

# COUNCIL DECISION REQUEST

SUBJECT: Mud Springs Road Biological Assessment and Evaluation

MEETING DATE: 11-16-06

CSP ITEM: Yes  No  KRA#

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: LaRon G. Garrett, Public Works

AMOUNT BUDGETED: \$ 625,000

SUBMITTAL TO AGENDA  
APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: \$ 6,200.00

CONT. FUNDING REQUIRED: \$ 0

EXHIBITS (If Applicable, To Be Attached): Standard Contract, Scope of Services, and Fee

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## RECOMMENDED MOTION

I move to approve the Mud Springs Road Biological Assessment and Evaluation contract with SWCA Environmental Consultants for a fee of \$6,200.00 and authorize the Mayor to sign all necessary Contract Documents.

## SUMMARY OF THE BASIS FOR RECOMMENDED MOTION:

At the September 7, 2006 Town Council Meeting approval was given to move forward with a redesign of Mud Springs Road Phase 1. This project will construct S. Mud Springs Road from the end of the existing pavement north of Frontier Elementary School to Granite Dells Road.

This project was originally designed in 1999. A portion of this project includes obtaining a roadway easement from the U. S. Forest Service. The majority of the right of way clearance was performed in 1999 and 2000. However, a Biological Assessment and Evaluation was not done at that time. In order to get final approval from the Forest Service for this easement, we now need to do the Biological Assessment and Evaluation. SWCA Environmental Consultants is an environmental firm that is working in the area with the Forest Service on other roadway easements. They come highly recommended and are very capable to do this evaluation.

Attached is a copy of our standard engineering contract and their Scope of Services. The fee to perform this assessment and evaluation is \$6,200.00. Staff recommends approval of this Scope of Services and Contract.

NOV 16 2006 L.3\*

# ***COUNCIL DECISION REQUEST***

**PROS:** This will allow the construction of Mud Springs Road from Frontier Elementary School to Granite Dells Drive to proceed.

**CONS:** None

**PUBLIC INPUT (if any):** None

**BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):** Recommended as the No. 1 priority of the Surface Transportation Advisory Committee.

**AGREEMENT  
BETWEEN SWCA ENVIRONMENTAL CONSULTANTS.  
AND THE TOWN OF PAYSON  
FOR PROFESSIONAL SERVICES IN CONNECTION WITH  
THE MUD SPRINGS ROAD BIOLOGICAL ASSESSMENT AND EVALUATION**

**THIS AGREEMENT** entered into this \_\_\_ day of \_\_\_\_\_, 2006 by and between SWCA Environmental Consultants, 2120 N. Central Avenue, Ste. 130, Phoenix, AZ 85004 (hereinafter referred to as the "Engineers and Architects" or "E/A") and the Town of Payson, a municipal corporation, located at 303 North Beeline Highway, Payson, Arizona 85541 (hereinafter referred to as "Client").

**RECITALS**

- A. Client desires to engage E/A to provide professional services; and
- B. Client finds that the proposed Scope of Services and terms of this Agreement are acceptable; and
- C. E/A desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth.

**NOW, THEREFORE**, based upon the mutual promises, covenants and conditions herein contained, the Parties do hereby agree as follows:

Section 1. Terms and Conditions

- A. Employment of the E/A. Client hereby engages E/A and E/A hereby agrees to perform the professional services as set forth herein.
- B. Scope of Services. E/A shall perform, in a proper and professional manner, the services set forth in the Scope of Services, marked Attachment "A", attached hereto, and by this reference incorporated herein as though set forth in full at this point. The work is generally described as:  
  
Provide a Biological Assessment and Evaluation for the Mud Springs Road Project.
- C. Time for Completion. The professional engineering report for the Biological Assessment and Evaluation for the Mud Springs Road Project as defined in Attachment "A", Scope of Services, shall be completed within 45 calendar days from date of execution of this contract.
- D. Extra Services. E/A shall provide extra services, not specifically called for in Attachment "A", Scope of Services, upon request or authorization of the Client at a fee to be determined at the time of the request. However, it is the intent that the Scope of Services,

with modifications by the E/A in the Special Provisions, if any, is complete and sufficient to accomplish the purposes of this Agreement.

E. Changes. If Client has requested modifications or changes in the extent of the Project, the time of performance of the services of E/A and the compensation therefor shall be adjusted appropriately and shall be incorporated in written amendments to this Agreement. Notwithstanding the foregoing, E/A shall perform no modification, changes or additional work, except as and until authorized in writing by Client to do so.

F. Fees. Client shall pay E/A, for the services set forth in Attachment "A", Scope of Services, a lump sum fixed fee of Six Thousand, Two Hundred Dollars and NO/100 (\$6,200.00).

G. Payment. E/A will submit to Client monthly invoices based on a percentage of work completed along with all reimbursable expenses incurred. Client will be responsible for paying the invoice in full within thirty (30) days of receipt. If Client fails to make any payment due E/A for services performed as set forth in Attachment "A", Scope of Services, within thirty (30) days after receipt of E/A's bill therefor the amounts due E/A shall include a charge at the rate of 1.50% per month from said day; and in addition E/A may suspend services under this Agreement until it has been paid in full all amounts due it for services and expenses. E/A shall be entitled to actual costs for remobilizing on any work suspended for thirty (30) days or more on account of non-payment or a substantial portion of the fee within the time prescribed in this Agreement.

H. Reimbursables. Unless otherwise stated in Attachment "A", Scope of Services, charges for out-of-pocket expenses not directly furnished by E/A will be paid by Client at a rate of 1.10 times the cost of such expense, up to a maximum of Five Hundred Dollars, excluding subconsultants, in addition to the amount set forth in paragraph 2 (F) herein above. E/A shall not be entitled for payment for printing or copying that occurs during the normal course of work required to accomplish the Scope of Services, except as authorized by the Client. Printing, binding, copying and deliveries of inspection reports, field notes and record drawings for the Client shall not be considered reimbursable.

I. Ownership and Re-Use of Documents. All documents, including original drawings, estimates, specifications, field notes, inspection reports, testing results, record drawings and data are and shall be the property of the Client, and shall be provided to the Client upon request during the term of this Agreement, and without demand at the conclusion of this Agreement. Client will not reuse the documents for any other project unless E/A has given written authorization to do so.

J. Delays Beyond the Control of the E/A. It is agreed that events which are beyond the control of the E/A may occur which may delay the performance of the Scope of Services of this Agreement. In the event that the performance of the Scope of Services by the E/A is delayed beyond its control, the E/A shall notify, in writing, the Client of such delay and the reason therefor, and Client shall extend the time of performance appropriately.

K. Liability of E/A. E/A shall be liable only for damage caused by negligence of it, its employees, sub-consultants or subcontractors. E/A shall notify Client of the engagement of any and all subcontractors or consultants, and client shall have sufficient and adequate opportunity to review the qualifications of such subcontractors or consultants, and shall have the right to approve or disapprove their engagement. Client requires subcontractors or consultants of the E/A shall provide appropriate certificates of insurance to the client prior to their performing of any work relating to this Agreement.

L. Problems. Any problems relating to the services provided herein are to be brought to the attention of E/A as soon as encountered and, if possible, before E/A incurs any obligations. E/A reserves the sole right to correct any errors it is responsible for, including, but not limited to, the selection of a subcontractor or sub-consultant and the negotiation of fees.

M. Indemnification. To the fullest extent permitted by law, the E/A shall defend, indemnify and hold harmless the Town of Payson, its agents, officers, officials and employees from and against all tortuous 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 negligent acts, errors, mistakes or omissions of the E/A, its agents, employees, or any tier of E/A's sub-consultants in the performance of this Contract. E/A's duty to defend, hold harmless and indemnify the Town of Payson, its agents, officers, officials and employees shall arise in connection with any tortuous 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 E/A's negligent acts errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the E/A, any tier of E/A's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the E/A may be legally liable.

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

N. Insurance. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the Town of Payson, constitute a material breach of this Contract.

The E/A's insurance shall be primary insurance as respects to the Town of Payson, and any insurance or self-insurance maintained by the Town of Payson shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the Town of Payson.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Town of Payson, its agents, officers, officials and employees for any claims arising out of the E/A's negligent acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Town of Payson under such policies. The E/A shall be solely responsible for the deductible and/or self insured retention and the Town of Payson, at its option, may require the E/A to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the Town of Payson, its agents, officers, officials and employees as Additional Insureds.

Required Coverage

General Liability.	\$1,000,000 / occurrence;	\$2,000,000 aggregate.
Workers' Compensation.	\$100,000 / accident;	\$100,000 disease; \$500,000 disease limit
Professional Liability	\$1,000,000 per claim.	

Prior to commencing work or services under this Contract, E/A shall furnish the Town of Payson with Certificates of Insurance, or formal endorsements as required by the Contract, issued by E/A's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this Contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the Town of Payson fifteen (15) days prior to the expiration date.

O. Termination of Contract. This Agreement may be terminated by either Party at any time upon thirty (30) days prior written notice to the other Party. Upon such termination, Client shall pay E/A all monies owed under this Agreement for all work performed up to the effective date of termination. Unless sooner terminated, this Agreement shall terminate fourteen (14) calendar days after completion of construction. In the event of such cancellation, all work performed by E/A up to that time, including but not limited to field information, studies and rough or final drafts of working papers, shall be delivered to the Client by E/A.

P. Publicity. No information relative to the Project shall be released by E/A for publication, advertising, or for any other purpose without the prior written approval of the Client.

Q. Supplementary Conditions. Supplementary Conditions, if any, shall apply to this Agreement, are set forth in Attachment "B", Supplementary Conditions which is attached hereto and incorporated herein by this reference as though set forth in full at this point.

R. Entire Agreement. This Agreement, with attachments, represents the entire understanding between Client and E/A in respect to the Project, all prior understanding and agreements are merged herein and this Agreement may only be modified by an instrument in writing executed with the same formalities as this instrument.

S. Successors and Assigns. Client and E/A each binds himself and his partners, successors, executors, administrators and assigns to the other party to this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither Client nor E/A shall assign, sublet or transfer its interest in this Agreement without the written consent of the other; however, E/A may employ others to assist him in carrying out its duties under this Agreement. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and E/A.

T. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

**WITNESS WHEREOF**, E/A and Client have executed this Agreement on the day and year first above written.

Town of Payson  
303 N. Beeline Highway  
Payson, AZ 85541  
Telephone: (520) 474-5242  
FAX: (520) 474-7052

By: \_\_\_\_\_  
Mayor

Attest \_\_\_\_\_  
Town Clerk

SWCA Environmental Consultants  
2120 N. Central Avenue, Ste. 130  
Phoenix, AZ 85004  
Telephone (602) 247-3831  
FAX: (602) 274-3958

By: \_\_\_\_\_

Title: \_\_\_\_\_

## APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this contract and approved it as to form. When reviewing this contract for form, the Legal Department considers whether the following situations have been addressed:

- I. Identification of parties;
- II. Offer and acceptance;
- III. Existence of contract consideration (we do not review to determine if consideration is adequate);
- IV. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the contract for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the contract or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

By \_\_\_\_\_  
Samuel I. Streichman, Town Attorney

## **SCOPE OF SERVICES**

### **Task 1: USFS Biological Clearance**

An SWCA biologist will visit the proposed project area to document habitat types present within and immediately surrounding it. It is our understanding that the project area consists of portions of Granite Dells Road, portions of future easement south of Highway 260, and approximately 1,200 feet of proposed future easement in undeveloped forest south of Granite Dells Road. Dominant plant communities and species will be recorded in addition to habitat features potentially important to federally listed or other special status species. Based on habitat types and features present, the project area will be evaluated for the potential presence of such species.

#### **Biological Assessment and Evaluation**

SWCA will prepare a USFS Biological Assessment and Evaluation (BA&E) to be used to document compliance with the Endangered Species Act and USFS regulations. SWCA will work directly with the USFS Biologist to complete this report. SWCA will also contact the Arizona Game and Fish Department (AGFD) via their interactive website to obtain Heritage Database information regarding recorded occurrences of listed species in the project vicinity. Additionally, the Arizona Native Plant Law will be addressed. If listed species (federal and/or USFS Sensitive) are observed or site conditions suggest that the proposed project may affect habitat critical to or occupied by listed species, the BE may contain recommendations for species-specific surveys.

#### **Migratory Bird Treaty Act Compliance**

During the field reconnaissance, an SWCA biologist will evaluate the project area in reference to migratory birds. SWCA will then prepare a Migratory Bird Treaty Act report, using the USFS provided form, to document compliance with USFS regulations. SWCA will work directly with the USFS Biologist to complete this report.

#### **Management Indicator Species Analysis**

During the field reconnaissance, an SWCA biologist will evaluate the project area in reference to USFS Management Indicator Species. SWCA will then prepare a Management Indicator Species Analysis report, using the USFS provided form, to document compliance with USFS regulations. SWCA will work directly with the USFS Biologist to complete this report.



One copy of the draft reports will be provided for your review. After your review, SWCA will provide three copies of each report to you for your use.

The scope and cost estimate does not include any endangered species-specific surveys and/or consultation related to Section 7 of the Endangered Species Act with the U.S. Fish and Wildlife Service or any other federal agency consultation.