

Purchasing Division
One City Plaza
Yuma, AZ 85364
(928) 373-5116 PHONE
(928) 373-5117 FAX
(928) 373-5149 TTY
www.YumaAz.gov

November 17, 2017

Maher Osman, PE
Consultant Engineering, Inc.
2855 S. 4th Avenue, Suite 111
Yuma, AZ 85364

RE: RFQ #2017-20000133 – Professional Engineering & Other Related Consultant Services

Dear Maher Osman:

Attached you will find the fully executed contract for the above referenced subject, which Yuma City Council awarded the contract on June 21, 2017, with the effective date of **November 15, 2017**.

Any projects relating to this contract, please indicate the RFQ number as shown above that it appears on the document, dated and signed on company letterhead.

Thank you for your interest in doing business with the City of Yuma. We look forward to a mutually beneficial contract and appreciate you continuing to bid with us. If you have questions concerning the contract, please feel free to contact me.

Sincerely,

Robin R. Wilson, CPPB
Purchasing & Contracts Manager

Enclosed: Contract Documents

c: File #2017-20000133



Purchasing Division
One City Plaza
Yuma, AZ 85364-1436
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November 7, 2017

Via e-mail: mosman@cei-az.com

Maher Osman, PE
Consultant Engineering, Inc.
2855 S. 4th Avenue, Suite 111
Yuma, AZ 85364

RE: RFQ #2017-20000133 – Professional Engineering & Other Related Consultant Services

Dear Maher Osman:

The Yuma City Council authorized the award of the above referenced project on June 21, 2017 and staff has accepted the fee schedule rates.

Attached you will find the approved services agreement ("Agreement"). Please print, sign two (2) complete originals of the Agreement and return both to me at the above address with your Certificates of Insurance and formal endorsements, as stated in the Agreement, no later than **November 15, 2017**.

By signing and returning the Agreement, you acknowledge that you have previously received copies of the following documents relating to **RFP #2017-20000133 – Professional Engineering & Other Related Consultant Services**:

1. Request for Qualifications
2. Addenda 1-2
3. Sample Contract
4. Contract
5. Proposal Response to the Solicitation dated May 1, 2017
6. Fee Proposal dated November 3, 2017

If there are any of the aforementioned items which you have **not** received, please contact me at once to receive a copy.


Please remember that the Agreement requires you to provide and maintain current certificates of insurance and formal endorsements referencing **RFP #2017-20000133 – Professional Engineering & Other Related Consultant Services** for the duration of the Agreement.

MAHER OSMAN
Printed Name of Signer


Signature

Nov. 9th 2017
Date

Sincerely,


Robin R. Wilson, CPPB
Purchasing & Contracts Manager

Copy: Bid File 2017-20000133

Return This Page to my attention with two signed contracts and the required insurance certificates.

2017 NOV 13 11:13:01



**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF YUMA
AND
CONSULTANT ENGINEERING, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of the Effective Date set forth below between the City of Yuma, an Arizona municipal corporation (the "City"), and **Consultant Engineering, Inc.** an Arizona Corporation (the "Consultant"). The City and the Consultant are sometimes referred to individually as the "Party" and collectively as the "Parties".

RECITALS

- A. The City issued a Request for Qualifications, **RFQ #2017-20000133 "Professional Engineering & Other Related Consultant Services"** (the "RFQ"), a copy of which is on file in the City Clerk's Office and incorporated herein by reference, seeking proposals from Consultants for **Professional Engineering & Other Related Consultant Services** (the "Services").
- B. The Consultant responded to the RFQ by submitting a proposal (the "Proposal"), attached hereto as Exhibit A and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant for the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Consultant hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the Effective Date set forth below and shall remain in full force and effect for one (1) year from the Effective Date (the "Initial Term"), unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for up to four (4) successive one-year terms (each, a "Renewal Term") unless terminated as otherwise provided in this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work.

This is an indefinite quantity and indefinite delivery order Agreement for Services, which shall only be provided when the City chooses to move forward with a pending project and proper authorization and documentation have been approved. For project(s) determined by the City to be appropriate for this Agreement, the Consultant shall provide the specific Services to the City as may be agreed upon between the Parties, in the form of a written invoice, quote, purchase order or other form of written acknowledgment describing the Services to be provided (each, a "Delivery Order"). Each Delivery Order shall (i) contain a reference to this Agreement and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Delivery Orders submitted without referencing this Agreement will be subject to rejection. Consultant acknowledges and agrees that Delivery Order(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement, other than City's project-specific requirements, are hereby expressly declared void and shall be of no force and effect. The City does not guarantee any minimum or maximum amount of Services will be requested under this Agreement.

3. Compensation. The City shall pay Consultant an amount not to exceed \$250,000.00 for each individual Delivery Order, and an annual aggregate amount not to exceed \$500,000.00 for Professional Engineering & Other Related Consultant Services (as described in the Scope of Work resulting in a Delivery Order) at the rates for Professional Engineering & Other Related Consultant Services, as set forth in the Fee Proposal, attached hereto as Exhibit C and incorporated herein by reference.
4. Payments. The City shall pay the Consultant monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.
5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the City pursuant to this Agreement shall be the property of the City.
6. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire City residents to fill vacant positions at all levels. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel possessing substantially equal ability and qualifications.
7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the City.
8. Licenses; Materials. Consultant shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Consultant. The City has no obligation to provide Consultant, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Consultant.
9. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.
10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend, and hold harmless the City and each council member, officer, director, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, fines, penalties, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively "Claims") to the extent that such Claims (or actions in respect thereof) are caused, in whole or in part, by the negligent acts, mistakes, errors, omissions, or recklessness or intentional misconduct of the Consultant, its officers, employees, agents, or any tier of subcontractor or person for which Consultant may be legally liable in connection with Consultant's work or services in the performance of this Agreement.

The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section 10.

11. Insurance.
11.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Arizona Revised Statutes ("A.R.S.") § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

B. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Consultant's insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Consultant shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFQ number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFQ number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - (a) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
 - (b) Auto Liability – Under ISO Form CA 20 48 or equivalent.
 - (c) Excess Liability – Follow Form to underlying insurance.
- (2) Consultant's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- (3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.
- (4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

A. Commercial General Liability. Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

E. Umbrella/Excess Liability. Consultant must carry Umbrella/Excess Liability insurance with an unimpaired limit of not less than \$2,000,000.00 per occurrence combined limit bodily injury and property damage, and applies in excess of the Commercial General Liability, Automobile Liability and Employer's Liability, as required above.

F. Additional Coverage. To the fullest extent permitted by law, if the Consultant maintains higher insurance limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limit maintained.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

12. Termination; Cancellation.

12.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Consultant of written notice by the City. Upon termination for convenience, Consultant shall be paid for all undisputed services performed to the termination date.

12.2 For Cause. If either Party fails to perform any obligation pursuant to this Agreement and such Party fails to cure its nonperformance within thirty (30) days after notice of nonperformance is given by the non-defaulting Party, such Party will be in default. In the event of such default, the non-defaulting Party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting Party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting Party immediately (A) provides written notice to the non-defaulting Party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed ninety (90) days. In the event of such termination for cause, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

12.3 Due to Work Stoppage. This Agreement may be terminated by the City upon thirty (30) days' written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

12.4 Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other Party to the Agreement in any capacity or a consultant to any other Party of the Agreement with respect to the subject matter of the Agreement.

12.5 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Consultant an amount equal to 150% of the gratuity.

12.6 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated

and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Consultant informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Consultant hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

13. Miscellaneous.

13.1 Independent Contractor. It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Consultant, its employees or subcontractors. The Consultant, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Consultant meets the requirements of its agreed Scope of Work as set forth in Section 2 above and Exhibit B. Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Consultant do not intend to nor will they combine business operations under this Agreement.

13.2 Applicable Law; Venue. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona or in the United States District Court for the District of Arizona, if, and only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

13.3 Laws and Regulations. Consultant shall comply with the Americans with Disabilities Act (ADA) and shall indemnify City for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. Consultant shall not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Agreement, and must comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964) and State Executive Order No. 2009-09. The Consultant shall not to participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law. The Consultant shall include similar requirements of all sub-Consultants in Agreements entered for performance of Consultant's obligations under this Agreement. Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations; (B) existing and future State and Federal laws; and (C) existing and future Occupational Safety and Health Administration standards. Consultant shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its performance under this Agreement.

13.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.

13.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

13.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

13.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

13.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Consultant without prior, written permission of the City, signed by the City Administrator. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

13.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other Party to furnish any of the material or services specified herein without the prior written and signed approval of the City. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Consultant.

13.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

13.11 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

13.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

13.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Consultant any amounts Consultant owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Consultant any amounts Consultant owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

13.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Yuma
Attn: City Administrator
One City Plaza
Yuma, Arizona 85364
928-373-5011

If to Consultant:
Consultant Engineering, Inc.
2855 S. 4th Avenue, Suite 111
Yuma, AZ 85364
480-258-4829

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the Party, (B) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

13.15 Force Majeure. The Parties shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence is presented to the City, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing.

13.16 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.

13.17 E-verify Requirements. To the extent applicable under Arizona Revised Statutes ("A.R.S.") § 41- 4401, the Consultant and its subcontractors warrant compliance, and are contractually obligated to comply, with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A) ("Immigration Warranty"). Consultant's or its subcontractor's failure to comply with Immigration

Warranty shall be deemed a material breach of this Agreement and may subject Consultant to penalties up to and including termination of this Agreement at the sole discretion of the City.

The City retains the legal right to inspect the papers of all Consultant personnel who provide services under this Agreement to ensure that Consultant or its subcontractors are complying with the Immigration Warranty. Consultant agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of Consultant and any subcontractor to ensure compliance with the Immigration Warranty. Consultant agrees to assist the City in regard to any random verification performed.

Neither Consultant nor any subcontractor will be deemed to have materially breached the Consultant Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).

13.18 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work, any City-approved Purchase Order, the Fee Proposal, the RFQ and the Consultant's Proposal, the documents shall govern in the order listed herein.

13.19 Non-Exclusive Agreement. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

13.20 Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the Parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

13.21 Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided, any consent to delay in Consultant's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.

13.22 Signatory Authority. Each person signing this Agreement represents that such person has the requisite authority to execute this Agreement on behalf of the entity the person represents and that all necessary formalities have been met.

13.23 Boycott of Israel. Pursuant to A.R.S. § 35-393.01, Consultant certifies that Consultant is not engaged in a boycott of Israel as of the effective date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.

[SIGNATURES ON FOLLOWING PAGES]

**CITY OF YUMA
CERTIFICATE OF VOTE**

(to be completed, signed and returned only if Consultant is a Corporation)

I, Steve L. Bruflat hereby certify that I am the duly qualified and acting Secretary of Consultant Engineering, Inc. and I further certify that a meeting of the Directors of said Company, duly called and held June 25, 2014, at which all Directors were present and voting, the following vote was unanimously passed:

VOTED: To authorize and empower Maher Osman to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: 

(Secretary of Corporation)

A True Copy:


(Notary Public)

My Commission Expires:
(Date)

5/12/20

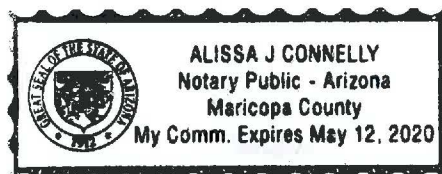


EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF YUMA
AND
CONSULTANT ENGINEERING, INC.

Consultant's Proposal

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF YUMA
AND
CONSULTANT ENGINEERING, INC.

Delivery Orders

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF YUMA
AND
CONSULTANT ENGINEERING, INC.

Fee Proposal



CITY OF YUMA
PROFESSIONAL ENGINEERING AND OTHER RELATED CONSULTANT SERVICES

Prime: Consultant Engineering, Inc.

Description: Construction Management and Inspection

RFQ: 2017-20000133

CLASSIFICATION	* HOURLY BILLING RATE
Senior Construction Manager / Resident Engineer, PE	\$205.00
Resident Engineer, PE	\$175.00
Project Supervisor/Chief Inspector	\$125.00
Sr. Construction Inspector	\$117.00
Construction Inspector	\$110.00
Electrical / Landscape Inspector	\$120.00
Registered Construction Landscape Architect	\$135.00
Field Testing Technician	\$110.00
Field Office Manager	\$95.00
Construction Office Technician	\$85.00
Scheduler	\$150.00
Estimator	\$150.00
Registered Land Surveyor	\$130.00

* Hourly billing rates include: overhead, profit and applicable vehicle, laptop, equipment, mileage and per diem

 Maher N. Osman, Sr. Vice President

 November 3, 2017