

RESOLUTION NO. 31-2007

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ENTERING INTO AN INDEPENDENT CONTRACTOR'S AGREEMENT WITH EEC FOR CONSULTING ENGINEERING SERVICES ON AN AS-NEEDED BASIS.

WHEREAS, the City Council has determined that it is necessary for the City to retain an engineering firm to assist the City Engineer, and that EEC is qualified for the job.

NOW, THEREFORE, BE IT RESOLVED that the City of Benson hereby approves the agreement with EEC attached hereto as Exhibit "A" for professional services for On-Call Miscellaneous Engineering Design and Review Services, and the Mayor is hereby directed to execute said agreement on behalf of the City of Benson.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 10th day of September, 2007.



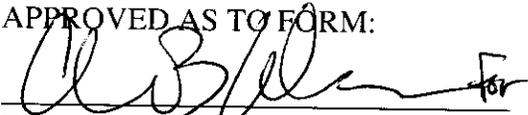
MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



THOMAS A. BENAVIDEZ, Interim City Attorney



**CITY OF BENSON, ARIZONA
ENGINEERING SERVICES
AGREEMENT OF SERVICES**

THIS CONTRACT is made and entered into this 27th day of August, 2007 by and between the City of Benson, Arizona, a municipal corporation (hereinafter "City"), and Engineering and Environmental Consultants, Inc., an Arizona Corporation (hereinafter "Contractor").

WHEREAS, City desires to employ a Consulting Engineer to assist the City Engineer and Engineering staff on an as-needed basis; and

WHEREAS, one of the principals of Contractor is duly registered and licensed as a Professional Engineer pursuant to the laws of the state of Arizona and represents himself or herself to be professionally competent and capable to perform the services described hereinafter; and

WHEREAS, Contractor desires to enter into this Agreement for the provision of Consulting Engineer, and City desires to employ Contractor for these services, under the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is mutually agreed, the City does hereby employ Contractor, and Contractor does hereby accept employment, in accordance with the provisions of this Agreement.

1. Effective Date; Term; Renewal.

This Agreement shall be effective from September 10, 2007, and shall continue through September 10, 2008 or until sooner terminated as provided herein.

This Agreement may only be renewed by the approval of the City Engineer, executed with the same formality as this Agreement. Under this renewal, all existing terms and conditions will remain the same and will apply during the renewal period with the possible exception of price and minor scope additions and/or deletions. Under no circumstances will the term of this Contract be greater than five (5) consecutive years.

2. Scope of Work.

The work to be performed under this Agreement is that work which is requested pursuant to the Scope of Work attached hereto as Exhibit "A" and incorporated herein by this reference. This Agreement is not intended to cover services rendered by contractor for City pursuant to any other Agreement.

The design or performance of architectural, structural, mechanical, electrical, civil, surveying, or other engineering features of the services described in this Agreement shall be under the direct supervision of professionals, registered to practice in the pertaining field or endeavor in the State of Arizona.

Contractor shall be responsible for the completeness and accuracy of all services rendered and correction of all negligent errors of omission or commission on the drawings, specifications, and other documents, notwithstanding prior approval of City.

Contractor agrees to maintain books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof, and other graphic or written data generated in connection with the work performed. All said information and documentation shall become the property of City, and upon expiration or termination of this Agreement for any reason whatsoever, shall be promptly delivered to City.

Contractor agrees to render professional services promptly and diligently upon receipt of notice to proceed with services on any specific project. City will not be liable to pay contractor for any work performed without a request to perform such work by the City Engineer.

Contractor warrants that it has all personnel and professional capacity required in performing the services pursuant to this Agreement.

3. Fees.

In consideration for the performance of the services set forth pursuant to Section 2 of this Agreement, Contractor shall be compensated according to the hourly rates set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

In addition to the hourly fees set forth in section 3.1, Contractor shall be reimbursed the out-of-pocket direct costs incurred, such as materials, printing, reproductions, long distance telephone, and the like, at the exact cost of such out-of-pocket costs. There shall be no mark-up of out-of-pocket costs.

There shall be no mileage charge or charge for any time spent traveling, except travel outside the Pima and Cochise Counties which has been previously approved by the City Engineer.

Contractor shall provide City with monthly billing statements in a form acceptable to City, listing specifically each task undertaken, the identity of the person performing the task, the time expended, and the cost of such task. Each invoice must bear a written certification by an authorized employee of Contractor confirming the professional services for which payment is requested. City shall pay each invoice within thirty (30) days of its approval for payment by the City Engineer.

4. Status of Contractor; Officers and Employees.

It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between parties or create any employer-employee relationship between City and any contractor employee, or between Contractor and any City employee. Neither party shall be liable for any debts

whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income tax for any of its employees.

City shall grant Contractor's officials and employees whatever rights are necessary to accomplish Contractor's obligations under this Agreement.

5. Hold Harmless; Indemnification.

Contractor agrees to indemnify and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, and employees, individually and collectively from, for and against all losses, claims, suits, demands, expenses, attorney's fees, or actions of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, but only to the extent they arise or are alleged to have arisen out of either (1) Contractor's negligent performance of the terms of this Agreement, or (2) any of Contractor's negligent errors or omissions. The Contractor's obligation shall not extend to any liability caused by the negligence of the City or its employees. The amount and type of insurance requirements set forth in Section 6 will in no way be construed as limiting the scope of indemnity in this Section.

6. Insurance Provisions.

Contractor agrees to obtain insurance coverage of the types and amounts required in this Section and keep such insurance coverage in force throughout the life of this Agreement. All policies will contain an endorsement providing that written notice be given to City at least ten (10) days prior to termination, cancellation, or material reduction in coverage in any policy.

The Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies will include City as an additional insured with respect to liability arising out of performance out of this Agreement. Contractor agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

Contractor shall provide City with proof of compliance with the insurance provisions and requirements of this Section within ten (10) days of the date of this Agreement. Failure of Contractor to comply with the insurance requirements of this Section at any time shall result in a breach of this Agreement, and shall, among other things, allow immediate termination of this Agreement.

Contractor shall provide and maintain minimum insurance limits as follows:

INSURANCE PROVISIONS

COVERAGE AFFORDED

Worker's Compensation

Commercial General Liability Insurance
Including:

- A. Products & Completed Operations
- B. Blanket Contractual
- C. Premises-Operations-Personal Injury

LIMITS OF LIABILITY

Statutory

\$1,000,000 – Bodily Injury
Combined Single Limit
\$1,000,000 Property Damage

Professional Liability Insurance (Errors and Omissions) (See Special Conditions) \$500,000 (Minimum) Combined Single Limit

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which include surveying and/or construction surveillance.

checked if applicable
Comprehensive Automobile Liability Insurance including: non-owned, and
Hired vehicles \$1,000,000-Bodily Injury Combined Single Limit
\$250,000Property Damage

7. Suspension or Discontinuation of Services; Termination.

This Agreement may be terminated by either party at will by giving thirty (30) days prior written notice of termination to the other party. Such termination shall not relieve either party from those liabilities or costs already incurred under this Agreement. This Agreement may be canceled by the City for conflict of interest pursuant to A.R.S. section 38-511.

This Agreement and all obligations upon City arising therefrom shall be subject to any limitation imposed by budget law. The City represents that it has within its budget sufficient funds to discharge the obligations and duties assumed under this Agreement. If for any reason the Benson City Council does not appropriate sufficient monies for the purpose of maintaining this Agreement, this Agreement shall be deemed to terminate by operation of law on the date of expiration of funding. In the event of such cancellation, Contractor and City shall have no further obligation to the other party other than for payment for services rendered prior to cancellation.

8. Miscellaneous Provisions.

If this Agreement is determined, in whole or in part, to be void by court action brought by third persons, there shall be no liability on the part of Contractor or City to the other by reason of such action or by reason of this Agreement.

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns.

Each of the parties, through their respective counsel, officers and employees, agree to take such actions as may be necessary to carry out the terms of this Agreement, and to cause such documents as may be necessary to be executed with reasonable promptness.

Each party to this Agreement shall comply with all applicable federal and state statutes and regulations. Each party shall comply with all applicable legal requirements relating to civil rights and non-discrimination in employment including, but not limited to, the Immigration Reform and Control Act of 1986 and the Americans with Disabilities Act.

Any assignment or attempted assignment of this Agreement by either party without the written consent of the other party shall be void.

Any and all notices, requests or demands made upon the parties hereto, pursuant to or in connection with this Agreement, unless otherwise noted, shall be delivered in person or sent by United States Mail, postage prepaid, to the parties at their respective addresses as agreed by both parties.

This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter hereof and correctly sets forth the rights, duties and obligations of each to the other as of this date. All prior or contemporaneous agreements and understandings oral and written are hereby superseded and merged herein. The provisions hereof may be abrogated, modified, rescinded or amended in whole or in part only by written instrument executed by the parties with the same formality as this document.

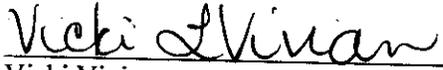
The failure of either party to insist, in any one or more instances, upon the full and complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other, or to take action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in full or in part or in the future. The acceptance by either party of sums less than that may be due and owing it at any time shall not be construed as an accord and satisfaction.

In the event that any provision, or any portion of any provision, of this Agreement, or the application thereof, is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision, or their application, which can be given effect without the invalid provision or application and to this end the provisions of this Agreement shall be deemed to be severable.

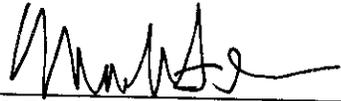
In witness whereof, the parties hereto enter into this Agreement on the date first written above.

ATTEST:

CITY OF BENSON

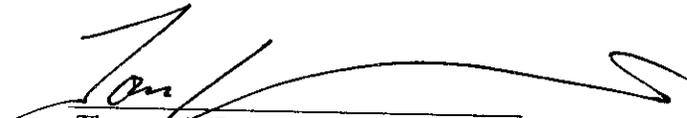


Vicki Vivian
City Clerk

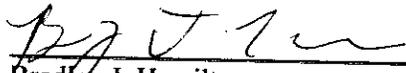


Mark M. Fenn
Mayor

Approved as to form:



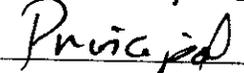
Thomas A. Benavidez
Interim City Attorney



Bradley J. Hamilton
City Engineer

Engineering and Environmental Consultants, Inc.:


By: 

Its 

Principal

EXHIBIT "A"

SCOPE OF WORK

ON-CALL MISCELLANEOUS ENGINEERING DESIGN AND REVIEW SERVICES

I. GENERAL

This scope of work provides for consultant engineering and drafting services on an "as needed" basis. All work shall be performed to City standards, or other standards approved by the City Engineer. Engineering work may include development review, development construction inspection roadway design, drainage design, miscellaneous design, electrical engineering design, preparation of plans and specifications, and review of other consulting engineers' work for the City.

II. CIVIL ENGINEERING SERVICES

The Consultant shall be expected to provide services within the civil engineering field, including but not limited to, development review, development construction inspection, survey, right-of-way analysis, hydrologic and hydraulic analyses, drainage design, roadside design, and utility coordination/design. The Consultant may be expected to prepare technical reports, either for justification or support of a project, such as design concept reports, drainage reports, traffic studies, and environmental determination studies.

III. NON-CIVIL ENGINEERING DESIGN

This contract may require the need for landscape, electrical, structural, and/or geotechnical services; however, the consultant shall not be required to include any of these specialties on the project team at this time. If and when it is determined that a specific project will require any or all of these services, the consultant will be asked to identify the sub consultant(s) for approval by the City Engineer's Office.

IV. RESPONSE TIME

The consultant shall provide a design fee for each miscellaneous design requested by the City, within ten (10) working days of notification. If necessary, each fee submittal shall be negotiated with the City's Engineer until a fair and equitable fee is arrived at. Because response time may be critical to the City, continued delays in response time shall be cause to terminate the contract.

V. CONTRACT AMOUNT/DURATION

Contract duration shall be one (1) year from date of notice to proceed, with three (3) subsequent renewals (each being one (1) year in length). Individual projects assigned under this contract are not expected to exceed \$50,000 and the total annual assignments are estimated at \$250,000.



Exhibit "B" Fee Estimate Summary

PROJECT: On-Call Engineering Design and Review Services

DATE: 8/10/2007

PREPARED BY: EEC

CONTRACT NUMBER: 200701

EFFECTIVE DATE: _____

PRIME CONTRACTOR: EEC

CONTRACT TIME: 1 year with possible 3 one-year renewals

CONTRACT TYPE: On-Call

Item No.	Firm	Discipline	(A)	(B)	(C)	(D)
			Direct Labor Rate	Overhead %	Profit %	Billing Rate
1	EEC	Principal Engineer	\$61.19	1.6	10%	\$175.00
2	EEC	Project Manager	\$44.23	1.6	10%	\$126.50
3	EEC	Project Engineer	\$34.97	1.6	10%	\$100.00
4	EEC	Engineering Designer	\$35.60	1.6	10%	\$102.00
5	EEC	Planning Manager	\$42.78	1.6	10%	\$122.50
6	EEC	Planner	\$25.00	1.6	10%	\$71.50
7	EEC	CAD Operator	\$22.00	1.6	10%	\$63.00
8	EEC	Landscape Architect	\$38.46	1.6	10%	\$110.00
9	EEC	Landscape Designer	\$19.34	1.6	10%	\$55.50
10	EEC	Professional Surveyor	\$45.45	1.6	10%	\$130.00
11	EEC	Survey Manager	\$38.46	1.6	10%	\$110.00
12	EEC	Survey Tech	\$20.98	1.6	10%	\$60.00
13	EEC	1-Person Survey Crew	\$38.46	1.6	10%	\$110.00
14	EEC	2-Person Survey Crew	\$43.71	1.6	10%	\$125.00
15	EEC	3-Person Survey Crew	\$47.20	1.6	10%	\$135.00

Formulas

(A) Direct Labor Rate

(B) Overhead @ _____% x A

(C) Profit @ _____% x (A+B)

(D) Billing Rate (A+B+C)