

# COUNCIL DECISION REQUEST

SUBJECT: Design of Water Line in Conjunction with the Airline/Luke Area Sewer

MEETING DATE: 5-20-10

PAYSON GOAL: NEW:            EXISTING:

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: LaRon G. Garrett, Pub Wks. Dir. AMOUNT BUDGETED: \$150,000

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED: \$52,004

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED: \$0

EXHIBITS (If Applicable, To Be Attached): Map of Area to be Served, Proposed Contract

## POSSIBLE MOTION

I move to approve the contract with Tetra Tech, Inc. for the Engineering Design of the Water Line in Conjunction with the Airline/Luke Area Sewer and authorize the Mayor to sign the necessary contract documents.

## SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

Recently, the Northern Gila County Sanitary District annexed the Airline Boulevard / Luke Drive area into the Sanitary District (See attached map). Currently the area is served with septic systems for sanitary service and very old and small water lines. Now the Sanitary District is working with the area residents to form an improvement district to install sanitary sewer lines and abandon all of the existing septic systems. The Town owns four parcels of property in this area, two of which are existing wells that will benefit from this improvement.

The sewer construction provides an excellent opportunity for the Town to install new water lines and fire hydrants in an area that currently does not have any fire protection. Constructing the water and sewer improvements at the same time will minimize any repair work and neighborhood disruption.

In order to do that we need to have the water system improvements designed. Tetra Tech has been hired by the Sanitary District to design the sewer system, and are therefore the logical firm to design the water improvements at the same time. Staff has negotiated the attached contract with Tetra Tech, Inc. to include the water system improvements with the sanitary sewer system plans.

**PROS:** Provide larger water mains and fire protection in an older Payson neighborhood.

**CONS:** None

**PUBLIC INPUT (if any):** N/A

**BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):** N/A

## FUNDING:

Acct: 661-5-5451-08-8009 Budget: 150,000 Available: 147,383 Expense: 52,004 Remaining: 95,379

3A:

*Hope A. Cull*

Date:

*5/11/10*

MAY 20 2010 I.3



**AGREEMENT  
BETWEEN TETRA TECH, INC.  
AND THE TOWN OF PAYSON  
FOR PROFESSIONAL SERVICES IN CONNECTION WITH  
AIRLINE BOULEVARD/LUKE DRIVE CORRIDOR WATER LINE DESIGN**

**THIS AGREEMENT** entered into this \_\_\_ day of \_\_\_\_\_, 2010 by and between **TETRA TECH, INC., 431 S. BEELINE HIGHWAY, PAYSON, AZ 85541**, (hereinafter referred to as the "Engineers and Architects" or "E/A") and the Town of Payson, a municipal corporation, located at 303 North Beeline Highway, Payson, Arizona 85541 (hereinafter referred to as "Client").

**RECITALS**

- A. Client desires to engage E/A to provide professional services; and
- B. Client finds that the proposed Scope of Services and terms of this Agreement are acceptable; and
- C. E/A desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth.

**NOW, THEREFORE**, based upon the mutual promises, covenants and conditions herein contained, the Parties do hereby agree as follows:

Section 1. Terms and Conditions

- A. Employment of the E/A. Client hereby engages E/A and E/A hereby agrees to perform the professional services as set forth herein.
- B. Scope of Services. E/A shall perform, in a proper and professional manner, the services set forth in the Scope of Services, marked Attachment "A", attached hereto, and by this reference incorporated herein as though set forth in full at this point. The work is generally described as:  
  
Provide Engineering Design for the new Water Line, including fire hydrants and service lines
- C. Time for Completion. The professional engineering report for **THE AIRLINE BOULEVARD/LUKE DRIVE CORRIDOR WATER LINE DESIGN** as defined in Attachment "A", Scope of Services, shall be completed within One Hundred Twenty (120) calendar days from the date of execution of this contract. This time frame may be extended if mutually agreed upon by both parties in writing.
- D. Extra Services. E/A shall provide extra services, not specifically called for in Attachment "A", Scope of Services, upon request or authorization of the Client at a fee to be determined at the time of the request. However, it is the intent that the Scope of Services, with modifications by the E/A in the Special Provisions, if any, is complete and sufficient to accomplish the purposes of this Agreement.
- E. Changes. If Client has requested modifications or changes in the extent of the Project, the time of performance of the services of E/A and the compensation therefore

shall be adjusted appropriately and shall be incorporated in written amendments to this Agreement. Notwithstanding the foregoing, E/A shall perform no modification, changes or additional work, except as and until authorized in writing by Client to do so.

F. Fees. Client shall pay E/A, for the services set forth in Attachment "A", Scope of Services, a Lump Sum of Thirty Four Thousand, Four Hundred Twenty Five Dollars and NO/100, (\$34,425.00) for Tasks 1-8 and Time and Materials with a "Not to Exceed" fee of Seventeen Thousand, Five Hundred Seventy Nine Dollars and NO/100 (\$17,579.00) for Tasks 9-14 per the fee schedule included in Attachment "A".

G. Payment. E/A will submit to Client monthly invoices based on a percentage of work completed along with all reimbursable expenses incurred. Client will be responsible for paying the invoice in full within thirty (30) days of receipt. If Client fails to make any payment due E/A for services performed as set forth in Attachment "A", Scope of Services, within thirty (30) days after receipt of E/A's bill therefore the amounts due E/A shall include a charge at the rate of 1.50% per month from said day; and in addition E/A may suspend services under this Agreement until it has been paid in full all amounts due it for services and expenses. E/A shall be entitled to actual costs for remobilizing on any work suspended for thirty (30) days or more on account of non-payment or a substantial portion of the fee within the time prescribed in this Agreement.

H. Reimbursables. Unless otherwise stated in Attachment "A", Scope of Services, charges for out-of-pocket expenses not directly furnished by E/A will be paid by Client at a rate of 1.10 times the cost of such expense, up to a maximum of Five Hundred Dollars, excluding subconsultants, in addition to the amount set forth in paragraph 2 (F) herein above. E/A shall not be entitled for payment for printing or copying that occurs during the normal course of work required to accomplish the Scope of Services, except as authorized by the Client. Printing, binding, copying and deliveries of inspection reports, field notes and record drawings for the Client shall not be considered reimbursable.

I. Ownership and Re-Use of Documents. All documents, including original drawings, estimates, specifications, field notes, inspection reports, testing results, record drawings and data are and shall be the property of the Client, and shall be provided to the Client upon request during the term of this Agreement, and without demand at the conclusion of this Agreement. Client will not reuse the documents for any other project unless E/A has given written authorization to do so.

J. Delays Beyond the Control of the E/A. It is agreed that events which are beyond the control of the E/A may occur which may delay the performance of the Scope of Services of this Agreement. In the event that the performance of the Scope of Services by the E/A is delayed beyond its control, the E/A shall notify, in writing, the Client of such delay and the reason therefore, and Client shall extend the time of performance appropriately.

K. Liability of E/A. E/A shall be liable only for damage caused by negligence of it, its employees, sub-consultants or subcontractors. E/A shall notify Client of the engagement of any and all subcontractors or consultants, and client shall have sufficient and adequate opportunity to review the qualifications of such subcontractors or consultants, and shall have the right to approve or disapprove their engagement. Client requires subcontractors or consultants of the E/A shall provide appropriate certificates of insurance to the client prior to their performing of any work relating to this Agreement.

L. Problems. Any problems relating to the services provided herein are to be brought to the attention of E/A as soon as encountered and, if possible, before E/A incurs any obligations. E/A reserves the sole right to correct any errors it is responsible for, including, but not limited to, the selection of a subcontractor or sub-consultant and the negotiation of fees.

M. Indemnification. To the fullest extent permitted by law, the E/A shall defend, indemnify and hold harmless the Town of Payson, its agents, officers, officials and employees from and against all tortuous claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions of the E/A, its agents, employees, or any tier of E/A's sub-consultants in the performance of this Contract. E/A's duty to defend, hold harmless and indemnify the Town of Payson, its agents, officers, officials and employees shall arise in connection with any tortuous claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any E/A's negligent acts errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the E/A, any tier of E/A's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the E/A may be legally liable.

The amount and type of insurance coverage requirements set forth in Paragraph N herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

N. Insurance. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the Town of Payson, constitute a material breach of this Contract.

The E/A's insurance shall be primary insurance as respects to the Town of Payson, and any insurance or self-insurance maintained by the Town of Payson shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the Town of Payson.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Town of Payson, its agents, officers, officials and employees for any claims arising out of the E/A's negligent acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Town of Payson under such policies. The E/A shall be solely responsible for the deductible and/or self insured retention and the Town of Payson, at its option, may require the E/A to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the Town of Payson, its agents, officers, officials and employees as Additional Insureds.

Required Coverage

General Liability.	\$1,000,000 / occurrence;	\$2,000,000 aggregate.
Workers' Compensation.	\$100,000 / accident;	\$100,000 disease; \$500,000 disease limit
Professional Liability	\$1,000,000 per claim.	

Prior to commencing work or services under this Contract, E/A shall furnish the Town of Payson with Certificates of Insurance, or formal endorsements as required by the Contract, issued by E/A's insurer(s), as evidence that policies providing the required coverage's, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this Contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the Town of Payson fifteen (15) days prior to the expiration date.

O. Termination of Contract. This Agreement may be terminated by either Party at any time upon thirty (30) days prior written notice to the other Party. Upon such termination, Client shall pay E/A all monies owed under this Agreement for all work performed up to the effective date of termination. Unless sooner terminated, this Agreement shall terminate fourteen (14) calendar days after completion of construction. In the event of such cancellation, all work performed by E/A up to that time, including but not limited to field information, studies and rough or final drafts of working papers, shall be delivered to the Client by E/A.

P. Publicity. No information relative to the Project shall be released by E/A for publication, advertising, or for any other purpose without the prior written approval of the Client.

Q. Supplementary Conditions. Supplementary Conditions, if any, shall apply to this Agreement, as set forth in Attachment "B" - Supplementary Conditions, which is attached hereto and incorporated herein by this reference as though set forth in full at this point.

R. Entire Agreement. This Agreement, with attachments, represents the entire understanding between Client and E/A in respect to the Project, all prior understanding and agreements are merged herein and this Agreement may only be modified by an instrument in writing executed with the same formalities as this instrument.

S. Successors and Assigns. Client and E/A each binds himself and his partners, successors, executors, administrators and assigns to the other party to this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither Client nor E/A shall assign, sublet or transfer its interest in this Agreement without the written consent of the other; however, E/A may employ others to assist him in carrying out its duties under this Agreement. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and E/A.

T. Non-Appropriation/Non-Receipt. Nothing herein shall be construed as obligating the Town to expend, or as involving the Town in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for this work. Nor shall anything herein be construed as obligating the Town to expend, or as involving the Town in any contract or other obligation for the future payment of money if the Town does not have sufficient revenues for this expenditure.

U. Business License. The E/A shall provide the Town with a copy of its Town of Payson business license. If the E/A is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Town Code.

V. Scrutinized Business Operations. Pursuant to A.R.S. §35-391.06, the Parties hereby warrant and represent that they do not have, nor any of their subcontractors have, and during the term of the Contract will not have a scrutinized business operation in either Sudan or Iran.

W. Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).

W.1 Consultant and any Sub-consultant employed by Consultant warrants their compliance with all Federal immigration laws and regulations that relate to their employees and Arizona Revised Statutes Section 23-214(A).

W.2 A breach of the warranty under Section W.1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.

W.3 The Town retains the legal right to inspect the papers of the Consultant or Sub-consultant who works on this Contract to ensure that the Consultant or Sub-consultant is complying with Section W.1.

X. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the

other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

**WITNESS WHEREOF**, E/A and Client have executed this Agreement on the day and year first above written.

Town of Payson  
303 N. Beeline Highway  
Payson, AZ 85541  
Telephone: (928) 474-5242  
FAX: (928) 474-7052

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

Attest: \_\_\_\_\_  
Town Clerk

Tetra Tech, Inc.  
431 S. Beeline Highway  
Payson, AZ 85541  
Telephone: 928-474-4636  
FAX: 928-474-4867

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

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

### APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this contract and approved it as to form. When reviewing this contract for form, the Legal Department considers whether the following situations have been addressed:

- I. Identification of parties;
- II. Offer and acceptance;
- III. Existence of contract consideration (we do not review to determine if consideration is adequate);
- IV. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.

By \_\_\_\_\_  
Samuel I. Streichman, Town Attorney

**ATTACHMENT 'A'  
SCOPE OF SERVICES**



**SCOPE OF SERVICES**

The following Scope of Services is for the purpose of adding new domestic water system improvements in the Airline/Luke Corridor to parallel the Northern Gila County Sanitary District (NGCSD) facilities currently being designed to serve existing parcels within this corridor. This will include the interconnections to the existing Town of Payson Water Distribution System in S.R. 87 and along East Rancho Road, typical service connections at each lot, and fire hydrants at locations selected by the Town of Payson. This Scope of Services is hereby added to an existing contract between the NGCSD and Tetra Tech, Inc. for design, bidding, and construction assistance on a sewer improvement project covering this area.

The Task Numbers referenced below correspond to tasks contained in the existing contract with the NGCSD:

**Task 1 – Design Report**

Tetra Tech, Inc. will prepare a Water System Design Report for the project to include incorporation of the water distribution system into the Town of Payson Water Master Plan. The report will review future build out potential of the area and will become the basis of the water system design. This document will act as the Engineering Design Report in support of Arizona Department of Environmental Quality (ADEQ) approval.

**Fixed Fee . . . \$ 6,493.00**

**Task 2 – Topographic & Boundary Survey**

Tetra Tech, Inc. will provide additional topographic or boundary survey information required for the water system improvements, up and beyond that currently being conducted for the NGCSD. Specifically, areas not included in the NGCSD project are E. Airline Blvd. from N. Woodland Dr. to N. Gila Drive, and North Gila Drive.

**Fixed Fee. . . \$ 7,226.00**

**Task 3 – Utility Company Coordination**

Tetra Tech, Inc. does not anticipate any additional effort will be required for utility company coordination in regards to water system improvement, up and beyond that already being provided for the NGCSD.



**Task 4 – Improvement Plans**

Tetra Tech, Inc. will incorporate the water system improvements in plan view on the 1"=20' sewer improvement plans being developed for the NGCSD (approximately seventeen (17) Plan and Profile Sheets). The plans will address main line alignments, valving, fire hydrants, and water service locations to serve each existing parcel (both developed and undeveloped). The plans will not show connection of the new water service to the existing individual lot plumbing. The Plans will show pavement replacement for only the section of roadway reasonably anticipated to be disturbed during water line construction. Full pavement replacement of the existing roadways will not be considered as a part of this project.

**Fixed Fee . . . \$11,713.00**

**Task 5 – Plan Check Coordination/ADEQ Submittal Coordination**

Tetra Tech, Inc. will coordinated plan check review, make one set of plan check corrections from each stakeholder public agency, and process plan approvals with the Town of Payson Public Works Department and the ADEQ. This will also include one set of requested revisions to the Design Report. This task does not include any review fees required by stakeholder public agencies.

**Fixed Fee . . . \$ 3,911.00**

**Task 6 – Preliminary Cost Estimate**

Tetra Tech, Inc. will include the water system components as a design alternative to the Preliminary Cost Estimate being prepared for the NGCSD.

**Fixed Fee . . . \$ 1,481.00**

**Task 7 – Bid Documents**

Tetra Tech, Inc. will include the water system components as an Add Alternate in the bid documents being prepared for the NGCSD. The bid documents will be based upon the McKamey Street Sewer Replacement Project Bid Documents. This will include a Bid Proposal/Specification book using a unit price bid form with quantities taken from the plans. This, along with copies of the plans, will be submitted to the NGCSD and the Town of Payson for review by their respective legal counsel. One set of corrections and suggestions will be incorporated into the documents which will then be printed for the bid. This task includes management of the issuance of Bid Documents and Addenda to Bidders.

**Fixed Fee . . . \$ 2,754.00**



### **Task 8 – Engineer’s Estimate of Probable Construction Cost**

Tetra Tech, Inc. will include the water system components as a design alternative to the Final Cost Estimate from quantities within the Bid Documents being prepared for the NGCSD.

**Fixed Fee . . . \$ 847.00**

### **Task 9 – Mandatory Pre-Bid Meeting and Bid Addendum**

Tetra Tech, Inc. will address any questions regarding water system improvements in written form through an addendum to be issued in conjunction with an addendum addressing sanitary sewer system questions for the NGCSD.

**Time and Materials NTE Fee . . . \$ 2,312.00**

### **Task 10 – Bid Opening, Analysis, Recommendation of Award**

Tetra Tech, Inc. will include the water system components as a bid alternative in a spreadsheet comparison of all submitted bids being prepared for the NGCSD. Tetra Tech, Inc. will analyze the bids and make a recommendation for award of the bid.

**Time and Materials NTE Fee . . . \$ 1,097.00**

### **Task 11 – Pre-Construction Meeting**

Tetra Tech, Inc. will incorporate the water system improvements into the preconstruction meeting being administered for the NGCSD. Attendance will include all utility companies, the Town of Payson, the NGCSD, and any other parties involved in construction coordination.

**Time and Materials NTE Fee . . . \$ 652.00**

### **Task 12 – Initial Construction Staking**

Tetra Tech, Inc. will provide one initial set of construction stakes for the water system construction. The installation of these stakes will be coordinated with the selected Contractor to take place after surface removal. Staking will include all valves, bends, fire hydrants, all water service connections, and water lines at 100-foot intervals.

**Time and Materials NTE Fee . . . \$ 7,410.00**



**Task 13 – Review of Shop Drawing and Submittals**

Tetra Tech, Inc. will not be providing review of Contractors Shop Drawings and submittals in regards to water system improvements for compliance with the Bid Documents and Agency standard requirements. It is assumed that the Town of Payson will provide these services.

**\$ 0.00**

**Task 14 – As-Built Survey & Record Plans**

Tetra Tech, Inc. will provide an As-Built survey of the constructed water system improvements, including all valves, fire hydrants, and water service connections. Tetra Tech, Inc. will then produce Record Drawings and submit these along with an Engineer’s Certificate of Completion to the Town of Payson and ADEQ for approval. Tetra Tech, Inc. will provide all As-Built survey information to the Town of Payson in digital format for incorporation into the Town’s Water System Maps.

**Time and Materials NTE Fee . . . \$ 6,108.00**

**TOTAL FIXED FEE ..... \$ 34,425.00**

**TOTAL TIME & MATERIALS NTE FEE ..... \$ 17,579.00**

**Additional Services Available Upon Request** – The following services can be provided upon request on a Time and Materials Basis at the current Tetra Tech Hourly Charge Rate and Expense Reimbursement Schedule:

1. **Public Meetings** – Tetra Tech, Inc. personnel will be available to provide materials for and attend any public meetings as requested by the Town of Payson.
2. **Emergency Construction Assistance** – Tetra Tech, Inc. will assist the Town of Payson and the Contractor on any construction issues as requested by the Town of Payson.
3. **Preparation of Easement Documents** – Tetra Tech, Inc. will prepare any required easement documents in support of the preferred alignment. These required easements are not defined at this time.

**EXHIBIT 'B'**  
**SUPPLEMENTARY CONDITIONS**

NONE