

Council Meeting Date: 4/09/2009

Agenda Item Number: 22

**SUBJECT:** Request to award a professional services design contract with Brown and Caldwell, Inc. for the rehabilitation of the Southern Avenue Interceptor (SAI).

**DOCUMENT NAME:** 20090409PWTG01 WASTEWATER MANAGEMENT (0812-01)  
PROJECT NO. 3200585

**COMMENTS:** Total cost for this contract is \$360,981.

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

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

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

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

**FISCAL NOTE:** Sufficient funds are available in Capital Improvement Fund No. 3200585. The City of Mesa will participate in approximately fifty percent (50%) of the costs for design and construction.

**RECOMMENDATION:** Award professional services contract.

**ADDITIONAL INFO:** A November 2005 study by Brown and Caldwell, Inc. revealed severe corrosion of portions of the unlined Southern Avenue Interceptor. The scope of work for this project includes the design and preparation of construction documents for the rehabilitation of approximately 13,200 linear feet of 36 inch and 48 inch unlined concrete sewer using cured-in-place pipe. This project is located between McClintock Drive and Hardy Drive on Southern Avenue.

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

CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

**CONTRACT FOR PROFESSIONAL SERVICES**

This Contract is made and entered into on the 9th day of April, 2009, by and between the **City of Tempe**, an Arizona municipal corporation (“City”), and **Brown and Caldwell, Inc.**, a California corporation (“Consultant”).

City engages Consultant to perform professional services for a project known and described as **Southern Avenue Interceptor (SAI) Rehabilitation Project Phase II**, Project No. **3200585** (“Project”).

**1. SERVICES OF 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 and design construction documents, as described in Exhibit “A” attached.
- 1.2. Consultant has assigned Ron Ablin as the project manager for this Contract. Prior written approval by City is required in the event Consultant needs to change the project manager. Consultant shall submit the qualifications of the proposed substituted personnel to City for approval prior to any substitution or change.
- 1.3. Consultant shall prepare and submit a detailed opinion of probable cost of the Project.
- 1.4. Consultant shall follow and comply with the Public Improvement Project Guide as directed by City.
- 1.5. Consultant shall prepare plans and technical specifications per the requirements of the applicable chapters of the City’s Engineering Design Criteria Manual, latest revision, and the Maricopa Association of Governments (MAG) Uniform Standard Details for Public Works Construction as amended by City. All plans shall be prepared on CAD as required by City. Final plans shall be submitted on 3 ml double matte black line mylar and shall be 24” x 36” in size.
- 1.6. Consultant shall submit all final construction documents in both hard copy and electronic format. Plans shall be MicroStation or AutoCAD compatible and all other documents shall be Microsoft Office compatible. The software version used shall be compatible to current City standards. Other support documents, for

example, structural calculations, drainage reports and geotechnical reports, shall be submitted in hard copy only.

- 1.7. Consultant shall obtain all necessary permits and licenses required for the performance of its work. Failure of Consultant to obtain said permits prior to the commencement of its work shall constitute a breach of this Contract.
- 1.8. Consultant shall perform the work in a manner and at times which do not impede or delay 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 City. In the event delays are experienced beyond the control of Consultant, the schedule may be revised as determined by 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 \$360,981.00, unless otherwise authorized by City. This fee includes an amount not to exceed \$197,365.00 for design services; an amount not to exceed \$60,616.00 for construction services based on hourly rates established in the attached Exhibit "A" incorporated hereby by this reference; an allowance of \$95,000.00 for survey, CCTV, laser survey, and sound study; and an allowance of \$8,000.00 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 Consultant. If detailed invoice(s) are approved by City, such installment payment shall be made within thirty (30) days after City's approval of the progress report and detailed invoice subject to the following limitations:
  - 3.2.1. Prior to approval of the preliminary design (30% plans), payments to Consultants shall not exceed 30% of the total Contract amount.
  - 3.2.2. Prior to approval of the final design documents, payments to Consultants shall not exceed 80% of the total Contract amount. The final approval and payment will be made within a reasonable period of time.
  - 3.2.3. If the scope of work of this Contract includes the preparation of studies, design concepts, or other investigations, progress payments shall not

exceed 90% of the total Contract amount prior to submittal of the final report deliverables.

3.2.4. Payment for reimbursable expenses shall be made during all phases based on actual expenses.

3.3. City at its discretion may, by written notification, waive the above limitations.

#### **4. CITY'S RESPONSIBILITIES**

4.1. City shall designate a project manager during the term of this Contract. The project manager has the authority to administer this Contract and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by 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 Consultant and will endeavor to provide a prompt response to minimize delay in the progress of Consultant's work. City will also endeavor to keep Consultant advised concerning the progress of 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 Consultant's services as identified in Section 1, City may furnish with or without charge, upon Consultant's reasonable request, the following information to the extent it is within 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, 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, 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 Consultant. Termination shall be

commenced by delivery of written notice delivered to Consultant, personally or by certified mail at 201 E. Washington Street, Suite 500, Phoenix, Arizona 85004. 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. In the event of Consultant's default, non-performance or breach, City agrees to, before exercising any right or remedy available to it, give Consultant written notice of the default, non-performance or breach. For the thirty (30) days following such notice, Consultant shall have the right to cure such default, non-performance or breach.
- 5.4. If Consultant fails to cure, immediately after receiving such notice of termination from City, Consultant shall discontinue performance under this Contract and proceed to close said operations under this Contract. Consultant shall submit a detailed breakdown of completed work to City for evaluation. City shall have the right to inspect 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, and pursuant to Section 5.9.
- 5.5. Within ten (10) days of receipt of notice of termination as set forth herein, Consultant shall deliver to City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by Consultant under the Contract, entirely or partially completed, together with all unused materials supplied by City.
- 5.6. In the event of such termination or abandonment, Consultant shall be paid only for those services performed in accordance with generally accepted engineering standards, 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.
- 5.7. 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 Consultant as determined and approved by 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.

- 5.8. City shall make a determination as to approval or denial of any requested final payment within sixty (60) days after Consultant has delivered the last of the completed items and the final appraisal has been submitted to City.
- 5.9. The parties agree that in the event of any damages suffered by City as a result of any delay, default, non-performance or breach by Consultant, Consultant agrees to reimburse City ten percent (10%) of the Contract amount per Section 3.1 for damages caused by its delay. This sum may be deducted from Consultant's payment or anticipated payment for failure to deliver and/or perform as specified. No premium will be awarded to Consultant for delivery and/or performance within the Contract term. Waiver by City of any of the provisions contained in this Section 5.9, or by way of the extension of the Contract term, shall in no way be deemed to waive or diminish City's rights available by law or in equity under the Contract.

## 6. INSURANCE

Without limiting any obligations or liabilities, 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 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 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 City, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded Consultant shall be primary insurance, and that any self insured retention and/or insurance coverage carried by City or its employees shall be excess coverage, and not contributory coverage to that provided by 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 City, and any insurance or self insurance maintained by City shall be in excess of 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 City.

- 6.1.5. Waiver. The policies for workers' compensation and general liability shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of 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 City under such policies. Consultant shall be solely responsible for deductible or self-insured retentions and City may require 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 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, Consultant shall require all subconsultant(s) to provide workers' compensation and employer's liability to at least the same extent as provided by 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 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 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 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 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 City. All required health insurance must be maintained during the entire time of the Contract with 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 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 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 City and are to be delivered to 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 Consultant. City shall retain ownership of these original works. If approved in writing by City, Consultant may retain the originals and supply 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, Consultant agrees to promptly disclose any financial or economic interest in the Project property or any property affected by the work, if 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 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 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 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 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, 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 or arising out of 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 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 City for reasonable attorneys' fees, taxable and non-taxable costs and disbursements, incurred by City in enforcing 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 Consultant without prior written authorization from City, at 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 City and 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 City, and such prohibition shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of 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, and all amendments thereto, along with all attendant laws, rules and regulations. 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 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 California 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 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 City.
- 15.13. No Waiver. No breach or default hereunder shall be deemed to have been waived City, except by a writing to that effect signed on behalf of 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 City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of 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 City. Therefore, Consultant assigns to City any and all claims for such overcharges. Consultant in all subcontracts shall require all subcontractors to likewise assign all claims for overcharges to 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:

Ron Ablin  
Brown and Caldwell, Inc.  
201 E. Washington Street  
Suite 500  
Phoenix, AZ 85004

- 15.20. Non-Appropriation of Funds. If funds appropriated by the City Council or otherwise allocated to perform the work becomes unavailable for payment by City

under this Contract, 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 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]

**Southern Avenue Interceptor (SAI) Rehabilitation Project Phase II  
Project No. 3200585**

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

CONSULTANT  
Brown and Caldwell, 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

BROWN AND CALDWELL

Scope of Work

201 East Washington Street, Suite 500  
Phoenix, Arizona 85004

## EXHIBIT A

### CITY OF TEMPE SOUTHERN AVENUE INTERCEPTOR REHABILITATION PROJECT, PHASE II

January 2009

The scope of work for this project includes design and preparation of construction documents for the rehabilitation of approximately 13,200 linear feet of 36- and 48-inch unlined concrete sewer using cured-in-place pipe (CIPP). The project is located between McClintock Drive and Hardy Drive on Southern Avenue, in the City of Tempe (City).

The sewer to be rehabilitated is located between manhole NW36N-4002 and SE28N-4026 on Southern Avenue. This pipe segment was recommended for rehabilitation within 3 to 5 years (Level B) by the Southern Avenue and Priest Drive Sewer Condition Assessment Report (November 2005, Brown and Caldwell).

The preliminary construction cost estimate provided in the November 2005 report for this project is approximately \$11.7 million.

#### **Task 1.0 Project Management and Quality Assurance/Quality Control**

**Subtask 1.1 Project Management.** Manage staff resources and subconsultants to assure timely project completion. Utilize a monthly review process that estimates level of effort to complete the project and provides the basis for evaluating budget and schedule progress. This activity includes preparation of estimates of project completion level in support of invoices billed to City on a "lump-sum" basis. Monthly status reports will be prepared and submitted to the City with a copy of the current schedule and a written narrative description of the work accomplished and percentage of completion for each task.

**Subtask 1.2 Quality Assurance/Quality Control.** Conduct a quality control review and check each work product for accuracy, consistency, clarity and constructability prior to City submittal. Monitor project approach and development of project deliverables for conformance with the City's requirements and technical quality.

#### **Task 2.0 Meetings**

**Subtask 2.1 Kick-off Meeting.** Schedule and conduct a project kick-off meeting with City representatives. Agenda items for the meetings will include:

- Introduction of the project team
- Establish primary lines of communication (including e-mail addresses)
- Review project purpose and background

*PCP*

- Identify the project scope
- Identify and discuss the project schedule
- Request for background information
- Identify and discuss issues related to the project.

**Subtask 2.2 Meeting Minutes.** Prepare and distribute meeting minutes and project team directory to all meeting attendees via e-mail.

### **Task 3.0 Background Information Review**

**Subtask 3.1 Condition Assessment and Existing Closed Circuit Television (CCTV) Records.** Review available condition assessment studies and CCTV records. This information will be incorporated into the contract documents and utilized during the rehabilitation analysis and will be compared to the new CCTV data collected to identify changes since the prior investigation.

**Subtask 3.2 Pipe Data.** Review existing record drawings and shop drawings for the pipe to be rehabilitated including the original pipeline construction and contract documents for the prior cured-in-place rehabilitation projects. No additional records will be collected under this project from either the City or the pipe manufacturer.

**Subtask 3.3 Utility Research.** Research the location of above and below ground utilities within the affected areas of the project for each pipeline. Buried facility maps will be collected from the affected agencies and incorporated into the contract documents. Research will focus primarily on the areas identified by the Construction Manager at Risk (CMAR) as access pit locations.

**Subtask 3.4 Existing Southern Avenue Interceptor Pipe Capacity and Flow Rates.** Current flow data and any future flow requirements will be collected from the Cities of Tempe and Mesa to identify current and future flow requirements, including minimum, average and peak flow rates for each of the pipelines.

**Subtask 3.5 Right-of-Way.** Collect existing right-of-way information from the City for use in evaluating the area available to rehabilitate each of the pipelines.

### **Task 4.0 Field Investigations**

**Subtask 4.1 Safety and Emergency Response Action Plan.** Prepare a Safety and Emergency Response plan for field activities.

**Subtask 4.2 CCTV Investigation.** Conduct a CCTV investigation of the pipeline to assess the current condition. The CCTV investigation will be limited to the current project location. However, CCTV of additional unlined sections, or laser surveying of the base project, may be conducted as an allowance if the current condition of the pipeline is significantly different than the conditions identified during the 2005 investigation. BC will acquire prior authorization from the City prior to conducting additional investigations using the allowance.

**Subtask 4.3 Survey and Mapping.** Conduct a field survey to collect topographical information, locate surface features, sewer inverts and verify as-built information for each of the two pipelines. The data collected will be the base information used to develop the construction documents.

**Subtask 4.4 Noise Investigation.** Conduct a field survey to collect data on ambient noise levels.

**Task 5.0 Preliminary Design**

**Subtask 5.1 Pipeline and Manhole Condition Assessment.** The existing and new field information will be compared to changes to the pipeline since 2005. This information will be used to identify the current pipeline conditions and identify any structural or operational defects that affect the design or installation of the CIPP liner.

**Subtask 5.2 Dewatering and Flow Bypassing.** Perform a detailed analysis of the requirements for dewatering the pipelines and bypassing the flows during the CIPP rehabilitation. BC will work in conjunction with the Cities of Tempe and Mesa to identify minimum bypass requirements, limitations for bypass pipeline routing and potential upstream diversions to limit flow and construction.

**Subtask 5.3 Design Criteria.** Develop design criteria for the pipeline rehabilitation. Where applicable, City standard design criteria will be used as the basis. Criteria related to the following elements will be developed:

- Pipe structural design requirements
- Structures (hydraulic design, design loads, geometry and construction details for structures to be used for temporary flow diversion)
- Earthwork (excavation and backfill)
- e' (used for CIPP liner design)
- Pipeline appurtenances (insertion pit manhole configurations)
- Dewatering and Bypass Pumping requirements
- End Seal and CIPP termination requirements.

**Subtask 5.4 Construction Requirements and Limitations.** In conjunction with the CMAR, identify the construction related issues that may be incurred during the rehabilitation process, including right-of-way and staging area requirements, construction sequencing, permits, other local construction activities and other issues.

**Subtask 5.5 Preliminary Traffic Study.** Perform research and field reconnaissance to evaluate the overall regional impact of closing portions of the roads to traffic. Meet with the City's Traffic Department to identify limitations and alternatives to permit construction activities.

**Subtask 5.6 Noise Mitigation.** Evaluate the results of the field investigation to assess the local impact of the noise generated by the bypass pumping and pipe rehabilitation operations. Based on the relative location of the project to existing homes and businesses, it is assumed that some level of noise mitigation will be required. Alternatives for addressing noise mitigation will be considered and these alternatives will be used to develop the sound attenuation requirements in the construction documents.

**Subtask 5.7 Preliminary Design Report.** A preliminary design letter report will be prepared and five copies will be submitted to the City.

**Subtask 5.8 Review Meeting.** Conduct one summary meeting with the City to present the recommendations to be incorporated into the Final Design Report.

**Subtask 5.9 Final Design Report.** Prepare and submit five copies of the Final Design Report after final completion of the construction documents.

**Task 6.0 Construction Documents**

**Subtask 6.1 Detailed Design.** The detailed design will include site-specific identification and design of pipe linings, structural requirements, bypass requirements, noise mitigation, process and preparation areas, maintenance of operations, right-of-way and construction limits, and other miscellaneous details.

Brown and Caldwell (Engineer) shall provide to and discuss with the CMAR the design concepts, alternatives, project documentation, plans, specifications and any project related material as necessary for the CMAR to perform his construction phase services for the City. The work shall include:

- Participating in design and value engineering discussions with the CMAR and the City. Estimate four meetings.
- Evaluating and responding to alternative design and value engineering suggestions by the CMAR as directed by the City.
- Making engineering and design changes for alternative design and value engineering developed changes as directed by the City.

**Subtask 6.2 Construction Cost Estimate.** Evaluate the Guaranteed Maximum Price prepared by the CMAR at the project milestones.

**Subtask 6.3 Construction Documents.** Prepare and submit construction documents at the 60 percent, 90 percent and final completion levels. Deliverables for the 60 and 90 percent submittals will include three copies of the technical specifications, one blackline copy of 22- by 34-inch blackline plans on 24- by 36-inch sheets and ten blackline copies of 11- by 17-inch plans. Deliverables for the 100 percent submittal will include one reproducible set of specifications and mylar plans. Notification of the proposed pipeline rehabilitation will be submitted to the Maricopa County Environmental Services Department in accordance with the procedures previously established with that agency including a copy of the design report.

The "front-end" Contract Forms and Conditions of the Contract will utilize the City-provided documents.

The technical specifications will utilize Maricopa Association of Governments specifications (and City Supplement) to the extent possible. Suggested revisions and additions will be reviewed with City staff concerning issues specific to this project.

**Subtask 6.4 Review Meetings.** Review meetings with appropriate project team members will be conducted at the completion of the 60 and 90 percent construction documents. Comments received at these meetings will be incorporated in subsequent project submittals. Meeting minutes will be prepared and distributed by Engineer.

**Task 7.0 Construction Phase (Hourly, Not to Exceed)**

Engineering services are to be provided throughout the duration of construction and start-up, which is approximately 4 months. No inspection services are to be provided under this scope of services. Construction inspection and administrative services, if required, will be negotiated prior to the construction period.

---

BROWN AND CALDWELL

Exhibit A - 4 of 5

RLB

**Subtask 7.1 Review Shop Drawings.** The Engineer shall review shop drawings and other data, which Contractor is required to submit. The Engineer's review shall only be for conformance with the design concept of the project and compliance with the information given in the construction documents. Such review or other action shall not extend to means, methods, sequences, techniques or procedures of construction selected by Contractor, or to safety precautions and programs incident thereto. As part of this task, the Engineer shall maintain a submittal log showing dates of submittal, transmittal action to other subconsultants, dates of return and review action. Copies of the log shall be furnished to the City and the Contractor monthly. The Engineer shall also evaluate the Contractor's request for substitutions. Submittal review efforts are based upon a maximum of two reviews per submittal and that no more than 50 percent of the total number of first submittals will require two reviews. The level of effort for this task is based upon receiving ten shop drawing submittals.

**Subtask 7.2 Issue Interpretations and Clarifications.** The Engineer shall issue necessary interpretations and clarifications of the construction documents and act as initial interpreter of the requirements of the construction documents. The Engineer shall respond to the City's representative and/or Contractor to clarify and/or interpret technical, design related questions. The Engineer shall respond to issues raised during construction regarding interpretation and clarification of the contractual administrative and technical requirements of the construction documents. This level of effort is based upon receiving 15 Requests for Information.

**Subtask 7.3 Record Drawings.** The Engineer shall prepare a set of reproducible record drawings showing the as-built condition of the work, based on the marked-up prints, drawings and other data furnished by Contractor to Engineer. The Engineer shall prepare one set of reproducible record drawings and specifications. Record drawing information will be reproduced by computer aided methods (CAD).

**Subtask 7.4 Meetings.** Attend preconstruction conferences and construction progress meetings.

### **Compensation**

Compensation will be as outlined in the attached Exhibit B.

**EXHIBIT B  
CITY OF TEMPE  
SOUTHERN AVENUE INTERCEPTOR SEWER REHABILITATION PROJECT**

Scope of Services	Hourly Rate	\$ 252	\$ 189	\$ 126	\$ 107	\$ 91	Total Labor	Total
	Project Exec	Project Mgr	Project Eng	Tech	Cler			
<b>DESIGN SERVICES</b>								
<b>1.0 Project Management and QA/QC</b>								
1.1 Project Management	8	40			36	84	\$	12,852
1.2 Quality Assurance/Quality Control	12	8			12	32	\$	5,628
						116	\$	18,480
<b>2.0 Kick-Off Meeting</b>								
2.1 Kick-Off Meetings	4	4	4			12	\$	2,268
2.2 Meeting Minutes		2			2	4	\$	560
						16	\$	2,828
<b>3.0 Background Information Review</b>								
3.1 Condition Assessment and CCTV Records		2	4	8		14	\$	1,738
3.2 Pipe Data		1	4			5	\$	693
3.3 Utility Research		2	8	8		18	\$	2,242
3.4 Existing Pipe Capacity and Flow Rates		2	4			6	\$	882
3.5 Right-of-Way		4	16	16		36	\$	4,484
						79	\$	10,039
<b>4.0 Field Investigation</b>								
4.1 Safety and Emergency Response Plan		2	12		4	18	\$	2,254
4.2 CCTV Investigation		2	8	32	4	46	\$	5,174
4.3 Survey and Mapping		4	16	8	4	32	\$	3,992
4.4 Noise Investigation	1	4	16		2	23	\$	3,206
						119	\$	14,626
<b>5.0 Preliminary Design</b>								
5.1 Pipeline Inspection and Assessment	2	8	16	40		66	\$	8,312
5.2 Dewatering and Flow Bypassing	2	8	40	24		74	\$	9,624
5.3 Design Criteria	1	4	16			21	\$	3,024
5.4 Construction Requirements and Limitations	4	8	24	24		60	\$	8,112
5.5 Preliminary Traffic Study	1	4	16	8		29	\$	3,880
5.6 Noise Mitigation	1	4	8			13	\$	2,016
5.7 Preliminary Design Report	4	16	40	24	20	104	\$	13,460
5.8 Review Meetings	4	4	4		2	14	\$	2,450
5.9 Final Design Report	2	8	24	24	8	66	\$	8,336
						447	\$	59,214
<b>6.0 Construction Documents</b>								
6.1 Detailed Design	6	24	80	80	8	198	\$	25,416
6.2 Construction Cost Estimate	1	8	40	20	4	73	\$	9,308
6.3 Construction Documents	1	60	120	160	80	421	\$	51,112
6.4 Review Meetings	8	12	12		6	38	\$	6,342
						730	\$	92,178
<b>TOTAL DESIGN (Lump Sum)</b>	<b>62</b>	<b>245</b>	<b>532</b>	<b>476</b>	<b>192</b>	<b>1507</b>	<b>\$</b>	<b>197,365</b>
<b>CONSTRUCTION SERVICES</b>								
<b>7.0 Construction Services</b>								
7.1 Review Shop Drawings		20	80		12	112	\$	14,952
7.2 Issue Interpretations and Clarifications	8	60	60		8	136	\$	21,644
7.3 Record Drawings	4	24	24	40	12	104	\$	13,940
7.4 Meetings	8	32	16			56	\$	10,080
<b>TOTAL CS (Hourly NTE)</b>	<b>20</b>	<b>136</b>	<b>180</b>	<b>40</b>	<b>32</b>	<b>408</b>	<b>\$</b>	<b>60,616</b>
<b>ALLOWANCES</b>								
Expenses (Printing, Mileage, etc.)							\$	8,000
Survey							\$	30,000
CCTV							\$	20,000
Additional CCTV							\$	20,000
Laser Surveys							\$	10,000
Sound Attenuation Study							\$	15,000
<b>ALLOWANCE TOTAL</b>							<b>\$</b>	<b>103,000</b>
<b>PROPOSAL TOTAL</b>							<b>\$</b>	<b>360,981</b>

*pub*