



TOWN OF PARADISE VALLEY

ENGINEERING SERVICES CONTRACT

PROJECT ENGINEERING CONSULTANTS, LTD.

Sewer Rehabilitation Design and Construction Administration & Inspection Services

PROJECT NO. 2019-05

This Engineering Services Contract ("Contract") is made and entered into this ____ day of _____, 2021, by and between the TOWN OF PARADISE VALLEY, an Arizona municipal corporation, hereinafter referred to as "**Town**," and Project Engineering Consultants, Ltd., a(n) Arizona corporation, authorized to do business in Arizona, hereinafter referred to as "**Engineer**" or "**Consultant**," whose principal place of business is located at: 2432 West Peoria Avenue, Suite 1246, Phoenix, Arizona 85029 (each individually a "Party," together "Parties.")

RECITALS

- A. The Town desires to contract for engineering services with Engineer to prepare construction documents for rehabilitation of four complete segments of existing sewer lines in the Town of Paradise Valley; and
- B. The Engineer is qualified to render the engineering services desired by the Town.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, the Town and Engineer agree as follows:

1.0 Description, Acceptance, Documentation

1.1 Scope of Services

The Engineer will act under the authority and approval of the Project Manager to provide the engineering services required by the Contract.

The Engineer is assigned the tasks specified in the Scope of Services for Sewer Rehabilitation (CIPP Lining Projects) which is Exhibit A to attached letter from Engineer dated May 19, 2021, hereinafter Exhibit **A, Scope of Work**, which is incorporated by reference and made a part of this Contract. If any provision of the Engineer's proposal, including but not limited to any limitation of liability or disclaimer of warranty language, conflicts or is in any way inconsistent with any provision of this Contract, this Contract will control.

The Engineer must obtain all necessary information to complete the tasks specified in **Exhibit A, Scope of Work**.

1.2 Performance Warranty; Standard of Care.

The Engineer warrants that all work under this Contract will conform to the requirements of this Contract and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

1.3 Acceptance and Documentation

- A. Each task will be reviewed and approved by the Town's Project Manager to determine acceptable completion.
- B. The Town will cooperate to provide all available necessary information to the Engineer for timely completion of the tasks specified in Section 1.1 above.
- C. All documents, including but not limited to, tracings, plans, specifications, maps, sketches, charts, computations, data compilations, studies, and reports, which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Project Manager before final payment is made to the Engineer. The Town may use such documents for other purposes without further compensation to the Engineer; however, any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at Town's sole risk and without liability or legal exposure to Engineer. Any verification or adaptation of the documents by Engineer for other purposes than contemplated by this Contract will entitle Engineer to further compensation as agreed upon between the Parties.

2.0 Fees and Payments

2.1 Fee Schedule

The amount paid to the Engineer will not exceed **\$23,017.79**. The Engineer will be compensated in accordance with the compensation schedule, including hourly rates, set forth in Exhibits B and C to the letter from Engineer dated May 19, 2021, as shown in **Exhibit A**.

2.2 Payment Approval

The time spent for each task must be recorded and submitted to the Project Manager. The Engineer must maintain all necessary documents and accounting records pertaining to time billed and to costs incurred and make these materials available at all reasonable times during the Contract period and for three years after final payment under this Contract.

Monthly payments will be made to the Engineer on the basis of a progress report submitted by the Engineer for work completed through the last day of the preceding calendar month. Each task is subject to review and approval by the Project Manager to determine acceptable completion.

The Project Manager or designee will process a partial payment request. **However, not more than 90% of the total Contract price will be paid before Town's final acceptance of all completed work.**

The Project Manager reserves the exclusive right to determine the amount of work performed and payment due the Engineer on a monthly basis. The Project Manager or designee will notify Engineer if the determination of completed work is different from Engineer's progress report.

All charges must be approved by the Project Manager before payment.

2.2.1 Payment Terms

The Town of Paradise Valley's payment terms for engineering work under State of Arizona A.R.S. Title 34 requirements is 14 days after invoice submittal by the Engineer and the work is certified and approved by the Town's Project Manager.

The Town has seven (7) days after receipt of the invoice to prepare and issue a written finding setting forth those items in detail which are not approved for payment under the Contract and which are not certified by the Town's Project Manager. Until such time as such issues are resolved and certified by the Town's Project Manager, the 14-day payment term will not have commenced.

2.3 Price Adjustment

No price increases are permitted.

3.0 General Terms and Conditions

3.1 Project Manager

The Project Manager for the Town is Paul Mood, Town Engineer; pmood@paradisevalleyaz.gov (email); 480-348-3573 (phone). The Project Manager will oversee the performance of this Contract, assist the Engineer in accessing the organization, audit billings, and approve payments. The Engineer must submit all reports and special requests through the Project Manager. The Town Manager has the authority to authorize Change Orders up to the limits permitted by the Town Code and Town's procurement policy.

3.2 Term of Contract

This Contract shall be effective as of the date first set forth above and shall remain in full force and effect for 365 days or until completion of the Project Scope of Work, whichever is earlier, unless terminated as otherwise provided in this Contract.

The Town may, at its option and with the approval of the Engineer, extend the term of this Contract an additional 30 days. Engineer will be notified in writing by the Town of its intent to extend the Contract Term at least thirty (30) calendar days prior to the expiration of the original or any renewal Contract period (or as otherwise agreeable to the Parties).

If any tasks remain incomplete after the completion original and any extended Term, the Town must approve a Contract amendment or issue a change order, as is required by the Town Code and Town Procurement Policy.

3.3 Termination or Cancellation of Contract

The Town may terminate this Contract or abandon any portion of the project that has not been performed by the Engineer.

Termination for Convenience: This Contract is for the convenience of the Town, and as such, Town has the right to terminate this Contract or any part of it for its sole convenience effective upon receipt by Engineer of written notice by the Town. If terminated, the Engineer must immediately stop all work and will immediately cause any of its suppliers and Subcontractors to stop all work. As payment in full for services performed to the date

of the termination, the Engineer will receive a fee for the percentage of services completed. This fee will be in the amount mutually agreed upon by the Engineer and the Town, based on the Scope of Work. If there is no mutual agreement, the Project Manager will determine the percentage of completion of each task detailed in the Scope of Work and the Engineer's compensation will be based on this determination. The Town will make this final payment within 60 days after the Engineer has delivered the last of the partially completed items. The Engineer will not be paid for any work done after receipt of the notice of termination or for any costs incurred by the Engineer's suppliers or Subcontractors, which the Engineer could reasonably have avoided.

Cancellation for Cause: The Town may also cancel this Contract or any part of it for cause with seven (7) days' notice if the Engineer defaults, or if the Engineer fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as determined by the Project Manager and failure to provide the Town, upon request, with adequate assurances of future performance, are all causes allowing the Town to terminate this Contract for cause. Upon cancellation for cause, the Town will not be liable to the Engineer for any amount, and the Engineer will be liable to the Town for all damages sustained by the default which caused the cancellation.

If the Engineer is in violation of any Federal, State, County or Town law, regulation or ordinance, the Town may terminate this Contract immediately after giving notice to the Engineer.

If the Town cancels this Contract or any part of the Contract services, the Town will notify the Engineer in writing, and upon receiving notice, the Engineer must discontinue advancing the work and proceed to close all operations.

Upon cancellation, the Engineer must deliver to the Town all documents, including but not limited to drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the Town. Use of incomplete data will be the Town's sole responsibility.

At the Town's request, the Engineer must appraise the work it has completed and submit its appraisal to the Town for evaluation.

If the Engineer fails to fulfill in a timely and proper manner its obligations, or if the Engineer violates any of the terms of this Contract, the Town may withhold any payments to the Engineer for the purpose of setoff until the exact amount of damages due the Town from the Engineer is determined by a court of competent jurisdiction.

If the Town improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section 3.3.

3.4 Funds Appropriation

If the Town Council does not appropriate funds to continue this Contract, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees to give written notice of termination to the Engineer at least 30 days before the end of its current fiscal period and will pay to the Engineer all approved charges incurred through the end of that period.

3.5 Audit

The Town may audit all the Engineer's records, calculations, and working documents

pertaining to this work at a mutually agreeable time and place.

The Engineer's records (hard copy, as well as computer readable data), and any other supporting evidence necessary to substantiate any claims related to this Contract must be open to inspection and subject to audit and reproduction by the Town's authorized representative as necessary to permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Engineer or any of his payees. The Town's authorized representative must be afforded access, at reasonable times and places, to all of the Engineer's records and personnel throughout the term of this Contract and for a period of 3 years after the final payment.

The Engineer must require all Subcontractors and material suppliers (payees) to comply with the provisions of this section by insertion of these requirements in a written Contract between the Engineer and payee. These requirements will apply to all Subcontractors.

If an audit discloses overcharges by the Engineer to the Town in excess of 1% of the total Contract billings, the actual cost of the Town's audit must be reimbursed to the Town by the Engineer. Any adjustments and payments made as a result of the audit or inspection of the Engineer's invoices and records will be made within a period of time not to exceed 90 days from presentation of the Town's findings to the Engineer.

This audit provision includes the right to inspect personnel records as required by Section 3.22.

3.6 Ownership of Project Documents

All documents, including but not limited to, field notes, design notes, tracings, data compilations, studies, and reports in any format, including but not limited to, written or electronic media, prepared in the performance of this Contract will remain the property of the Town and must be delivered to the Project Manager before final payment is made to the Engineer.

When the work detail covers only the preparation of preliminary reports or plans, there will be no limitations upon the Town concerning use of the plans or ideas in the reports or plans for the preparation of final construction plans. In that event, the Town will release the Engineer from any liability for the preparation of final construction plans by others.

3.7 Completeness and Accuracy

The Engineer will be responsible for the completeness and accuracy of its work, including but not limited to, survey work, reports, supporting data, and drawings, sketches, etc. prepared by the Engineer and will correct, at its expense, all errors or omissions which may be disclosed. The cost to correct those errors will be chargeable to the Engineer. Additional construction added to the project will not be the responsibility of the Engineer unless the need for additional construction was created by any error, omission, or negligent act of the Engineer. The Town's acceptance of the Engineer's work will not relieve the Engineer of any of its responsibilities.

3.8 Attorneys' Fees

Should either Party bring any action for relief, declaratory or otherwise, arising out of this Contract, the prevailing Party will be entitled to receive from the other Party all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees, as determined by the court sitting without a jury. All these fees, costs, and expenses will be considered to have accrued on the commencement of the action and will be enforceable

whether or not the action is prosecuted to judgment.

3.9 Successors and Assigns

This Contract will be binding upon the Engineer, its successors and assigns, including any individual, or other entity with or into which the Engineer may merge, consolidate, or be liquidated, or any individual or other entity to which the Engineer may sell or assign its assets.

3.10 Assignment

Services covered by this Contract must not be assigned or sublet in whole or in part without first obtaining the written consent of the Project Manager.

3.11 Subcontractors

The Engineer may engage any additional Subcontractors as required for the timely completion of this Contract. If the Engineer subcontracts any of the work required by the Contract, the Engineer remains solely responsible for fulfillment of all the terms of this Contract.

The Engineer will pay its Subcontractors within seven (7) calendar days of receipt of each progress payment from the Town. The Engineer will pay for the amount of the Work performed by each Subcontractor as accepted and approved by the Town with each progress payment. In addition, any reduction of retention, if any, by the Town will result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Engineer will pay Subcontractors the reduced retention within 14 calendar days of the payment of the reduction of the retention to the Engineer. No Contract between the Engineer and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided in this Contract.

If the Engineer fails to make payments in accordance with these provisions, the Town may take any of one or more of the following actions and the Engineer agrees that the Town may take these actions:

- A. To hold the Engineer in default under this Contract;
- B. Withhold future payments including retention until proper payment has been made to Subcontractors in accordance with these provisions;
- C. Reject all future offers to perform work for the Town from the Engineer for a period not to exceed 1 year from the completion date of this project; or
- D. Terminate this Contract.

3.12 Alterations or Additions to Scope of Services

The total scope of the engineering services to be performed is stated in this Contract. Any services requested outside the Project Scope of Work are additional services. The Engineer will not perform these additional services without a written Change Order approved by the Town. It is understood and agreed by the Parties that if the Engineer performs additional services without a written Change Order, the Engineer will not receive any additional compensation.

3.13 Modifications

Any amendment or modification of the terms of this Contract must be in writing and will be effective only after approval of all Parties to this Contract.

3.14 Conflict of Interest

The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for the Engineer any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, Town will have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of any fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

Under A.R.S. § 38-511, as amended, the Town may cancel any contract it is a party to within three years after its execution and without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the Town or its departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. In the event the Town elects to exercise its rights under A.R.S. § 38-511, as amended, the Town agrees to give notice to Engineer.

The Engineer will fully reveal in writing any financial or compensatory agreement which it has with a prospective bidder before the Town's publication of documents for bidding.

3.15 Force Majeure

Neither Party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

3.16 Taxes

The fee listed in this Contract includes all taxes applicable to the services authorized. The Town will have no obligation to pay additional amounts for taxes of any type.

3.17 Advertising

No advertising or publicity concerning the Town's use of the Engineer's services will be undertaken without first obtaining written approval of the Town Manager.

3.18 Counterparts

This Contract may be executed in one or more counterparts, and each executed duplicate counterpart will possess the full force and effect of the original.

3.19 Entire Agreement

This Contract contains the entire understanding of the Parties and no representations, or agreements, oral or written, made before its execution will vary or modify the terms of this Contract.

3.20 Arizona Law; Venue

This Contract must be governed and interpreted according to the laws of the State of Arizona and any legal proceeding, including but not limited to lawsuits, pertaining to this Contract may be brought only in courts in Maricopa County, Arizona.

3.21 Equal Employment Opportunity

During the performance of this Contract, the Engineer will follow the Federal government's guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.

No Preferential Treatment or Discrimination:

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the Town will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

3.22 Compliance with Federal and State Laws

The Engineer accepts the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. In addition, the Engineer accepts the applicability to it of A.R.S. §34-301 and 34-302. The Engineer will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, the Engineer warrants to the Town that the Engineer and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Engineer and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Engineer or any of its subcontractors will be considered a material breach of this Contract and may subject the Engineer or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The Town retains the legal right to inspect the papers of any employee of the Engineer or any subcontractor who works on this Contract to ensure that the Engineer or any subcontractor is complying with the warranty given above.

The Town may conduct random verification of the employment records of the Engineer and any of its subcontractors to ensure compliance with this warranty. The Engineer agrees to indemnify, defend and hold the Town harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The Town will not consider the Engineer or any of its subcontractors in material breach of this Contract if the Engineer and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Engineer enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The

Engineer will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Engineer's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the Town.

3.23 Compliance with Americans with Disabilities Act

Engineer acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Engineer will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Engineer agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of Engineer, its employees, agents or assigns will constitute a material breach of this Contract.

3.24 Boycott of Israel Prohibited

To the extent Title 35 is applicable to the Contract, the Contractor warrants that it is not and will not participate in prohibited activity in contravention of A.R.S. § 35-393.01.

3.25 Evaluation of Engineer's Performance

The Engineer will be evaluated regarding its performance of this Contract. This evaluation will include, but not be limited to, the following consideration for:

- Completeness
- Accuracy
- Utility Coordination
- Technical Expertise
- Organization
- Appearance of plans (line work, lettering, etc.)
- Working relationship with Town staff and others
- Availability
- Communication skills (meetings, correspondence, etc.)

An evaluation may be prepared by the staff and used to evaluate the desirability to proceed with negotiations for additional services.

3.26 Notices

All notices or demands required by this Contract must be given to the other Party in writing, delivered by hand or by registered or certified mail at the addresses stated below, or to any other person(s) or address a Party may substitute by giving written notice as required by this section.

If hand delivered, Notices are received on the date delivered. If delivered by certified or registered mail, Notices are received on the date indicated on the receipt. **Notice by facsimile or electronic mail is not adequate notice.**

On behalf of the Engineer:

Michael D. Heaton, P.E., CFM
Project Engineering Consultants

2432 West Peoria Avenue, Suite 2432
Phoenix, AZ 85029

On behalf of the Town:

Town of Paradise Valley
Engineering / Public Works Department
6401 East Lincoln Road
Paradise Valley, AZ 85253
ATTN: Paul Mood, Town Engineer
Ph: (480)348-3573

With required copy to:

Town Manager
Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

Town Attorney
Town of Paradise Valley
6401 East Lincoln Drive
Paradise Valley, AZ 85253

3.27 Independent Contractor

The services the Engineer provides to the Town are that of an Independent Contractor, not an employee, or agent of the Town. The Town will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

Town will not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

3.28 Ineligible Bidder

The preparer of bid specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

3.29 Indemnification

To the fullest extent permitted by law, Engineer, its successors, assigns and guarantors, must defend, at Engineer's sole expense, indemnify and hold harmless Town of Paradise Valley, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or alleged to have resulted from any negligence, recklessness, or intentional wrongful conduct by Engineer or other persons employed or used by the Engineer in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Engineer's and Subcontractor's employees.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this section and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section must not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

3.30 Provisions Required by Law

Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Contract will promptly be physically amended to make such insertion or correction.

4.0 Insurance

Failure to provide an appropriate Certificate of Insurance will result in rejection of your certificate and delay in Contract execution.

Additionally Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.

4.1 Insurance Representations and Requirements

- A. General: The Engineer agrees to comply with all applicable Town ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of the Engineer, the Engineer must purchase and maintain, at its own expense, the required minimum insurance with insurance companies duly licensed or approved to conduct business in the State of Arizona and with an A.M. Best's rating of A+ or above with policies and forms satisfactory to Town. Failure to maintain insurance as required may result in cancellation of this Contract at the Town's option.

- B. No Representation of Coverage Adequacy: By requiring insurance, Town does not represent that coverage and limits will be adequate to protect the Engineer. The Town reserves the right to review any and all of the insurance policies and endorsements cited in this Contract, but it has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements in this Contract or failure to identify any insurance deficiency will not relieve the Engineer from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Contract.

- C. Coverage Term: The Engineer must maintain all required insurance in full force and effect until all work or services are satisfactorily performed and accepted by the Town of Paradise Valley, unless specified otherwise in this Contract.

- D. Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract, and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

- E. Policy Deductibles and or Self-Insured Retentions: The required policies may provide coverage which contain deductibles or self-insured retention amounts. The

Engineer is solely responsible for any deductible or self-insured retention amount and the Town, at its option, may require the Engineer to secure payment of the deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

- F. Use of Subcontractors: If any work is subcontracted in any way, the Engineer must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the Town requires of the Engineer in this Contract. The Engineer is responsible for executing the Contract with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.
- G. Evidence of Insurance and Required Endorsements: Before commencing any work or services under this Contract, the Engineer must furnish the Project Manager with Certificate(s) of Insurance, or formal endorsements issued by the Engineer's insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverages, conditions, and limits of coverage and that the coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, the Town will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, the Engineer must forward renewal Certificates to the Town within 10 days after the renewal date containing all the necessary insurance provisions.

Certificates shall specifically cite the following provisions endorsed to the Engineer's policy:

1. The Town of Paradise Valley, its elected officials, agents, representatives, officers, directors, officials and employees are named as an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. The Engineer's insurance must be primary insurance for all performance of work under this Contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against the Town, its elected officials, agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by the Engineer under this Contract.
4. If the Engineer receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Engineer's responsibility to provide prompt notice of same to the Town, unless such coverage is immediately replaced with similar policies.

4.2 Required Coverage

- A. Commercial General Liability: The Engineer must maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$4,000,000 General Aggregate Limit. The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal injury and advertising injury. If any

Excess insurance is utilized to fulfill the requirements of this section, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.

- B. Professional Liability: The Engineer must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the Engineer, or anyone employed by the Engineer, or anyone for whose acts, mistakes, errors and omissions the Engineer is legally liable, with a liability limit of \$2,000,000 each claim and \$4,000,000 annual aggregate. Professional Liability coverage specifically for Architects, Engineers and Surveyors shall contain contractual liability insurance covering the contractual obligations of this Contract. If the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, the Engineer must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3-year period.
- C. Vehicle Liability: If any vehicle is used in the performance of the Scope of Work that is the subject of the Contract, the Engineer must maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Engineer's owned, hired, and non-owned vehicles assigned to or used in the performance of the Engineer's work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than the underlying insurance.
- D. Workers Compensation Insurance: The Engineer must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Engineer's employees engaged in the performance of work or services under this Contract, and must also maintain Employers' Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5.0 Software Licenses

If the Engineer provides to the Town any software licenses, the following provisions apply:

5.1 Source Code Availability

- A. The Engineer must furnish the Town, without charge, a single copy of the Source Code for the Software immediately upon the occurrence of any of the following:
 - 1. The Engineer becomes insolvent; or
 - 2. The Engineer ceases to conduct business; or
 - 3. The Engineer makes a general assignment for the benefit of creditors;
 - or
 - 4. A petition is filed in Bankruptcy by or against the Engineer.
- B. Use of the Source Code must not be subject to any greater restrictions than use of the Software itself.
- C. The Town must have the right to modify the Source Code in any manner the Town believes is appropriate, provided that the Source Code as modified must remain subject to the restrictions of Section 5.1(B).

5.2 Proprietary Protection

- A. The Town agrees that if the Engineer informs the Town that the Software is confidential information or is a trade secret property of the Engineer; the Software is disclosed on a confidential basis under this Contract and in accordance with the terms of this Contract.
- B. The Engineer must not use or disclose any knowledge, data or proprietary information relating to the Town obtained in any manner.
- C. As permitted by Arizona Law, the Parties agree that during the term of this Contract and of all Licenses granted under this Contract, and for a period of seven (7) years after termination of this Contract and of all licenses granted by this Contract, to hold each other's confidential information in confidence. The Parties agree, unless required by government regulations or order of Court, not to make each other's confidential information available in any form to any third party or to use each other's confidential information for any purposes other than the implementation of this Contract. However, if the Engineer's confidential information is requested to be divulged under the provisions of the Arizona Public Records Act, A.R.S., Title 39, the Engineer must reimburse the Town for the full cost of the Town's refusal to release the information, including the costs of litigation, the Town's attorney fees, fines, penalties or assessments of the opposing Party's attorney fees. Town and Engineer agree to take all reasonable steps to ensure that confidential information is not disclosed or distributed by its employees or agents in violation of the provisions of this Contract.

5.3 Non-Infringement

The Engineer warrants that the Software provided to the Town does not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary or property right of any person or entity.

In the event of a claim against the Town asserting or involving such an allegation, the Engineer will defend, at the Engineer's sole expense, and will indemnify and hold harmless the Town and its elected officials, agents, representatives, officers, directors, officials and employees against any loss, cost, expense (including attorney fees) or liability or damages arising out of the claim, whether or not the claim is successful. In the event an injunction or order is obtained against use of the Software, or if in the Engineer's opinion the Software is likely to become the subject of a claim of infringement, the Engineer will, at its option and its sole expense:

- 1. Procure for the Town the right to continue using the Software; or
- 2. Replace or modify the Software so that it becomes non-infringing (this modification or replacement must be functionally equivalent to the original); or
- 3. If neither 1 nor 2, above, is practicable, repurchase the Software on a depreciated basis utilizing a straight line 5-year period, commencing on the date of acceptance.

5.4 Third Party License

The Engineer must sublicense to the Town any and all third-party Software required in this Contract. The Town reserves the right to accept or reject third party license terms. If the Town rejects the terms of a third-party license, it will be the Engineer's responsibility to negotiate acceptable terms or to supply Software from another source with terms acceptable to the Town. The Town's acceptance of the third-party license terms will not be unreasonably withheld.

6.0 Severability and Authority

6.1 Severability

If any term or provision of this Contract is found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

6.2 Authority

Each Party warrants that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each Party has been properly authorized and empowered to enter into this Contract. Each Party acknowledges that it has read, understands, and agrees to be bound by the terms and conditions of this Contract.

7.0 Request For Taxpayer I.D. Number & Certification I.R.S. W-9 Form

Upon request, the Contractor shall provide the required I.R.S. W-9 FORM which is available from the IRS website at www.irs.gov under its forms section.

The Parties enter into this Contract effective as of the date shown above.

TOWN OF PARADISE VALLEY,
an Arizona municipal corporation

By: Jill. Keimach
Its: Town Manager

ATTEST:

Duncan, Miller, Town Clerk (SEAL)

APPROVED AS TO FORM:

Andrew J. McGuire, Town Attorney

PROJECT ENGINEERING
CONSULTANTS, LTD.
a(n) Arizona corporation

By: Michael D. Heaton
Its: Vice President

EXHIBIT A
PROJECT SCOPE OF
WORK

(See Attached Letter from Project Engineering Consultants, Ltd. To Paul Mood dated May 19, 2021)

May 19, 2021

Mr. Paul Mood
Town of Paradise Valley
6401 E Lincoln Dr.
Paradise Valley, AZ 85253

Re: Sewer Rehabilitation Project (Sewer Pipe Lining)

Dear Mr. Mood:

Project Engineering Consultants, Ltd. (PEC) is pleased to offer this proposal to provide engineering services for the above referenced project.

PEC will perform those engineering services required to prepare a set of construction documents (exhibits and specifications) for rehabilitation of existing sewer lines in the Town of Paradise Valley. The project consists of lining four complete segments of pipe totaling approximately 1200 linear feet of 8-inch and 12" sewer line, and installing four, 8-inch diameter CIPP point repairs, in various locations in the Town. The projects were identified by the on-going sewer assessment project. While performing these services, PEC will use engineering judgment, practices and principles that could reasonably be expected from other engineers under like circumstances.

PEC will be responsible for the professional quality, accuracy and coordination of designs, drawings, specifications, and other services furnished by the Engineer.

PEC will demonstrate good project management practices such as clear communication with the City and others as necessary, efficient management of time and resources including an auditable time record system, and accurate documentation of Project activities. PEC will set up and maintain project files throughout the design effort.

Our estimate to provide these services for a lump sum fee not to exceed \$23,017.79.

Attached are the following exhibits:

Exhibit A -	Scope of Work
Exhibit B -	Labor Estimate
Exhibit C -	Fee Estimate

Please call if you have any questions with our proposal. We look forward to successful and timely completion of this project.

Sincerely yours,

Thank you!



Michael D. Heaton P.E., CFM
Project Engineering Consultants, Ltd.

Exhibit A
Town of Paradise Valley

Exhibit A - Scope of Services for
Sewer Rehabilitation (CIPP Lining Projects)

2021-05-18

The Town of Paradise Valley (Town) has requested that Project Engineering Consultants, Ltd. (Consultant) prepare this scope of work for the Sewer Rehabilitation Design and Construction Administration & Inspection Services (CA&I) as for DIP sewer lines identified in the on-going sewer assessment program.

The work will consist of limited sewer rehabilitation design (specifications & exhibits) for roughly 1200 linear feet of 8 and 12-inch sewer pipeline, and 4 CIPP point repairs, at various locations along within the Town. The pipeline varies in material and condition. The Town's decision to line all DIP regardless of condition to avoid potential failure directly contributes to a portion of these repairs. The Consultant will provide necessary design services and construction management services for the rehabilitation of the pipeline segments.

Task 1 — Project Management

1.1 Conduct Meetings

The Consultant will conduct all required project meetings. The anticipated meetings and assumed responsibilities are as follows:

Kickoff Meeting: The Consultant will prepare for and conduct a virtual Project Kickoff Meeting with Town staff and the JOC contractor using internet connectivity. The purpose of this meeting will be to introduce the project team; review the project purpose, background, and desired results; establish the lines of communication for the project; establish the reporting mechanisms and coordination efforts required to complete the project; discuss and identify with Town its desired format for reporting; and identify and discuss potential project issues. The Consultant will prepare and distribute meeting minutes.

Monthly Progress/Review Meetings: No other meetings are anticipated during the time frame for the contract. Communication will be ongoing, and the Consultant will provide weekly updates during the course of the installation of the lining to keep the project team up to date on the progress of the contractor.

1.2 Coordination with Town

The Consultant shall submit monthly invoices. Invoices shall be submitted to the Town accounting with a copy of the invoice to the Town's Project Manager by e-mail. The invoice shall include task lines directly corresponding to progress report tasks showing percent complete. Invoices shall identify the Town information as required which could include contract number, work assignment

number, the project name. The monthly invoice shall indicate the start date and end date of the invoice period and such dates shall be consistent with the progress reporting period.

TASK 2 — Design Phase Services

2.1 Utilities & Background Information

The Consultant will research the locations of above and below ground utilities within the project area where the pipeline will be lined. Detailed mapping will not be required as no excavation is anticipated. However, a cursory knowledge of the utilities in the vicinity would be noted in case an emergency excavation is necessary. No utility conflicts are anticipated for this project since the recommended rehabilitation is CIPP.

2.2 Right-of-Way

It is anticipated that all work will be completed in Town right-of-way.

2.3 Project Design and Contract Documents

The Consultant will prepare an exhibit for each of the pipe segments to be lined with sufficient detail to show the beginning and end of the lining. The exhibits will include the general location of known sewer service taps and other connections. The exhibits will include general notes and information for the lining project.

The pipe segments to be lined include:

Facility Asset ID	U/S MH Asset ID	D/S MH Asset ID	Material	Diameter (in)	Length (ft)	Remarks
14700	48235	48360	DIP	8	280	Survey Abandoned @ 8.0 ft.
14776	48226	48381	VCP	8	282	Point Repair (Hole in Pipe)
14855	48441	48440	PVC/DIP	12	324	207 ft. of DIP
6378	45297	45296	VCP	8	200	Point Repair (Hole in Pipe)
11966	47517	47505	VCP/DIP	8	440	18 ft. of DIP
14863	48446	48447	PVC/DIP	8	139	12 ft. of DIP
14326	47951	47950	VCP	8	418	Point Repair (Defective Tap)
14359	47971	47973	VCP	8	314	Point Repair (Defective Tap)

The design will be presented in a set of documents on 11" X 17" sheets at an appropriate scale.

The project technical specifications will be prepared for the CIPP lining using the NASSCO standard and referencing the appropriate ASCE or other current standards. To the greatest extent possible, the Engineer will use the Maricopa Association of Governments Uniform Standard Specifications for Public Works

Construction (MAG Specifications) and MAG Uniform Standard Details for Public Works Construction (MAG Details), and any Town's supplements to the MAG Specifications and Details when necessary.

2.4 Estimate of Probable Construction Cost

Using information from the Town's previous work with the JOC, the Consultant will prepare an estimate of probable construction cost for each item of work included in the design in sufficient detail to identify and estimate the total cost of the project.

2.5 Submittals

The Town is preparing to line these pipe segments as soon as possible. Therefore, the Consultant will submit rehabilitation design exhibits and specifications by end of June 2021.

Deliverables

Deliverables for this project includes exhibits and sealed specifications as electronic files.

TASK 3 — Post-Construction Phase Services

3.1 Record Drawings

The Consultant will prepare a set of record drawings showing those changes made during construction and sealed by the engineer of record. Record drawing information shall be based on marked-up prints, drawings, and other data furnished by Contractor(s) to Consultant which Consultant will review for accuracy and completeness. The Consultant's RE will review and coordinate the record drawings. The record drawings shall be available to Town within thirty (30) days of receipt of all data in its entirety from the Contractor.

Deliverables

Complete set of digital record drawings will be submitted to Town. Record drawing information will be added to existing final drawings for the project by the Consultant as the record set. The record drawings shall be conformed to reflect shop drawing review, substitutions, clarifications and change order information.

Complete set of electronic files representing record of information for the project. Files will include photos, notes, memos, and field inspection reports for site visits and inspections.

Task 4 – Construction Phase Services

4.1 Construction Phase Services

4.1.1 On-Site Inspection and Review of Work

The duration of construction is anticipated to up to 30 calendars (not consecutive). A Resident Engineer (RE) will be furnished and will oversee the CA&I portion of this project. The RE furnished by the Consultant will be a registered Professional Engineer as recognized by the State of Arizona and will have experience in sewer line and manhole construction and rehabilitation and be NASSCO certified. The RE's dealings in matters pertaining to the on-site work shall in general be only with the inspector, the Town and the Contractor, and dealings with subcontractors shall only be through or with the full knowledge of the Contractor.

A NASSCO certified inspector will be furnished by the Consultant to maintain an *"as necessary"* presence at the project site. Through on-site observations of the work in progress and field checks of materials and equipment by the RE, and Inspector, the Consultant will endeavor to provide protection for Town against defects and deficiencies in the work of the Contractor; but the furnishing of such resident project representation will not make the Consultant responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs, or for the Contractor's failure to perform their work in accordance with the contract documents. The inspector, construction manager and RE will maintain a presence at the project site with sufficient frequency to be knowledgeable about the progress and quality of the work to:

1. On-site inspections will be generally limited to the necessary time to certify the installation of the liner per NASSCO requirements. This includes the pre- and post- installation videos and during the liner curing process.
2. Conduct on-site inspections of the work in progress to assist in determining if the work is proceeding in accordance with the construction documents and that completed work conforms to the construction documents.
3. Identify whenever it is believed that any work is unsatisfactory, faulty or defective or does not conform to the construction documents, or does not meet the requirements of inspections, tests or approval required to be made, or has been damaged prior to final payment; and advise when it is believed work should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
4. Verify that tests, equipment and systems start-up and operating and maintenance instructions are conducted as required by the construction documents and in presence of the required personnel, and insure the Contractor maintains adequate records thereof; observe, record and report appropriate details relative to the test procedures and start-ups.
5. Accompany visiting inspectors representing public or other agencies having jurisdiction over the project when requested by the Town.

4.2.2 Interpretation of Construction Documents

The Consultant will receive and transmit clarifications and interpretations of the construction documents. The RE will notify Town's representative of the Consultant's decision prior to issuance to the Contractor.

4.2.3 Shop Drawings and Test Results

The Consultant will receive, review, evaluate, and distribute (or take other appropriate action in respect of) shop drawings, samples, test results, and other data which Contractor is required to submit. For lining projects, NASSCO ITCP requirements will be followed. The Consultant's review shall be for conformance with the design concept of the project and compliance with the information given in the construction documents. Such review or other action shall not extend to means, methods, sequences, techniques or procedures of construction selected by Contractor(s), or to safety precautions and programs associated thereto. The Consultant will receive and review (for general contents as required by the construction documents) maintenance and operating schedules and instructions, operation and maintenance manuals, guarantees, and certificates of inspection which are to be assembled by Contractor(s) in accordance with the construction documents.

The Consultant will maintain a submittal log showing dates of submittal, transmittal action to other sub-consultants, dates of return and review action. Copies of the log shall be furnished to Town and the Contractor monthly. The Consultant will promptly and in accordance with Project schedule requirements, review and approve, reject or take other appropriate action on the Contractor's request for substitutions. The Consultant will not approve any proposed substitution unless such substitution conforms to the project design concept and the construction contract documents including the contract price.

Submittal review efforts are based upon a maximum of two (2) reviews per submittal and that no more than fifty percent (50%) of the total number of first submittals will require two (2) reviews.

4.2.4 Meetings

The Consultant will conduct impromptu construction progress meetings on site and distribute project progress information via email to project team members. This will constitute weekly meetings and minutes distribution.

4.2.5 Schedules

The Consultant will review the progress schedule, schedule of shop drawing submissions and schedule of values prepared by Contractor and consult with Town concerning their acceptability.

4.2.10 Certify Contractor Progress Payments

The Consultant will review, prepare comments, and reach agreement with the Contractor on the progress represented in the Contractor's schedule of values and shall be used by the Consultant to determine the appropriateness of the Contractor's request for payment.

Assumptions:

1. Town will provide all public information and relations services during construction.

Exhibit B

Town of Paradise Valley DIP Sewer Rehabilitation - Six Pipe Segments

FEE ESTIMATE

Prepared By: Mike Heaton

Date: 5/19/2021

Project Management		\$	340.00
Design Phase Services		\$	3,291.00
Post Construction Services		\$	258.00
Construction Phase Services		\$	3,398.00
Total Direct Labor	=	\$	7,287.00
Overhead 155.97%	=	\$	<u>11,365.53</u>
Subtotal	=	\$	18,652.53
Profit 10%	=	\$	<u>1,865.25</u>
Subtotal	=	\$	20,517.79
Allowances			
Description			
Owners Allowance	=	\$	2,500.00
Printing	=	\$	-
Subtotal	=	\$	<u>2,500.00</u>
TOTAL ESTIMATED COST	=	\$	23,017.79

Exhibit C
Town of Paradise Valley
Sewer Rehabilitation - Four Pipe Segments, Three Point Repairs

LABOR ESTIMATE

Prepared By: Mike Heaton

2021-05-19

TASK	DESCRIPTION	Principal/PM \$85.00 /Hour		Engineer/RE \$48.00 /Hour		Design Engineer/Inspector \$39.50 /Hour		CADD Tech \$32.25 /Hour		Total Direct Labor Fees	
		Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount
1	Project Management										
1.1	Conduct Meetings	2	\$170.00	0	\$0.00	0	\$0.00	0	\$0.00	2	\$170.00
1.2	Coordination with Town	2	\$170.00	0	\$0.00	0	\$0.00	0	\$0.00	2	\$170.00
										4	\$340.00
2	Design Phase Services										
2.1											
2.2	Utilities & Background Information	0	\$0.00	4	\$192.00	0	\$0.00	8	\$258.00	12	\$450.00
2.3	Right-of-Way	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
2.4	Project Design & Contract Documents	0	\$0.00	30	\$1,440.00	0	\$0.00	28	\$903.00	58	\$2,343.00
2.5	Estimate of Probable Construction Cost	0	\$0.00	4	\$192.00	0	\$0.00	4	\$129.00	8	\$321.00
2.6	Submittals	0	\$0.00	1	\$48.00	0	\$0.00	4	\$129.00	5	\$177.00
										83	\$3,291.00
3	Post-Construction Phase Services										
3.1	Record Drawings	0	\$0.00	0	\$0.00	0	\$0.00	8	\$258.00	8	\$258.00
3.2											
3.3											
										8	\$258.00
4	Construction Phase Services										
4.1	Construction Phase Services	2	\$170.00	8	\$384.00	72	\$2,844.00	0	\$0.00	82	\$3,398.00
4.2											
										82	\$3,398.00
	DIRECT LABOR SUBTOTALS:	6	\$510.00	47	\$2,256.00	72	\$2,844.00	52	\$1,677.00	177	\$7,287.00