City of Benson
City Council Communication

Regular Meeting **January 27, 2014**

To: Mayor and Council Agenda Item # 10

From: Bradley J. Hamilton, P.E. Public Works Director/City Engineer

Subject:

Discussion and possible action regarding a Contractor's Agreement with Armstrong Consultants, Inc. for Consulting Engineering Services on an As-Needed Basis

Discussion:

The City of Benson, Department of Public Works, respectfully requests the Mayor and Council's approval of the Engineering Services Contract with Armstrong Consultants, Inc. The City released a request for qualifications (RFQ) this fall and three engineering firms submitted proposals. The proposals were reviewed by myself, George Scott, Pat Boyle, Peter Wangsness, Ron Brooks and Chris Moncada. The proposal by Armstrong Consultants, Inc. was rated the highest overall.

The attached contract has been negotiated with Armstrong Consultants, Inc. to provide Engineering Services as outlined in the Scope of Work, attached to the contract as Exhibit "A". Payment for these services is based upon an hourly rate as outlined in the Rate Schedule, attached to the contract as Exhibit "B". Also, projects may be done by lump sum. Payment will be based on services rendered. The contract provides that Armstrong Consultants, Inc. will only provide those services specifically requested by the Public Works Director/City Engineer.

Staff Recommendation:

Approval of the Contractor's Agreement with Armstrong Consultants, Inc. for Consulting Engineering Services on an As-Needed Basis

CITY OF BENSON, ARIZONA
ENGINEERING SERVICES
AGREEMENT OF SERVICES

THIS CONTRACT is made and entered into this 27th day of January, 2014 by and between the City of Benson, Arizona, a municipal corporation (hereinafter "City"), and Armstrong Consultants, Inc., a Colorado 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, Contractors was determined to offer the best value to City pursuant to an RFQ, responses to which were due on or about August 23, 2013; 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 January 27, 2014, and shall continue through January 27, 2015 or until sooner terminated as provided herein.

This Agreement may only be renewed by the approval of the City Engineer, which renewal shall be issued by the City. 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 a written notice to proceed with services on any specific project. City will not be liable to pay contractor for any work performed without a written notice to perform such work by the City Engineer.

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

3. Fees.

Engineering services to be performed under this Agreement will be ordered as required by the City via execution of mutually agreed upon Task Orders.

Compensation for services shall be on a Lump Sum or Cost Reimbursable basis as mutually agreed upon by the parties. The Task Orders issued under the Agreement shall specifically identify the services, the type of Compensation, the applicable rates and the reimbursable expenses.

For performance of the Services described in each Lump Sum Task Order, City shall pay the Contractor the Lump Sum set forth in such Task Order in no greater than monthly increments over the period of performance of the work, based on the percentage of each Task competed unless other specific payment schedules are mutually agreed to and set forth in the Task Order. Expenses for Lump Sum projects shall be included in the Task Order.

For performance of the Services described in each Cost Reimbursable Task Order, Contractor shall be compensated according to the hourly rates set forth in Exhibit “B” attached hereto and incorporated herein by this reference. 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 in writing by the City Engineer.

For Cost Reimbursement Task Orders, 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. For Lump Sum Task Orders, Contractor shall provide City with billing statements in a form acceptable to the City, listing specifically the percentage of completion of each Task, the total proportionate amount of the total fee earned, the amount previously paid by the City, and the current amount due to the Contractor. 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.

Contractor is an independent contractor. 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.

To the fullest extent permitted by law, Contractor shall indemnify, defend, 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 to the extent they arise out of either (1) Contractor's negligent performance of the terms of this Agreement, or (2) any of Contractor's errors or omissions. For purposes of this provision, the acts of Contractor's agents, employees, and consultants shall be considered as Contractor's acts. 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. Contractor's duty to defend shall be a separate and distinct obligation from the duty to indemnify the City and is enforceable regardless of fault or negligence; the City shall have the right at its option, to participate in such defense without relieving Contractor of any obligation under this Agreement. Contractor's obligations under this provision shall survive the termination of this Agreement.

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	**LIMITS OF LIABILITY**
Worker's Compensation	Statutory
Commercial General Liability Insurance Including:	$1,000,000 – Bodily Injury Combined Single Limit $1,000,000 Property Damage

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

Professional Liability Insurance (Errors and Omissions)	$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 obligations, 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. Notwithstanding that circumstance, 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 termination.

8. Public Information.

Pursuant to AR.S. § 39-121 *et seq.*, and AR.S. § 34-603(H), in the case of construction or Architectural and Engineering services procured under AR.S. Title 34, Chapter 6, all information submitted by Contractor in any way related to this contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes

public information and upon request, is subject to release and/or review by the general public **including competitors**.

Any records submitted related to this Agreement that Contractor reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to the close of the solicitation. City agrees that it will treat as confidential all documents received from the Contractor that as marked as CONFIDENTIAL.

Notwithstanding the above provisions, in the event records are requested for public release pursuant to A.R.S. § 39-121 *et seq*., City shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the Contractor of the request for release unless Contractor has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. Contractor shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

City shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall County be in any way financially responsible for any costs associated with securing such an order.

Contractor's obligations to indemnify, defend, and save the City harmless recited above apply to any action filed by Contractor or the requested party concerning Contractor's position that documents marked as CONFIDENTIAL should not be disclosed. Should Contractor decide to pursue injunctive relief, the City reserves all right it has to tender defense of any claim the party requesting release of documents brings against it.

9. 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 ,the Americans with Disabilities Act, and Arizona Executive Order 2009-09, a copy of which may be found online at http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf

Each party shall comply with those Required Federal Contract Provisions for set forth for Professional Services (A/E) Contracts funded by the Airport Improvement Program (AIP), which can be found online at http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/.

Any changes in the governing laws, rules, and regulations during the term of Contractor's performance shall apply without any need to amend this Agreement.

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 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.

Contractor shall be responsible for all acts and omissions of its subconsultants and of persons directly or indirectly employed by its subconsultants and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement shall create any obligation on City's part to pay or see to the payment of any money due to any of Contractor's subconsultants.

All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by Contractor under this Agreement shall vest in and become the City's property and shall be delivered to City upon completion or termination of the services, but Contractor may retain and use copies thereof. The City agrees that the material will not be used for any project other than the project for which it was designed without Contractor's express written permission.

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

ATTEST:

_____
Vicki L. Vivian, CMC
City Clerk

CITY OF BENSON

_____
Toney D. King, Sr.,
Mayor

Approved as to form:

_____
MESCH, CLARK AND ROTHSCHILD, P.C
By Gary J. Cohen
City's Attorney

_____
Bradley J. Hamilton
City Engineer

Armstrong Consultants, Inc.:

By: _____
Dennis A. Corsi
Its President

EXHIBIT "A"
SCOPE OF WORK

ON-CALL MISCELLANEOUS ENGINEERING DESIGN AND REVIEW SERVICES

I. GENERAL

The City of Benson wishes to retain the professional services of a qualified airport consulting firm to provide a full range of aviation planning, engineering, and consulting services for future projects at the Benson Municipal Airport located in Benson, Arizona.

II. CIVIL ENGINEERING SERVICES

The Consultant shall be expected to provide services within the civil engineering field, including but not limited to, engineering design, surveying, airport master planning, environmental analysis, airport noise control, land use compatibility planning, feasibility studies, management and operational evaluations, technical specification preparation, construction management, inspections, special studies, plan review, grant application preparation, coordination with funding agencies and other general consulting services as requested by the City of Benson.

III. NON-CIVIL ENGINEERING DESIGN

The selected firm will be expected to assist the City in the development of contracts and scopes of services that will be acceptable to the Federal Aviation Agency (FAA) and the Arizona Department of Transportation (ADOT) Aeronautics Division.

Additional projects for which the City may ask the selected consultant to assist with may include but are not limited to:

1. Assist the Sponsor with preparation and submittal of annual Airport Capital Improvement Program (ACIP). Attend ACIP coordination meetings with FAA and ADOT Aeronautics personnel.
2. Coordinate with FAA and ADOT Aeronautics on proposed airport development.
3. Assist Sponsor with preparation and submittal of revalidated Airport Layout Plan.
4. Conduct feasibility studies; prepare conceptual layouts for airport development including hangars and other facilities.
5. Assist Sponsor with other services as may be requested.
6. Review of Development Plans at the Benson Airport.
7. Assist in obtaining grant monies
8. Provide 30% review and as-built plans to ADOT-Aeronautics

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. PROJECTS ANTICIPATED FOR DEVELOPMENT AT THE BENSON MUNICIPAL AIRPORT

The following projects are anticipated for development at the Benson Municipal Airport during the five-year period of the consultant services contract, pending availability of funding. This list should not be considered to be all-inclusive, as projects may be added, deleted of may be rearranged in order of priority. With the adoption of the Airport Master Plan, other projects may be added.

1. Land Acquisition
2. Construct Hangars
3. Construct Taxilanes
4. Runway Pavement Preservation
5. Apron Structural Upgrades
6. Master Drainage Study
7. Instrument Approach Survey(s)
8. Construct Auto Parking
9. Drainage/Erosion Control Improvements
10. Runway Extension
11. Taxiway Extension
12. Install Security Fencing
13. Construct Terminal
14. Construct Helipad(s)
15. Construct/Reconstruct Airport Access Road
16. Construct Perimeter Road
17. Update Airport Master Plan
18. Expand Apron
19. Environmental Assessments

VI. CONTRACT AMOUNT/DURATION

Contract duration shall be one (1) year from date of notice to proceed, with four (4) subsequent renewals, each being one (1) year in length.

EXHIBIT "B"

ARMSTRONGHOURLY RATE SCHEDULE

Category	Rate/ Hour
Principal	$230.00
Department/Project Manager	$190.00
Project Engineer/Senior Planner	$170.00
Staff Engineer/EIT	$140.00
Staff Planner	$130.00
Resident Inspector	$110.00
CADD Technician	$130.00
Clerical	$72.00
Pilot (Flight / Ground)	$95.00 / $70.00