City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 19 **Ordinance/Resolution# 09-10-436 Council District: 1-6**

For Meeting of December 21, 2009
(Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING THE RENEWAL OF THE AGREEMENTS WITH SOUDER, MILLER & ASSOCIATES OF LAS CRUCES, NM; TERRACON CONSULTANTS, INC. OF LAS CRUCES, NM; AND ZIA ENGINEERING AND ENVIRONMENTAL CONSULTANTS, LLC OF LAS CRUCES, NM TO PROVIDE ENVIRONMENTAL ENGINEERING SERVICES TO THE CITY OF LAS CRUCES ON AN AS NEEDED BASIS.

PURPOSE(S) OF ACTION: Renew the Environmental Engineering Services agreements for a one-year period.

Name of Drafter: Nancy Montoya		Department: PW/Engineering Services		Phone: 528-3171	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Public Works		3333	Budget		2300
			Assistant City Manager		2271
Legal		2128	City Manager		2076

BACKGROUND/KEY ISSUES/CONTRIBUTING FACTORS:

In November 2008, the Engineering Services Section of the Public Works Department requested proposals for Environmental Engineering Services. These services are required to perform design functions that include, but are not limited to, the following: preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management, such as indoor air quality and asbestos, and the testing of soil and groundwater for contaminants. The purpose of the Environmental Engineering Services RFP is to prequalify three (3) engineering firms that can provide specialized environmental engineering services.

These agreements are one- (1-) year contracts with the option to renew for four (4) additional one- (1-) year terms at the discretion of the City and under mutual agreement. It is advantageous for the City to have a prequalified list of environmental engineering firms from which to select, in order to get budgeted projects completed. All departments within the City will be able to enter into individual project agreements with these engineering firms on an as-needed basis. There are times when special funding (e.g., legislative, NMDOT) is made available to the City for specific projects. The funding sources often give strict time frames within which improvements must be designed and constructed in order to secure the funding.

By having a list of three (3) prequalified engineering firms, it will not be necessary to go through the extensive and time consuming request for proposal process in order to contract the necessary work for each individual project. These agreements will allow the Public Works Department and other City departments to contract with any one of the three (3) prequalified firms. As a result, valuable time is saved in the design of each project and staff time can be used on other projects and in other capacities.

The Environmental Engineering Services Agreements will be set up as individual purchase orders depending on available funding. The agreements for individual engineering projects will be authorized pursuant to the provisions of the Las Cruces Municipal Code, 1998, Chapter 24, Procurement Code.

The original agreements were awarded in January of 2009. The City of Las Cruces Public Works Department-Engineering Services Section requests approval from the City Council to enter into agreements with Souder, Miller & Associates of Las Cruces, NM; Terracon Consultants, Inc. of Las Cruces, NM; and Zia Engineering and Environmental Consultants, LLC of Las Cruces, NM to provide environmental engineering services to the City of Las Cruces on an as-needed basis for the period of one-year.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
Various as projects are identified	Various as projects are identified	Various as projects are identified

1. Resolution.
2. Purchasing Manager's Request to Contract Form (PMRC), Exhibit "A".
3. Environmental Engineering Services Agreement, Exhibit "B".
4. Vendor renewal approval letters, Exhibit "C".

OPTIONS / ALTERNATIVES:

1. Vote "YES". This action will authorize the City of Las Cruces to enter into agreements with Souder, Miller & Associates of Las Cruces, NM; Terracon Consultants, Inc. of Las Cruces, NM; and Zia Engineering and Environmental Consultants, LLC of Las Cruces, NM.

2. Vote "NO". This action will reject the proposed award and instruct staff to either rebid, rescope, or abandon these agreements altogether. Without these agreements, engineering projects could be delayed and the City of Las Cruces will have to explore an alternative means of procuring environmental engineering services.

3. Modify the resolution.

4. Table the resolution and provide an alternative direction to staff.

RESOLUTION NO: 09-10-436

A RESOLUTION AUTHORIZING THE RENEWAL OF THE AGREEMENTS WITH SOUDER, MILLER & ASSOCIATES OF LAS CRUCES, NM; TERRACON CONSULTANTS, INC. OF LAS CRUCES, NM; AND ZIA ENGINEERING AND ENVIRONMENTAL CONSULTANTS, LLC OF LAS CRUCES, NM TO PROVIDE ENVIRONMENTAL ENGINEERING SERVICES TO THE CITY OF LAS CRUCES ON AN AS NEEDED BASIS.

The City Council is informed that:

WHEREAS, the Public Works Department-Engineering Services Section requested proposals for Environmental Engineering Services in November 2008; and

WHEREAS, these services are required to perform design functions that include, but are not limited to, the following: preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management, such as indoor air quality and asbestos, and the testing of soil and groundwater for contaminants; and

WHEREAS, the purpose of the Environmental Engineering Services request for proposals is to prequalify three (3) engineering firms that can provide specialized environmental engineering services for City of Las Cruces (City) engineering projects; and

WHEREAS, these agreements were established for a one- (1-) year term with the option to renew for four (4) additional one- (1-) year terms at the discretion of the City and upon mutual agreement; and

WHEREAS, each firm has agreed to the agreement renewal; and

WHEREAS, the Public Works Department-Engineering Services Section requests award of the first renewable option to Souder, Miller & Associates of Las Cruces, NM; Terracon Consultants, Inc. of Las Cruces, NM; and Zia Engineering and Environmental Consultants, LLC of Las Cruces, NM.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the renewal of the Environmental Engineering Services Agreement with Souder, Miller & Associates of Las Cruces, NM; Terracon Consultants, Inc. of Las Cruces, NM; and Zia Engineering and Environmental Consultants, LLC of Las Cruces, NM is hereby approved.

(II)

THAT the agreement is for a one- (1-) year term commencing on January 20, 2010 and terminating January 19, 2011.

(III)

THAT City staff is hereby authorized to do any and all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20____.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

Approved as to Form:

_____
City Attorney

Exhibit A

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: December 21, 2009

Resolution No.: 09-10-436

Existing Contract Purchase For
Environmental Engineering Services (Year 2 of 5)

The Las Cruces City Council is provided the following information concerning this request:

BID/RFP SOLICITATION INFORMATION:

1. Original Bid/RFP & Due Date: **RFP#08-09-322/November 21, 2008**
2. Description of Bid/RFP: **Environmental Engineering Services**
3. Number of Original Responses: **Five (5)**
4. Existing Contract Expiration Date: **January 19, 2010**
5. Last Contract Renewal by Council: **Resolution No. 08-09-322/January 20, 2009**
6. Using Department: **Public Works**
7. Current Award Recommendation To: **Souder Miller and Associates, Terracon Consultants, and Zia Engineering and Environmental Consultants, LLC All of Las Cruces, NM**
8. Total Award Amount (includes any tax and contingency) **Indefinite Dependant on Available Budget**
9. Contract Duration: **One Year**

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-316.**

Purchasing Manager / 11/25/09 Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION OR PURCHASE ORDER NUMBER:	**VARIOUS**

EXHIBIT "B"

City of Las Cruces®
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ENVIRONMENTAL ENGINEERING SERVICES CONTRACT

THIS CONTRACT is entered into on this _____ day of _____, 20____ between the City of Las Cruces, a New Mexico Municipal Corporation, hereinafter called the "City"; and _____ ("Engineer"), a corporation registered to provide engineering services in New Mexico.

WHEREAS, on January 20, 2009 in Resolution No. 08-09-322, the City Council awarded engineering contracts to three (3) engineering firms to provide environmental engineering services to the City on an as needed basis;

WHEREAS, this Environmental Engineering Services Contract contains all of the general terms that will apply to each specific project that will be assigned by the City to the Engineer under the Contract.

NOW, THEREFORE, the parties agree as follows:

1. Background Documentation: The Technical Proposal and Cost Proposal submitted by the Engineer in response to the City's RFP No. 08-09-322 are included in and made a part of this Contract by reference.

2. Services to be Performed. For each project contracted under this Contract, the Engineer shall perform and/or furnish to the City those items requested and for which the Engineer has agreed to provide as stated in its Technical Proposal.

3. Payment for Services. The City shall pay for said services at the rate herein. Payment will not be made by the City until the services for that project have been received and accepted by the City as being in compliance with the instructions and specifications, except for long term projects being sixty (60) days or longer. Monthly billings based on the percent of work completed will be accepted and negotiated for each specific long term project. Payments shall include reimbursement for all expenses incurred in rendering such services unless otherwise specifically provided.

4. Completion Date. The time given for completion of each project shall be stated in the cost proposal for that project. The project shall be performed by the completion date unless the City's project administrator agrees to an extension of the performance date in writing.

5. City Responsibility. The City will make available for the use of the Engineer all of its maps, records, or other data pertinent to the work to be performed by the Engineer pursuant to the Contract, and also any other maps, records, or other materials available to the City upon the City's request to any other public agency or body.

6. Compliance with Appropriate Laws. The Engineer will comply with all applicable Federal, State, and local laws and ordinances applicable to this work, including the Civil Rights Act of 1964.

7. Term. This Contract covers projects assigned by the City to the Engineer from January 20, 2010 through January 19, 2011 and shall be subject to annual approval each anniversary date pending mutual agreement between the parties.

8. Termination. This Contract may be terminated by either party upon written notice delivered at least thirty (30) days before the intended date of termination. By such termination neither party may nullify obligations already incurred for performance or failure to perform before the date of termination. On termination by the City without cause, the Engineer will be paid for termination expenses including but not limited to reassignment of personnel, subcontract termination costs and related close out costs.

9. Renewal: This agreement must be annually approved by the City for each successive one (1) year periods at sole option and discretion of the City and pending mutual agreement by the Engineer. At the time of renewal of the Agreement, the Engineer may renegotiate its pricing with the City. If this Agreement is not renewed or is terminated, the Engineer shall be required to complete any projects still in progress at the rates negotiated for those projects.

10. Appropriations. The terms of this contract are contingent on sufficient appropriations and authorization being made by the City for the performance of this Contract. If sufficient appropriations and authorizations are not made by the City Council, this Contract shall terminate upon written notice given by the City to Engineer. The City's decision as to whether sufficient appropriations and authorizations exist shall be accepted by Engineer and shall be final.

11. Project Assignments. The City will attempt to make project assignments on a rotating basis, but is not obligated to do so. This Contract does not constitute a grant to the Engineer of any right to handle any specific project nor any specific number of projects. The City may, at its sole discretion, assign or reassign projects as it deems expedient. The City, when giving work assignments, will take into account the type of work the Engineer is capable of providing to the City as stated in his Technical Proposal, the jobs the Engineer has already performed or is currently performing for the City, and whether the Engineer can meet the project deadline. The City also reserves the right to reject project specific cost proposals from the Engineer and to secure a project specific cost proposal from another engineer.

12. Status of Engineer. The Engineer, its agents and employees are independent contractors performing services for the City, and are not employees of the City. The Engineer, its agents and employees shall not, as a result of this Contract, accrue any leave, retirement, insurance, bonding, use of City vehicles, or any other benefit afforded to employees of the City.

13. Assignment. The Engineer shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract without the prior written consent of the City. If assigned, the Contract shall extend to and be binding upon the successors and assigns of the Engineer.

14. Subcontract. The Engineer shall not subcontract any portion of the services to be

performed under this Contract without the City's prior written consent.

15. Indemnification. The Engineer shall indemnify, and hold harmless the City and its officers, employees or agents, liability, claims, damages, losses or expenses, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the negligent acts or omissions of the Engineer or its officers, employees or agents.

16. Conflict of Interest. The Engineer warrants that he will not undertake any engineering services under this Contract with regard to any property as to which it will or might have an interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Contract.

17. Ownership of Plans and Documents. The Engineer shall deliver to the City for approval and acceptance, and before payment can be made, all documents and materials prepared by and for the City, not limited to the following, under this Contract:

A. Preliminary report containing schedule of work and cost estimate.

B. Hard copies of the construction plans and in Adobe PDF format for use by the City Purchasing Section in its bid solicitations.

C. Record drawings on electronic media and reproducible prints. Electronic drawings shall be on compact disk (CD) drawn in AutoCAD version 2002 (AutoDesk® Land Desktop #3) or mutually agreed upon equivalent.

D. Project reports.

E. Any other item specified in the individual project agreements.

The City will be the owner of all plans and documents prepared by the Engineer under this agreement. Such plans and documents are not intended or represented to be suitable for reuse by the City and any such re-use without written authorization from the Engineer will be at the City's sole risk and without liability to the Engineer.

18. Amendments. This Contract shall not be amended except by written instrument executed by both parties.

19. Insurance. The Engineer will be required to provide proof of insurance for each separate project prior to performing work on City owned property. The requirements are as follows:

1. General Liability: $1,000,000.00 per occurrence
   $2,000,000.00 Aggregate
   a. Includes Coverage for Premises/Operation Coverage & Products/Completed Operations
   b. Must be Occurrence form coverage
   c. Coverage shall remain in force for the duration of the contract.
2. Auto Liability: $1,000,000.00 Each Accident
   a. Covers all owned, leased, hired and non-owned autos or "any auto"

3. Professional Liability: $1,000,000 per claim
   a. Must be Occurrence form coverage
4. Workers Compensation:
   a. Not applicable to firms with less than three employees, or, to out-of-state firms unless hiring in New Mexico.
   b. When applicable, firm must provide the New Mexico statutory limits as follows:
      $1,000,000.00 – Bodily Injury: By Accident – Each Accident
      $1,000,000.00 – By Disease: Policy Limit
      $1,000,000.00 – By Disease: Each Employee
5. City of Las Cruces Named as Additionally Insured:
   a. This condition is required for General Liability, Auto Liability and Professional Liability.
   b. This coverage must be as broad as the coverage provided to the insured. Coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of endorsement for this coverage must provided.
6. Waiver of Subrogation:
   a. This condition is required on **all** coverage and must be stated on proof of insurance certificate.
7. Notification:
   a. The certificate must state that coverage afforded under the policies will not be canceled or allowed to expire until at least **30** days prior written notice has been given to the City.

20. Applicable Law. The rights and obligations of the parties under this Contract shall be governed by the laws of the State of New Mexico.

21. Engineer's Personnel at a Construction Site. Neither the professional activities of the Engineer, nor the presence of the Engineer or its employees and sub consultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Engineer and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures.

22. Engineer's Personnel and Local Office. The Engineer shall have a local office with engineering staff on-site, everyday that is responsible on behalf of the Engineer during the progress of each individual project under contract with the City. Any deviation from this requirement is at the discretion of the City and must be approved in writing by the City.

23. Standard of Care. The standard of care applicable to Engineer's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time said services are performed. The Engineer will re-perform any services not meeting this standard without additional compensation.

24. Intergovernmental Contract Extension. The Engineer may extend the terms and conditions of this contract to other governmental entities pursuant to the governing laws of those entities. The City of Las Cruces shall not have any liability to Engineer as a result of such extension.

25. Force Majeure. The Engineer is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the Engineer. In any such event, the Engineer's contract price and schedule shall be equitably adjusted.

IN **WITNESS WHEREOF,** the parties hereto have executed this Contract the day and year above mentioned.

CITY OF LAS CRUCES

_____
Purchasing Manager

APPROVED AS TO FORM:

_____
City Attorney

ENGINEER

_____
Firm Name

By: _____
(Signature)

_____
Printed Name and Title

EXHIBIT "C"

City of Las Cruces
PEOPLE HELPING PEOPLE

PO Box 20000
Las Cruces, NM 88004

November 13, 2009

Zia Engineering and Environmental
755 S. Telshor, Ste. F-201
Las Cruces, NM 88011

Attention: A. K. Khera

E-Mail Address: akkhera@ziaeec.com

Re: First Renewal 08-09-322, Environmental Engineering Services

Dear Mr. Khera,

The City of Las Cruces would like to exercise the first renewable option of RFP #08-09-322, Environmental Engineering Services.

Please indicate below if your company desires to renew the contract.

If I do not hear from you by November 20, 2009, I will assume you do not wish to participate.

If you have any questions regarding this matter please call me at (575) 528-3171.

Sincerely,

Nancy Montoya

Nancy Montoya
Administrative Assistant

[X] I will extend pricing from RFP #08-09-322, Environmental Engineering Services, at the same terms and conditions.

[ ] I do not wish to extend pricing from RFP #08-09-322, Environmental Engineering Services, at the same terms and conditions.

Signed: _____ Title: 11/16/09

Return this form to fax number 575-528-3110
Cc: Martha Montoya

City of Las Cruces
PEOPLE HELPING PEOPLE

PO Box 20000
Las Cruces, NM 88004

November 13, 2009

Souder, Miller and Associates
401 Seventeenth Street, Ste. 4
Las Cruces, NM 88005

Attention: Karl E. Tonander

E-Mail Address: karl.tonander@soudermiller.com

Re: First Renewal 08-09-322, Environmental Engineering Services

Dear Mr. Tonander,

The City of Las Cruces would like to exercise the first renewable option of RFP #08-09-322, Environmental Engineering Services.

Please indicate below if your company desires to renew the contract.

If I do not hear from you by November 20, 2009, I will assume you do not wish to participate.

If you have any questions regarding this matter please call me at (575) 528-3171.

Sincerely,

Nancy Montoya
Administrative Assistant

[X] I will extend pricing from RFP #08-09-322, Environmental Engineering Services, at the same terms and conditions.

[ ] I do not wish to extend pricing from RFP #08-09-322, Environmental Engineering Services, at the same terms and conditions.

Signed: K.E. Tonander Title: Vice President

Return this form to fax number 575-528-3110
Cc: Martha Montoya

City of Las Cruces
PEOPLE HELPING PEOPLE

PO Box 20000
Las Cruces, NM 88004

November 13, 2009

Terracon Consultants, Inc.
1640 Hickory Loop, Ste. 105
Las Cruces, NM 88005

Attention: Mary E. Wells

E-Mail Address: mewells@terracon.com

Re: First Renewal 08-09-322, Environmental Engineering Services

Dear Ms. Wells,

The City of Las Cruces would like to exercise the first renewable option of RFP #08-09-322, Environmental Engineering Services.

Please indicate below if your company desires to renew the contract.

If I do not hear from you by November 20, 2009, I will assume you do not wish to participate.

If you have any questions regarding this matter please call me at (575) 528-3171.

Sincerely,

Nancy Montoya

Nancy Montoya
Administrative Assistant

[✓] I will extend pricing from RFP #08-09-322, Environmental Engineering Services, at the same terms and conditions.

[ ] I do not wish to extend pricing from RFP #08-09-322, Environmental Engineering Services, at the same terms and conditions.

Signed: _____ Title: Principal

Return this form to fax number 575-528-3110
Cc: Martha Montoya