

COUNCIL DECISION REQUEST

SUBJECT: Trailwood and Woodland Meadows Subdivision Flood Plain Issues

MEETING DATE: June 19, 2008

PAYSON GOAL: NEW: EXISTING:

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: LaRon Garrett, Town Engineer

AMOUNT BUDGETED: \$0.00

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED: \$41,951.00

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED:



EXHIBITS (If Applicable, To Be Attached): Proposed Contract

POSSIBLE MOTION

I move to approve the contract with Tetra Tech, Inc. to prepare the FEMA Letter of Map Revision for the affected area in the Woodland Meadows and Trailwood subdivisions and authorize the Mayor to sign all necessary contract documents.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

The Woodland Meadows subdivision was constructed in the early 1980's and the Trailwood Subdivision was constructed in the early-mid 1990's. Portions of both subdivisions were within the FEMA Zone 'A' Flood Plain. When the two subdivision designs were done the channel along Payson Parkway and Longhorn Road was included. Based on the design, this channel would protect the subdivision lots from flooding. At that time the Payson Town Code did not require the developer to file for a Letter of Map Revision (LOMR) with FEMA to have the map modified to remove the lots from the flood plain.

The Trailwood developer originally intended on filing for a LOMR with FEMA to remove the lots from the flood plain. However, before the study was completely ready to be filed, all the lots were sold so there was no more incentive for the developer to continue with the map revision.

Over the past several years the Town has provided a letter to mortgage companies stating that even though the FEMA Maps showed some of the Woodland Meadows and Trailwood lots in a Flood Plain, due to the construction, these lots were now out of the Flood Plain. Until recently that worked with most mortgage companies and they did not require the homeowner to buy flood insurance. Also, a few of the property owners filed directly with FEMA to have their individual lot removed from the Flood Plain.

It appears that approximately 92 lots are affected by this Flood Plain. Due to the recent events such as Hurricane Katrina, the national mortgage crisis, and reprinted and updated FEMA Maps this flood insurance issue has become a major problem for several property owners. Since Hurricane Katrina and the issues with mortgages nationally, everyone has been taking a closer look at this issue. Also, in December of 2007 new Flood Plain Maps were issued by FEMA. These new maps have been updated to show all the new lots created since 1979 and have an aerial photo background so you can see where each lot is. With these new maps it is much easier to determine if a property is within the FEMA designated Flood Plain. With the update information many mortgage companies have been requiring the property owner to obtain flood insurance. The cost of this flood insurance can be substantial.

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COUNCIL DECISION REQUEST

ASL Sierra, which is now known as Tetra Tech, Inc., did the original work for the developer in creating the data for the FEMA submittal. Town Staff has been in contact with Tetra Tech, Inc. concerning having them retrieve the original information and file the application with FEMA for a Letter of Map Revision to remove the affected properties from the Flood Plain. They have investigated what information is still available and current from the previous study and what items need to be completed or updated to finalize the application to FEMA. Attached to the proposed contract is the Scope of Services that needs to be done for the Town to file the application with FEMA. The engineering fee to prepare the submittal package to FEMA is \$37,551.00. In addition to the engineering fee, there is a \$4,400 filing fee to FEMA that the Town will need to submit the application. The contract time to prepare the application for submittal to FEMA is 3 months, excluding review time.

Staff recommends that the Council approve the contract with Tetra Tech, Inc to prepare the FEMA Letter of Map Revision for the affected area in the Woodland Meadows and Trailwood subdivisions.

PROS: This will assist several homeowners in Payson by removing the requirement that they purchase flood insurance for their property.

CONS: None

PUBLIC INPUT (if any): N/A

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes): N/A

FUNDING:

Account Number:	Title:	Amount: \$
Account Number:	Title:	Amount: \$
Account Number:	Title:	Amount: \$
Account Number:	Title:	Amount: \$
		Total Cost: \$41,951.00

CFO: _____ Date: _____

**AGREEMENT
BETWEEN TETRA TECH, INC. AND THE TOWN OF PAYSON
FOR PROFESSIONAL SERVICES IN CONNECTION WITH
PREPARING AN APPLICATION TO FEMA FOR A
LETTER OF MAP REVISION FOR AFFECTED PROPERTIES
IN THE WOODLAND MEADOWS AND TRAILWOOD SUBDIVISIONS**

THIS AGREEMENT entered into this ___ day of June 2008 by and between **TETRA TECH, INC.**, 431 S. Beeline Highway, Payson, AZ 85541, (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:

Prepare the application to FEMA for a Letter of Map Revision to remove existing residential lots from the Zone 'A' Flood Plain in the Woodland Meadows and Trailwood Subdivisions.

C. Time for Completion. The professional engineering report for the preparation of the application to FEMA for a Letter of Map Revision for affected properties in the Woodland Meadows and Trailwood Subdivisions as defined in Attachment "A", Scope of Services, shall be completed within 90 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 Thirty Seven Thousand, Five Hundred Fifty One and NO/100 (\$37,551.00).

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. Business License The Contractor shall provide the Town with a copy of its Town of Payson business license. If the Contractor is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Town Code.

U. 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: (928) 474-5242
FAX: (928) 474-7052

By: _____
Mayor

Attest: _____
Town Clerk

Tetra Tech, Inc.
431 S. Beeline Highway
Payson, AZ 85541
Telephone: (928) 474-4636
FAX: (928) 474-4867

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 _____, 2008.

By _____
Samuel I. Streichman, Town Attorney



TETRA TECH, INC.

SCOPE OF SERVICES

Trailwood/Woodland Meadows Channel LOMR

Task 1 – Overall Project Management

Mr. Garrett Goldman, PE will be the Project Manager for the Trailwood/Woodland Meadows Channel LOMR. Mr. Goldman will be assisted by Mr. Tanner Henry, P.E. of Tetra Tech, Inc. and Mr. Jeffery Despain, PE, CFM of JE Fuller/Hydrology & Geomorphology, Inc.

Task 2 – Meetings and Project Coordination

Tetra Tech, Inc. and its team will attend up to three (3) coordination meetings to discuss the project with the Town of Payson (Town). Additional meetings required to provide for a smooth LOMR process will be conducted via telephone conference between the Town, Tetra Tech, and its team. Tetra Tech, Inc. and its team will participate in one (1) public meeting to present the findings of the project report so that it may be documented into the Technical Data Notebook (TDN) portion of this scope of services (Task 7). It will be the Town's responsibility to advertise for this meeting and to provide documentation for this advertisement.

Task 3 – Data Collection

Tetra Tech and its team will collect necessary data to perform the LOMR. This project will utilize the latest topographic information from the Town of Payson. Tetra Tech and its team will incorporate all data collection information in the TDN portion of this scope of services.

Task 4 – Topographic Mapping

Tetra Tech and its team will utilize the latest topographical information from the Town. Tetra Tech, Inc. will supplement this topographical information with field survey information in the form of cross-sectional data, specific spot elevation data, and finished floor elevation data. Tetra Tech, Inc. and its team will incorporate this documentation into the TDN portion of this scope of services.

Task 5 – Hydrologic Analysis

Tetra Tech, Inc. and its team will organize and utilize existing hydrologic information from the current Floodplain Delineation Study (FDS) studies in the area and hydrology performed under other studies. This hydrology will be documented properly to present with the FEMA submittal. Existing 100-year hydrology will be used for this study. Other frequency runs may be incorporated into the submittal if the Town feels that it is necessary. Hydrologic information necessary for approval from FEMA will be included in the TDN portion of this scope.



Task 6 – HEC-RAS Modeling

Tetra Tech, Inc. and its team will prepare a new HEC-RAS based study for approximately one river mile (5280 feet) originating at Cross Section “D” of the upstream existing FDS for the north branch and approximately McLane Road for the South branch. This will allow for accurate modeling through the combination of these two branches down to approximately four hundred (400) feet southwest of the Lakeshore Road Crossing.

Tetra Tech, Inc. and its team will make refinements to the HEC-RAS models based on comments received from reviewing agencies. Tetra Tech, Inc. and its team will prepare floodway determinations for a total of approximately one river mile of the new detailed study.

Tetra Tech, Inc. and its team will conduct field reconnaissance of the study reach, provide photo documentation of channel and overbank conditions, provide Manning’s “n” values, document structures and look at potential flow breakouts.

As stated previously, supplemental cross-sectional data will be used in the study. Cross-sections will be placed no greater than 150-feet apart and will also be located at the upstream edge of each adjacent structure. This is for the purposes of determining if the existing finished floors are elevated properly.

Tetra Tech, Inc. and its team will determine flood zones for the entire reach of detailed delineation. Tetra Tech, Inc. and its team will fully document the HEC-RAS modeling into the TDN portion of this scope of services.

Task 7 – Technical Data Notebook and FEMA Submittal

Tetra Tech, Inc. and its team will prepare material to be included in the TDN for approximately one river mile from Tasks 1 through 6 of this scope of services. Tetra Tech, Inc. and its team will prepare work maps on the existing topographical mapping base and prepare FEMA submittal forms for the entire one river mile reach. Work maps will be provided on 1”=200’, 2-foot contour interval bases. All submittals will be to FEMA 33 guidelines and Tetra Tech, Inc. and its team will make corrections/modifications to the FEMA submittal based on agency comments. Tetra Tech, Inc. and its team will provide the TDN to the Town for further submittal by the Town to FEMA.

Schedule

Project tasks will be completed within three (3) months from a Notice to Proceed (NTP). This schedule does not include review time by the Town or FEMA. These review times are an unknown factor and are not included in Tetra Tech, Inc.’s schedule.



TETRA TECH, INC.

Fee

Task(s)	Description	Hours	Fee
1	Overall Project Management	8	\$1,384.00
2	Meetings and Project Coordination	18	\$3,024.00
3	Data Collection	11	\$1,277.00
4	Topographic Mapping	162	\$12,880.00
5	Hydrologic Analysis	10	\$1,126.00
6	HEC-RAS Modeling	71	\$7,634.00
7	Technical Data Notebook and FEMA Submittal	94	\$10,225.00
	Total Lump Sum Fee...		\$37,551.00