

## AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made on the 10th day of January, 2018, between the City of San Luis, Arizona, a municipal corporation of the State of Arizona, ("City"), and James Davey and Associates of Yuma, Arizona, having a principal being a registered engineer of the State of Arizona ("Engineer"):

Witness:

By this agreement the City hereby engages the services of Engineer for the following described project ("Project"): Merrill Avenue Improvements Phase II (CDBG Agreement No. 114-18).

This project is being undertaken by the City of San Luis, Arizona and is to implement such improvements under the general direction of the State of Arizona Department of Housing, Community Development Block Grant Program, (CDBG).

The accomplishment of the work and services described in this Agreement is necessary and essential to the public works improvement program of the City; and

The City desires to engage the Engineer to render professional engineering services for the project described in this Agreement, and the Engineer is willing to perform those services.

Therefore, in consideration of the premises and agreements contained here, the parties agree as follows:

### **ARTICLE I. DESCRIPTION OF PROJECT**

Merrill Avenue Improvements Phase II project includes replacing two sewer manholes and replacing approximately 160 feet of 8" sewer line and connection to existing services on San Felipe Street, Rio Sonora Street, and Independence Street. The roadway improvements include removing the existing 40' wide pavement section, recompacting the subgrade and repaving with a 3-1/2" AC over 8" ABC pavement section on Merrill Avenue between Villa and Aquila to Los Oros Street. As part of the roadway repaving, a 12-inch PVC storm drain bleed off line would be installed along Rio Sonora Street to Merrill Avenue, allowing retention basins along Rio Sonora Street to drain to the retention basin at the Zapata and Merrill intersection. In addition, the project will include adjusting existing water valves and sewer manholes with new frame and

covers; installation of survey monuments; street signing/stripping; miscellaneous concrete and asphalt removals; and other work incidental to the improvements.

## **ARTICLE II. ENGINEER'S SCOPE OF SERVICES**

The Engineer shall perform professional engineering services relevant to the Project in accordance with the terms and conditions set forth here, and as provided in Exhibit I, which is attached to this agreement and by this reference made a part of it.

## **ARTICLE III. CHANGES IN SCOPE**

If changes occur either in the Engineer's Scope of Services or the Description of the Project, a supplemental agreement may be negotiated at the request of either party. For the purposes of such a change, the Engineer will supply to City an estimate of the cost for such change in services or project, and the amount paid for such change in services or project by City shall not exceed said estimate.

## **ARTICLE IV. ENGINEER'S FEE**

### **A. Basic Fee**

1. As compensation for Basic Services as described in Paragraph A of Exhibit I of this Agreement, and for services required in the fulfillment of Article II, the Engineer shall be paid a "Basic Fee," which shall constitute full and complete payment for those services and all expenditures that may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall be a total lump sum amount \$53,505.00 based on:

- a. Design phase services for the Merrill Avenue Improvements Phase II will be provided for a cost of \$24,200.00.
- b. Construction inspection and administration of Merrill Avenue Improvements Phase II will be provided for a cost of \$29,305.00.

2. The parties agree that the Basic Fee is based upon the Scope of Services to be provided by the Engineer and is not necessarily related to the estimated construction cost of the Project. In the event that the estimated construction cost differs from the estimated construction cost, the Engineer's compensation will not be adjusted unless the Scope of Services to be provided by the Engineer changes, and the adjustment is agreed to by the parties in writing pursuant to the provisions of Article III above.

B. Payment Schedule for Basic Fee

1. The Basic Fee shall be paid in the following installments as the Engineer's work progresses:

- a. The fee of \$53,505.00 prorated in accordance with construction progress, except that five percent (5%) of the Basic Fee shall be payable only upon acceptance of the Project, and receipt of approved, reproducible Mylar "Record Drawings" of the Project plans prepared in a format prescribed by the Public Works Director.

C. Payment for Special Services.

As compensation for the services rendered by the Engineer as set forth in Paragraph B of Exhibit I of this Agreement entitled "Special Services," the City shall pay the Engineer such sums as may be agreed to by written amendment to this agreement. For such Special Services, Engineer agrees to furnish to City an estimate of cost for such special service. If the City agrees to have Engineer perform that service, Engineer agrees that the amount charged shall not exceed such estimate. Any agreement for such special service shall be as a supplemental agreement pursuant to Article III above.

D. Certified Cost Records.

The Engineer shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For those purposes, the books of account of the Engineer shall be subject to audit by the City. The Engineer shall complete work and cost records for all billings on those forms and in that manner as will be satisfactory to the City.

E. Gross Receipts Tax.

To the fees and other payments payable under this agreement, the Engineer may add any applicable gross receipts tax.

**ARTICLE V. OWNERSHIP OF PLANS AND DOCUMENTS: RECORDS**

A. The field notes, design notes, and logs of any wells drilled, as instruments of service, are and shall remain, the property of the Engineer, however, copies of such records shall be furnished to City upon its request. All drawings of the construction plans, including any "as built" drawings, shall be the property of City. The City agrees that Engineer shall retain any common law copyright and that the City will not allow copies to be reproduced in a manner inconsistent with said common law copyright. The City shall be furnished, at no additional cost, a disk

of all design drawings, including any “as built” construction drawings, with one set of reproducible mylars of the original drawings of the work.

B. The City shall make copies, for the use of the Engineer, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Engineer under this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.

C. The Engineer shall furnish to the City, copies of all maps, records, field notes, and soil tests that were developed in the course of work for the City and for which compensation has been received by the Engineer.

## **ARTICLE VI. CONTRACT TIMES**

The Engineer’s work for the Preliminary Design and Final Design Phases of the project will be completed and ready for final payment within 120 calendar days of the date in the Notice to Proceed. The Engineer’s work for the Construction Phase shall correspond to the time allowed for construction and shall be completed within 30 days of the Contractor completing work. No work shall commence before the Notice to Proceed is issued. Furthermore, this Contract does not take effect and is not valid unless and until it is accepted and approved by the City of San Luis.

## **ARTICLE VII. TERMINATION**

A. This Agreement may be terminated by either party upon fifteen (15) days' prior written notice to the other party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party.

B. This Agreement may be terminated by the City for its convenience upon twenty (20) days' prior written notice to the Engineer.

C. In the event of termination, as provided in this Article, the Engineer shall be paid as compensation in full for services performed to the date of that termination, an amount calculated in accordance with Article IV of this Agreement. Such amount shall be paid by the City upon the Engineer's delivering or otherwise making available to the City, all data, drawings, specifications, reports, estimates, summaries, and that other information and materials as may have been accumulated by the Engineer in performing the services included in this Agreement, whether completed or in progress.

## **ARTICLE VIII. ASSIGNMENT**

This Agreement shall not be assignable except at the written consent of the parties, and if so assigned, shall be binding upon the successors and assigns of the parties.

## **ARTICLE IX. CONFLICT OF INTEREST**

This agreement is subject to the Conflict of Interest Laws of the State of Arizona. It is subject to the cancellation provisions of A.R.S. §38-511.

## **ARTICLE X. INDEMNITY**

To the fullest extent permitted by law, the Engineer agrees to defend and indemnify the City and its officers, agents, and employees against any and all actions of any character brought because of any injury or damage sustained by any person, persons, or property resulting from any asserted negligent act, error, or omission of the Engineer or its agents or employees, in whole or in part. The indemnity required here shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

## **ARTICLE XI. INSURANCE**

- A. The Engineer agrees to procure and maintain at its expense until final payment by the City for services covered by this Agreement, insurance in the kinds and amounts provided below with insurance companies authorized to do business in the State of Arizona, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the work, the Engineer shall furnish to the City a certificate or certificates in form satisfactory to the City, showing that it has complied with this paragraph. All certificates shall provide that the policy shall not be changed or cancelled until forty-five days' prior written notice shall have been given to the City. Kinds and amounts of insurance required are as follows:

- a. Workmen's Compensation Insurance.

Workmen's Compensation Insurance for its employees in accordance with the provisions of the Workmen's Compensation Act of the State of Arizona.

- b. Liability Insurance.

Professional liability insurance in an amount not less than \$1,000,000.per claim and aggregate and automobile liability insurance in an amount not less than \$1,000,000.00, for injuries to any one person and \$1,000,000.00 on account of any one accident and in an amount of not less than \$500,000.00 for property damage to protect the Engineer and its agents from claims that

may arise from services rendered under this Agreement, whether those services are rendered by the Engineer or by any of its agents or by anyone employed by either.

**ARTICLE XII. DISCRIMINATION PROHIBITED**

In performing the services required under this agreement, the Engineer shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

**ARTICLE XIII. ADMINISTRATION OF AGREEMENT**

The City Manager, or authorized representative, shall administer this Agreement for the City.

In Witness, the parties have executed this Agreement as of the day and year written first above.

The City of San Luis

James Davey and Associates, Inc.

By: \_\_\_\_\_  
Tadeo Azael De La Hoya, City Manager

By: \_\_\_\_\_  
James Davey, Owner

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kay Macuil, City Attorney

## EXHIBIT I. DUTY OF ENGINEER

The Engineer shall render professional engineering services as described below:

### A. Basic Services

#### 1. Preliminary Design Phase and Final Design Phase

a. Confer with the City to review its objectives and requirements, inspect the site of the work, review the available material assembled by the City, and discuss design criteria and scheduling.

b. Plan and make the necessary reconnaissance surveys and other field investigations, if any are required.

c. Prepare, preliminary plans, preliminary estimate of cost, and outline specifications.

(2) Preliminary engineering studies, preliminary plans, preliminary estimates of cost, and outline specifications, shall be submitted for review and comment by the City.

(3) The Engineer shall not proceed with further performance of Basic Services until receiving a written order to do so from the City.

b. Confer with the City and other interested parties as required to review comments from the preliminary Design Phase submittal.

c. Prepare complete detailed working drawings and accompanying documents. All plans, specifications, documents, and layouts prepared by the Engineer shall conform to and comply with standard practice and design requirements of the City and applicable codes and ordinances. Drawings shall show existing utilities and their locations. Contract Documents shall indicate the sequence in which utilities are to be relocated, where applicable.

d. Prepare and submit a detailed Engineer's estimate of cost for the Project. The term "estimated construction cost" is defined as the total estimated cost for the construction of the Project assigned to the Engineer under this Agreement for design, excluding fees or other costs for engineering, lands, and rights-of-way, and for legal and administrative procedures.

- e. Detailed working drawings, specifications, and other Contract Documents to the City for review and comments.
  - f. Confer with the City and other interested parties or agencies as required to review comments from the preceding submission. Corrections and minor changes in the completed Contract Documents, which are required by the City, shall be made by the Engineer at no additional cost to the City.
  - g. After incorporation of comments, provide the City with the requested number of check sets of Contract Documents for the Project.
  - h. Upon final City approval of the contract documents and prior to the first Advertisement for Bids, provide the City with the requested number of sets of the approved Contract Documents for the Project
2. The Construction Phase
- a. Assist the City in obtaining construction bids. Tabulate bids and furnish a recommendation regarding the award of the construction contract.
  - b. Upon award of the construction contract, provide the City with the requested number of sets of formal Contract Documents for the Project, including plans and specifications.
  - c. Assist the City in the execution of formal Contract Documents for the construction contract.
  - d. Furnish consultation and advice during construction of the work.
  - e. Make periodic inspections and observation of the work in progress and provide inspection reports.
  - f. Make periodic estimates and certificates of payment at intervals required by the specifications of the Project.
  - g. Prepare reproducible “as built” drawings to reflect construction as actually accomplished.
  - h. Make final inspection and recommendation regarding acceptance of the work performed in the construction contract. In performing construction inspection and observation, it is expressly understood and agreed that the Engineer will exert all reasonable effort to insure compliance with requirements of the construction contract, but the Engineer does not guarantee the performance of the Contractor.

## B. Special Services

Only when directed in writing by the City, the Engineer shall furnish or acquire for the City requested professional and technical services not covered by the Basic Services.

## C. Performance

1. The Engineer agrees that, immediately upon the execution of this Agreement, it will enter upon the duties prescribed in this agreement, proceed with the work continuously, and make the various submittals on or before the schedule specified here. The City is not liable and will not pay the Engineer for any services rendered before written authorization is received by the Engineer.
2. The Engineer shall submit:
  - a. Final construction contract documents ready for bid.
  - b. "As built" drawings after satisfactory completion of the Project.
3. If any delay is caused to the Engineer by order of the City to change the design or plans; or by failure of the City to designate right-of-way, or to supply or cause to be supplied any data not otherwise available to the Engineer that is required in performing the work described; or by other delays due to causes entirely beyond the control of the Engineer; then, in that event, the time schedules will be adjusted equitably in writing, as mutually agreed between the City and the Engineer at the moment a cause for delay occurs.
4. Since the work of the Engineer must be coordinated with the activities of the City, the Engineer shall advise the City in advance, of all meetings and conferences between the Engineer and any governmental agency, political subdivision, or third party which is necessary to the performance of the work of the Engineer.

