

RESOLUTION 57-2011

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH K E & G CONSTRUCTION, INC., FOR THE RUNWAY REPAIR 10/28 OF THE BENSON MUNICIPAL AIRPORT IN AN AMOUNT NOT TO EXCEED \$116,194.95

WHEREAS, the Mayor and City Council of the City of Benson have determined that it is necessary to complete the Runway repair 10/28 of the Benson Municipal Airport; and

WHEREAS, the City of Benson has submitted to the Federal Aviation Administration an Application dated March 3, 2011 for a grant of federal funds for a project at or associated with the Benson Municipal Airport/Planning Area for the Runway repair 10/28; and

WHEREAS, the City of Benson has been awarded a grant by the Federal Aviation Administration for the construction of the Runway repair 10/28; and

WHEREAS, K E & G Construction, Inc. is qualified to provide construction services and construct the above-mentioned improvements at the Benson Municipal Airport , and has presented an agreement (the "Agreement") to the staff of the City for such construction services, attached here to as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, the City Council has reviewed the terms and conditions of the Agreement and determined that the proposed Agreement with K E & G Construction, Inc. represents the best and most cost effective method to provide this service to the City and its residents and entering into it is in the best interests of the City and its residents.

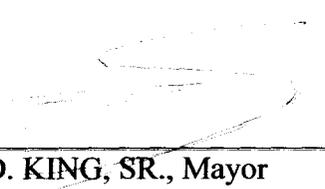
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

- Section 1. The City is hereby authorized to enter into the Agreement between K E & G Construction, Inc. and the City of Benson, attached hereto as Exhibit "A."
- Section 2. The Mayor of the City of Benson is hereby authorized and directed to execute said Agreement on behalf of the City of Benson, and the City staff is hereby authorized and directed to take all steps necessary and proper to implement said Agreement and give it effect.
- Section 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

Section 4. All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the Council in conflict with the provisions of this Resolution are here by repealed, effective as of the effective date of this Resolution.

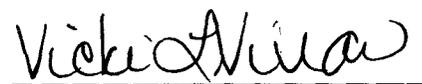
Section 5. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions there of.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 12th day of September, 2011.



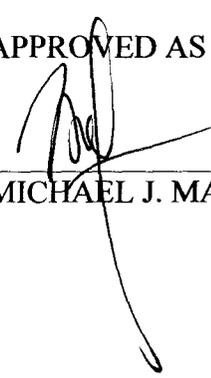
TONEY D. KING, SR., Mayor

ATTEST:



VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:



MICHAEL J. MASSEE, City Attorney

EXHIBIT "A"
THE AGREEMENT

**BENSON MUNICIPAL AIRPORT
BENSON, ARIZONA**

RECONSTRUCT/REHABILITATE RUNWAY PHASE III

**A.I.P. PROJECT NO. 03-04-0077-15
ADOT TRACS E2FXX**

AGREEMENT

THIS AGREEMENT, is dated as of the 22nd day of August in the year 2011 by and between the City of Benson, hereinafter referred to as the OWNER, and KE & G Construction Hereinafter referred to as the CONTRACTOR.

WITNESSETH: The OWNER and the CONTRACTOR, in consideration of the mutual covenants herein after set forth, agree as follows:

ARTICLE 1 - WORK

- 1.1 CONTRACTOR shall at his own cost and expense furnish all labor, services, tools, materials, equipment and incidentals necessary to perform all Work required by the Contract Documents to construct:

Reconstruct/Rehabilitate Runway Phase III. P-401 Asphaltic Concrete and Slurry Seal will be used to repair Runway 10/28.

ARTICLE 2 - CONTRACT DOCUMENTS

INCORPORATION OF DOCUMENTS: CONTRACTOR and CITY in entering into this Contract have relied upon information provided in the INVITATION TO BID, INSTRUCTIONS TO BIDDERS, BID PROPOSAL FOR CONSTRUCTION, BID, PAYMENT, AND PERFORMANCE BONDS, GENERAL CONDITIONS, SUPPLEMENTAL CONDITIONS, SPECIAL PROVISIONS, PLANS AND DRAWINGS, ADDENDA, information provided in the CONTRACTOR response to this solicitation, and the Special Federal Requirements and Wage Rates. These documents are hereby incorporated into this Contract by reference as if set forth in full herein.

ORDER OF PRECEDENCE: In the event of a conflict or inconsistency between or among the documents incorporated into this contract, the Contract Documents shall take precedence in the following order:

This Contract
Supplemental Conditions, if any
General Conditions
Technical Specifications and Plans
Contractor Response to the Solicitation
Instructions to Bidders
Invitation to Bid

The parties may, by written mutual agreement, deviate from this order of precedence in resolving inconsistencies between or among contract documents. Any such Agreement interpreting the Contract shall be incorporated into the Contract by Amendment.

ARTICLE 3 - ENGINEER

- 3.1 The person, appointed as ENGINEER by the OWNER acting directly or through his duly authorized representative is herein called ENGINEER and will be the OWNER'S representative during construction until final payment is made and will have all rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIME

- 4.1 The Work shall be completely ready for final acceptance/payment in accordance with the Contract Documents within 45 calendar days. The calendar day count will begin as outlined in the written notice to proceed.
- 4.2 Failure of the CONTRACTOR to perform any covenant or condition contained in the Contract Documents within the time period specified in Paragraph 4.1 shall constitute a material breach of this Agreement entitling the OWNER to terminate the Agreement unless the CONTRACTOR applies for, and receives, an extension of time in accordance with the procedures set forth in Section 80 of the General Provisions.
- 4.3 Failure of the OWNER to insist upon the performance of any covenant or condition with the time period specified in Paragraph 4.1 shall not constitute a waiver of the CONTRACTOR's duty to complete performance within the designated periods unless the waiver is in writing.
- 4.4 The OWNER's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of the CONTRACTOR to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Agreement entitling the OWNER to terminate.

ARTICLE 5 - LIQUIDATED AND SPECIAL DAMAGES

- 5.1 Liquidated Damages:
- A. OWNER and CONTRACTOR recognize that time is of the essence as to Substantial Completion and that OWNER will suffer financial loss apart from the costs described in Paragraph 5.2, if the Work is not substantially complete within the time specified in Article 4, plus any extensions thereof allowed in accordance with Section 80 of the General Provisions. OWNER and CONTRACTOR also recognize the delays, expense and difficulties involved improving a legal or arbitration proceeding the actual loss suffered by OWNER if the work is not substantially complete on time. Accordingly, instead of requiring such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$700.00 for each calendar day that expires after the time specified in Article 4 for final completion, including any extensions made in accordance with Section 80 of the General Provisions.
- B. It is further agreed that said amount per day is a reasonable estimate of such

damages, that said amount does in fact bear a reasonable relationship to the damage that would be sustained by the OWNER, and the CONTRACTOR agrees to pay such liquidated damages as herein provided.

5.2 Special Damages:

- A. In addition to the amount provided for as liquidated damages, CONTRACTOR shall pay OWNER the actual costs reasonably incurred by OWNER for engineering and inspection force employed on the Work of each day that expires after the time specified in Article 4 for Substantial Completion, including any extensions thereof made in accordance with Section 80 of the General Provisions, until the work is substantially complete.
- B. The OWNER's contract with the ENGINEER for field inspection services required for this project is based on a Construction Administrator and a field inspector for the duration of the contract. Should the CONTRACTOR's methods for completion require additional staff by the ENGINEER such as working Sundays or legal holidays, the actual cost of this additional staff will be deducted from the CONTRACTOR's final payment.

5.3 OWNER may deduct the amount of liquidated damages, special damages, and other costs such as CONTRACTOR's failed testing costs, damages to City or County property from monies due CONTRACTOR under the Agreement.

ARTICLE 6 - CONTRACT PRICE

6.1 OWNER shall pay CONTRACTOR for performance of the work in accordance with the Contract Documents the prices stipulated in CONTRACTOR's Bid, which Bid is attached hereto and identified as Exhibit 1 of this Agreement.

ARTICLE 7 - PAYMENT PROCEDURES

7.1 CONTRACTOR shall submit Applications for Payment in accordance with Section 90 of the General Provisions. Applications for Payment will be processed by ENGINEER as provided in the Specifications.

7.2 Progress Payments:

- A. OWNER shall make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. CONTRACTOR's Applications for Payment will be due on the day as determined by OWNER at Pre-Construction Conference. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in Section 70 of the General Provisions. A progress payment will not be made whenever the value of the Work completed since the last previous progress payment is less than \$1,000.00. Notwithstanding the foregoing, or any other terms of the Contract Documents, OWNER and Contractor specifically agree that OWNER shall not have any obligation to make progress payments to the Contractor unless and until OWNER receives the requisite funding for the completed work from the Federal Aviation Administration.
- B. The CONTRACTOR's monthly Application for Payment shall be accompanied by an updated work schedule will be considered as a necessary requirement for

progress payment purposes.

- C. The CONTRACTOR shall make an application for payment based on quantities, unit prices, and extensions to the ENGINEER for approval. The ENGINEER shall review this application for payment and make comments and suggestions for revision. Once the estimated quantities have been approved by the ENGINEER, including change orders or force account work, the ENGINEER shall inform the CONTRACTOR of the approved payment amount. The CONTRACTOR shall then prepare an actual invoice from this pay estimate based on the contract unit prices, quantities, extensions, change orders, force accounts, etc. The invoice shall be as outlined in the specifications. It shall include a date. It shall reference the payment estimate or month. It shall have its own unique invoice number that shall not be duplicated on any other invoices. It shall have the project name and project number as required. The original invoice shall be submitted to the Accounts Payable Division of the City of Benson. The Accounts Payable Division of the City of Benson will process the invoice in the following manner. The Airport Planner will review the invoice with the Accounts Payable Division after receipt, and approve the invoice based on the payment estimates and contract, etc. It should be noted that the CONTRACTOR should list the total contract price, previous payments and deduct a 10% retainage from the total amount due to date so that the net amount due is the total amount due, less 10% retainage, less previous payments. The Accounts Payable Division will process the invoice and the CONTRACTOR will receive payment in accordance with the contract specifications after the City of Benson receives funds from the FAA and ADOT. The CONTRACTOR shall be paid generally within 30 days from the date of the invoice.

7.3 Final Payment:

- A. Upon final completion and acceptance of the Work in accordance with Section 70 of the General Provisions, the OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Section 70.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.1 As part of the inducement for OWNER to enter into this Agreement, CONTRACTOR makes the following representations:
- A. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress of performance of the Work.
- B. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site of those reports that otherwise may affect cost, progress or performance of the Work, which were utilized by ENGINEER in the preparation of Special Conditions.
- C. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in Paragraph 9.1 as he deems necessary for the performance of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Conditions of the Contract Documents; and no

additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such proposals.

- D. CONTRACTOR has correlated the results of all such observations, examinations, investigations, test, reports, and data with the terms and conditions of the Contract Documents.
- E. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 9 - DRAWINGS AND ADDENDA

- 9.1 The Drawings comprise a set entitled "RECONSTRUCT/REHABILITATE RUNWAY PHASE III" AIP Project No. 03-04-0077-15.

ARTICLE 10 - MISCELLANEOUS

- 10.1 Terms used in this Agreement which are defined in Section 10 of the General Provisions shall have the meanings indicated in the General Provisions.
- 10.2 No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 10.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto, and his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.4 The City of Benson is not bound until the Contract is signed by the CONTRACTOR and subsequently signed by an authorized representative of the City of Benson. The representative of the City will not sign the contract until the CONTRACTOR has performed all prerequisites to the execution of the Contract including bonding, insurance, licenses and permits.

ARTICLE 11 – COMPLIANCE WITH FEDERAL IMMIGRATION LAWS

- 11.1 As mandated by A.R.S. § 41-4401, the City is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A). The City must also insure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A). Therefore, in signing and performing any contract, including this Agreement, for the City, CONTRACTOR fully understands that:

It warrants that it and its subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A);

A breach of the warranty set forth in subsection (A) shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and

The City or its designee retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Contract to ensure that the contractor or subcontractor is complying with the warranty under subsection (A).

ARTICLE 12 – LABOR AND MATERIAL AND PERFORMANCE BOND REQUIREMENTS

- 12.1 In accordance with A.R.S. §34-2221, the CONTRACTOR shall provide a Labor and Materials Bond and Performance Bond for not less than one hundred percent (100%) of the contract amount. Copies of said bond shall be attached to and become a part of this contract. Prior to final payment, CONTRACTOR shall provide lien releases from all materials suppliers.

IN WITNESS WHEREOF, The parties hereto have executed this Agreement on the day and year first written above.

This Agreement will be effective on the 22nd day of August in the year 2011.

Approved As to Form:

ATTORNEY (for OWNER):

[Signature]
Signature

OWNER:

By [Signature]
Signature

Title Toney D. King, Sr., Mayor

CONTRACTOR:

By [Signature]
Signature

Title President

ATTEST:

By [Signature]
Signature

Title Vicki L. Vivian, City Clerk

ATTEST:

By _____
Signature

Title _____

(Seal if bid is by a Corporation)

BID SCHEDULE

The following estimated quantities are given only as a basis for comparison of proposals and the award of the contract. The item cost shall reflect all labor, materials, and equipment necessary to furnish construct and install the item in accordance with these plans, specifications and manufacturer's instruction. For the proposal to be considered a valid bid, all bidders must submit with his base bid completed bid schedules.

RECONSTRUCT/REHABILITATE RUNWAY PHASE III

ITEM NO.	ITEM DESCRIPTION	UNIT	UNIT PRICE	QTY	TOTAL PRICE
M-100-3.1	MOBILIZATION (NOT TO EXCEED 5%)	LS	<u>5809.74</u>	1	<u>5809.74</u>
P-152-4.1	BORROW	CY	<u>23.25</u>	316	<u>7505.00</u>
P-152-4.2	UNSUITABLE MATERIAL	CY	<u>10.30</u>	391	<u>2446.76</u>
P-208-5.1	CRUSHED AGGREGATE BASE COURSE	CY	<u>157.87</u>	115	<u>18155.05</u>
P-401-8.1	BITUMINOUS SURFACE COURSE	TN	<u>194.93</u>	85	<u>16569.05</u>
P-620-5.1	RUNWAY AND TAXIWAY PAINTING WITH BEADS	SF	<u>1.57</u>	11,330	<u>17388.10</u>
P-620-5.2	TEMPORARY RUNWAY AND TAXIWAY PAINTING W/OUT BEADS	SF	<u>0.86</u>	6,500	<u>5590.00</u>
P-626-6.1	EMULSIFIED ASPHALT SLURRY SEAL SURFACE TREATMENT	SY	<u>3.33</u>	6,300	<u>20979.00</u>
SP4-3.1	OBLITERATION OF PAVEMENT MARKINGS	SF	<u>1.57</u>	10,200	<u>16014.00</u>
SP5-5.1	SEEDING	AC	<u>3448.00</u>	1	<u>3448.00</u>
SP6-4.1	PAVEMENT REMOVAL	SY	<u>2.70</u>	675	<u>1822.50</u>
BID TOTAL					<u>116,167.20</u>