

APPROVED AS TO FORM

(GDW)

Office of the City Attorney

Prepared By: GDW/rd
Requested: Projects Comte
Presentation on: 12-20-2016
Suspension of Rules: NO

RESOLUTION

RESOLUTION AUTHORIZING MAYOR TO EXECUTE TASK ORDER
DIRECTIVE NO. 4 WITH BURK-KLEINPETER, INC. FOR
ENGINEERING AND RELATED SERVICES FOR THE
DISASTER RECOVERY—STREETS RECONSTRUCTION PROJECT
(A14-0954)

WHEREAS, on December 4, 2014 the City of Tuscaloosa entered into a Master Agreement with Burk-Kleinpeter, Inc. for engineering and related services for the Disaster Recovery—Streets Reconstruction Project; and,

WHEREAS, the City now desires to enter into Task Order Directive No. 4 with Burk-Kleinpeter, Inc. to perform additional engineering and related services for Phase II of the project at an estimated cost of \$45,000.00.

BE IT RESOLVED BY THE CITY COUNCIL OF TUSCALOOSA AS FOLLOWS:

That the Mayor be, and he is hereby, authorized to execute Task Order Directive No.4 for additional engineering and related services for Phase II of the Disaster Recovery—Streets Reconstruction Project at an estimated cost of \$45,000.00 by, and as an act for, and on behalf of the City of Tuscaloosa, and the City Clerk is authorized to attest the same.

FUNDING REQUIRED: Yes No

Funding Source: DR 2

Account #: 22817162-13020 - 20138

2,066,092 Avail munijs

By: [Signature]
Finance Director

COUNCIL ACTION

Resolution ✓
Ordinance _____
Introduced _____
Passed 12-20-16
2nd Reading _____
Unanimous _____
Failed _____
Tabled _____
Amended _____
Comments: _____

STATE OF ALABAMA)
CITY OF TUSCALOOSA)

**TASK ORDER DIRECTIVE NO. 4 TO THE MASTER AGREEMENT
WITH BURK-KLEINPETER, INC. TO PROVIDE ENGINEERING AND
RELATED SERVICES FOR THE DISASTER RECOVERY—STREETS
RECONSTRUCTION PROJECT
(A14-0954)**

Task Order Directive No. 4 from City to Engineer to perform specific services in accordance with the terms and conditions of the Master Agreement for providing professional services to the City of Tuscaloosa.

ARTICLE A. PURPOSE / EFFECTIVE DATE

The purpose of this Task Order Directive (TOD) is to authorize and direct the Engineer to perform engineering and related services for the Disaster Recovery—Streets Reconstruction Project for Phase II of the project as more particularly described in Exhibit “1” attached hereto and made a part of the Master Agreement between the City and the Engineer dated the 4th day of December, 2014. The Effective Date of TOD No. 4 shall be the date of execution of TOD No. 4.

ARTICLE B. SCOPE OF SERVICES

The specific services to be performed by Engineer pursuant to this TOD are more particularly described and defined in Exhibit “1”, which is attached to this TOD.

ARTICLE C. COMPENSATION / EXPENSES

As compensation for providing the services described by TOD No. 3, the City shall pay the Engineer in accordance with the provisions of the Master Agreement. Compensation to Engineer for TOD #4 shall not exceed the maximum cost established herein.

Maximum cost for TOD No. 4	\$ 45,000.00
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ARTICLE D. CITY REPRESENTATIVE

Engineer shall keep the City's TOD representative informed of all efforts and progress in regard to services pursuant to the TOD so that work effort can be monitored and coordinated.

The City's representative for the services of Engineer pursuant to this TOD is hereby designated as:

Name: Wendy McBride, P.E.
Director of Engineering Services
Infrastructure and Public Services
City of Tuscaloosa
P.O. Box 2089
Tuscaloosa, Alabama 35403

Telephone: (205) 248-5380

ARTICLE E. PERIOD OF SERVICE

Work by the Engineer on all aspects of this TOD shall commence upon the execution by both parties of the TOD. Time for completion shall be no later than 45 days from date of execution.

ARTICLE F. MERGER

This TOD together with any other authorized TODs and the Master Agreement constitutes the entire agreement between the parties in relationship to the services stated herein. All written or oral understandings and agreements between the parties are merged into this agreement. To the extent that any provision of this TOD conflicts with the Master Agreement, the terms and conditions of the Master Agreement shall prevail. To the extent there is a direct conflict between any term or condition hereof and Exhibit "1" attached hereto, the provisions of this TOD shall prevail.

No representation, warranty or covenant made by any party which is not contained or referred to in the Master Agreement or this TOD has been relied on by any party in entering into this agreement.

ARTICLE G. AUTHORIZATION

This TOD is effective and the Engineer is authorized to commence providing services pursuant to the provisions hereof upon the execution by both parties to this TOD.

ARTICLE H. MISCELLANEOUS

Capacity: Each Party to this Agreement represents and warrants to the other as follows:

- (1) That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.

- (2) That each has full power and capacity to enter into this Agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- (3) That to the extent required, each Party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the Party.
- (4) That each Party has duly authorized and empowered a representative to execute this Agreement on their respective behalf and the execution of this Agreement by such representative fully and completely binds the Party to the terms and conditions hereof.
- (5) That absent fraud, the execution of this Agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other Party shall be entitled to rely upon the same. To the extent a Party is a partnership, limited liability company or joint venture, the execution of this Agreement by any member thereof shall bind the Party and to the extent that the execution of Agreement is limited to a manager, managing partner or specific member then the person so executing this Agreement is duly authorized to act in such capacity for the Party.
- (6) That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this Agreement.
- (7) That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this Agreement.

Third Party Beneficiaries: It is the intent of the parties hereto that there shall be no third party beneficiaries to this Agreement.

Final Integration: This Agreement, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their

understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

Force Majeure: Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

Amendment in Writing: This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

Binding Effect: This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Captions: The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.

Construction: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

Mandatory and Permissive: "Shall", "will", and "agrees" are mandatory; "may" is permissive.

Governing Laws: The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

Prohibition on Assignment and Delegation: No party to this Agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

Waiver: Non enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Agreement.

Ownership of Contract Documents: The Contract Documents, and copies of parts thereof, are furnished and owned by the City. All portions of the Contract

Document, and copies of parts thereof, are the instruments of serve for this project. They are not to be used on other work and are to be returned to the City on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City. Such user shall hold the City harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

Fines and Penalties: The Engineer shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner which are related to the Engineer's services. The Owner shall deduct the amount of the levied fine or penalty from the Contract amount.

Agreement Date/Counterparts: The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

Use of Words and Phrases: The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

ARTICLE I. COMPLIANCE WITH IMMIGRATION LAW

By signing this TOD, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

ARTICLE J. COMPLIANCE WITH AFFORDABLE HEALTH CARE ACT

By signing this TOD, the contracting parties affirm, for the duration of the agreement, that they will not violate federal compliance laws pertaining to the Affordable

Health Care Act. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

IN WITNESS WHEREOF the parties hereto each herewith subscribe the same on this the 31st day of January, 2017.

OWNER:
CITY OF TUSCALOOSA, A MUNICIPAL CORPORATION

BY: Walter Maddox
Walter Maddox, Mayor

Attest:

Tony Meyer
City Clerk

ENGINEER:
BURK-KLEINPETER, INC.

BY: B. G. [Signature]

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 12th day of January, 2017.

Vickie Gilliland
Notary Public.

My Commission Expires: 2/3/19

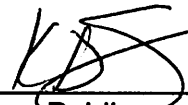
STATE OF ALABAMA)
COUNTY OF TUSCALOOSA)

I, Kathryn D Simpson, a Notary Public in and for said State at Large, hereby certify that Bruce L. Higginbotham, who is named as Engineer, is signed to the foregoing document, and,

- Who is known to me, or
- Whose identity I proved on the basis of _____, or
- Whose identity I proved on the oath/affirmation of _____, a creditable witness to the signer of the above document

and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 31 day of January, 2017.



Notary Public.

My Commission Expires:



BURK-KLEINPETER, INC.

ENGINEERS, ARCHITECTS, PLANNERS, ENVIRONMENTAL SCIENTISTS

2900 8TH STREET

TUSCALOOSA, AL 35401

TELEPHONE (205) 759-3221 FAX (205) 759-9166

WWW.BKIUSA.COM



OVER 100 YEARS OF SERVICE

CHAIRMAN OF THE BOARD
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CRAIG P. WILLIAMS, PE
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RUSSELL D. WARE, JR., PE

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PRESIDENT
GEORGE C. KLEINPETER, JR., PE
REGIONAL VICE PRESIDENT - AL
O. JEFFREY WOOD, PE
VICE PRESIDENT
BRUCE L. HIGGINBOTHAM, PE

December 13, 2016

Ms. Wendy McBride, P.E.
Director of Engineering Services
City of Tuscaloosa
P.O. Box 2089
Tuscaloosa, Alabama 35403

Re: Streets Reconstruction Project Phase II – City of Tuscaloosa
TOD #4

Dear Ms. McBride:

Please find the attached fee of \$45,000.00 to provide design services for Phase II of the Streets Reconstruction Project. The fee provided for this work only includes Survey, Bid Phase and other hourly items that were not included in the original lump sum contract. I have provided the fee breakdown for your review. If you or you have questions or comments, please advise.

I have included a fee for permitting. This pertains to the ALDOT permit required for Kicker Road and Veterans Memorial Parkway.

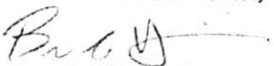
It is assumed that Construction Engineering and Inspection services will be provided by the City of Tuscaloosa. I am requesting to include an item for Engineering Services During Construction. In the event these services become necessary, they would be performed on an hourly/not to exceed basis.

Please note that the above fees do not include any permitting or advertising fees that may be required. It is assumed that the City will pay for these directly. In addition, it is assumed that no right of way will be required for this project.

Thank you for the opportunity to work with the City of Tuscaloosa. Please call if you have any questions or would like to discuss our proposal.

Sincerely,

BURK-KLEINPETER, INC.


Bruce L. Higginbotham, P.E.
Vice President

Attachments: Fee Breakdown
Rate Schedule
Scope of Work

cc: File (TU.14.040)

EXHIBIT "1"



BURK-KLEINPETER, INC.

ENGINEERS, ARCHITECTS, PLANNERS, ENVIRONMENTAL SCIENTISTS

2900 8TH STREET

TUSCALOOSA, AL 35401

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City of Tuscaloosa 12-Dec-16

Streets Reconstruction Project Phase II (TOD #4)

Construction Cost Estimate \$2,000,000

Summary of Costs Total

A. Preliminary Design \$0

B. Final Design \$0

C. Bid Phase Services \$3,500

D. Engineering Services During Construction \$10,000

E. Design Surveying \$11,500

F. Maximum Payments (Sub-Total) \$25,000

G. Easements \$0

H. Advanced S.D.C.

Construction Staking \$7,500

Record Drawings \$3,500

Inspection \$0

I. Design Testing \$0

J. Construction Testing \$0

K. Administration \$1,500

L. Permitting* \$7,500

M. Prequalification of Bidders \$0

N. Traffic Control Plan \$0

O. Letter of Map Revision \$0

P. Sales and Use Tax Savings \$0

Total Contract Amount \$45,000

*Permitting includes the following:

1. ALDOT Permit



BURK-KLEINPETER, INC.

ENGINEERS, ARCHITECTS, PLANNERS, ENVIRONMENTAL SCIENTISTS

2900 8TH STREET

TUSCALOOSA, AL 35401

TELEPHONE (205) 759-3221 FAX (205) 759-9166

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OVER 100 YEARS OF SERVICE

SCOPE OF WORK

Streets Reconstruction Project – City of Tuscaloosa

TOD #4

December 13, 2016

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VICE PRESIDENT
BRUCE L. HIGGINBOTHAM, PE

This project will involve, generally, evaluation and reconstruction of eligible streets within the recovery zone.

The scope of work is detailed as follows:

A. Design Services

- a. Prepare preliminary design drawings and present to the City for comments.
- b. Survey streets requiring sanitary sewer replacement and/or drainage structure replacement. Survey will be limited to necessary items in the areas of sanitary sewer and/or drainage structure replacement.
- c. Revise drawings to incorporate comments.
- d. Prepare final design plans, specifications, and contract documents to the current City standards.
- e. Assist City in Bid Process. Review bids and provide low bidder information to City.

B. Construction Inspection Services – To Be Provided by City

- a. Provide Construction Engineering and Inspection services.

Note: Additional fees for permits and advertising are not included in the above Tasks. It is assumed that the City will pay these fees direct. It is assumed that all work will take place in existing right of way.



BURK - KLEINPETER, INC.
ENGINEERS, ARCHITECTS, PLANNERS, ENVIRONMENTAL SCIENTISTS

**Streets Reconstruction Project
Phase II
City of Tuscaloosa**

**BKI FEE SCHEDULE
Through December 31, 2017**

Principal	\$210/hr
Project Manager	\$195/hr
Senior Professional Engineer	\$175/hr
Professional Engineer	\$135/hr
Staff Engineer	\$120/hr
Technician	\$85/hr
Senior Inspector	\$87/hr
Professional Land Surveyor	\$125/hr
Survey Crew	\$150/hr
Clerical	\$60/hr
Mileage	\$0.52/Mile