

RESOLUTION 3-2014

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ENTERING INTO AN INDEPENDENT CONTRACTOR'S AGREEMENT WITH ARMSTRONG CONSULTANTS, INC. 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 Armstrong Consultants, Inc. is qualified for the job.

NOW, THEREFORE, BE IT RESOLVED that the City of Benson hereby approves the agreement with Armstrong Consultants, Inc. 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 COUNCIL OF THE CITY OF BENSON, ARIZONA, this 10th day of March, 2014.



TONEY D. KING, SR., Mayor

ATTEST:


VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

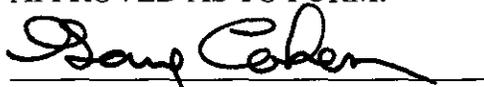

MESCH, CLARK AND ROTHSCHILD, P.C.
By Gary J. Cohen
City's Attorney

Exhibit "A"
Professional Services Agreement
between Armstrong Consultants, Inc. and the City of Benson

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
OWNER AND ENGINEER**

THIS IS AN AGREEMENT made as of March 11, 2014 between the **CITY OF BENSON, ARIZONA (OWNER)** and **ARMSTRONG CONSULTANTS, INC. (ENGINEER)**. OWNER intends to improve the **BENSON MUNICIPAL AIRPORT** (hereinafter called the **PROJECT**). The Project may include, but not be limited to, the following items:

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. Expand Apron
18. Provide Non FAA Funded Airport Planning, Engineering, Environmental and Miscellaneous Airport Consulting Services As May Be Required

The OWNER and the ENGINEER shall negotiate and approve separate written "Task Orders" which will be signed and approved by the parties for each individual task associated with this agreement.

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional services by ENGINEER and the payment for those services by OWNER as set forth herein and in the accompanying Task Orders.

ENGINEER shall provide professional services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER'S professional representative for the Project as set forth below and shall give professional consultation and advice to OWNER during the performance of services hereunder.

SECTION 1-- SERVICES OF ENGINEER

- 1.1 Preparation or revision of the State and Federal Aviation Administration (FAA) grant applications;
- 1.2 Consult/Coordinate with OWNER, Airport Users, FAA, State Aeronautics, Airport Staff and other interested parties;

- 1.3 Complete Design Engineering in accordance with the Task Orders entitled "Further Description of Professional Services";
- 1.4 Complete Construction Period Services in accordance with Task Orders entitled "Further Description of Professional Services";
- 1.5 Complete Planning and Environmental Services in accordance with Task Orders entitled "Further Description of Professional Services";
- 1.6 Perform miscellaneous Engineering services as requested by OWNER;
- 1.7 Perform all services in conformance with applicable rules and regulations of the FAA.

SECTION 2--OWNER'S RESPONSIBILITIES

OWNER shall:

- 2.1 Provide all criteria and full information as to OWNER'S requirements for the Project, including design objectives and constraints, and any budgetary limitations.
- 2.2 Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 2.3 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 2.4 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 2.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 2.6 Provide all accounting, legal, independent cost estimating and insurance counseling services as may be required for the Project.
- 2.7 Designate in writing a person to act as OWNER'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER'S services.
- 2.8 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services, or any defect in the work of Contractor(s).
- 2.9 Bear all costs incident to compliance with the requirements of this Section 2.

SECTION 3--PERIOD OF SERVICE

- 3.1** This Agreement will be valid for a period of five years from the date signed unless terminated in accordance with Section 7.9 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 its current budget, 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, Engineer and City shall have no further obligation to the other party other than for payment for services rendered prior to termination.

SECTION 4--PAYMENTS TO ENGINEER

- 4.1** OWNER shall pay ENGINEER for Services rendered as agreed by Task Orders entitled "Further Description of Professional Services". Engineer shall be compensated according to the hourly rates set forth in Exhibit "B" attached hereto and incorporated herein by this reference.
- 4.2** ENGINEER shall submit monthly statements. The statements will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt payments in response to ENGINEER'S monthly statements.
- 4.3** If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days following submittal of a statement in accordance with Article 4.2, the amounts due ENGINEER shall include a charge at the rate of 1 1/2% per month from said due date, and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.
- 4.4** 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.

SECTION 5--OPINIONS OF COST. OWNER acknowledges that ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions and that ENGINEER cannot and does not guarantee that bids will not vary from opinions of cost prepared by him, his development of an ENGINEER'S Estimate provided for herein shall nonetheless be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional, familiar with the construction industry.. OWNER further acknowledges that it may employ an independent cost estimator as provided in paragraph 2.6 if it wishes greater assurance as to Construction Cost.

SECTION 6--GENERAL CONSIDERATIONS

- 6.1** **Reuse of Documents.** All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting therefrom. Any such

verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

Notwithstanding anything provision in this Agreement to the contrary, all original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by Engineer 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 Engineer may retain and use copies thereof.

6.2 Release of AutoCAD Files. The ENGINEER may produce certain Documents in whole or in part on a computer-aided design system (CAD). If the OWNER requests electronic files of those Documents, the ENGINEER and the OWNER agree as follows:

6.2.1 The ENGINEER agrees to prepare and transmit electronic files containing Drawings as referenced above, such Drawings being devoid of certain title block information and professional seals.

6.2.2 OWNER acknowledges that the drawing information on the files may not contain all information resulting from addenda, change orders and field executed changes that have not been incorporated into final record drawings. Therefore, the OWNER understands that the use of the information provided is at his own risk. Accordingly, the OWNER agrees to indemnify and hold harmless the ENGINEER from all claims arising out of the use of the information contained in the files provided by the ENGINEER to the OWNER for any work other than on the Project, including defense costs.

6.3 Plan Room. ENGINEER may submit bid documents to plan room for bidding purposes, but ENGINEER has no control over the operation of the plan room. OWNER therefore agrees to indemnify and hold ENGINEER harmless against any claims of any nature by successful or unsuccessful bidders arising from or relating to the receipt of incomplete and / or erroneous bid information. OWNER further agrees to be solely responsible for costs arising from or relating to rebidding the construction work, should the need for rebidding be caused, in whole or in part, by the receipt of incomplete and / or erroneous bid information through the plan room.

6.4 Controlling Law. This Agreement is to be governed by the law of Arizona. Any changes in the governing laws, rules, and regulations during the term of Engineer's performance shall apply without any need to amend this Agreement.

6.5 Successors and Assigns.

6.5.1 OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

6.5.2 Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.5.1 and except to the extent that the effect of this limitation may be restricted

by law. 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 this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

6.6 Insurance. The ENGINEER shall acquire and maintain throughout the term of this Agreement the statutory workmen's compensation coverage, employer's liability, comprehensive general liability and professional liability insurance coverage as follows:

<u>Commercial General Liability Insurance</u>	\$1,000,000 – Bodily Injury Combined Single Limit \$1,000,000 Property Damage
Including:	
A. Products & Completed Operations	
B. Blanket Contractual	
C. Premises-Operations-Personal Injury	
<u>Professional Liability Insurance</u> (Errors and Omissions)	\$500,000 (Minimum) Combined Single Limit

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

6.7 Indemnification. To the fullest extent permitted by law, Engineer 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) Engineer's negligent performance of the terms of this Agreement, or (2) any of Engineer's errors or omissions. For purposes of this provision, the acts of Engineer's agents, employees, and consultants shall be considered as Engineer'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. Engineer'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 Engineer of any obligation under this Agreement. Engineer's obligations under this provision shall survive the termination of this Agreement.

6.8 Changes. All Change Orders, Contract Extensions, Supplemental Agreements and/or Amendments are subject to FAA and State Aeronautics approval prior to their execution.

6.9 Use of Subconsultants. Engineer 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 Engineer 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 Engineer's subconsultants.

SECTION 7--REQUIRED FEDERAL CLAUSES

7.1 Civil Rights Act of 1964, Title VI - 49 CFR Part 21

During the performance of this contract, the ENGINEER, for itself, its assignees and successors in interest (hereinafter referred to as the "ENGINEER") agrees as follows:

- 7.1.1 Compliance with Regulations.** The ENGINEER shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract.
- 7.1.2 Nondiscrimination.** The ENGINEER, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The ENGINEER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 7.1.3 Solicitations for Subcontracts, including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the ENGINEER for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the ENGINEER of the ENGINEER'S obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 7.1.4 Information and Reports.** The ENGINEER shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the OWNER or the FAA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of ENGINEER is in the exclusive possession of another who fails or refuses to furnish this information, the ENGINEER shall so certify to the OWNER or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 7.1.5 Sanctions for Noncompliance.** In the event of the ENGINEER'S noncompliance with the nondiscrimination provisions of this contract, the OWNER shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
- a. Withholding of payments to the ENGINEER under the contract until the ENGINEER complies, and/or,
 - b. Cancellation, termination or suspension of the contract, in whole or in part.

7.1.6 Incorporation of Provisions. The ENGINEER shall include the provisions of the preceding paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The ENGINEER shall take such action with respect to any subcontract or procurement as the OWNER or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event ENGINEER becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the ENGINEER may request the OWNER to enter into such litigation to protect the interests of the OWNER and, in addition, the ENGINEER may request the United States to enter into such litigation to protect the interests of the United States.

7.2 Airport and Airway Improvement Act of 1982, Section 520 General Civil Rights Provisions

The ENGINEER assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

7.3 DBE Required Statements - 49 CFR Part 26

Contract Assurance (§26.13) - The ENGINEER shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The ENGINEER shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the ENGINEER to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the OWNER deems appropriate.

Prompt Payment (§26.29) - The ENGINEER agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten days from the receipt of each payment the ENGINEER receives from the OWNER. The ENGINEER agrees further to return retainage payments to each subcontractor within ten days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the OWNER. This clause applies to both DBE and non-DBE subcontractors.

7.4 Lobbying and Influencing Federal Employees – 49 CFR Part 20, Appendix A

7.4.1 No Federal appropriated funds shall be paid, by or on behalf of the Engineer, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

7.4.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with any Federal grant, the Engineer shall complete and submit Standard Form – LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

7.5 Access to Records and Reports - 49 CFR Part 18.36 (i)

The ENGINEER shall maintain an acceptable cost accounting system. The ENGINEER agrees to provide the OWNER, the FAA and the Comptroller General of the United States or any of their authorized representatives access to any to any books, documents, papers and records of the ENGINEER which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The ENGINEER agrees to maintain all books, records and reports required under this contract for a period not less than three years after final payment is made and all pending matters are closed.

7.6 Breach of Contract Terms - 49 CFR Part 18.36(i)(1)

Any violation or breach of the terms of this contract on the part of the ENGINEER or their subcontractor may result in the suspension or termination of this contract or such other action which may be necessary to enforce the rights of the parties of this Agreement. The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

7.7 Rights to Inventions - 49 CFR Part 18.36(i)(8)

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the OWNER of the Federal grant under which this contract is executed.

7.8 Trade Restriction Clause - 49 CFR Part 30.13

The ENGINEER or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- 7.8.1** is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- 7.8.2** has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.
- 7.8.3** has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an ENGINEER or subcontractor who is unable to certify to the above. If the ENGINEER knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list the Federal Aviation Administration may direct through the OWNER, cancellation of the contract or subcontract for default at no cost to the Government.

Further, the ENGINEER agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in

all lower tier subcontracts. The ENGINEER may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The ENGINEER shall provide immediate written notice to the OWNER if the ENGINEER learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the ENGINEER, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the ENGINEER or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through the OWNER, cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of an ENGINEER is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

7.9 Termination of Contract - 49 CFR Part 18.36(i)(2)

- 7.9.1** Either the OWNER or ENGINEER may, by written notice, terminate this contract in whole or in part at any time, either for convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the OWNER and payment for work performed made to the ENGINEER.
- 7.9.2** If the termination is for the convenience of the OWNER, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- 7.9.3** If the termination is due to failure to fulfill the ENGINEER'S obligations, the OWNER may take over the work and prosecute the same to completion by contract or otherwise. In such case, the ENGINEER shall be liable to the OWNER for any additional cost occasioned to the OWNER thereby.
- 7.9.4** If, after notice of termination for failure to fulfill contract obligations, it is determined that the ENGINEER had not so failed, the termination shall be deemed to have been effected for the convenience of the OWNER. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
- 7.9.5** The rights and remedies of the OWNER provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

- 7.10 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - 49 CFR Part 29** The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. Where the bidder/offeror/ENGINEER or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

SECTION 8 –SPECIAL PROVISIONS, TASK ORDERS & SCHEDULES

- 8.1** This Agreement is subject to the following special provisions.
- 8.1.1** This Agreement is supported by an OWNER'S resolution stipulating that Armstrong Consultants, Inc. is authorized to perform the services as outlined in Task Orders to this contract.
 - 8.1.2** The OWNER'S obligation to make payment under this Agreement is wholly conditional on the funding of the project, including all Engineering services, by the U.S. Department of Transportation. This Agreement shall, upon such funding, be supported by an OWNER'S Resolution appropriating the funds to pay for the services to be rendered by ENGINEER. However, if the FAA is willing to fund the project and the OWNER decides to abandon or postpone the project, the monies owed the ENGINEER shall be due and payable by the OWNER within 30 days of the above decision.
 - 8.1.3** This Agreement includes the provisions of Arizona Executive Order 75-5, dated April 28, 1975.
 - 8.1.4** The duly authorized representatives of the State shall have access to any books, documents, papers and records of the ENGINEER that are in any way pertinent to this Agreement for a period of five years, in accordance with A.R.S. 35-214, for the purpose of making inspection, audits, examinations, excerpts and transcriptions.
 - 8.1.5** Reimbursement for ENGINEER's travel costs will be in accordance with the limits and rates of the ADOA Travel Policy.
- 8.2** This Agreement, together with the Task Orders and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings.
- 8.3** This Agreement and said Task Orders and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

SECTION 9 –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 Engineer 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 Engineer 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 Engineer that as marked as CONFIDENTIAL.

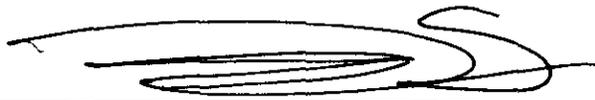
Notwithstanding the above provisions, in the event records are requested for public release pursuant to A.R.S. § 39-121 *et seq.*, City shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the Engineer of the request for release unless Engineer has, within the 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. Engineer 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 City be in any way financially responsible for any costs associated with securing such an order.

Engineer's obligations to indemnify, defend, and save the City harmless recited above apply to any action filed by Engineer or the requested party concerning Engineer's position that documents marked as CONFIDENTIAL should not be disclosed. Should Engineer 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.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

**OWNER:
CITY OF BENSON, ARIZONA**



Toney D. King, Sr., Mayor

**ENGINEER:
ARMSTRONG CONSULTANTS, INC.**



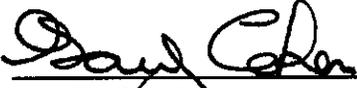
Dennis A. Corsi, President

ATTEST SIGNATURE:

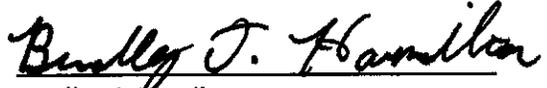


Vicki L. Vivian, CMC, City Clerk

Approved as to form:



Mesch, Clark & Rothschild, P.C.
By Gary J. Cohen, City's Attorney



Bradley J. Hamilton
City Engineer

20Q8937