Print Form

FOR CLERK USE ONLY
City Council
Item No. 7

CITY COUNCIL AGENDA
FACT SHEET

Community Development Department
Department

March 16, 2010
Requested Date

1. **Request:**

Council Approval	■	Information Only/ Presentation	☐
Other (specify)	☐	Hearing	☐

2. **Requested Action:**

Authorize City Manager to execute agreement with Dynamics Consulting Engineers, Inc. to provide as needed consultant engineering services assistance for capital improvement projects and private development projects.

3. **Fiscal Impact:**

Revenue:	Increase	☐	Source:	
	Decrease	☐	Amount:	
Cost:	Increase	☐	Source:	101-53021-2340
	Decrease	☐	Amount:	Not to exceed $10,000 for FY2009-2010 (Contract Services), and $20,000.00 for each of the next two fiscal years.
	Does Not Apply	■		

4. **Reviewed By:**

Finance Dept. on 03/10/2010 By: [signature]

Comments:

City Attorney on By:

Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action	☐	Filing	☐
Consent	☐	Presentation	☐
Hearing	☐	Other(specify)	☐

Reviewed by: City Clerk _____ City Manager _____

Date Date

Form FIN038 (Revised 07/2009)

CITY COUNCIL
AGENDA REPORT

SUBJECT: Authorize City Manager to execute agreement with Dynamics Consulting Engineers, Inc. to provide as needed consultant engineering services assistance for capital improvement projects and private development projects.

AGENDA DATE: March 16, 2010

PREPARED BY: Veronica Atondo, P.E., Interim Engineering Manager
Armando G. Villa, Director of Community Development Department

APPROVED FOR AGENDA BY: Victor M. Carrillo, City Manager

RECOMMENDATION: It is recommended the City Council approve the following: Authorize City Manager to execute an agreement with Dynamics Consulting Engineers, Inc. to provide engineering consultant services for an as needed basis to support City staff.

FISCAL IMPACT: Any work related to Private Development will be funded by private developers. A not to exceed amount of $10,000 for FY 2009-2010 and $20,000 for each of the next two fiscal years, from General Fund (Approved Budget includes this item) for the tasks not included on the CIP or Private Development Projects.

BACKGROUND INFORMATION: (Prior action/information)
The Engineering Division currently is working in various transportation Capital Improvement Projects as shown on the attached list. Due to the amount of work required for the project management and administration for these projects and in order to avoid losing funding City staff recommends the subject agreement for as needed engineering consultant services.

DISCUSSION (Current consideration):
Based on the City Council pre-approved list of consultants for "On Call Professional Engineering Services" and its qualifications, City staff recommends using Dynamics Consulting Engineers, Inc. as the engineering consultant firm to assist with as needed services. City staff is currently working on securing funds for capital improvement projects.

City staff needs assistance from one of the selected engineering consultants to aid in plan checking and other engineering tasks needed in support of capital improvement projects. Dynamics Consulting Engineers have extensive experience in working with city requirements and assisting city staff with many engineering tasks.

DOCUMENT(S) ATTACHED:
1. Standard Agreement for Professional Engineering Consultant Services
2. List of Transportation CIP

Agenda Item No. ____
Page_____ of _____

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the __ day of March, 2010, by and between the City of Calexico ("City") and Dynamics Consulting Engineers, Inc. ("Consultant").

RECITALS

A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such work shall be completed no later than April 20, 2012. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City.

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the Schedule of Charges set forth in Exhibit B, which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation shall exceed $10,000.00 without additional authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff. When payments made by City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement has been accepted by City.

5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

6 Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

7. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

8. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

9. Indemnity. Consultant [or however design professional is referenced] agrees to indemnify, including the cost to defend, the City, and its officers, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its agents in the performance of services under this contract. This indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence, willful misconduct or defects in design by the City or its agents, servants, or

independent contractors who are directly responsible to the City, or the active negligence of the City.

10. Insurance Requirements.

a. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars ($1,000,000) combined single limit for each occurrence.

iv. Errors and Omissions Liability. Consultant shall maintain errors and omissions liability insurance for all work performed under this Agreement in an amount of not less than one million dollars ($1,000,000).

b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

11. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall obtain a City of Calexico Business License.

13. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Imperial, California.

14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calexico, City Manager
608 Heber Ave.
Calexico, CA 92231

If to Consultant:

15. Consultant's Books and Records.

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. Termination. This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

_____
Victor M. Carrillo
City Manager

CONSULTANT:

_____

APPROVED AS TO FORM:

_____
Jennifer M. Lyon
City Attorney

ATTEST:

_____
Lourdes Cordova
City Clerk

EXHIBIT A

SCOPE OF SERVICES

Dynamic CONSULTING ENGINEERS

February 22, 2010

Veronica Atondo, P.E.
Interim Engineering Manager
City of Calexico, Engineering Department
608 Heber Avenue
Calexico, CA. 92231

RE: Engineering and Surveying Assistance for the City of Calexico

Dynamic Consulting Engineers, Inc (DCE) is pleased to present you with this proposal for engineering services. The City needs temporary assistance due to a planned temporary absence of the City's Engineering Manager. DCE proposes to use David Dale, PE, PLS to fill this need.

David Dale has experience as a City Engineer for the City of Blythe, General Manger of two local small water districts, is a Professional Engineer and a Professional Land Surveyor. David can assist the City with engineering and surveying as needed. The City will provide a workspace and DCE will provide a laptop computer. The City has estimated that the need is for two full days (16 hours) a week.

DCE proposes that the hourly rate for this work will be **$95.00 per hour**.

Thank you for giving Dynamic Consulting Engineers, Inc the opportunity to serve you. If you have any question please feel free to call me at (760) 545-0162.

Carlos Beltran, PE
Principal Engineer
Dynamic Consulting Engineers, Inc.

116 South Imperial Avenue, Suite B, Imperial, California 92251 Ph 760/545-0162 Fax 760/545-0163

EXHIBIT B

SCHEDULE OF CHARGES

EXHIBIT C

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

I hereby certify that in the performance of the work for which this Agreement is entered into, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of the State of California.

Executed on this _____ day of _____, 2010, at_____, California.

_____

Consultant

List of Transportation Capital Improvments Projects August 2010

NO.	Project Name and Description	Funding Source	Federal /State Amount	Total Project Cost
1	Street Rehabilitation of Emerson Avenue from Third Street to SR 98 Project. ARRA I - Regional Surface Transportation Program.	ARRA I - RSTP Federal Funds	$ 895,000.00	$ 1,200,000.00
2	HSIP Grant for Improvements and traffic signal Van De Graaff and Cole Road. Raised Median From SR 111 to Van De Graff (Obligation for contruction package needs to be submitted by October 2009)	HSIP- Federal Funds	$ 450,000.00	$ 500,000.00
3	EDA Grant (West Cole Road Widening, Robinson Street, Sunset-Estrada Avenue Street Improvements, Sewer Main, Water Line and Traffic Signal along Cole Road)	Economic Development Adm. - Federal Funds	$ 3,000,000.00	$ 6,288,373.00
4a (PE)	Cole Rd. Corridor Improvements; Expansion of a 2 lane road into a 4 lane principal arterial (.5 miles) from Bowker Rd. East to SR 98 FTIP Carryover (STP LOCAL FUNDING)	STP - Local Funding Design Phase		$ 725,177.00
4b (CONST)		STP - Local Funding Construction		$ 2,900,708.00
5	Safe Routes to School Application 1-Various Locations sidewalks, handicap ramps. State Cycle 8 2008-2009. Grant List published July 30, 2009.	SR2S-State Funds	$ 393,300.00	$ 437,000.00
6	Overlay projects on various sites (Camino del Rio, Grant Street, David Navarro, Paseo de su Alteza, 5th Street, 7th Street, Iris North and South)	Measure D (Local)		$ 1,660,000.00
7	Cesar Chavez Blvd. /Calexico West Port of Entry Congestion Improvements	DEMO Proj. - Federal Funds	$ 2,850,000.00	$ 2,850,000.00
8	Cesar Chavez Blvd. and SR 98 Intersection imrpovements including Traffic Signal funded with Highway Safety Improvement Program.	HSIP- Federal Funds	$ 900,000.00	$ 1,800,000.00
9	Cole Road Rehabilitation from Rockwood Avenue to M.L. King Avenue. ARRA II - Regional Surface Transportation Program	ARRA-II RSTP	$ 452,000.00	$ 715,000.00
10	Second Street Rehabilitation from SR 111 to E. Rivera Avenue. State. Funded by American Recovery and Reinvestment Act II - State Transportation Improvement Program (ARRA II STIP).	ARRA-II STIP Federal Funds	$ 1,310,000.00	$ 1,310,000.00
Grand Total				**$ 20,386,258.00**