City of Benson
City Council Communication

Regular Meeting **October 24, 2016**

To: Mayor and Council Agenda Item # 4

From: Dustin DeSpain, Finance Director

Subject:

Discussion and possible action regarding a contract with Prologic Technology Group, LLC, an Arizona limited liability company for Information Technology Services

Discussion:

Staff issued an RFP (Request for Proposals) for contracted services on our Information Technology Service. After review of several bids, Prologic was selected as the most advantageous for the City of Benson. They are based locally and have in the past provided interim services for use between contractors.

Staff Recommendation:

Approval of the contract with Prologic Technology Group, LLC, an Arizona limited liability company for Information Technology Services

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into between City of Benson, a body politic and corporate (the "City"), and Prologic Technology Group, LLC, an Arizona limited liability company (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 November 1, 2016 and shall terminate on October 31, 2018 unless sooner terminated or further extended pursuant to the provisions of this Contract. 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 Exhibit A, attached hereto. 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) Contractor obtains 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 monthly fee of $4,200, inclusive of all services listed in Contractor's scope. CONTRACTOR shall also be available to repair and/or replace computer and network equipment damaged due to inclement weather or other casualty losses at the rate of $80 per hour. Total payment for this Contract shall not exceed $50,400.

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 limit or $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:	CONTRACTOR:
City Manager, William Stephens	Prologic Technology Group, LLC
City of Benson	4633 E. Broadway Boulevard
P.O. Box 2223	www.prologictech.com
Benson AZ 85602	c/o Billy Coleman, Managing Director
(520) 586-2245	(520) 906-6123
www.cityofbenson.com	bcoleman@prologictech.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: _____

CITY OF BENSON

_____ DATE: _____

TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
Mesch Clark Rothschild
City Attorney, by GARY COHEN

	Participation if Boycott of Israel		State of Arizona State Procurement Office 100 N.15th Ave., Suite 201 Phoenix, AZ 85007
	Solicitation No.: 2016 - IT	PAGE 1	
	Description: IT Services	OF 1	

All materials submitted as part of a response to a solicitation are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract. Recently legislation has been enacted to prohibit the state from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, this form must be completed and returned with the response to the solicitation and any supporting information to assist the State in making its determination of compliance.

As defined by A.R.S. §35-393.01:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
   (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
   (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
   (a) together with other investors that are not subject to this section.
   (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

All offerors must select one of the following:

_____ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.

_____ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01. :

By submitting this response, proposer agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

Company Name	Signature of Person Authorized to Sign
Address	Printed Name
City State Zip	Title