

RESOLUTION NO. 2015-26

A RESOLUTION RENEWING THE ENGINEERING SERVICES AGREEMENT WITH SPINK ENGINEERING

WHEREAS, the City of Benton City is authorized by statute to secure engineering services for the benefit of the City; and

WHEREAS, in accordance with RCW 39.80.040, the City has previously established criteria and sought by competitive evaluation professional engineering services which were awarded to Spink Engineering under the terms of an Engineering Services Agreement dated August 21, 2005; and

WHEREAS, said Engineering Services Agreement provides for annual renewal, renewal which has been requested by Spink Engineering; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to renew the Engineering Services Agreement with Spink Engineering for the calendar year of 2016 according to the same terms and conditions of that Agreement of August 21, 2005, a copy of which is attached hereto and incorporated herein by this reference as Exhibit A.

ADOPTED this 15 day of December, 2015, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 15 day of December, 2015.

Resolution 2014-25 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 15 day of December, 2015.



Lloyd R. Carnahan
Mayor

Attest:



Stephanie Haug, CMC
City Clerk/Treasurer

Approved as to Form:



Kerr Law Group
City Attorney

**ENGINEERING SERVICES AGREEMENT
SPINK ENGINEERING**

THIS ENGINEERING SERVICES AGREEMENT is entered into this 21 day of August, 2005, by and between Spink Engineering, hereinafter referred to as "*Engineer*", and the City of Benton City, a Washington Municipal Corporation, whose place of business is located at 708 9th Street, Benton City, Washington, hereinafter referred to as "*Client*."

The purpose of this Agreement is to provide a master contract for professional services that will be required by the *Client* for design and construction projects, day-to-day services, and other miscellaneous engineering services, hereinafter called "Projects."

Engineer shall render its services in accordance with generally accepted professional practices. *Engineer* shall, to the best of its knowledge, information and belief, comply with applicable laws, ordinances, codes, rules, regulations and permits in effect on the date this Agreement is signed. Notwithstanding any other provision(s) herein, nothing in this Agreement shall be construed so as to raise the standard of care otherwise applicable to *Engineer's* services provided hereunder.

The *Client* is contracting with *Engineer* to provide engineering services for the *Client* in any individual phase or all phases of the Projects to which this Agreement applies, and *Engineer* will furnish engineering services for Projects and give advice to the *Client* during the performance of the services hereunder.

It is anticipated that the services furnished by *Engineer* to the *Client* will be performed under a series of Task Orders defining the services to be performed (detailed scope), time of performance and cost for each phase of the services. These Task Orders are anticipated to be specific in nature and to cover individual projects or phases of projects. In addition to Task Order work, *Engineer* shall be available to the *Client* on a day-to-day on-call basis. The designated *Client* contacts for Task Orders and day-to-day services are the Mayor or the City Clerk.

Client and *Engineer*, in consideration of the mutual promises contained herein, agree as follows:

1. Scope of Work

- A. Task Orders. Prior to commencement of any phase of the services, it will be necessary for *Client* and *Engineer* to mutually agree upon and execute a Task Order for the specified phase. Each Task Order will be numbered numerically and will contain an Exhibit "B" attached hereto. Execution of this Agreement and of a Task Order will authorize the *Engineer* to proceed with that phase of the services under this Agreement. The *Engineer* is not authorized and shall not be required to proceed with any phase of consulting work until the *Client* and the *Engineer* have mutually agreed upon and executed subsequent Task Orders, and

likewise, the *Client* shall have no responsibility to make any payments to the *Engineer* for any services rendered unless a Task Order is agreed upon and executed prior to the rendering of said services.

- B. On-Call Services. The *Client* may seek the services of the *Engineer* on an as needed basis during regular business hours Monday through Friday. *Engineer* shall keep track of time expended on on-call services in one-tenth (1/10) of an hour increments and bill *Client* monthly for such hourly charges in accordance with the fee schedule attached hereto.
- C. Time Period for Performance of Services. The *Engineer* will commence the services as described on approved Task Orders in accordance with the time schedule set forth thereon and will proceed with such services in a diligent manner to completion. The *Client* and *Engineer* will cooperate one with the other in establishing time schedules for services rendered.
- D. Attendance at City Meetings. *Engineer* will attend council meetings and other meetings such as but not limited to the Technical Advisory Committee (TAC) or Benton-Franklin Council of Governments (BFCOG), as requested by the Mayor. *Client* to endeavor as much as possible to schedule *Engineer* early on the Agenda. Cost to be One Hundred Dollars (\$100.00) per meeting.

2. Payments

Client agrees to pay *Engineer* as follows:

- A. Cost for Services. The *Client* shall pay to the *Engineer*:
 - 1. A lump sum for the services scoped in the Task Order (Exhibit B); or
 - 2. Hourly costs based upon a fee schedule (Exhibit C) to be attached to the Task Order and made a part thereof.
 - 3. Direct expenses (travel costs, prints, reproductions, postage, etc.) shall be billed at invoice cost.
- B. Time of Payments. *Engineer* will submit monthly invoices for services rendered. *Client* shall process said invoices at the regular end of month voucher meeting in accordance with *Client's* required statutory procedure. If the *Client* is not a governmental agency with regular official meetings, the invoices shall become due and payable thirty (30) days after date of invoice. Late charges may be charged interest at the rate of twelve percent (12%) annually.
- C. Payments in Event of Termination. In the event this Agreement is terminated,

Engineer will be compensated for services performed under this Agreement to the date of termination in accordance with the above provisions for payments to the *Engineer*.

3. Performance

- A. Subcontractor. *Engineer* may use the services of its independent contractors to perform portion(s) of its obligations under this Agreement and *Engineer* will be responsible for their services and job performed under this Agreement. Service performed by independent contractors will bill to *Engineer* and *Client* will pay *Engineer* the actual cost plus ten percent (10%).
- B. Standard of Performance. The *Engineer* shall perform its services in accordance with generally accepted standards for the profession in which the *Engineer* is a licensed practitioner. The *Engineer* shall be responsible for the professional and technical soundness and accuracy of all work and services furnished under this Contract.

4. Term of Contract

- A. Duration of Work. The *Engineer* agrees that work shall begin on the tasks described in Section 1 immediately upon execution of this Agreement. The parties agree that the term of this Agreement shall be for twelve (12) months from the date of execution and shall be renewable on an annual basis.
- B. Termination. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other.

5. Communications and Notices

Client: Mayor Bryan Robinson
City of Benton City
708 9th Street
PO Box 70
Benton City, WA 99320
(509) 588-3322

Engineer: Robert Spink
SPINK ENGINEERING
601 Knight Street
Richland WA 99352
(509) 946-1581

6. Hold Harmless

It is further agreed that *Engineer* shall defend, indemnify, and hold the *Client*, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the negligent performance of the contract, except for injuries and damages caused by the sole negligence of the *Client*.

7. **Relationship of Parties**

The parties intend that an independent contractor-client relationship will be created by this Agreement. No employee, agent, representative or subcontractor of the *Engineer* shall be or shall be deemed to be the employee, agent representative or subcontractor of the *Client*. None of the benefits provided by the *Client* to its employees, including, but not limited to, compensation, insurance and unemployment insurance are available from the *Client* to the employees, agents, representatives or subcontractors of the *Engineer*. On or before the effective date of this Agreement, *Engineer* shall file, maintain and/or open all necessary records with the Internal Revenue Service and the State of Washington, as the same are required by RCW 51.08.195 in order to establish *Engineer's* status as an independent contractor.

Engineer shall be solely and entirely responsible for its acts and for the acts of *Engineer's* agents, employees, representatives and subcontractors during the performance of this Agreement. The *Client* may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the *Engineer* performs hereunder.

8. **Documents**

All drawings, specifications or studies prepared by the *Engineer* pursuant to this Agreement shall be the property of the *Client* and in the event of termination shall be delivered to the *Client* forthwith with no extra charges.

9. **Personal Services**

The *Engineer's* services rendered herein are considered to be the personal services of the *Engineer* and this Agreement may not be assigned or transferred to any other party. The *Engineer* may, however, employ other parties or entities it deems necessary or proper for any part of the work required to be performed under the terms of this Agreement, provided that no additional cost or expense to the *Client*, other than the *Engineer's* costs as outlined above.

10. **Discrimination**

In the hiring of employees for the performance of the work in this Agreement or any subcontract hereunder, the *Engineer*, its subcontractors, or any person acting on behalf of such *Engineer* or subcontractor shall not, by reason of race, religion, color, age, sex, national origin or the presence of any sensory, mental or physical handicap discriminate against any person who is qualified and available to perform the work to which the employment relates.

11. Indemnification

The *Engineer* will indemnify and hold harmless the *Client*, its officers, agents and employees, from and against all loss, liability or claims caused by the sole negligence of the *Engineer*, its agents, subcontractors or employees, in the performance of this Agreement, including claims by *Engineer's* own employees to which *Engineer* may otherwise be immune under Title 51, RCW. Such indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination or institution of any litigation.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the *Engineer* and the *Client*, its officers, employees, agents or representatives, *Engineer's* liability hereunder shall only be to the extent of *Engineer's* negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes *Engineer's* waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. The parties have mutually negotiated this waiver.

12. Insurance

At all times during the term of this Agreement, the *Engineer* shall, at its own cost, maintain the following insurance:

- A. Workers Compensation Insurance in accordance with the laws of the State of Washington and the laws of such other jurisdictions as may apply.
- B. Comprehensive General Liability Insurance, including vehicle liability, for bodily injury, including accidental death, in an amount of not less than \$1,000,000 for the death or injury to any one person and \$1,000,000 for death or injury to two or more persons in any one occurrence, and property damage insurance in an amount not less than \$1,000,000 for each occurrence.
- C. Professional Liability Insurance (Errors and Omissions, on a claims-made basis) consisting of \$500,000 per claim and \$1,000,000 annual aggregate.
- D. *Engineer's* insurance coverage shall be primary as respects the *Client*, its officers, officials, employees agents, representatives or volunteers. Any deductibles or

self-insured retentions must be declared to and approved by the *Client*. At the option of the *Client*, the insurer shall reduce or eliminate such deductibles and/or self-insured retentions shall not apply to the *Engineer's* liability to the *Client* and shall be the sole responsibility of the *Engineer*. Any insurance maintained by the *Client* shall be in excess of the *Engineer's* insurance and shall not contribute with it.

- E. *Engineer* agrees to provide the *Client* with certificates of insurance evidencing the required coverage before execution of this Agreement. Each insurance policy required by this clause shall be written on an "occurrence form" for general liability and automobile insurance policies and "per claim form" for professional liability insurance and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to the *Client*. *Client* reserves the right to require complete, certified copies of all required insurance policies, at any time.

13. **Governing Law**

This Agreement shall be governed by the laws of the State of Washington and the venue for any action herein shall be in the Superior Court of Benton County, Washington.

14. **Enforcement**

In the event suit or action is instituted by either party to enforce any of the terms or conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees in such suit or action in both trial and appellate courts.

15. **Entire Agreement**

This written terms and provisions of this Agreement as Exhibit A, together with Exhibit B and C attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement. The entire Agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto.

16. **Modification**

No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the *Client* and *Engineer*.

17. **Assignment**

