

Staff Summary Report



Council Meeting Date: 06/11/2009

Agenda Item Number: _____

SUBJECT: Request award of a professional services contract with Stantec Consulting, Inc. for the flood irrigation system.

DOCUMENT NAME: 20090611PWTG08 STORM DRAIN & FLOOD CONTROL (0808) PROJECT NO. 6704041

COMMENTS: Total cost for this contract is \$476,362.

PREPARED BY: Theresa Galindo, Acting Engineering Contracts 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. 6704041

RECOMMENDATION: Award professional services contract.

ADDITIONAL INFO: The scope of work for consists of project management, pipe cleaning and inspections, and an analysis of the video inspection results of the City's flood irrigation system.

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



CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made and entered into on the 11th day of June, 2009, by and between the City of Tempe, an Arizona municipal corporation (“City”), and **Stantec Consulting, Inc.**, an Arizona corporation (“Consultant”).

City engages Consultant to perform professional services for a project known and described as **Flood Irrigation System Phase II – Engineering Analysis Inspection Monitoring and Cleaning**, Project No. 6704041 (“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 inspection monitoring and analysis, as described in Exhibit “A” attached.
- 1.2. Consultant has assigned Maria Brady 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 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.
- 1.4. 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.
- 1.5. Consultant shall perform the work in a manner and at times which do not impede or delay City’s operations and/or functions.
- 1.6. 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 \$476,362.00, unless otherwise authorized by City.
- 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) and progress report(s) are approved by City, installment payments will be made within thirty (30) days after City's approval.

4. CITY'S RESPONSIBILITIES

- 4.1. City shall designate a project manager during the term of this Contract. The project manager has the authority to administer this Contract and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by 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 7776 Pointe Parkway West, Suite 290, Phoenix, 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. Consultant agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this clause.
- 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 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:

Maria Brady
Stantec Consulting, Inc.
7776 Pointe Parkway West
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]

**Flood Irrigation System Phase II – Engineering Analysis Inspection Monitoring and Cleaning
Project No. 6704041**

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
Stantec Consulting, 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

Transmittal

Stantec Consulting Inc. 7776 Pointe Parkway West,
Suite 290
Phoenix, AZ 85044 Phone: (602) 438-2200
Fax: (602) 431-9562



Stantec

To: City of Tempe

Date: 05 May 2009

Attention: Mr. Philip Brown

For your information

Reference: **SCOPE OF WORK
ENGINEERING ANALYSIS
AND INSPECTION
MONITORING FEES**

For your review

For your comment

For your approval

As requested

Project: **INSPECTION MONITORING,
CLEANING & ANALYSIS OF
IRRIGATION SYSTEM
PIPELINES**

Attachments:

- Estimated Manhours and Costs for Engineering Analysis and Inspection Monitoring Fees for the City of Tempe Flood Irrigation System Clean and Inspect Irrigation System Pipelines Project
- Flood Irrigation System Cleaning and Television Inspection Comparison

INTRODUCTION

We are pleased to present this proposal for the subject project for your review. Our proposal is loosely based on the construction documents prepared in 2000 that were originally prepared to publicly bid the cleaning and video inspection of approximately 66,500 lf of the existing low-pressure irrigation system that the City operates and maintains in Sections 22, 23 and 27 of T1N, R4E (Phase II of the Total Irrigation System Analysis). These documents further breakout the approximate length of pipeline per diameter and this estimate was used to prepare estimates for cleaning and inspecting the irrigation pipelines.

We have separated the project into two major tasks: Project Oversight and Evaluation and Video Inspection and Cleaning. Within the Project Oversight and Evaluation, we propose to provide three basic services: project management, oversight of the cleaning and video inspection, and analysis of the video inspection results. These services will be provided by Stantec. Manhours and estimated cost to perform these services are listed on the attached fee schedule. Our proposal includes bids from two local companies that can provide the cleaning and inspection services. Work will be split between the firms and specific reaches to be performed by each company will be determined at the kick-off meeting and subsequent work scheduling meetings.

OVERAL PROJECT SCHEDULE

The 2000 plans and specifications listed a 150-day inspection schedule. The project was going to be bid so that the bulk of the video inspection would occur from November to February during the reduced irrigation and dry-up season. Our proposal is based on a 180-day inspection period assuming the project will overlap the regular irrigation season. The actual video inspection and cleaning production rate is estimated at approximately 1000 feet a day or approximately 70 days. The 180-day schedule will provide flexibility to coordinate with the irrigation schedule. If it is deemed necessary to suspend work for certain months (say July and August) and re-commence, then our proposal will allow for that to happen. We have included a three month period to complete the overall analysis of the Phase II reach and prepare a summary report similar to the Phase I report.

PUB

Reference: SCOPE OF WORK ENGINEERING ANALYSIS AND INSPECTION MONITORING FEES

It should be noted that the Phase I report was not finalized and fee has not been included to complete that report. However, the portions of the Phase I report that were not completed were the go forward plan for system ownership and for continued operation and maintenance of the system by the City. This has been addressed in the more recent 2006 report and Council decisions.

PROJECT OVERSIGHT AND EVALUATION

Project Management:

We have assumed that the first step will be to meet with the City Irrigation staff to review each quarter section and determine which areas are known problem areas. This information will be noted on the quarter section maps and reviewed with the video inspection teams at the kick-off meeting. Initial work assignments will be determined for each video inspection team. We have assumed that one monthly meeting will be conducted to review the status of the project during both the inspection and the evaluation phases of the project with City staff. This meeting will coincide with the regular weekly inspection coordination meeting during the cleaning and inspection phase described below.

CCTV Inspection and Temporary Access Point Construction Monitoring:

We have assumed that there will be a kick-off meeting with the video inspectors to initiate the project and weekly inspection coordination meetings. It is anticipated that these weekly meetings will be held with City Irrigation personnel to verify irrigation schedules and specific reaches that can be cleaned and videoed during the next three-week cycle. To reduce project costs, we have assumed that only periodic inspection of the field work will be required. We have estimated that we should monitor the cleaning and video work approximately twice a week for four hours per trip. We have further assumed that most questions that may arise from the cleaning and video inspection and how to address problems will be handled in the twice weekly on-site inspections or at the weekly coordination meetings.

Stantec will provide a stand pipe design that can be used in the event that the City would prefer to install a standpipe rather than a temporary access point. This design shall be prepared to assume that gates could be added at a future time. In addition, construction of the stand pipe will be completed through an existing JOC contract that the City maintains and will not be constructed as part of this contract.

Review and Analyze CCTV Reports:

Each of the reaches will then be reviewed with the quarter section maps to organize the data into a notebook for the City. In addition, the video will be examined to confirm the preliminary findings of the CCTV inspection for each reach. As each reach is reviewed, problems will be noted on a table to document those problems that may cause system failure. Reaches with problems will be evaluated to determine the recommended repairs/replacements and then cost estimates will be prepared for each of these reaches. All data will be summarized onto a table in the same order as it appeared in the construction documents prepared in 2000. In addition, we will produce a set of drawings color coding the status of the reaches similar to that produced for Phase I. It is our expectation that we will provide that information in GIS format to be added to your existing information on the irrigation system.

The NASSCO evaluation system, the lot service map and the detailed repair/replacement and cost information for each reach will be used to establish an overall prioritization recommendation to improve the irrigation system functionality. The prioritization will be based on the maximum number of repairs that can be made versus the annual projected budget for these repairs per year to give a better CIP approach.

PMB

Reference: SCOPE OF WORK ENGINEERING ANALYSIS AND INSPECTION MONITORING FEES

We have assumed approximately 2 hours of review and evaluation for 1000 feet of CCTV inspection. We have assumed approximately 15 minutes per reach to organize the CCTV reports and put together a notebook with the data. A simple written description explaining the information presented on the tables and figures will be prepared and submitted to the City with the CCTV data notebook and the table summarizing all this data. We have assumed one review meeting with the City for the summary report and to finalize report recommendations. Upon receipt of City comments, we will finalize the table, report and notebook.

CLEANING AND VIDEO INSPECTION

We have received two price proposals for the cleaning and video inspection of the irrigation system from Pro Pipe and Ancon (see attached cost comparison table). These price proposals have assumed that the current National Association of Sewer Service Companies (NASSCO) published standards will be used to judge and grade the condition of the pipelines. As discussed with you, NASSCO has attempted to standardize the inspection and reporting techniques for pipelines. Using this standard will allow the City to compare the status of the irrigation system against other systems in future evaluations and against itself over the years with more reliability. This standard will also allow the use of existing software packages such as Wincan or a similar software package that CCTV companies use to record irregularities.

Initial work assignments will be scheduled for each video inspection team at the kick-off meeting and revised at the weekly review meetings. Cost for the inspection will be invoiced on a time and materials basis with no mark-up on their work. It is assumed that the City will provide a method to dispose of the debris cleaned from the pipelines. As it is determined that temporary access points are required, the video inspection team will work with the City's JOC Contractor to construct and repair these access points. No access points are included in this cost proposal.

Two sets of hard copy Reach Reports will be provided. Both sets of Reach Reports will be organized by Quarter Section and submitted to the City in Notebooks. Stantec will provide five (5) sets of the draft and final reports summarizing results, priority for repair and estimated repair costs. We will provide a Word version, a pdf version and the GIS data generated during the project.

SUMMARY

We would recommend a time and materials approach to the project on a task by task basis. We respectfully submit this proposal for your review and stand ready to finalize the approach and details of the contract. If you have questions, please feel free to call at your convenience.

Sincerely,

STANTEC CONSULTING INC.



Maria J. Brady, PE
Project Manager

Enclosure

**ESTIMATED MAN - HOURS
CLEAN AND INSPECT IRRIGATION SYSTEM PIPELINES PROJECT
ENGINEERING ANALYSIS AND INSPECTION MONITORING FEES**

| TASKS | Personnel and Rate | Manhours | | | | | | Subcontractors & Expenses | | | | | | TOTAL COST |
|--|--------------------|--------------------------|---------------------------|-------------------|--------------------|-----------------|-----------------|---------------------------|---------|----------|------------------|----------------|-----------|------------|
| | | Project Manager \$154 | Project Engineer \$138 | CADD/GIS \$112 | Technician \$74 | Clerical \$4 | Sub-Total Labor | Sub-Total Cost | Travel | Printing | Video Inspection | Sub-Total Cost | | |
| Project Administration (Estimated Project Duration 9 months) | | | | | | | | | | | | | | |
| A. Resources and Schedule (4 hours per month) | | 36 | | | | | 36 | \$5,544 | | | | | \$0 | \$5,544 |
| B. Project Kickoff Meeting | | 8 | | | | | 8 | \$2,336 | \$25 | | | | \$25 | \$2,361 |
| C. Progress Meetings (1 per month) | | 36 | | | | | 36 | \$5,544 | \$225 | | | | \$225 | \$5,769 |
| D. Coordination, Progress Reports and Invoicing (4 hrs/month) | | 36 | | | | | 36 | \$5,544 | \$100 | | | | \$100 | \$5,644 |
| Subtotal | | 116 | 8 | 0 | 0 | 124 | | \$18,968 | \$250 | \$100 | \$0 | \$350 | \$19,318 | |
| Monitor Video Inspection (estimated duration 180 days) | | | | | | | | | | | | | | |
| A. Kick-off meeting (set-up, coordination, meeting) | | 8 | 16 | | | | 24 | \$3,440 | \$25 | | | | \$25 | \$3,465 |
| B. Weekly scheduling meetings | | 54 | 144 | | | | 198 | \$28,188 | | | | | \$0 | \$28,188 |
| C. Standpipe Design | | 4 | 16 | 32 | | | 52 | \$6,408 | | | | | \$0 | \$6,408 |
| D. Periodic field inspection and reports (4 hours per day, 2 days per week for 6 month inspection) | | 48 | 240 | | | | 288 | \$40,512 | \$3,600 | \$120 | | | \$3,720 | \$44,232 |
| E. Field Questions | | 6 | 48 | | | | 54 | \$7,548 | \$100 | | | | \$100 | \$7,648 |
| F. Record Drawings (update electronic schematic drawings) | | 2 | 8 | 40 | | | 50 | \$5,892 | \$200 | | | | \$200 | \$6,092 |
| Subtotal | | 122 | 472 | 72 | 0 | 668 | | \$97,988 | \$3,625 | \$420 | \$0 | \$4,045 | \$96,033 | |
| Review and Analyze CCTV Reports | | | | | | | | | | | | | | |
| A. Review CCTV Reports | | 24 | 140 | | | | 164 | \$23,016 | | | | | \$0 | \$23,016 |
| B. Organize CCTV Data into Notebook Format | | 8 | | 40 | | | 48 | \$4,192 | \$250 | | | | \$250 | \$4,442 |
| C. Prepare Repair/Replacement Recommendations | | 16 | | | | | 16 | \$2,464 | | | | | \$0 | \$2,464 |
| D. Prioritize Reaches | | 8 | 40 | 80 | 20 | | 148 | \$17,192 | | | | | \$0 | \$17,192 |
| E. Prepare Summary of Recommendations Report | | 16 | 40 | | | | 56 | \$7,984 | \$500 | | | | \$500 | \$8,484 |
| F. City Review of Summary Report | | 4 | 4 | | | | 8 | \$1,168 | \$25 | | | | \$25 | \$1,193 |
| G. Incorporate City Comments | | 4 | 16 | 8 | | | 28 | \$3,720 | \$500 | | | | \$500 | \$4,220 |
| Subtotal | | 80 | 240 | 88 | 60 | 468 | | \$59,736 | \$25 | \$1,250 | \$0 | \$1,275 | \$61,011 | |
| Review and Analyze CCTV Reports | | | | | | | | | | | | | | |
| A. Review CCTV Reports | | | | | | | 0 | \$0 | | | \$300,000 | \$300,000 | \$300,000 | \$300,000 |
| Subtotal | | 0 | 0 | 0 | 0 | 0 | | \$0 | \$0 | \$0 | \$300,000 | \$300,000 | \$300,000 | |
| TOTAL HOURS | | 318 | 720 | 160 | 60 | 1258 | | \$170,692 | \$3,900 | \$1,770 | \$300,000 | \$305,670 | \$476,362 | |
| TOTAL COST | | \$48,972 | \$99,360 | \$17,920 | \$4,440 | | | | | | | | | |

CITY OF TEMPE
 PROJECT NO. 926466A
 FLOOD IRRIGATION SYSTEM CLEANING AND TELEVISION INSPECTION
 PHASE 2
 March 12, 2009

| ITEM NO. | DESCRIPTION | QUANTITY | UNIT | Pro Pipe | | Ancon | |
|------------------------|---|----------|------|-------------|----------------------|-------------|----------------------|
| | | | | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST |
| 1 | CLEAN AND CCTV OF 10" CONCRETE PIPE | 2,037 | L.F. | \$ 3.50 | \$ 7,129.50 | \$ 3.50 | \$ 7,129.50 |
| 2 | CLEAN AND CCTV OF 12" CONCRETE PIPE | 10,824 | L.F. | \$ 3.50 | \$ 37,884.00 | \$ 3.50 | \$ 37,884.00 |
| 3 | CLEAN AND CCTV OF 14" CONCRETE PIPE | 10,835 | L.F. | \$ 3.50 | \$ 37,922.50 | \$ 4.15 | \$ 44,965.25 |
| 4 | CLEAN AND CCTV OF 16" CONCRETE PIPE | 6,992 | L.F. | \$ 3.50 | \$ 24,472.00 | \$ 4.15 | \$ 29,016.80 |
| 5 | CLEAN AND CCTV OF 18" CONCRETE PIPE | 27,601 | L.F. | \$ 5.00 | \$ 138,005.00 | \$ 4.80 | \$ 132,484.80 |
| 6 | CLEAN AND CCTV OF 20" CONCRETE PIPE | 1,101 | L.F. | \$ 5.00 | \$ 5,505.00 | \$ 4.80 | \$ 5,284.80 |
| 7 | CLEAN AND CCTV OF 24" CONCRETE PIPE | 3,626 | L.F. | \$ 5.00 | \$ 18,130.00 | \$ 4.80 | \$ 17,404.80 |
| 8 | CLEAN AND CCTV OF 26" CONCRETE PIPE | 328 | L.F. | \$ 5.00 | \$ 1,640.00 | \$ 5.10 | \$ 1,672.80 |
| 9 | CLEAN AND CCTV OF 36" CONCRETE PIPE | 20 | L.F. | \$ 5.00 | \$ 100.00 | \$ 5.40 | \$ 108.00 |
| 10 | CLEAN AND CCTV OF UNKNOWN DIA CONCRETE PIPE | 3,084 | L.F. | \$ 5.00 | \$ 15,420.00 | \$ 5.80 | \$ 17,887.20 |
| 11 | PERMIT FEES | 1 | L.S. | \$ 1,000.00 | \$ 1,000.00 | \$ 1,000.00 | \$ 1,000.00 |
| 12 | TEMPORARY ACCESS POINTS | | EA. | | \$ - | | \$ - |
| | - IN UNPAVED AREA | | EA. | | \$ - | | \$ - |
| | - IN PAVED AREA | | EA. | | \$ - | | \$ - |
| TOTAL BID PRICE | | | | | \$ 287,208.00 | | \$ 294,837.95 |

PB

**CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS**

**AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE**

Arizona

Date _____

**Flood Irrigation System Phase II – Engineering Analysis Inspection Monitoring and Cleaning
Project No. 670404**

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

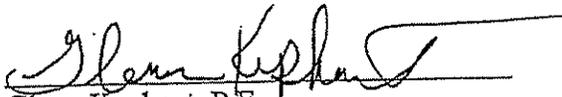
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the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