

TO: James L. App, City Manager
FROM: Robert A. Lata, Community Development Director
SUBJECT: Consultant Services Agreement for Engineering
DATE: September 6, 2005

Needs: For the City Council to consider approval of a resolution authorizing execution of consultant services agreement.

Facts:

1. In order for the City to approve Final subdivision and parcel maps, the maps must be checked for technical accuracy.
2. The attached Resolution would authorize the use of JoAnn Benner Head, Professional Land Surveyor, to check subdivision maps for technical accuracy.

**Analysis
and**

Conclusion: Currently, North Coast Engineering and Vaughan Surveys provide the Community Development Department with map checking services. The City Engineer has the final authority with regard to stating that a map is technically correct and so provides his signature on final maps.

Both Vaughan Surveys and North Coast Engineering prepare a substantial number of subdivision maps for property located in the City. A need has arisen for a third professional surveyor to assist us with maps prepared by either North Coast Engineering or Vaughan Surveys, or to provide assistance with any map where the volume of work warrants more resources.

The agreements with North Coast Engineering, Vaughan Surveys and the attached agreement with JoAnn Benner Head also recognize and incorporate a broader scope of work that they may perform as technical consultants to the City providing professional land surveying services.

Policy

Reference: Consultant Services

Fiscal

Impact: Expenditures will be either reimbursed by applicants or within established budgets.

Options:

- a. Adopt Resolution No. 05-xx and authorize execution of the attached consultant services agreement.
- b. That the City Council amend, modify or reject the above option.

Attachments: (2)

1. Resolution
2. Exhibit A; Consultant Services Agreement - JoAnn Head

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A CONSULTANT SERVICES AGREEMENT WITH
JOANN BENNER HEAD, P.L.S.

WHEREAS, the City desires to retain a professional land surveyor to verify that subdivision maps submitted to the City are technically correct; and

WHEREAS, pursuant to Government Code section 66442(a), the technical accuracy of subdivision maps submitted to the City may be verified by a City Engineer or Surveyor.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. JoAnn Benner Head who is duly licensed to practice land surveying will assist the City Engineer to verify the technical accuracy of subdivision maps and to provide supplementary professional land surveying services upon request.

SECTION 2. The Agreement between the City and JoAnn Benner Head, in the form attached hereto as Exhibit A and incorporated herein by reference, is hereby approved by the City.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 6th day of September 2005 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of _____, 2005, by and between the **CITY OF EL PASO DE ROBLES**, a municipal corporation of the State of California (hereinafter referred to as "**CITY**"), and **JoAnn Benner Head, P.L.S.**, having a principal place of business in, Santa Margarita, California (the "**Consultant**").

Recitals

A. The City desires to retain the Consultant to provide services by reason of its qualifications and experience, and the Consultant has offered to provide the required services on the terms and in the manner set forth in this Agreement.

Agreements

THE CITY AND CONSULTANT HEREBY AGREE AS FOLLOWS:

1. Contract Coordination.

a. The City Engineer shall be the representative of the City and Project Manager for all purposes under this Agreement.

b. The Consultant shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement for the Consultant. JoAnn Benner Head, P.L.S. is hereby designated as the Contract Manager for the Consultant. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Contract Manager for any reasons, the Contract Manager designee shall be subject to the prior written acceptance and approval of the City's Contract Manager.

2. Scope of Services by Consultant. Consultant shall provide certain professional land surveying services including but not limited to review of certain subdivision maps that are submitted to the City, and provide comment as to whether those maps are technically correct. All services rendered by Consultant shall be authorized in advance by the City.

3. **Direction from City.** The City shall furnish the Consultant with all existing maps, topographic maps, aerial photographs, soils reports and / or other similar information in possession of the City covering the work required. To the extent such information is not public and to the extent requested by the City, the Consultant shall treat said information as confidential and shall not reveal it to third parties without the prior approval of the City.

4. **Time of Performance.** The services of the Consultant are to commence upon the execution of this Agreement and shall be undertaken and completed within the time limits mutually agreed upon by the City and the Consultant.

5. **Billings and Compensation.** Each month the Consultant shall submit progress billings to the City which set forth the designated items of work for which the billings are submitted. Upon approval of the City, but in any event no later than thirty (30) days after the receipt of the monthly progress statement billings from the Consultant, the City shall remit to the Consultant payment for services rendered.

6. **Compensation.** The Consultant shall charge for services performed on an hourly basis (See attached current Billing Rates).

7. **Monthly Statements/Time of Payment.** The Consultant shall submit monthly to the City a detailed statement of account which clearly sets forth by dates the designated items of work or costs for which the billing is submitted. Within thirty (30) days after receipt of the Consultant's monthly statement, the City shall pay the Consultant for services rendered and costs as shown in such monthly statement.

8. **Interest of Consultant.** Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Consultant further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. The Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the City. It is expressly

agreed that, in the performance of the services hereunder, the Consultant shall at all times be deemed an independent contractor and not an agency or employee of the City.

9. Interest of Members and Employees of City. No member of the governing body of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested.

10. Liability of Members and Employees of City. No officer, employee or agent of the City shall be personally liable to the Consultant or any successor in interest or to any other parties, whether transacting matters with the Consultant or otherwise, in the event of any default or breach of the City or for any amount which may become due to the Consultant or any successor in interest or for any obligations directly or indirectly incurred under the terms of this Agreement.

11. Consultant Not an Agent of City. The Consultant is an independent contractor and is not an agent of the City, and the City retains all rights of approval and discretion with respect to any project to which this Agreement pertains. The Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision or course of action, and the Consultant, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the City or that it or they have the power to bind or commit the City.

12. Employees of Consultant. If, in the performance of this Agreement, any third persons are employed as employees of the Consultant, such persons shall be employed by and shall be entirely and exclusively under the direction, supervision and control of the Consultant. All terms of employment of said persons, including hours, wages, working conditions, discipline,

hiring and discharging or any other terms of employment or requirements of law, shall be made by the Consultant, and the City shall have no right or authority over said persons or the terms of such employment.

13. Insurance/Indemnification. The Consultant shall maintain its own automobile insurance, and shall maintain general liability insurance in a minimum amount of \$1,000,000 and shall cause the City of El Paso de Robles to be designated as an additional insured thereunder. The Consultant shall indemnify and hold the City harmless from any and all claims and liabilities related to or arising as a result of the Consultant's negligence and/or willful misconduct in the performance of its obligations pursuant to this Agreement. The City agrees to hold Consultant harmless from and indemnify Consultant from and against any and all damages, attorneys' fees, losses, costs and expenses which Consultant may incur as a result of a claim or claims against it, if any, by any third party, arising out of any wrongdoing, negligence and/or breach attributed solely to the City, alleged or otherwise, that is related, in any manner whatsoever, to the Project or the City's involvement with the Project.

14. Assignment Prohibited. Neither the City nor the Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

15. Termination of Agreement. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by either party upon written notice to the other party. Upon such termination, all finished and unfinished documents, project data and reports shall, at the option of the City, become its property and shall be delivered to it or to any party it may designate. In the event of such termination, the Consultant shall not be entitled to any additional compensation over that already paid or owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that the Consultant shall be entitled to compensation for work in progress at the time of termination.

16. **Amendment.** This Agreement may be amended or extended from time to time by the written agreement of the parties hereto.

17. **Notices.** Written notices and communications between the parties shall be sufficiently given if dispatched by first class mail, postage prepaid, addressed as follows:

CITY: James L. App, City Manager
City Hall
1000 Spring Street
Paso Robles, CA 93446

CONSULTANT: JoAnn Benner Head, P.L.S. 6317
P.O. Box 887
Santa Margarita, CA 93453

18. **Integration.** This Agreement is integrated, and contains all of the terms, considerations, understandings and promises of the parties with respect to the subject matter hereof; it shall be read as a whole.

19. **Attorneys' Fees.** In any action brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees.

20. **Nondiscrimination.** No discrimination shall be made in the employment of persons under this Agreement because of the race, color, national origin, ancestry, religion or sex of such person.

If Consultant is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this Agreement, it shall thereby be found in material breach of this Agreement. Thereupon, City shall have the power to cancel or suspend this Agreement, in whole or in part, or to deduct from the amount payable to Consultant the sum of Twenty-five Dollars (\$25) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract, or both. Only a finding of the State of California Fair

Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If Consultant is found in violation of the nondiscrimination provisions of this Agreement or the applicable affirmative action guidelines pertaining to this Agreement, Consultant shall be found in material breach of the Agreement. Thereupon, City shall have the power to cancel or suspend this Agreement, in whole or in part.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement as of the date first above written.

“CONSULTANT”

JoAnn Benner Head, P.L.S

By _____
JoAnn Benner Head, P.L.S

“CITY”

CITY OF EL PASO DE ROBLES

By _____
Frank R. Mecham, Mayor

Attest:

Sharilyn M. Ryan, Deputy City Clerk

JoAnn Benner Head, P.L.S. 6317
P.O. Box 887
Santa Margarita, CA 93453
(805) 674-4172 Fax (805) 438-4842

Billing Rates

Effective July 1, 2005

<u>Classification</u>	<u>Hourly Rate</u>
Licensed Surveyor (analysis, calculations, research)	\$80.00
Computer Drafting	\$55.00
Survey Crew	\$110.00