

RESOLUTION NO. 2018-32

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN AND ENTER INTO 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. 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 execute and enter into the Engineering Services Agreement with Spink Engineering for the calendar years of 2019 and 2020, a copy of which is attached hereto and incorporated herein by reference as Exhibit A.

ADOPTED this 18 day of December, 2018, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 18 day of December, 2018.

Resolution 2018-32 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 18 day of December, 2018.




Linda Lehman, Mayor

Attest:



Stephanie Haug, MMC
City Clerk-Treasurer

Approved as to Form:



Kerr Ferguson Law, PLLC
City Attorney

**ENGINEERING SERVICES AGREEMENT
BETWEEN
SPINK ENGINEERING AND CITY OF BENTON CITY**

THIS ENGINEERING SERVICES AGREEMENT is entered into this ____ day of December, 2018, 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 1009 Dale Avenue, Suite A and B, Benton City, Washington, hereinafter referred to as "*City*."

The purpose of this Agreement is to provide a master contract for professional services that will be required by the *City* 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 *City* is contracting with *Engineer* to provide engineering services for the *City* 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 *City* during the performance of the services hereunder.

It is anticipated that the services furnished by *Engineer* to the *City* 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 *City* on a day-to-day/on-call basis. The designated *City* contacts for Task Orders and day-to day services are the Mayor or the Maintenance Supervisor.

City 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 *City* 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 "A" attached thereto. 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 *City* and the *Engineer* have mutually agreed upon and executed subsequent Task Orders, and likewise, the *City* 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 *City* 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 *City* 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 or as amended, and will proceed with such services in a diligent manner to completion. The *City* 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. The *City* will endeavor as much as possible to schedule *Engineer* early on the Agenda. Cost to be One Hundred Dollars (\$100.00) per meeting.

2. Payments.

City agrees to pay *Engineer* as follows:

- A. Cost for Services. The *City* shall pay to the *Engineer*:
 - 1) A lump sum for the services scoped in the Task Order (Exhibit A); or
 - 2) Hourly costs based upon a fee schedule (Exhibit B) 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. *City* shall process said invoices at the regular end of voucher meeting in accordance with *City's* required statutory procedure. 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 jobs performed under this Agreement. Service performed by independent contractors will bill to *Engineer* and *City* 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 twenty-four (24) months from the date of execution and shall be renewable on a biennial 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.

City: Mayor Linda Lehman
CITY OF BENTON CITY
1009 Dale Avenue, Suite A and B
PO Box 70
Benton City, WA 99320
(509) 588-3322
E-mail: llehman@ci.benton-city.wa.us

Engineer: Alan Rainey
SPINK ENGINEERING
1045 Jadwin Avenue, Suite B
Richland WA 99352
(509) 946-1581
E-Mail: alan@spinkeng.com

6. **Hold Harmless.** It is further agreed that *Engineer* shall defend, indemnify, and hold the *City*, 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 *City*.
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 *City*. None of the benefits provided by the *City* to its employees, including, but not limited to, compensation, insurance and unemployment insurance are available from the *City* 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 *City* 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 *City* and in the event of termination, shall be delivered to the *City* forthwith.
9. **Public Records.**
 - A. *Engineer* acknowledges that the *City* is an agency subject to Chapter 42.56 RCW "Public Records Act." All preliminary drafts or notes prepared or gathered by the *Engineer*, and recommendations of the *Engineer* are exempt prior to the acceptance by the *City* or its prior public citation by the *City* in connection with *City* action.
 - B. If the *Engineer* becomes a custodian of public records of the *City* and request for such records is received by the *City*, the *Engineer* shall respond to the request by the *City* for such records within five (5) business days by either providing the records, or by identifying in writing the additional time necessary to provide the records with a description of the reasons why additional time is needed. Such additional time shall not exceed twenty (20) working days unless extraordinary good cause is shown.

B. Minimum Scope of Insurance. *Engineer* shall obtain insurance of the types described below:

- 1) Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 2) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The *City* shall be named as an additional insured under the *Engineer's* Commercial General Liability insurance policy with respect to the work performed for the *City* using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
- 3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- 4) Professional Liability insurance appropriate to the *Engineer's* profession.

Any coverage written on a "claims made" basis shall include at least three years of prior acts coverage.

C. Minimum Amounts of Insurance. *Engineer* shall maintain the following insurance limits:

- 1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- 2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- 3) Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit.

D. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

C. In the event the City receives a public records request for protected work product of the *Engineer* within its possession, the City shall, prior to the release of any protected work product or as a result of a public records request or subpoena, provide *Engineer* at least ten (10) business days prior written notice of the pending release and to reasonably cooperate with any legal action which may be initiated by the *Engineer* to enjoin or otherwise prevent such release.

10. **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. Pursuant to the terms of this Agreement, the *Engineer* may 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.

11. **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.

12. **Indemnification.** The *Engineer* will indemnify and hold harmless the *City*, 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 *City*, 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.

13. **Insurance.** The *Engineer* shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the *Engineer*, its agents, representatives, or employees.


A. **No Limitation.** *Engineer's* maintenance of insurance as required by the agreement shall not be construed to limit the liability of the *Engineer* to the coverage provided by such insurance, or otherwise limit the *City's* recourse to any remedy available at law or in equity.

- 1) The *Engineer's* insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the *City*.
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- F. Verification of Coverage. *Engineer* shall furnish the *City* with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the *Engineer* before commencement of the work.
14. 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.
15. Dispute Resolution. In the event of a dispute regarding the enforcement, breach, default, or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with both parties waiving the right of a jury trial upon trial de novo, with venue placed in Benton County, Washington. The substantially prevailing party shall be entitled to its reasonable attorney fees and costs as additional award and judgment against the other.
16. Entire Agreement. The written terms and provisions of this Agreement, together with Exhibits A and B 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.
17. 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 *City* and *Engineer*.
18. Title VI of the Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

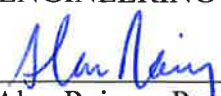
19. **Section 109 of the Housing and Community Development Act Of 1974, as Amended.** No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
20. **Public Law 101-336, Americans with Disabilities Act of 1990.** Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
21. **Age Discrimination Act of 1975, as Amended.** No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance. (42 U.S.C. 610 et. seq.)
22. **Section 504 of the Rehabilitation Act of 1973, as Amended.** No otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funds. (29 U.S.C. 794)
23. **Conflict of Interest Provision.** The *Engineer* covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The *Engineer* further covenants that in the performance of this contract, no person having such interest shall be employed.
24. **Assignment.** Any assignment of this Agreement by the *Engineer* without the written consent of the *City* shall be void.

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

CITY OF BENTON CITY

By: 
Linda Lehman, Mayor

SPINK ENGINEERING

By: 
Alan Rainey, President

ATTEST:


Stephanie Haug, MMC
City Clerk-Treasurer

APPROVED AS TO FORM:



KERR FERGUSON LAW, PLLC, City Attorney


STATE OF WASHINGTON)

: ss.

County of Benton)

On this day personally appeared before me LINDA LEHMAN, Mayor of the City of Benton City, to be known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 18th day of December, 2018.



Paula Kauer
 Print Name: Paula Kauer
 NOTARY PUBLIC in and for the State of Washington
 Residing at: Benton City, WA
 My Commission Expires: 9/5/2021


STATE OF WASHINGTON)

: ss.

County of Benton)

On this day personally appeared before me ALAN RAINEY, President of Spink Engineering, to be known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 18th day of December, 2018.



Paula Kauer
 Print Name: Paula Kauer
 NOTARY PUBLIC in and for the State of Washington
 Residing at: Benton City, WA
 My Commission Expires: 9/5/2021



1045 Jadwin Ave. Suite B ▪ 509.946.1581 ▪ Richland, WA 99352 ▪ www.spinkeng.com

City of Benton City
Engineering Services Agreement
TASK ORDER NO. _____ (Year-#)

PROJECT: (Name) _____

Submitted to: _____
Mayor _____
City of Benton City _____

Reference: "2019-2020 Engineering Services Agreement " between City of Benton City (City) and Spink Engineering (Engineer), City Resolution NO. 2018 - #.

Upon execution of this Task Order by the City and the Engineer in the space provided below, this Task Order will serve as authorization for the Engineer to carry out and complete the services set forth below in accordance with the referenced agreement between the City and Engineer.

1. Scope of Services:
(Define Scope)
2. Time for Performance of Services:
(Define Schedule)
3. Fees for Services: SPINK ENGINEERING shall be paid on a "Time-plus-expense" basis for the performance of services under this agreement using the rates indicated in the attached fee schedule, dated January 1, 2017, included as part of this agreement.

The maximum compensation shall be _____ (\$ _____), or such greater amounts when authorized by written notice from the Owner.

ENGINEER:
Spink Engineering, LLC

CITY:
City of Benton City

By Alan Rainey _____

By: Linda Lehman _____

Signed: _____

Signed: _____

Title: President _____

Title: Mayor _____

Date: _____

Date: _____

(Authorization Date)



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Effective January 1, 2017

FEE SCHEDULE

Principal Engineer	\$105/hour
Professional Land Surveyor	\$105/hour
Project Engineer II	\$100/hour
Design Engineer	\$95/hour
Engineering Technician	\$95/hour
CAD Draftsman	\$85/hour
Engineering Intern	\$45/hour
Secretarial/Clerical	\$30/hour
Mileage Rate	\$0.55/mile