City of Benson
City Council Communication

Regular Meeting **July 14, 2014**

To: Mayor and Council Agenda Item # 4

From: Megan Moreno, Finance Director

Subject:

Discussion and possible action regarding Resolution 19-2014 of the Mayor and Council of the City of Benson, Arizona, entering into a contract with Executech Utah, INC. for Information Technology Services.

Discussion:

The City issued a Request for Proposals for Information Technology Services at the request of the City Council. The submission deadline for responses was April 22, 2014. The City received two responses by the established deadline. Each proposal was reviewed and evaluated by a selection committee, established by the City Manager. Based on those evaluations, the committee is presenting its recommendation of Executech for the City's IT provider.

Executech came in with the lowest monthly cost at $5,800. This equates to $69,600 annually. The attached contract has an effective date of July 16, 2014.

Staff Recommendation:

Approval of Resolution 19-2014

RESOLUTION 19-2014

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ENTERING INTO A CONTRACT WITH EXECUTECH UTAH, INC. FOR INFORMATION TECHNOLOGY SERVICES

WHEREAS the City of Benson ("City") requires the services of a Contractor that is qualified to provide Information Technology support for the City's computer systems, including its networks and web-based applications; and

WHEREAS Executech Utah, Inc. is such a qualified Contractor that is willing to provide such services; and

WHEREAS, pursuant to the City's Request for Proposals made in accordance with applicable law(s), Executech Utah, Inc. submitted the Proposal most advantageous to the City.

NOW, THEREFORE, BE IT RESOLVED that the City of Benson hereby approves the agreement with Executech Utah, Inc. for Information Technology services, attached hereto as Exhibit "A", and the Mayor, City Clerk and City Attorney are 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 14th day of July, 2014.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MESCH, CLARK AND ROTHSCHILD, P.C.
By GARY J. COHEN
City's Attorney

EXHIBIT “A”

Professional Services Contract with Executech Utah, Inc.

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into between City of Benson, a body politic and corporate (the "City"), and Executech Utah, Inc., a Utah corporation (the "Contractor").

RECITALS

WHEREAS, City requires the services of a CONTRACTOR qualified to provide Information Technology support for the City's computer systems, including its networks and web-based applications; and,

WHEREAS, CONTRACTOR is qualified and willing to provide such services; and

WHEREAS, pursuant to the City's Request for Proposals for Information Technology Services, the CONTRACTOR submitted the Proposal most advantageous to the City.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I - TERM AND EXTENSION/RENEWAL

This Contract shall commence on July 16, 2014 and shall terminate on June 30, 2015 unless sooner terminated or further extended pursuant to the provisions of this Contract. The City shall have the option to extend this Contract for one (1) additional one-year periods or any portion thereof. Any modification or extension shall be by formal written amendment executed by the parties hereto.

ARTICLE II - SCOPE

CONTRACTOR shall perform the scope of services set forth in ¶ 3 of the City's Request for Proposals together with the services outlined in Contractor's April 21, 2014 letter. CONTRACTOR shall perform all its work in accordance with the terms of the contract and to the best of the CONTRACTOR'S ability. CONTRACTOR shall employ suitably-trained and skilled professional personnel to perform all consultant services under this Contract.

Any software Contractor licenses (or purchases) shall be titled in the City's name. At the termination of this Agreement, Contractor shall transfer any licenses improperly licensed to the City without charge.

ARTICLE III - PAYMENT

In consideration of the services specified in this Contract, the City agrees to pay CONTRACTOR a flat fee of $5,800 per month. Total payment for this Contract shall not exceed $69,600.

Contractor has advised the City that it is willing to renegotiate this pricing term after approximately four months under this agreement. Contractor therefore shall report to the City

within 100 days of the execution of this Agreement on the status of the City's computers, network, and online operations. The City therefore reserves the right to renegotiate Contractor's compensation, and may initiate those discussions within thirty days of receiving contractor's report; in the alternative, the City reserves the right to convert its relationship with Contractor into a month-to-month relationship in accord with the terms and conditions of this agreement. Should the City exercise the right to convert its relationship into a month-to-month relationship with Contractor, the total term of such agreement shall not exceed 24 months.

ARTICLE IV -INSURANCE

CONTRACTOR shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

a) Commercial General Liability in the amount of $1,000,000.00 combined, single limit Bodily Injury and Property Damage. City of Benson is to be named as an additional insured for all operations performed within the scope of the Agreement between City of Benson and Contractor;

b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Agreement with limits in the amount of $1,000,000.00 combined single limitor$1,000,000.00 Bodily Injury, $1,000,000.00 Property Damage;

c) If this Agreement involves professional services, professional liability insurance in the amount of $1,000,000.00; and,

d) If required by law, workers' compensation coverage including employees liability coverage. CONTRACTOR shall provide City with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

ARTICLE V -INDEMNIFICATION

CONTRACTOR shall indemnify, defend, and hold harmless City, its elected officials, officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto arising out of any act, omission, fault or negligence by the CONTRACTOR, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract. The amount and type of insurance requirements separately set forth in this agreement 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. Contractor's indemnification and defense duties shall survive the termination of this agreement.

ARTICLE VI -COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Cochise County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply but do not require an amendment.

ARTICLE VII -INDEPENDENT CONTRACTOR

The status of the CONTRACTOR shall be that of an independent contractor. Neither CONTRACTOR, nor CONTRACTOR's officers agents or employees shall be considered employees of City of Benson or be entitled to receive any employment-related fringe benefits under the City of Benson employment or merit system. CONTRACTOR shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold City harmless from any and all liability which City may incur because of CONTRACTOR's failure to pay such taxes. CONTRACTOR shall be solely responsible for program development and operation.

ARTICLE VIII -SUBCONTRACTOR

CONTRACTOR will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract shall create any obligation on the part of City to pay or see to the payment of any money due any subcontractor, except as may be required by law.

ARTICLE IX -ASSIGNMENT

CONTRACTOR shall not assign its rights to this Contract, in whole or in part, without prior written approval of the City. Approval may be withheld at the sole discretion of City, provided that such approval shall not be unreasonably withheld.

ARTICLE X -NON-DISCRIMINATION; ADA

CONTRACTOR shall not discriminate against any City employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out CONTRACTOR's duties pursuant to this Contract. CONTRACTOR shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Contract by reference as if set forth in full herein. CONTRACTOR further shall comply with all applicable provisions of the Americans

with Disabilities Act (Public Law 101336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

ARTICLE XI - AUTHORITY TO CONTRACT

Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that City does not have authority to enter into this Contract, City shall not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

ARTICLE XII - FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any 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 the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

ARTICLE XIII - TERMINATION; CANCELLATION

City reserves the right to terminate this Contract at any time and without cause by serving upon CONTRACTOR 30 days advance written notice of such intent to terminate. In the event of such termination, the City's only obligation to CONTRACTOR shall be payment for services rendered prior to the date of termination.

This Contract may be terminated at any time without advance notice and without further obligation to the City when the CONTRACTOR is found by City to be in default of any provision of this Contract.

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining City or other public entity obligations under this Contract. In the event of such termination, City shall have no further obligation to CONTRACTOR, other than to pay for services rendered prior to termination.

This Contract is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

ARTICLE XIV - NOTICE

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as follows:

CITY:

William Stephens
City of Benson
P.O. Box 2223
Benson AZ 85602
(520) 586-2245
www.cityofbenson.com

CONTRACTOR:

Executech Utah, Inc.
5429 East Mercer Lane
Scottsdale AZ 85254
(480) 447-8944
www.executech.com

c/o
Lex Watterson
lex@executech.com

ARTICLE XV - NON-EXCLUSIVE CONTRACT

CONTRACTOR understands that this Contract is nonexclusive and is for the sole convenience of City. The City reserves the right to obtain like services from other sources for any reason.

ARTICLE.XVI - OTHER DOCUMENTS

CONTRACTOR and City in entering into this Contract have relied upon information provided in CONTRACTOR's proposal. This document together with the City's Request for Proposal are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract or the Request for Proposal.

ARTICLE XVII - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE XVIII - SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE XIX - BOOKS AND RECORDS

CONTRACTOR shall keep and maintain proper and complete books, records and accounts, which shall be open at all reason able times for inspection and audit by duly authorized representatives of City.

In addition, CONTRACTOR shall retain all records relating to this contract at least 5 years after termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

ARTICLE XX - ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered, or extended only by a written amendment executed by the parties. Although the terms of this contract may vary from those contained in the Proposal or solicitation, the parties agree that all such variances were the product of negotiations following award.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date of the City's execution below.

CONTRACTOR

_____ DATE: 7/1/14

CITY OF BENSON

DATE: _____

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
Mesch, Clark & Rothschild, P.C.,
City Attorney, by GARY COHEN

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