

Staff Summary Report



Council Meeting Date: 5/28/2009

Agenda Item Number: 43

SUBJECT: Request to award a professional services design contract with Wilson Engineers for the replacement of the sedimentation basin grout liner at the South Tempe Water Treatment Plant.

DOCUMENT NAME: 20090528PWTG01 SOUTH TEMPE WATER TREATMENT PLANT (0811-08)
PROJECT NO. 3203421

COMMENTS: Total cost for this contract is \$72,835.

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

REVIEWED BY: Don Hawkes, Water Utilities Manager (x2660)
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. 3203421.

RECOMMENDATION: Award professional services contract.

ADDITIONAL INFO: The scope of work for this project consists of design and construction related services for the removal and replacement of grout lining in pre-sedimentation and sedimentation basins.

The contract was negotiated by staff and is considered reasonable for the scope of services. Wilson Engineers 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 28th day of May, 2009, by and between the City of Tempe, an Arizona municipal corporation ("City"), and **Wilson Engineers, L.L.C.**, an Arizona limited liability company ("Consultant").

City engages Consultant to perform professional services for a project known and described as **South Tempe Water Treatment Plant Sedimentation Basin Grout Liner Replacement**, Project No. **3203421** ("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 provide engineering design and construction related services, as described in Exhibit "A" attached.
- 1.2. Consultant has assigned Uday Gandhe 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. The final original 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 two hundred seventy (270) 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 \$72,835.00, unless otherwise authorized by City. This fee includes the sum of \$21,775.00 for design services; and an amount not to exceed \$51,060.00 for construction administration services based on hourly rates established in the attached Exhibit "A" incorporated hereby by this reference.
- 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 final design documents, payments to Consultants shall not exceed 20% of the total Contract amount. The final approval and payment will be made within a reasonable period of time.
- 3.3. City at its discretion may, by written notification, waive the above limitation.

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 9633 S. 48th Street, Suite 290, Tempe, Arizona 85044. 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 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 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 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.
- 5.7. 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, 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 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 an Arizona limited liability company, licensed to do business in the state of Arizona and currently in good standing, and that it is not now in violation of any agreement, instrument, contract, law, rule or regulation by which Consultant is bound.
- 15.10. Independent Contractor. Nothing contained in this Contract shall be deemed or construed by the parties hereto or otherwise, to create the relationship of principal and agent, partnership, joint venturer, employer and employee, or any association between City and Consultant. Consultant is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to 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:

Uday Gandhe
Wilson Engineers, L.L.C.
9633 S. 48th Street
Suite 290
Phoenix, AZ 85044

- 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]

**South Tempe Water Treatment Plant Sedimentation Basin Grout Liner Replacement
Project No. 3203421**

DATED this _____ day of _____, 2009.

CITY OF TEMPE, ARIZONA

By: _____
Mayor

By: _____
Public Works Manager

ATTEST:

Recommended By:

City Clerk

AM _____
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
Wilson Engineers, L.L.C.

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT A

WILSON
ENGINEERS

9633 South 48th Street, Suite 290
Phoenix, AZ 85044-5658
480-893-8860 | 480-893-8968 Fax
Wilson-Engineers.com

City of Tempe
South Water Treatment Plant
Basin Grout Repair Project
Scope of Services
3/25/2009

The City of Tempe currently owns and operates the South Water Treatment Plant located near the intersection of Guadalupe Road and the Loop 101. The City has experienced persistent operational issues with the eight sedimentation basins and two pre-sedimentation basins due to spalling concrete and delaminating patch work on the floor of the basins that interferes with the sludge rake mechanisms. Four to five years ago patch work repairs were done in the sedimentation basins that have not held up and continue to be a problem. It is believed that inadequate surface preparation and/or inconsistent over-site and inspection of the repair work contributed to the patch work failures. The purpose of this project is to construct improvements the entire floor of the sedimentation basins and pre-sedimentation basins that will provide a more reliable surface.

The engineering services to be provided under this Project are as follows:

TASK 1.0 PRELIMINARY DESIGN

Subtask 1.1 Data Collection and Review. Collect and review available information pertaining to existing and facilities:

- Existing Water Plant As-Builts
- Information pertaining to the previous repair work done in the basins
- Site investigations to inspect the current conditions of the basin floors

Subtask 1.2 Site Survey. A detailed site survey is not anticipated to be necessary for this project. The base sheets for the drawings will be from existing available drawings of the Water Treatment Plant.

Subtask 1.3 Design Concept Letter Report. Prepare a design concept letter report for submittal to the City of Tempe. Based on the available data, site investigations, and the City's design standards, Wilson Engineers will prepare a design concept letter report for the proposed improvements. The report will include preliminary surface preparation recommendations, preliminary product selections, a preliminary construction cost estimate, and identification of any additional design issues and recommendations. Wilson Engineers will submit six (6) copies of the Design Concept Letter Report to for review. A review meeting will be conducted to discuss comments on the Design Concept Letter Report.

TASK 2.0 CONSTRUCTION DOCUMENT PREPARATION

Subtask 2.1 Preparation of 90% Plans and Specifications (Agency Review Set). Prepare draft (90%) construction documents including plans, specifications, and a construction cost estimate for the project. The specifications will include requirements on the contractor to develop a safety plan addressing confined space issues, develop a security plan with at a minimum a security guard stationed at the construction

entrance, a disposal plan addressing sampling and final disposal, and detailed schedule outlining how the work will be completed during the November/December plant shutdown, in addition to the required surface preparation requirements and product specifications. The plans shall incorporate the comments received on the Design Concept Report submittal. Three (3) copies of 22" by 34" prints, one (1) copy of 11" by 17" half scale prints, four (4) copies of 8½" by 11" specifications and one (1) CD with pdf copies of the 90 percent plans and specifications will be submitted for review.

Subtask 2.2 Preparation of 100% Plans and Specifications. The final 100% plans and specifications will be prepared incorporating all comments received from the City. One (1) reproducible set of 24" by 36" Mylar plans and one (1) copy of 8½" by 11" master specifications will be prepared to produce the construction sets. In addition one (1) CD with pdf copies of the 100% percent plans and specifications, and Auto CAD files of the 100% percent plans will be submitted.

TASK 3.0 PERMITTING SERVICES

Subtask 3.1 Maricopa County Environmental Service Departments. The Engineer will complete and submit to Maricopa County the required permit applications for approval to construct and approval of construction.

Subtask 3.2 City of Tempe Building Permit. The Engineer will complete and submit the required City permit applications for approval.

TASK 4.0 PRE-BID SERVICES

Subtask 4.1 Contractor Pre-Submittal Meeting and Site Visit. The Engineer will facilitate a pre-submittal meeting and site visit for the contractors to address questions.

TASK 5.0 CONSTRUCTION COORDINATION

Subtask 5.1 Review Submittals. The Engineer will review Shop Drawing submittals on the materials to be furnished.

Subtask 5.2 Site Visits. The Engineer will perform weekly site visits during the construction to monitor the construction progress.

Subtask 5.3 Questions During Construction. Receive and respond to contractors questions regarding the plans and specifications during the construction phase.

TASK 6.0 RESIDENT SERVICES DURING CONSTRUCTION

Subtask 6.1 Resident Project Representative. Wilson Engineers will furnish a Resident Project Representative up to half time and NSB will furnish an inspector up to quarter time who will act as directed by ENGINEER, in order to assist ENGINEER in observing performance of the work of the Contractor. Through increased on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and NSB inspector, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor; but the furnishing of such Resident Project Representative and NSB inspector will not make ENGINEER responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs, or for Contractor failure to perform their work in accordance with the construction documents.

END SCOPE OF SERVICES

WILSON ENGINEERS

**CITY OF TEMPE
SOUTH WTP BASIN GROUT REPAIR PROJECT
DESIGN AND CONSTRUCTION SERVICES FEE
4/8/2009**

I. LABOR SUMMARY

Task	Task Description	Principal E-7 \$ 195.00	Project Manager E-5 \$ 150.00	Project Engineer E-4 \$ 125.00	Senior Construction Observer C-5 \$ 115.00	Admin. A-4 \$ 75.00	Total Hours	Total Fee
Task 1.0 - Preliminary Design and Development								
1.1	Data Collection		2	4			6	\$ 800
1.2	Site Survey		2	4			6	\$ 800
1.3	Design Concept Letter Report	0	4	4		4	12	\$ 1,400
	Subtotal	0	8	12	0	4	24	\$ 3,000
Task 2.0 - Construction Document Preparation								
2.1	90% Construction Document Submittal	0	8	24		16	48	\$ 5,400
2.2	100% Final Submittal		8	16		4	28	\$ 3,500
	Subtotal	0	16	40	0	20	76	\$ 8,900
Task 3.0 - Permitting								
3.1	Maricopa County Permitting		2	4			6	\$ 800
3.2	City of Tempe		2	4	0		6	\$ 800
	Subtotal	0	4	8	0	0	12	\$ 1,600
Task 4.0 - Pre-Bid								
4.1	Pre Submittal Meeting		4	8		4	16	\$ 1,900
	Subtotal	0	4	8	0	4	16	\$ 1,900
Task 5.0 - Construction Coordination (HOURLY RATE NOT TO EXCEED)								
5.1	Review Submittals		4	16		2	22	\$ 2,750
5.2	Site Visits	2	24	40			66	\$ 8,990
5.3	RFI's		8	8			16	\$ 2,200
	Subtotal	2	36	64	0	2	104	\$ 13,940
Task 6.0 - Resident Project Representative (HOURLY RATE NOT TO EXCEED)								
6.1	Observation and Record Keeping				200	16	216	\$ 24,200
	Subtotal	0	0	0	200	16	216	\$ 24,200
	Subtotal - Labor	0	32	68	200	44	344	\$ 53,540

↑
 Design
 \$15,400
 ↓
 Const
 \$18,140
 ↓

II. EXPENSE SUMMARY

No.	Expense Description	Unit	Total Units	Cost / Unit	Total
1.0	Misc. Printing (Reports, Final Mylars)	Lump Sum	1	\$ 750	\$ 750
2.0	NSB (Preliminary Design and Construction Document Preparation)	Lump Sum	1	\$ 6,095	\$ 6,095
3.0	NSB (HOURLY RATE NOT TO EXCEED)		1	\$ 29,815	\$ 29,815
SUBTOTAL - EXPENSE SUMMARY					\$ 19,765

III. TOTAL FEE

Item	Description	Amount
I.	LABOR SUMMARY (LUMP SUM)	\$ 15,400
II.	EXPENSE SUMMARY (LUMP SUM)	\$ 5,375
III.	COUNTY REVIEW FEE	\$ 1,000
TOTAL LUMP SUM FEE PROPOSAL		\$ 21,775
I.	LABOR SUMMARY (HOURLY NOT TO EXCEED)	\$ 38,140
II.	EXPENSE SUMMARY (HOURLY NOT TO EXCEED)	\$ 12,920
TOTAL HOURLY NOT TO EXCEED FEE PROPOSAL		\$ 51,060
III.	TOTAL FEE PROPOSAL	\$ 72,835

→ LUMP SUM = \$ 21,775
 → - HOURLY N.T.E = \$ 51,060

Nabar Stanley Brown, Inc.
 Structural Engineers

CITY OF TEMPE				
Tempe South Water Treatment Plant				
Grout Repair				
Structural Engineering Services (Lump Sum)				
Task/Item	Project Engineer	Structural Designer	Senior Structural Technician	
1- Review Existing Drawings	1	1		
2- Site Verification Visit	2		4	
3 - Develop Drawings and Specifications for Grout Repair Work	8	16	16	
Total Hours	11	17	20	
Hourly Rate	\$155.00	\$110.00	\$90.00	
	\$1,705.00	\$1,870.00	\$1,800.00	\$5,375.00
			Total Fee:	\$5,375.00

4
RSB

Nabar Stanley Brown, Inc.
Structural Engineers

CITY OF TEMPE				
Tempe South Water Treatment Plant				
Grout Repair Work				
Structural Construction Administration Services (Hourly Not to Exceed)				
Task/Item	Project Engineer	Structural Designer	Senior Structural Technician	Totals
RFI's, Clarif. & Interpretations	8	8		
Submittal Review				
Concrete Mix Designs				
Reinforcing Shop Drawings				
Structural Steel Submittals				
Pre-Engineered Canopy Submittals				
Grating Submittal				
Masonry Submittals				
Waterstop Submittals				
Adhesive Anchors				
Concrete Testing Results				
Structural Observations				
Structural Inspections (quarter time for 3 months)			120	
Total Hours	8	8	120	
Hourly Rate	\$155.00	\$110.00	\$90.00	
	\$1,240.00	\$880.00	\$10,800.00	\$12,920.00
			Total =	\$12,920.00
Notes:				

J
PJM

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE

Arizona

Date _____

**STWTP Sedimentation Basin Grout Liner Replacement
Project No. 3203421**

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

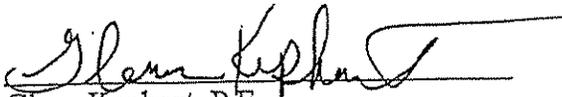
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the 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 dependents and meets all City requirements, the Contractor may so note on the required affidavit.
4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.
5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.
6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.
8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.


Glenn Kephart, P.E.
Public Works Manager