

# CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To:

The Honorable Mayor and Council

From:

Randy Whitaker, Project Manager, 226-4844

Community Development Division

Date:

November 26, 2008

Meeting Date:

December 16, 2008



### Title:

Consideration of the Award of a Construction Contract for the Rail Crossing Modification project

### **RECOMMENDED ACTION:**

- 1. Award the construction contract to the lowest responsive responsible bidder, 442 Construction, Inc. of Phoenix, AZ in the total amount of \$240,501.03. The award amount includes a contract allowance of \$50,000 and a contract period of 70 calendar days and
- 2. Authorize Change Order Authority to the City Manager in the amount of \$24,050.00 (10% of base bid contract amount) for unanticipated additional costs and
- 3. Authorize the City Manager to execute the necessary documents.

### **ACTION SUMMARY:**

Award of the contract will authorize the construction of the Rail Crossing Modification project in accordance with the approved plans prepared by Plateau Engineering which includes improvements at the Steves, Fanning, Enterprise, Beaver and San Francisco rail crossings.

### **DISCUSSION:**

### Background/History:

The City of Flagstaff in 2005 began to study the possibility of creating a quiet zone based on 49 CFR Parts 222-229 Final Rule (Quiet Zone Rule) by the Federal Railroad Administration (FRA). The development of the Quiet Zone Rule had extensive public, railroad and local government input.

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On November 25, 2008 there were 3 bids received in response to the advertisement to construct the Rail Crossing Modification project. 442 Construction is considered the lowest responsive bidder.

Bidder	Base Bid \$
442 Construction	240,501.53
Sky Engineering, Inc.	249,970.00
Field Day, LLC (Considered non-responsive)	115,980.48
Engineers Estimate	360,000.00

Field Day, LLC did not purchase a set of plans and specification from the City but only obtained partial bid documents from a plan room. Field Day did not turn in the required documents in their bid package and it was determined by Purchasing that the bid should be considered non-responsive.

## **Key Considerations:**

This is the final agreement that will be required to implement the Flagstaff Quiet Zone. The agreements are:

- 1. City Pre-Order the city furnished Wayside Horn which will be installed by the contractor
  - o This item was presented and approved by Council on October 7, 2008.
- 2. City-BNSF Wayside Horn Agreement
  - This agreement provides for the ownership, installation and maintenance by the city of the Wayside horn.
  - o This item was presented and approved by Council on November 18, 2008
- 3. City-BNSF Lease Agreement
  - The lease agreement provides for installation of the pedestrian fencing at Beaver and San Francisco Streets.
  - o This item was presented and approved by Council on December 2, 2008
- 4. Construction Contract
  - o Current Council Action
  - o Advertisement dates 11/1/08 and 11/8/08
  - o Bid date 11/25/08
  - o Project duration 70 calendar days
  - Target completion date April 2009

# **Community Benefits and Considerations:**

At the conclusion of the construction, the Notice of Establishment for the quiet zone will be sent to BNSF Rail Company, Federal Railroad Administration and the State Corporation Commission. Unless there are objections from BNSF Rail Company, Federal Railroad Administration or the State Corporation Commission within 30 days from the Notice of Establishment, the quiet zone will become effective and the train engineer will no longer blow the train horn except in an emergency situation.

### **Community Involvement:**

There has been extensive public involvement for several years which included two wayside horn demonstrations and approvals by Council.

The following meetings were held:

- Demonstration 1: May 2006
- Demonstration 2: December 2007

### Council meetings:

- May 1, 2007
- September 2, 2008

### Financial Implications:

The Quiet Zone Project is budgeted in the amount of \$655,785 for FY08/09 and estimated total cost in FY 08/09 is \$435,409. 040-9228-607-4205 (Traffic Control) is the account number for this Agreement.

The total actual and estimated cost for FY 08/09 is:	
City Pre-Order of Wayside Horn, Purchase Order issued	\$72,784
City-BNSF Wayside Horn Agreement, BNSF Time and Material	\$41,274
City-BNSF Lease Agreement, Lump Sum Yearly	\$1,800
Construction Contract,	\$240,501
City Labor & Design Fees 08/09, Estimate	\$55,000
Allowance	24,050
Estimated FY08/09 Project Cost	\$435,409

### **Options and Alternatives:**

- Approve the recommended action.
- Direct staff to bid project again, this would have the effect of not authorizing the contract for completion of construction.

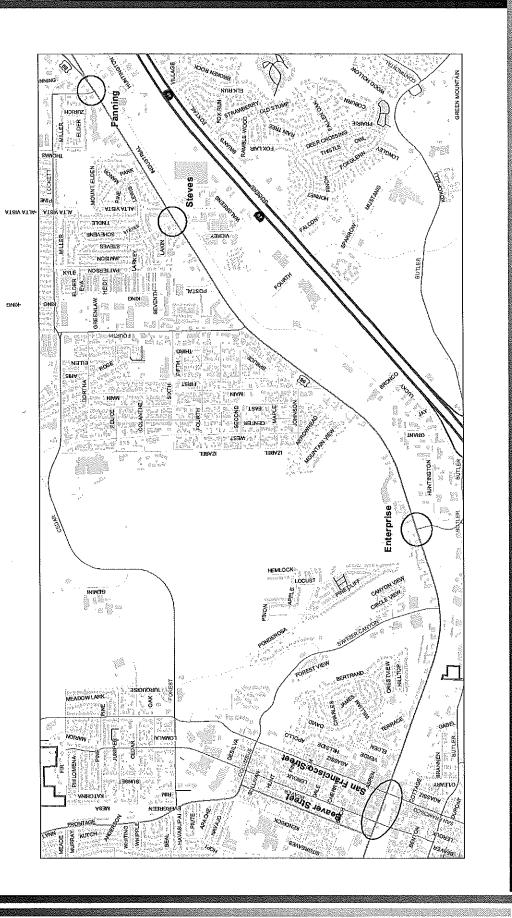
### Attachments/Exhibits:

- 1. Vicinity Map
- 2. Construction Agreement

Department Head (Acknowledgment that all reviews have been completed and required approvals initialed below.)

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
SMG	BIDS/PURCHASES GRANTS LEGAL	11/26/08 	RAB	FINANCE/BUDGET CONTRACTS IGAS Chylengineer	11/26/08
DATE OF CO	TINCH ADDDOVAL.				

# Vicinity Map



Project Name: Rail Crossing Modification Project Project No.: 922800

# AGREEMENT

20	08, by and between the City of Flagstaff, Arizona ("City") and	
	, ("Contractor").	
	INESSETH, that in consideration of the mutual covenants contained herein, the City and agree as follows:	
1.	It is understood by both parties hereto that the construction work hereinafter referred to, be performed on certain real property owned by the City and Burlington North Sante Fe located at Steves Boulevard, Fanning Drive, Enterprise Road, Beaver Street and San Francisco railroad crossings Flagstaff, Arizona ("Premises"). The City may award to others contracts for additional work, and Contractor shall cooperate with any such other contractors and coordinate its work as directed by the City with the work included under any such other contracts.	
<b>2</b> <sub>0</sub> .	Contractor shall furnish and deliver all of the materials and perform all of the work described in the Specifications for and shown on Plans included in the back of the Specifications, for the Woodlands Village Sidewalk Improvements, it being understood and agreed that said Specifications and Plans, including all General and Special Provisions of the Contract Documents, are hereby incorporated into this Agreement. All materials, work, Specifications and Plans shall be the property of the City.	
3.	That the work shall be completed within seventy (70) calendar days and shall be delivered to the City free of all liens, claims and demands of any kind for materials, equipment, supplies, services, labor, taxes and damages to property or persons.	
4.	4. If Contractor fails or refuses to execute this Agreement within the time specified in the Ci Proposal, located on pages 3 – 5 of the Project Manual, or such additional time as may allowed, the proceeds of Contractor's proposal guaranty shall become subject to deposit the Treasury of the municipality as monies available to compensate the City for damage provided by A.R.S. § 34-201 for the delay in execution of this Agreement, and bonds and performance of work hereunder, and the necessity of accepting a higher or less desirable from such failure or refusal to execute this Agreement and bond as required. If Contract has submitted a certified check or cashier's check as a proposal guaranty, the check shall returned after execution of this Agreement. The certified check or cashier's check of or Bidders shall be returned at the expiration of thirty (30) days from the date of opening proposals or sooner, if this Agreement is executed prior to that time.	
5.	Contractor shall keep Premises and work clear and free of all mechanics' liens.	
6.	The City and Contractor hereby agree that the not-to-exceed sum to be paid by the City to Contractor for said work and materials shall be	

Project Name: Rail Crossing Modification Project Project No.: 922800

- a, Contractor shall promptly submit to the City all proper invoices necessary for the determination of the prices of labor and materials;
- b. Progress payments shall be made in the amount of ninety percent (90%) of the value of labor and materials incorporated in the work, based on the sum of the Agreement prices of labor and material, and of materials stored at the worksite, on the basis of substantiating paid invoices, as estimated by the City, less the aggregate of all previous payments, until the work performed under this Agreement is fifty percent (50%) complete. When and after such work is fifty (50%) complete, the ten percent (10%) of value previously retained may be reduced to five percent (5%) of value completed if Contractor is making satisfactory progress as determined by the City and providing that there is no specific cause or claim requiring a greater amount to be retained. If at any time the City determines that satisfactory progress is not being made, the ten percent (10%) retention shall be reinstated for all subsequent progress payments made under this Agreement;
- The City Engineer shall have the right to finally determine the amount due to Contractor;
- d. Monthly progress payments shall be made by the City, on or before fourteen (14) calendar days after the receipt by the City of an approved estimate of the work completed;
- e. Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the City upon receipt of the corresponding progress payment, therefore;
- f. The remainder of the Agreement price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after acceptance of completed work by the City. The release of retention or alternate surety shall be made following the City's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, and Consent of Surety for Final Payment, as well as Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.
- 7. Contractor shall not assign this Agreement, in whole or in part, without the prior written consent of the City.
- 8. All prior negotiations, proposals, and understandings of the City and Contractor are merged in, and superseded, by this Agreement and there is no verbal or written contract, agreement, or understandings of any kind whereby the terms and conditions hereof are, or can be changed, varied, modified, or explained in any manner whatsoever.
- 9. Contractor shall not enter into any subcontract, or issue any purchase order for the completed work, or any substantial part of the work, unless in each instance, prior written approval shall have been given by the City. Contractor shall be fully responsible to the City for acts and

omissions of Contractor's subcontractors and all persons either directly employed by them.

- 10. Contractor shall not employ illegal aliens in accordance with A.R.S. § 34-301.
- 11. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.
- 12. Contractor shall comply with all applicable laws, statutes, ordinances, regulations and governmental requirements in the performance of this Agreement.
- 13. Compliance with Federal Immigration Laws and Regulations. Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with ARS 23-214.A. Contractor acknowledges that pursuant to ARS 41-4401, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the CITY retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the day and year first above written.

			A Karanga		
	CITY OF FLAGSTAFF 211 W. Aspen Avenue Flagstaff, Arizona 86004			CONTRACTOR	
Ву:			Bÿî		
	Kevin Burke, City Manager		•	Signature	and the second of the second o
				Printed Name	
				- Company of Newscone	
				Title	
Attest	<b>:</b>			Attest:	
Margi	e Brown, City Clerk				
Appro	ved as to Form:	•	Productions		
City A	attorney			•	

Project Name: Rail Crossing Modification Project Project No.: 922800

### CITY OF FLAGSTAFF, ARIZONA PAYMENT BOND

PROJECT NAME: RAIL CROSSING MODIFICATION PROJECT PROJECT NUMBER: 922800

STATUTORY PAYMENT BOND PURSUANT TO TITLE 34 CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES (Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:	
(hereinafter called the Principal), as Principal, and	
	, a corporation organized and , with its principal office in the City of ed the Surety), as Surety, are held and firmly bound unto the City of
existing under the laws of the State of	, with its principal office in the City of
(hereinafter call	ed the Surety), as Surety, are held and firmly bound unto the City of
Flagstaff, Arizona (hereinafter called the Obligee)	, in the amount of) for the payment whereof, the said Principal and Surety
Dollârs (\$	for the payment whereof, the said Principal and Surety
these presents,	executors, successors and assigns, jointly and severally, firmly by
WHEREAS, the Principal has entered into day of, 20, the City of Flagstaff which Contract is hereby reficopied at length herein.	o a certain written Contract with the Obligee, dated thisin
all persons supplying labor or materials to the prin provided for in the contract, this obligation is void	
Arizona Revised Statutes, and all liabilities on	this bond shall be determined in accordance with the provisions article 2, Arizona Revised Statutes, to the same extent as if it were
The prevailing party in a suit on this bond may be fixed by a judge of the court.	I shall recover as a part of the judgment reasonable attorney fees that
Witness our hands this day of	20
PSTRACT ALICONIN	0 20 10
Principal (Seal)	Surety (Seal)
By:	. By:
Agency of Record	Agency Address

Project Name: Rail Crossing Modification Project Project No., 922800

### CITY OF FLAGSTAFF, ARIZONA PERFORMANCE BOND

PROJECT NAME: RAIL CROSSING MODIFICATION PROJECT PROJECT NUMBER: 922800

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34 CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES (Penalty of this Bond must be 100% of the Contract Amount)

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(hereinafter called t	he Surety), as Surety, are held and firmly bound unto the City of
Flagstaff, Arizona (hereinafter called the Obligee), in	the amount of
Dollars (\$	he Surety), as Surety, are held and firmly bound unto the City of the amount of
these presents.	cutors, successors and assigns, jointly and severally, firmly by
	certain written Contract with the Obligee, dated this of Flagstaff which Contract is hereby referred to and made a part ength herein.
of the undertakings, covenants, terms, conditions and any extension of the contract, with or without n under the contract, and also performs and fulfills all cof all duly authorized modifications of the contract the surety being hereby waived, the above obligation is well provided, however, that this bond is executive.	on is such, that if the principal faithfully performs and fulfills all agreements of contract during the original term of the contract otice to the surety, and during the life of any guaranty required of the undertakings, covenants, terms, conditions and agreements hat may hereafter be made, notice of which modifications to the bid. Otherwise it remains in full force and effect.  ted pursuant to the provisions of title 34, chapter 2, article 2, and shall be determined in accordance with the provisions of title
	he extent as if it were copied at length in this agreement.
The prevailing party in a suit on this bond shaps be fixed by a judge of the court.	nall recover as part of the judgment reasonable attorney fees that
Witness our hands this day of	
Principal (Seal)	Surety (Seal)
Din	Bÿ:
Вуг	
Agency of Record	Agency Address

Project Name: Rail Crossing Modification Project Project No.: 922800