simulation will not include 3D renderings of buildings, trees, or other features. The CONSULTANT will perform a capacity analysis of the study area intersections using VISSIM that determines the LOS, delay, and queue lengths during the AM and PM peak hours under future conditions. The findings of the capacity analysis for each of the alternatives will be summarized in tabular format.

Based on known information about existing and planned conditions and constraints, and in accordance with the agreed upon evaluation criteria, the CONSULTANT will evaluate the anticipated non-traffic-related impacts of each intersection-type alternative, which is anticipated to include right-of-way and construction costs. The CITY will provide the CONSULTANT with right-of-way unit cost information. Construction cost estimates will be developed by the CONSULTANT at a very high level based on relative costs of similar improvements at other locations and will not include a break-out of costs for each potential bid item. The findings of the evaluation of non-traffic-related impacts will be summarized in tabular format.

The CONSULTANT will provide the TAC with high-level concept drawings of the three intersection-type alternatives that were evaluated. The concept drawings for the evaluated alternatives will show proposed edge of pavement, lane markings, and new right-of-way lines superimposed on an aerial photo of existing conditions plus existing line-work for existing right-of-way and known utilities, where available.

The CONSULTANT will also provide the TAC with tables summarizing the anticipated impacts of the alternatives. The TAC will select a preferred intersection-type alternative based on the results of the evaluation and the CONSULTANT and TAC will discuss what should be presented at the Transportation Commission meeting and at the public open house.

Deliverables: VISSIM existing and future AM and PM peak hour models and associated tables of capacity analysis findings for each intersection-type alternative, along with a table of other anticipated impacts.

Task 7.0 – Recommended Alternative

Task 7.1 – Evaluating variations of the preferred intersection-type alternative and selecting the recommended alternative

Based on the results of the intersection-type alternatives evaluation and the input received from the TAC and the public, the CONSULTANT will refine the preferred intersection-type alternative into a recommended alternative. This refinement is anticipated to involve creating and evaluating up to three variations of the preferred intersection-type alternative and providing the



TAC with the findings of the refined evaluation. This refined evaluation involves creating existing and future AM and PM peak hour VISSIM models, high-level concept drawings, and estimates of probable construction costs for the variations of the preferred intersection-type alternative.

The concept drawings for the variations of the preferred intersection-type alternative will show proposed edge of pavement, lane markings, and new right-of-way lines superimposed on an aerial photo of existing conditions plus existing line-work for existing right-of-way and known utilities, where available.

The estimate of probable construction costs for the variations of the preferred intersection-type alternative will contain unit costs for the anticipated improvements based on the level of detail shown in the concept drawing.

The CONSULTANT will provide the TAC with tables summarizing the anticipated impacts of the three variations of the preferred intersection-type alternative. Based on the results of the refined evaluation, the TAC will select which variation of the preferred intersection-type alternative is the recommended alternative.

Deliverables: VISSIM existing and future AM and PM peak hour models, high-level concept drawings, and estimates of probable construction costs for the variations of the preferred intersection-type alternative.

Task 8.0 – Feasibility Report

Task 8.1 – Draft Feasibility Report

The CONSULTANT will prepare a draft Feasibility Report for review and comment by the City that documents all tasks in the study. A proposed report outline is shown below:

1. Executive Summary
2. Introduction
 - 2.1 Study Background, Purpose, Area, and Process
3. Stakeholder Involvement
 - 3.1 TAC Meetings
 - 3.2 Public Open House
4. Existing Conditions
 - 4.1 Data Collected and Reviewed
 - 4.2 Assessment of Existing Conditions
5. Future Conditions
 - 5.1 Assessment of Future Conditions
6. Alternatives Development
 - 6.1 Alternative # 1



- 6.2 Alternative # 2
- 6.3 Alternative # 3
- 6.4 Evaluation Criteria
- 7. Alternatives Evaluation
 - 7.1 Assessment of Anticipated Impacts of Intersection-Type Alternatives
- 8. Recommended Alternative
 - 8.1 Evaluating Variations on Preferred Intersection-Type Alternative
 - 8.2 Selecting Recommended Alternative
- 9. Next Steps

The CONSULTANT will provide the draft report to the CITY in PDF format only for review and comment. The CITY will provide any comments on the draft report to the CONSULTANT within two weeks after receiving the draft report.

Deliverables: PDF version of draft Feasibility Report.

Task 8.2 – Final Feasibility Report

Based on comments received from the CITY, the CONSULTANT will revise the draft report and resubmit it as a final report. Six hard copies of the final report plus a PDF version will be submitted to the CITY. The final Feasibility Report will be signed and sealed by the responsible engineer.

Deliverables: Six hard copies plus a PDF version of the final Feasibility Report.

Task 9.0 – Potholing Allowance

At the request of the CITY, a potholing allowance of \$5,000 is included. The potholing allowance will only be used when authorized by the CITY.

STUDY MILESTONES

It is anticipated that the study will require approximately 150 calendar days to complete. Assuming that the Tempe City Council authorizes a contract with the CONSULTANT in January 2009 and the CITY provides a notice to proceed shortly thereafter, the following is a chronology of the anticipated major milestones for the duration of the study:

- February 2009 – Execute Contract and Notice to Proceed
- March 2009 – Data Collection
- April 2009 – Intersection-Type Alternatives Development



- May 2009 – Intersection-Type Alternatives Evaluation
- May 2009 – Public Open House and Transportation Commission
- June 2009 – Recommended Alternative and Draft Feasibility Report
- July 2009 – Final Feasibility Report

ASSUMPTIONS

The scope, fee, and schedule for the 1st Street Alignment Feasibility Study have been developed based on the following assumptions:

- The CITY will provide all available pertinent data that is requested by the CONSULTANT in a timely manner;
- Data provided by the CITY can be used as-is and is accurate;
- Traffic counts will be conducted on a typical weekday when school is in session;
- The CONSULTANT will make assumptions about default traffic factors for use in VISSIM if such data is not readily available;
- The CITY will provide timely review of draft submittals; and
- Project management effort is incorporated into the costs for each task.

PAYMENT FOR SERVICES

Compensation for these services will be in accordance with the attached fee matrix (Exhibit "B"). Payment will be made in lump-sum amounts based on the percentage of the associated task completed at the end of each month for Tasks 1-8. Payment for allowance items in Task 9 will be made based on the effort expended each month.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at the CONSULTANT'S then currently hourly rates. Additional services that the CONSULTANT can provide include, but are not limited to, the following:

- Full design services to develop construction drawings, estimates, and specifications for any of the improvement alternatives
- VISSIM simulation models that include 3D renderings of buildings, trees, or other features.
- Environmental studies
- Construction administration
- Railroad consultation and coordination
- Quiet zone application assistance
- Meetings with City Council
- Additional meetings with TAC or others
- Any other item not specifically listed in the scope of services



1ST STREET ALIGNMENT FEASIBILITY STUDY
CITY OF TEMPE CIP: 6909141
EXHIBIT "B" - FEE MATRIX

		KIMLEY-HORN AND ASSOCIATES, INC.								
TASK	TASK DESCRIPTION	Project Manager \$195	Senior Engineer \$180	Project Engineer \$135	Designer \$110	Analys/ Technician \$98	Admin \$98	Clerical \$65	Total Man Hours	Total Fee
Task 1.0 Project Initiation										
	1.1 Kick-off Meeting and project start-up	6		4			2	2	14	\$2,036
	1.2 Collect existing reports and data	2		4		4		2	12	\$1,452
	LABOR SUBTOTAL	8	0	8	0	4	2	4	26	\$3,488
	EXPENSES									\$0
	SUBTOTAL									\$3,488
Task 2.0 Stakeholder Involvement										
	2.1 4 Technical Advisory Committee Meetings	16		24		24	4	4	72	\$9,364
	2.2 Transportation Commission Meeting	6		4		4	2	2	18	\$2,428
	2.3 Public open house	6		12		12	2	2	34	\$4,292
	LABOR SUBTOTAL	28	0	40	0	40	8	8	124	\$16,084
	EXPENSES									\$0
	SUBTOTAL									\$16,084
Task 3.0 Existing Conditions										
	3.1 Conduct topographic and ALTA survey	2		2	2	4	2	2	14	\$1,598
	3.2 Review data and conduct traffic counts	4		12	2	24	2	2	46	\$5,298
	3.3 Assessment of existing conditions	6		20		40	2	2	70	\$8,116
	LABOR SUBTOTAL	12	0	34	4	68	6	6	130	\$15,012
	EXPENSES									Survey \$11,840
	EXPENSES									Traffic Counts \$4,293
	SUBTOTAL									\$31,145
Task 4.0 Future Conditions										
	4.1 Assessment of future conditions	4		8		16	2	2	32	\$3,754
	LABOR SUBTOTAL	4	0	8	0	16	2	2	32	\$3,754
	EXPENSES									\$0
	SUBTOTAL									\$3,754
Task 5.0 Alternatives Development										
	5.1 Identify alternatives and evaluation criteria	6	2	8		16	2	2	36	\$4,504
	LABOR SUBTOTAL	6	2	8	0	16	2	2	36	\$4,504
	EXPENSES									\$0
	SUBTOTAL									\$4,504
Task 6.0 Alternatives Evaluation										
	6.1 Assessment of anticipated impacts	12	4	24	2	72	4	4	122	\$14,228
	LABOR SUBTOTAL	12	4	24	2	72	4	4	122	\$14,228
	EXPENSES									\$0
	SUBTOTAL									\$14,228
Task 7.0 Recommended Alternative										
	7.1 Recommended alternative	8		14		28	4	4	58	\$6,846
	LABOR SUBTOTAL	8	0	14	0	28	4	4	58	\$6,846
	EXPENSES									\$0
	SUBTOTAL									\$6,846
Task 8.0 Feasibility Report										
	8.1 Draft Feasibility Report	4		12		24	2	2	44	\$5,078
	8.2 Final Feasibility Report	4		6		12	2	2	26	\$3,092
	LABOR SUBTOTAL	4	0	12	0	24	2	2	70	\$8,170
	EXPENSES									\$0
	SUBTOTAL									\$8,170
Task 9.0 Potholing Allowance										
	9.1 Potholing Allowance								0	\$0
	LABOR SUBTOTAL								0	\$0
	EXPENSES									\$5,000
	SUBTOTAL									\$5,000

TOTAL FEE			
Lump Sum	\$72,086	for	Design Service
Allowance of	\$16,133	for	Reimbursable Expenses
Allowance Not To Exceed Amount of	\$5,000	for	Potholing Allowance
TOTAL	\$93,219	Total Contract Amount	

S | I | G
**SURVEY INNOVATION
GROUP, INC**
Land Surveying Services

November 24, 2008

Michael Grandy
Kimley-Horn and Associates, Inc.
7878 N. 16th St. #300
Phoenix, AZ 85020

Via Email: Michael.Grandy@kimley-horn.com
Jared.Wegner@kimley-horn.com

Dear Michael:

Survey Innovation Group, Inc. (SIG, INC.) proposes to provide professional land surveying services in connection with the Project known as **1st Street Alignment Project** in Tempe, Arizona. CLIENT is expected to provide SIG, INC. with information as to requirements and/or any special considerations for the Project or special services needed, and also to make available all pertinent existing data, where applicable.

Services will be provided under the General Terms and Conditions attached hereto. Our services will consist of providing professional land surveying services. The Scope of Services is detailed in Exhibit "A". We will also furnish such additional services as may be requested in writing to SIG, INC.

SIG, INC. will invoice periodically for services and reimbursable expenses based on actual work progress. The above financial arrangements are based on the prompt payment of our invoices and on the orderly and continuous progress of the Project.

If this agreement meets with your satisfaction, please sign and return as our Notice to Proceed.

Sincerely,

Accepted for CLIENT,



Jason Segneri, RLS
President

Signature

Print Name

Date

If you wish to receive copies of your invoices via email please provide your email address below; original invoices will still be mailed.

Email

MAW

Exhibit "A"
Scope of Services

Topographic Survey

(See attached aerial graphic showing limits of topography in "red".)

SIG will prepare and provide a Topographic Base Map in AutoCAD format as well as a hard copy of the map to be used for Civil Engineering Design. The Base Map will indicate the location and elevation of improvements within the limits of topography. Included will be surfaced utilities, physical structures, and trees. Elevations of utilities will indicate the rim and invert of all accessible manholes and any found culverts with sizes and materials, if able to be determined. Roadway cross section grades will be provided every 50 feet. Utility bluestake markings will be located and shown.

ALTA/ACSM Land Title Survey

We propose to provide professional surveying services for completing ALTA/ACSM Land Title Survey on the above-referenced site. Our survey and map of record would be completed in accordance with the "2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" adopted by ALTA and NSPS in 2005, shall meet the accuracy requirements described therein and shall include Optional Table "A" items 2, 3, 4, 10, 11 a & b, 13 and 16 described therein.

The ALTA/ACSM Land Title Survey shall include the following parcels (See attached map with highlighted parcels):

APN124-24-004B, APN124-24-003, APN124-24-171A, APN132-20-015T,
APN132-20-970A, APN132-20-018A, APN132-20-019, APN132-29-981,
APN132-29-976, APN132-29-972A, APN132-29-353, APN124-32-931,
APN124-32-061A and APN124-32-028.

Topographic Survey Fee: \$5,280.00

ALTA/ACSM Land Title Survey: \$6,560.00

Notes:

1. See attached Map for Limits of Topography.
2. See attached ALTA Parcel Map.
3. Title reports will be provided by a subconsulted Title agency and the fee associated with said reports is included in this proposal.
4. Any meetings required by the client will be billed on a Time and Materials basis beyond the above fee.
5. Allow 4-5 weeks for completion of the Topographic and ALTA Surveys from notice to proceed.

General Terms and Conditions for Services Rendered by Survey Innovation Group, Inc.

1. Fee Schedule as of January 1, 2008

PROJECT MANAGER RLS	\$110.00/HR
PROJECT MANAGER NON-RLS	\$95.00/HR
SURVEY TECHNICIAN	\$85.00/HR
PROJECT COORDINATOR	\$60.00/HR
ONE MAN SURVEY CREW-GPS	\$115.00/HR
TWO MAN SURVEY CREW	\$135.00/HR
THREE MAN SURVEY CREW	\$165.00/HR

Premium Charge: Overtime work, Saturday, Sunday, etc: Hourly rate time multiplier of 1.50.

2. Survey Innovation Group, Inc. will NOT be open or operating during its scheduled Holidays. The Holiday schedule for 2008 is as follows:

President's Day	Memorial Day	Independence Day
Labor Day	Thanksgiving Day	Friday following Thanksgiving Day
Christmas Day	Friday following Christmas	New Years Day Friday following New Years

3. All required efforts outside the outlined SCOPE OF SERVICES will be provided upon the CLIENT'S request, as additional services, and will be billed at the current billing fee schedule rate.

4. In the event that a question or a claim may arise as to an error or omission in the SURVEYOR'S maps, the SURVEYOR will assume no liability for errors or omissions unless notified within 48 hours of the CLIENT'S discovery of such. If notified within 48 hours, the SURVEYOR will have the right to remedy any such errors or omissions within a reasonable and agreed upon time thereafter at no additional cost to the CLIENT. In the event that a question or a claim may arise as to an error relative to the accuracy of construction stakes, the SURVEYOR will assume no liability for errors unless all original survey stakes in question remain in place and undisturbed. Should such stakes in question not be present and verified as to their origin and original condition in the surveyor's opinion, no claim for additional compensation or correction shall be presented to the SURVEYOR.

5. CLIENT will be billed monthly, based on the percentage of work completed and/or hourly charges and reimbursable expenses. A finance charge of one and one half percent (1-1/2%) per month (18% annual Percentage rate) will be added to portions of accounts over 30 days past due and will result in immediate stoppage of all services until payment is received. The CLIENT will pay any and all charges incurred by the SURVEYOR to collect past due accounts. In the event that litigation is instituted to enforce the provisions hereof, the prevailing party shall be entitled to recover from the other party in addition to all other relief to which such prevailing party may, otherwise be entitled, all costs expenses and fees incurred by such party or parties.

6. The obligation to provide further services under this SCOPE OF SERVICES may be terminated by either party upon ten (10) days' written notice of intent to terminate. In the event of any termination, the SURVEYOR will be paid for all services rendered to the date of termination plus reimbursable expenses.

7. To the fullest extent permitted by the law, and notwithstanding any other provision to this SCOPE OF SERVICES, the total liability, in the aggregate, of the SURVEYOR and the SURVEYOR'S officers, directors, partners, employees, agents, and sub-consultants, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to this SCOPE OF SERVICES from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty expressed or implied of the SURVEYOR, or the SURVEYOR'S officers, directors, partners, employees, agents, and sub-consultants, shall not exceed the SURVEYOR'S fee specified in the SURVEYOR'S SCOPE OF SERVICES.

8. If there are protracted delays for reasons beyond SURVEYOR'S control, within the customary period of time after six (6) months, SURVEYOR'S compensation shall be adjusted, taking into consideration changes in price indexes and pay scales applicable to the period when services are, in fact, being rendered.

9. Reimbursable expenses incurred in connection with all basic services are included in the quoted fee, with the exception of required submittal / review fees.

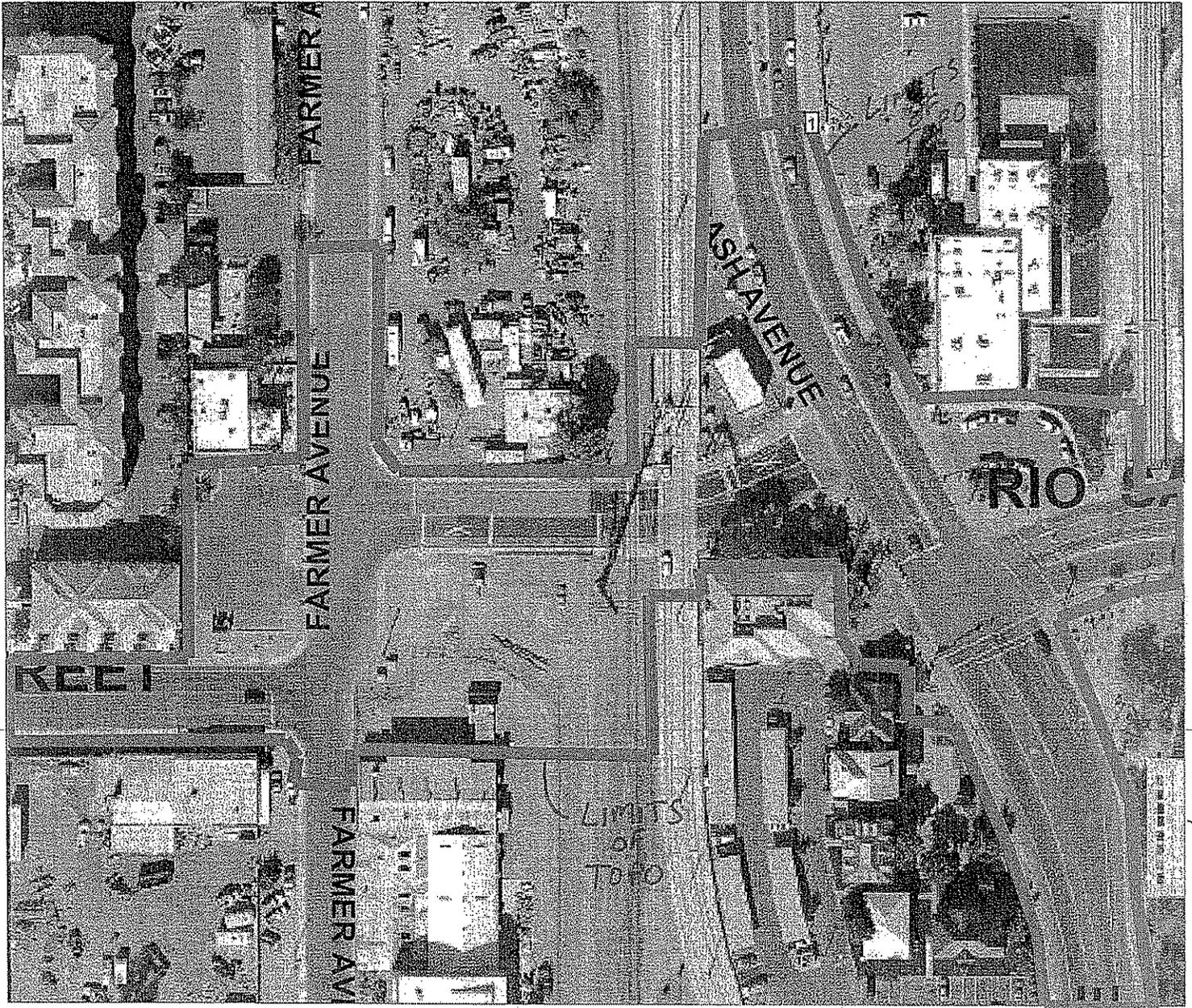
10. This Agreement is to be governed by the Laws of Arizona.

11. This Work Order is valid for 60 calendar days.

MAW

County Parcels

"LIMITS OF TOPO"



County Parcels

"ALTA PARCELS"



mwf



20928 North John Wayne Parkway C13-146
 Maricopa, Az 85239
 520.316.6745 Phone
 520.316.6743 Fax

ESTIMATE # : 08-1120
 TOTAL: \$4,293.00
 CITY: Tempe, AZ
 LOCATIONS: 17

FORMAL QUOTE

www.fdsaz.com

DATE CREATED: 10/24/08

CREATED BY: Jerry Morris

CLIENT INFORMATION

▶ KIMLEY HORN & ASSOCIATES
 1255 W. Baseline Road Suite 258
 Mesa, AZ 85202
 (480) 777-4730

PRIMARY JOB DESCRIPTION:

▶

MICHAEL GRANDY

CITY: Tempe, AZ

JOB DETAILS

	TYPE	QUANTITY	DESCRIPTION	AMOUNT	TOTAL
1			Weekday peak hour turning movement counts (7-10am & 3-6pm)	\$0.00	\$0.00
2	ITM	1	1st Street & Farmer Ave. (south intersection)	\$290.00	\$290.00
3	ITM	1	1st Street & Farmer Ave. (north intersection)	\$290.00	\$290.00
4	ITM	1	1st Street & Ash Ave.	\$290.00	\$290.00
5	ITM	1	Rio Salado Parkway & Ash Ave.	\$290.00	\$290.00
6				\$0.00	\$0.00
7			Train queue (7-10am & 3-6pm)	\$0.00	\$0.00
8	ITM	2	Number of freight trains and light rail trains that cross, the duration	\$290.00	\$580.00
9			of their crossing, and the associated queues that develop dut to the	\$0.00	\$0.00
10			train crossing.	\$0.00	\$0.00
11				\$0.00	\$0.00
12			Video Survey (7-10am & 3-6pm)	\$0.00	\$0.00
13	Video	4	Video Survey at each turning movement count location	\$290.00	\$1,160.00
14				\$0.00	\$0.00
15	CLASS	7	1st Street approx. 300' west of Farmer Avenue, 1st Street approx. 150' east of Farmer Avenue, Farmer Avenue approx. 200' south of 1st Street; Farmer Avenue approx. 75' north of 1st Street;	\$199.00	\$1,393.00
16			Ash Avenue approx. 325' north of 1st Street; Ash Avenue approx. 350' south of Rio Salado Parkway	\$0.00	\$0.00
17			Rio Salado Parkway approx. 400' east of Ash Avenue	\$0.00	\$0.00
18	* If the invoice is paid within 30 Days of receipt, A 5% DISCOUNT will apply.				
19	Beyond 30 days you will be billed FULL PRICE. NO EXCEPTIONS.				
20	I understand these terms and agree. _____			DATE	_____
21	MUST BE SIGNED BY AUTHORIZED PERSONNEL				
				ON TIME PAYMENT DISCOUNTED 5%:	\$4,078.35 *
				FULL INVOICE AMOUNT:	\$4,293.00

ADT= AUTOMATED DAILY TOTALS
 SPD= SPEED SURVEY-MACHINE
 PSD= PLATE SURVEY

PRK= PARKING LOT STUDY
 PLA= PLATE SURVEY
 VDC= VIDEO SURVEY FOR TIME PERIOD

NOT VALID AFTER 180 DAYS

MAN

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE

Arizona

Date _____

**First Street Alignment Feasibility Study
Project No. 6909141**

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 _____, 2009.

General Contractor/Prime Consultant

By: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2009.

Notary Public

My commission expires:

City of Tempe

Guidelines for Implementation of Health Insurance

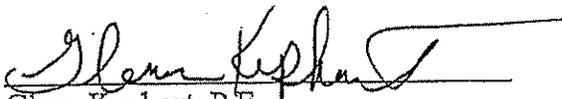
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the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