

# Staff Summary Report



Council Meeting Date: 05/14/2009

Agenda Item Number: \_\_\_\_\_

**SUBJECT:** Request approval of job order no. 5 to replace the Kiwanis Park Sister Cities restroom building through the existing job order contract with Foresite Design & Construction, Inc. and approval of a project contingency.

**DOCUMENT NAME:** 20090514PWTG01 KIWANIS COMMUNITY PARK (0706-25) PROJECT NO. 6301064

**COMMENTS:** Total amount for job order no. 5 is \$263,418 and the amount of the project contingency is \$26,000.

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

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

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

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

**FISCAL NOTE:** Sufficient funds are available in Capital Improvement Fund No. 6301064.

**RECOMMENDATION:** Approve job order no. 5 with Foresite Design & Construction, Inc. in the amount of \$263,418, through the existing job order Contract No. C2008-138, and approve a project contingency of \$26,000.

**ADDITIONAL INFO:** The scope of work for this project includes demolition of the existing restroom facility and replacing it with a new restroom facility that will meet ADA standards. The scope will also include modifications to the adjacent hardscape and landscape.

CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

A stamp consisting of a small square containing the letter 'C' followed by the word 'COPY' in a bold, sans-serif font.

JOB ORDER NO. 5 TO FORESITE DESIGN & CONSTRUCTION, INC.  
THROUGH EXISTING CONTRACT NO. C2008-138

**KIWANIS PARK SISTER CITIES  
RESTROOM BUILDING REPLACEMENT**

**PROJECT NO. 6301064**

This **JOB ORDER NO. 5** is entered into on this 14<sup>th</sup> day of May, 2009, by and between the City of Tempe, an Arizona municipal corporation (“City”) and **ForeSite Design & Construction, Inc.**, an Arizona corporation (“JOC”) through the existing Contract made and entered into by and between the parties on July 22, 2008, (Contract No. C2008-138).

**SECTION 1 – JOB ORDER PRICE AND WORK LOCATION:** JOC shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work for the construction of Kiwanis Park Sister Cities Restroom Building Replacement (Project No. 6301064) (“Project”), for the sum of Two Hundred Sixty Three Thousand Four Hundred Eighteen Dollars (\$263,418), as detailed in the Proposal (Exhibit “A”), and to completely and totally construct the same and install the materials therein for the Project, in a good and workmanlike and substantial manner and to the satisfaction of City or its properly authorized agents and strictly pursuant to and in conformity with the Specifications and Plans for the Project and other documents that may be requested by the City through its Engineer or other properly authorized agents, as provided herein. The full street or physical address of the construction work location (“Work Location”) is 5802 All America Way, Tempe, Arizona. JOC shall list the Work Location in any subcontract related to this job order at any level and each subcontractor shall likewise include the Work Location in any of its subcontracts.

**SECTION 2 – REQUIRED SUBMITTALS:** JOC shall submit the completed forms referenced in the Forms Appendix (Exhibit “B”) to City for approval prior to receipt of a Notice

to Proceed issued by City for the Project.

**SECTION 3 – AMENDMENT:** City of Tempe Contract No. C2008-138, the terms and conditions contained therein and all exhibits attached to the Contract and to this Job Order No. 5 are by reference incorporated into this Job Order No. 5. All provisions of the underlying Contract where not inconsistent with this Job Order No. 5 shall remain binding on the parties.

**SECTION 4 – CONTRACT TERM:** Work shall start as soon as practicable, and in no case later than seven (7) calendar days after the Notice to Proceed is issued by City, and shall be completed within one hundred fifty (150) calendar days thereafter.

**SECTION 5 – SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST:** JOC represents and warrants to City that neither JOC nor any affiliate or representative of JOC (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, JOC certifies that it does not have a scrutinized business operation in either Iran or Sudan.

**SECTION 6 – EMPLOYMENT LAWS:** JOC agrees and covenants that it will comply with any and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healy Act, and the Arizona Fair and Legal Employment Act, and all amendments thereto, along with all attendant laws, rules and regulations. JOC acknowledges that a breach of this warranty is a material breach of this Contract and JOC is subject to penalties for violation(s) of this provision, including termination

of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors 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 JOC. JOC hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

**SECTION 7 – EQUAL OPPORTUNITY:** City is an equal opportunity, affirmative action employer. JOC hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, nation origin, physical or mental disability, age, sex or veteran status. JOC covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans’ Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity.

JOC further agrees to include the provisions of this Section in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

[SIGNATURE PAGE TO FOLLOW]

Kiwanis Park Sister Cities Restroom Building Replacement  
Project No. 6301064

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  
*A*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

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

FORESITE DESIGN & CONSTRUCTION, INC.

By: \_\_\_\_\_  
Name

Its: \_\_\_\_\_  
Title

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

Certified to be a true and exact copy.

\_\_\_\_\_  
Karen M. Fillmore  
Records Specialist



# EXHIBIT A

## City of Tempe Job Order Price

COT Project Name: **Kiwanis Park Restroom Building Replacement** 4/7/2009  
COT Project Number: **6301064**

Price of Subcontractor(s)	\$182,542
Price of Subconsultant(s) (If applicable)	\$0
General Conditions	\$42,261
Preconstruction Labor (If applicable)	
Construction Labor	\$2,323
<b>Subtotal</b>	<b>\$227,126</b>

Overhead and Profit ( 7 % )	\$15,899
<b>Total</b>	

Insurance (1.79%)	\$4,715
Bonds (0.95%)	\$2,502
Sales tax (5.265%)	\$13,175

---

**Combined Total** \$263,418

---

<b>Contractor's Contingency</b>	<b>\$0</b>
<b>Owner's Contingency</b>	<b>\$0</b>

SDB

**EXHIBIT B**

**FORMS APPENDIX**

The following forms shall be completed and submitted with each Job Order.

LIST OF SUBCONTRACTORS .....	SB-1
STATUTORY PERFORMANCE BOND .....	PB-1
STATUTORY PAYMENT BOND.....	PB-3





COT Project Name: Kiwanis Park Restroom Replacement  
 COT Project Number: 6301064

**LIST OF SUBCONTRACTORS**

In accordance with the provisions of Section 108.2 of the MAG Specifications, the JOC Contractor shall provide for each Job Order the information listed below regarding proposed subcontractors which are subject to approval by the City.

Subcontractor

<u>Name</u>	<u>Address</u>	<u>Type of Work</u>	<u>% of Total Contract</u>
Brady Aulerich & Associates, Inc.	1030 E. Guadalupe Road, Tempe, AZ 85283	Construction staking	0.9
Dickens Quality Demolition	1111 N. 19th Avenue, Phoenix, AZ 85009	Demolition	2.3
M & J Construction, Inc.	3640 S. 36th Street, Phoenix, AZ 85040	Earthwork	1.8
North Star Pipelines	508 W. First Avenue, Tempe, AZ 85281	Wet site utilities	1.2
Alrey's Landscaping		Landscaping & irrigation repair	1.9
UpGrade Concrete	8552 E. Nido Ave. Mesa, AZ 85209	Concrete	7.3
Decorative Masonry	419 E. Juanita Ave., Suite #101, Mesa, AZ 85204	Masonry	6.6
ARC Steel	3136 E. Irwin, Mesa, AZ 85204	Steel	11.3

Metal Source	3602 W. Clarendon Ave., Phoenix, AZ 85019	Stainless steel	2.7
Superior Sealants & Waterproofing	PO Box 87713, Phoenix, AZ 85080	Caulking	0.4
ForeSite Design & Construction, Inc	124 W. Orion St., Tempe, AZ 85283	Doors, Frames & Hardware	4.2
Vintage Plastering, Co.	3043 E. Southern Ave., Phoenix, AZ 85040	Stucco	1.5
DCW, Inc.	102 N. 56th Street, Phoenix, AZ 85034	Painting	3.3
Sierra Signs	6909 W. Pasadena Ave., Glendale, AZ 85303	Toilet accessories	1.7
Beach Products	PO Box 14468 Phoenix, AZ 85063	Toilet accessories	0.6
Dick Lee Plumbing	PO Box 32713, Phoenix, AZ 85064	Plumbing	6.8
Tri-Mega Mechanical	4830 N. 92nd Lane, Phoenix, AZ 85037	HVAC	1.4
Indicom Electric Company	3402 East Wier Avenue, Phoenix, AZ 85040	Electrical	7.1

---

---

---

STATUTORY PERFORMANCE BOND  
PURSUANT TO TITLE 34,  
CHAPTER 6, OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ (“Principal”) and \_\_\_\_\_,  
a corporation organized and existing under the laws of the State of \_\_\_\_\_, with  
its principal office in the City of \_\_\_\_\_ (“Surety”), are held and firmly bound  
unto \_\_\_\_\_ (“Obligee”) in the amount of \_\_\_\_\_ Dollars  
(\$\_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves,  
and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by  
these presents.

WHEREAS, the Principal has entered into a certain written Contract with the  
Obligee, dated the 14<sup>th</sup> day of May, 2009, to complete Project No. 6301064, which Contract is  
hereby referred to and made a part hereof as fully and to the same extent as if copied at length  
herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said  
Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions  
and agreements of said Contract during the original term of said Contract and any extension  
thereof, with or without notice to the Surety, and during the life of any guaranty required under  
the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions,  
and agreements of any and all duly authorized modifications of said Contract that may hereafter  
be made, notice of which modifications to the Surety being hereby waived; then the above  
obligation shall be void, otherwise to remain in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the Court. The performance under this bond is limited to the construction to be performed under this Contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the Contract.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
PRINCIPAL SEAL

BY: \_\_\_\_\_

\*\*  
\_\_\_\_\_  
SURETY SEAL

BY: \_\_\_\_\_

\_\_\_\_\_  
AGENCY ADDRESS

\*\* Surety hereby acknowledges they are licensed to do business in the State of Arizona \*\*

STATUTORY PAYMENT BOND  
PURSUANT TO TITLE 34,  
CHAPTER 6, OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ (“Principal”) and \_\_\_\_\_,  
a corporation organized and existing under the laws of the State of \_\_\_\_\_,  
with its principal office in the City of \_\_\_\_\_ (“Surety”), as held and firmly  
bound unto \_\_\_\_\_ (“Obligee”) in the amount of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_), for the payment whereof, the said Principal and Surety bind  
themselves, and their heirs, administrators, executors, successors and assigns, jointly and  
severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the  
Obligee, dated the 14th day of May, 2009, to complete Project No. 6301064, which Contract is  
hereby referred to and made a part hereof as fully and to the same extent as if copied at length  
herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said  
Principal shall promptly pay all monies due to all persons supplying labor or materials to the  
Principal or the Principal’s Subcontractors in the prosecution of the construction provided for the  
Contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that this bond is executed pursuant to Title 34, Chapter 6,  
Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with  
the provisions, conditions and limitations of said Title and Chapter to the same extent as if it  
were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the Court.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
PRINCIPAL SEAL

BY: \_\_\_\_\_

\*\*

\_\_\_\_\_  
SURETY SEAL

BY: \_\_\_\_\_

\_\_\_\_\_  
AGENCY ADDRESS

\*\* Surety hereby acknowledges they are licensed to do business in the State of Arizona \*\*

CITY OF TEMPE  
TEMPE, ARIZONA  
DEPARTMENT OF PUBLIC WORKS

JOC CONTRACTOR'S AFFIDAVIT  
REGARDING  
SETTLEMENT OF CLAIMS

\_\_\_\_\_, Arizona

Date \_\_\_\_\_

**KIWANIS PARK SISTER CITIES RESTROOM BUILDING REPLACEMENT  
PROJECT NO. 6301064**

To the City of Tempe, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above Project, whether by subcontractor or claimant in person, have been duly discharged or will be discharged after receipt of the final payment from the City of Tempe for the above Project.

The undersigned, for the consideration of \$\_\_\_\_\_, as set out in the final pay estimate, as full and complete payment under the terms of the Contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described Project against the City of Tempe. The undersigned further agrees to defend, indemnify and save harmless the City of Tempe against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances, materials, and/or equipment furnished for the performance of said installation.

Signed and dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
JOB ORDER CONTRACTOR

By: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss  
COUNTY OF MARICOPA        )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

[Notary Seal]