



**CITY OF EL MIRAGE
ON-CALL ENGINEERING
INSPECTION SERVICES – EM20-INSP01**

THIS CONTRACT is made and entered into this 19th day of May, 2020, (“Effective Date”), by and between the City of El Mirage, an Arizona municipal corporation (“City”), and Consultant Engineering, Inc., a(n) Arizona corporation (“Consultant”).

RECITALS

- A. The City of El Mirage is authorized and empowered by provisions of the City Code to execute contracts for professional services by and through its City Manager;
- B. The City desires to provide engineering construction inspection services on an on-call basis for various public and private projects throughout the City, as more fully described in the Scope of Work and referred to as the “Project;”
- C. The City requires professional services for this Project and desires to contract with the Consultant to provide these services.
- D. Consultant is duly qualified to perform the requested services.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. PROJECT DESCRIPTION

The City proposes to retain the Consultant for various projects requiring residential, commercial and industrial inspection services for the City of El Mirage Engineering Division on an as-needed, on-call basis. Requests for services will be issued in the form of a written notice to proceed initiated by the Engineering Division. Work will be performed within the City of El Mirage city limits.

2. SCOPE OF WORK

The Consultant must be able to provide full-service engineering inspection services. Adequate inspection services shall be provided to enforce compliance with the conditions of approval, City, State and Federal laws and the requirements set forth on the plans for which the permit was issued. When infractions are observed, inspectors shall write citations and/or stop work in progress depending on the nature of the infraction, document actions, and testify in court, if necessary. The Consultant shall perform the following functions:

- a. Inspect a variety of construction sites and projects by answering questions and providing information on codes, regulations and ordinances, resolving disputes, complaints and technical problems, attending pre-construction and job meetings, coordinating inspection activities, verifying

engineering code compliance, and maintaining records of inspections, meetings and construction activities

- b. Review plans and drawings by verifying compliance with engineering design standards, reviewing all permits, reviewing specifications, and ensuring specifications are followed
- c. Review traffic control measures and review information with contractors and subcontractors.
- d. Complete project closeouts by completing warranty walks for city projects and acceptance, testing documentation, and verifying and reviewing field and lab tests.
- e. Maintain as-built information by documenting and recording construction changes and maintaining all documents and related information
- f. Interpret codes and ordinances

3. PAYMENTS TO THE CONSULTANT

The Consultant's project fees under this Contract will be based on the following:

1. Inspections conducted by the Consultant: Hourly rates identified in the attached Exhibit A – Hourly Rate Schedule. These rates will be in effect for the duration of the Contract and project assignment term.

4. CONTRACT TERM

This Contract begins on the Effective Date and continues through October 31, 2020. The City may at its sole option and with the consent of the Consultant, extend the period of this Contract up to two additional years in one-year increments. The Consultant shall be notified in writing when the contract renewal has been approved within 30 days of contract expiration.

Either party has the right to cancel this contract at any time with a thirty 30-day written notice.

5. GUARANTEE

Consultant warrants that all services provided under this Contract shall conform to the specifications of this Contract.

6. APPLICABLE LAW

In the performance of this contract, Consultant shall abide by and conform to any and all laws of the United States, State of Arizona and City of El Mirage including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Contract. It is the policy of the City of El Mirage that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age or disability.

This Contract shall be governed by the City. City and Consultant shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this Contract or in statutes pertaining specifically to the City. This Contract shall be governed by the laws of the State of Arizona. Any lawsuit pertaining to this Contract may be brought only in courts in the State of Arizona.

This Contract is subject to the cancellation provisions of A.R.S. §38-511.

7. LEGAL REMEDIES

All claims and controversies shall be subject to resolution according to the terms of the City of El Mirage Procurement Code. In the event either party brings any action for any relief, declaratory or otherwise, arising

out of this Contract, 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 or arbitration board, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award.

8. ASSIGNMENT – DELEGATION

No right nor interest in this Contract nor delegation of any duty of Consultant shall be made without prior written permission of the City.

9. RIGHTS AND REMEDIES

No provision in this document or in the vendor's offer 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 contract. The failure of the City to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the City's acceptance of and payment for materials or services, shall not release the Consultant from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.

10. FORCE MAJEURE

Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God: acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

Force majeure shall not include the following occurrences:

- a. Late performance by a subconsultant unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within 48 hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *Certified-Return Receipt* and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

11. RIGHT TO ASSURANCE

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform they may demand that the other party give a written assurance of this intent to perform. In the event that a

demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

12. RIGHT TO AUDIT RECORDS

The City may, at reasonable times and places, audit the books and records of any Consultant as related to any contract held with the City.

13. LICENSES

Consultant shall have at the time of proposal submittal, and shall maintain in current status, all Federal, State and Local licenses and permits required for the operation of the business conducted by the Consultant as applicable to this Contract. The conclusion of the issuing authority in each case is to be deemed conclusive for the purposes of complying with this provision. Substantial compliance does not meet the minimum requirements of this or any provision hereof, or of any applicable law or other authority, and that strict compliance alone is adequate to meet those requirements, unless the City consents to such substantial compliance in writing at the time of bid submittal. The determination shall be made by the City.

14. PATENTS AND COPYRIGHTS

All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this Contract are the property of the City and shall not be used or released by the Consultant or any other person except with the prior written permission of the City.

15. ADVERTISING

Consultant shall not advertise or publish information concerning this Contract, without prior written consent of the City.

16. INDEPENDENT CONTRACTOR

a. General

- i. The Consultant acknowledges that all services provided under this Contract are being provided as an independent consultant, not as an employee or agent of the City of El Mirage.
- ii. Both parties agree that this Contract is nonexclusive and that Consultant is not prohibited from entering into other contracts nor prohibited from practicing their profession elsewhere.

b. Liability

The City of El Mirage shall not be liable for any acts of the Consultant outside the scope of authority granted under this Contract or as the result of Consultant's acts, errors, misconduct, negligence, omissions and intentional acts.

To the fullest extent permitted by law, the Consultant shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Consultant, its employees, agents, or any tier of subconsultants in the performance of this Contract. Consultant's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract

including any employee of the Consultant or any tier of subconsultant or any other person for whose acts, errors, mistakes, omissions, work or services the Consultant may be legally liable.

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

c. Other Benefits

The Consultant is an independent consultant; therefore, the City will not provide the Consultant with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Consultant is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Consultant.

17. PAYMENT TERMS

If payment terms are not indicated, terms of NET 30 days shall be applied by the City. Payment terms to apply after receipt of invoice or final acceptance of the products/services, whichever is later. Payment terms offering less than twenty days for payment will not be considered. A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or services and correct invoice.

18. PROVISIONS REQUIRED BY LAW

Each and every provision of law and any clause required by law to be in the Contract 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 contract will forthwith be physically amended to make such insertion or correction.

19. SEVERABILITY

The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

20. RELATIONSHIP TO PARTIES

It is clearly understood that each party shall 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 is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Consultant should make arrangements to directly pay such expenses, if any.

21. INTERPRETATION-PAROL EVIDENCE

This Contract represents the entire Contract of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by this Contract. 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 Contract. This Contract may not be changed, modified or rescinded except as provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this Contract shall be void and of no effect.

22. LOSSES AND DAMAGES

All loss or damage arising out of the nature of the work to be done or from the action of the elements or from any unforeseen circumstances in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in and/or during the prosecution of the work, or from any casualty whatsoever of every description, shall be sustained and borne by the Consultant at its own cost and expense.

23. CHARACTER AND STATUS OF WORKERS

Only skilled and certified workers shall be employed on work requiring special qualifications. When required by the Engineering Division, the Consultant shall discharge any person who is, in the opinion of the Engineering Division, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. The Consultant shall keep the City harmless from damages or claims for compensation that may occur in the enforcement of this section. The Consultant shall be responsible for assuring the legal working status of its employees and its subconsultant's employees.

24. INSURANCE

The Consultant shall secure and maintain at all times that this Contract is in effect, insurance coverage which shall include statutory workers' compensation, comprehensive general and automobile liability, owner's and Consultant's protective liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000) combined single limit. The owner's and Consultant's protective liability limits shall be no less than one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) policy aggregate naming the City as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1,000,000). In other than errors and omissions professional liability, City's and Consultant's protective liability and worker's compensation, the City of El Mirage shall be named as an additional insured.

All insurance coverage shall be written through a carrier licensed in Arizona, or an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A- or above with policies and forms satisfactory to the City.

The Consultant shall submit to the City a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph within ten (10) days of award of this Contract. City shall not issue a "Notice to Proceed" until after Consultant has submitted the certificate of insurance to City. Insurance evidenced by the certificate shall not expire or be canceled or materially changed without thirty (30) days prior written notice to the City, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer.

The insurance policies, except Workers' Compensation required by this Contract, shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

25. CONTRACT DEFAULT

The City, by written notice of default to the Consultant, may terminate the whole or any part of this Contract immediately in any one of the following circumstances:

- a. If the Consultant performs the services in a manner the City determines creates an unreasonable risk of harm or injury to the public or any property of the City; or
- b. If the Consultant fails to perform any of the other provisions of this Contract; and fails to remedy the situation within a period of five calendar days after receipt of notice.

26. TERMINATION FOR CONVENIENCE

The City reserves the right to terminate any contract, with or without cause, upon thirty days written notice. The City shall be responsible for the payment for services completed by Consultant prior to the effective date of the termination.

27. DELAY IN EXERCISING CONTRACT REMEDY

Failure or delay by the City to exercise any right, power, or privilege shall not be deemed a waiver thereof.

28. TAX EXEMPTION

The City is exempt from paying Federal Excise Taxes and shall furnish an exemption certificate upon request.

29. LATE SUBMISSION OF CLAIM

The City will not honor any invoices or claims which are tendered more than six months after the last item of the account accrued.

30. LIABILITY

Except for the negligence of the City, its officers, managers, employees, or agents, Consultant shall be liable to the City for any physical damage to City property or for the death of, or personal injury to, City personnel arising out of Consultant's occupancy, maintenance, repair, replacement, installation and/or any other work performed pursuant to the Contract. Consultant agrees to indemnify, defend and hold the City harmless from any claim or loss arising from such damage or injury.

31. CONTRACT SUBJECT TO APPROPRIATIONS

Payments by the City required under the terms of this Contract are subject to appropriation by the Council of the City of El Mirage. The obligation of City to make any payment pursuant to this Contract is a current expense of the City, payable exclusively from annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the fee amounts as set forth in this Contract during any succeeding fiscal year, City shall provide Consultant written notice that this Contract shall terminate at the end of the current fiscal year and that City shall be relieved of any subsequent obligation of payment under this Contract upon such termination and neither the City nor any official or employee of the City shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

32. COOPERATIVE USE OF CONTRACT

In addition to the City of El Mirage, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Consultant.

33. AUTHORITY AND APPROVALS

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and

empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

[Signature page follows]

City of El Mirage,
an Arizona municipal corporation

By: J. Crystal Dyches
Its: City Manager

ATTEST

City Clerk

APPROVED AS TO FORM:

City Attorney

a(n) _____



By: Barry Brown, PE

Its: President

