



MAYOR AND COUNCIL COMMUNICATION

DATE: 08/04/2015
REGULAR
ITEM #: 15

AGENDA ITEM: Approve Agreement for City Planner Services
SUBMITTED BY: Clark Schroder, Interim Administrator
THROUGH: Kyle Klatt, Community Development Director

SUMMARY AND ACTION REQUESTED:

With the City Planner position currently vacant, the Community Development Director is in need of assistance with planning duties while the City conducts a search process for a permanent City Planner. Staff will attempt to limit the utilization of the contractor to reimbursable projects, but there may be a need for assistance with broader planning and zoning issues. With the City Planner vacancy, this is anticipated to have a neutral impact on the Planning Department budget.

RECOMMENDATION:

Motion "to approve the Agreement for City Planner Services"

ATTACHMENT(S):

Agreement for City Planning Services

AGREEMENT FOR ZONING & PLANNING SERVICES

THIS AGREEMENT is made and entered into by and between the City of Lake Elmo, a municipal corporation under the laws of the State of Minnesota (hereinafter called Lake Elmo) and Sambatek, Inc. (hereinafter called “Consultant”). Lake Elmo desires to contract with Consultant for the provision of supplemental zoning and planning services.

Accordingly, the parties agree that Consultant shall provide certain zoning and planning services, subject to the following conditions:

- Zoning Services.** The zoning services to be performed by Consultant include, but are not limited to consultation with the Mayor, City Council and Planning Commission, City Administrator, City Engineer and City Attorney on zoning and related issues; assisting persons to comply with the zoning ordinances, conditional use permits, variances, wetland development regulations, shoreland management regulations, and subdivision regulations. This shall be done by reviewing permit applications and conducting plan reviews; investigating inquiries regarding ordinance requirements; interpreting and explaining zoning ordinances; reviewing plans to determine compliance with zoning and subdivision ordinances; researching complaints of violations and enforcing zoning-related issues; issuing written reports and orders; maintaining complete and accurate records; developing written policies on ordinance interpretation; coordinating activities with property owners, Consultants, residents and other interested parties to explain requirements, investigate complaints and determine appropriate action for issue resolution; monitoring and enforcing zoning ordinance, and other similar issues; and investigating and monitoring zoning ordinance complaints and issuing orders of citations; attendance at Planning Commission meetings and attendance at City Council meetings related to zoning or subdivision requests; preparing zoning and related letters or reports and resolutions for the Planning Commission and City Council; working with neighborhood groups on traffic and zoning related issues, Other services include keeping Lake Elmo officials informed of and up-to-date on zoning and subdivision problems and issues, and recommending ordinance, fee and policy changes as requested or necessary.
- Planning Services.** The planning services to be performed by Consultant include consultation with the Mayor, City Council, Planning Commission, other Commissions, City Administrator, City Engineer and City Attorney on planning and related issues including the comprehensive plan, implementation programs and other city issues, preparing ordinances and ordinance amendments, preparing plans and programs, attending non-zoning or non-neighborhood local, regional and area meetings, negotiations, and non-zoning and subdivision report writing.

3. **Administration procedures.** This section is set forth to clarify the responsibilities of each party and to establish procedures for performing the services as provided above.

A. Responsibility of Lake Elmo

1. Provide and maintain an office, meeting area or work area for the occasional use of the zoning and planning administrator, including a telephone, forms and supplies to perform the work required of the position.
2. Perform normal City clerical functions related to zoning and planning, such as publishing legal notices, keeping track of the application process, printing reports and letters, taking and preparing minutes, distribution of information.
3. Along with the Planning Commission Chair Person preparing the Planning Commission Agenda.
4. Establish committees and/or assign volunteers to work on ordinance revisions, Capital Improvement Program and updates to the Comprehensive Plan and Short Range Programs as well as other issues that may be related the Planning Services above.
5. Maintaining permanent City records associated with the services to be performed.
6. Prosecute all violations approved for prosecution by the City Council.
7. Issue all permits and collect fees associated with the services to be performed.
8. Provide information to interested parties.

B. Responsibility of Consultant

1. Provide Advice and Consultation to the Mayor, City Council, Planning Commission, City Administrator, City Engineer and City Attorney.
2. Provide typewritten reports and other information for the permanent records of Lake Elmo.
3. Receive zoning related applications, review for completeness and notify applicants of missing information; complete zoning review and approval process including any extension of time required by the City.
4. Provide complete packets of all information to the Planning Commission and City Council members for each monthly meeting.
5. Provide all office space, administrative and clerical support, equipment and supplies for work that is not performed at City Hall.
6. Attend Planning Commission and City Council meetings as provided above.
7. Provide a vehicle for the position.
8. Other activities as detailed above.

4. **Administrative Responsibility.** The daily administration of the zoning and planning services rendered pursuant to this agreement shall be under the direction of the contracted employee assigned to perform the services. The degree of services rendered, the standards of performance and other matters relating to regulations and policies shall remain under the control of Lake Elmo. Consultant shall submit to Lake Elmo a monthly report of services rendered and charges due, in such form and detail as Lake Elmo may reasonably require, as well as periodic suggestions regarding other matters relating to the zoning and planning services.

5. **Consultant.** Consultant shall assign Ben Gozola and Laura Chamberlain to perform the services pursuant to this agreement and the Consultant shall retain all obligations arising out of the contract relationship, including, but not limited to, salary, worker's compensation insurance, withholding tax and health insurance on Ben Gozola and Laura Chamberlain as Consultant's employees. Lake Elmo shall not be required to furnish any fringe benefits or compensation whatsoever to the Consultant. Neither Ben Gozola and Laura Chamberlain nor Consultant shall not, at any time or in any manner, be deemed to be an employee of Lake Elmo by reason of the performance of work or the providing of services within the territorial limits of Lake Elmo or on behalf of Lake Elmo in accordance with this agreement.

6. **Authority of Zoning and Planning Consultant.** Consultant assigned to perform the services is hereby provided specific authority by Lake Elmo to administer and enforce the pertinent Lake Elmo ordinances as provided in this agreement, to provide consultation and advice to the Planning Commission and to work with groups as requested by the City Council.

7. **Performance of Services.** The services to be provided by the Consultant under this agreement shall be done as directed by Lake Elmo, or, absent specific direction, in conformance with the general standard of care for a planning professional. The exercise by the Consultant of the powers here described on behalf of Lake Elmo, and the services to be provided by the Consultant in accordance with this agreement, may be inspected by Lake Elmo to determine whether the same are being exercised and performed satisfactorily.

8. **Indemnification.** To the fullest extent permitted by law, the Consultant agrees to defend, indemnify and hold harmless the City, and its employees, officials, and agents from and against all claims, actions, damages, losses and expenses, including reasonable attorney fees, resulting from, arising out of, or related to Consultant's negligence or the Consultant's performance or failure to perform its obligations under this Agreement. The Consultant's indemnification obligation shall apply to the Consultant's subConsultant(s), or anyone directly or indirectly employed or hired by the Consultant.

9. **Fees and Reimbursements of Direct Expenses.** For and in consideration of the rendition of the services described herein, Lake Elmo shall pay Consultant an hourly rate as follows:
Ben Gozola - \$ 119.00 per hour
Laura Chamberlain - \$ 90.00 per hour

Lake Elmo shall reimburse Consultant for any documented expenses paid for by Consultant in the performance of the Consultants responsibilities including mileage at the current IRS rate, printing and photographic costs performed by a third party, computer data storage of Lake Elmo information, postage and delivery cost provided by a third party and other costs approved by the City Administrator.

10. **Independent Consultant.** It is expressly understood that the Consultant is an “independent Consultant” and not an employee of the City. The Consultant shall have control over the manner in which the Services are performed under this Agreement. The Consultant shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the Services contemplated by this Agreement. The Consultant shall not be entitled to any benefits from the City, including, without limitation, insurance benefits, sick and vacation leave, workers’ compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture or agency relationship between the Parties.
11. **Insurance Requirements.** Insurance Requirements. The Consultant, at its expense, shall procure and maintain in force for the duration of this Agreement the following minimum insurance coverage and shall include the City as an additional insured on each such policy:
- A. General Liability. The Consultant agrees to maintain Commercial General Liability insurance in a minimum amount of \$1,000,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from, at a minimum, premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability.
 - B. Automobile Liability. If the Consultant operates a motor vehicle in performing the Services under this Agreement, the Consultant shall maintain commercial automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum liability limit of \$1,000,000, combined single limit.
 - C. Professional (Errors and Omissions) Liability Insurance. The Consultant will maintain professional liability insurance for all claims the Consultant may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Consultant’s professional services required under this Agreement. The Consultant is required to carry the following minimum limits: \$1,000,000 per claim; \$2,000,000 annual aggregate. The retroactive or prior acts date of such coverage shall not be after the effective date of this Agreement and the Consultant shall maintain such insurance for a period of at least three (3) years, following completion of the Services. If such insurance is discontinued, extended reporting period coverage must be obtained by the Consultant to fulfill this requirement.
 - D. Workers’ Compensation. The Consultant agrees to provide Workers’ Compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota. The Consultant shall also carry Employers’ Liability Coverage with minimum coverage as follows:
 - i. § \$500,000 – Bodily Injury by Disease per employee
 - ii. § \$500,000 – Bodily Injury by Disease aggregate
 - iii. § \$500,000 – Bodily Injury by Accident

- E. The Consultant shall, prior to commencing the Services, deliver to the City a Certificate of Insurance as evidence that the above coverages are in full force and effect.
 - F. The Consultant's general liability and auto liability should be primary insurance to any other valid and collectible insurance available to the City with respect to any claim arising out of Consultant's performance under this Agreement.
 - G. The Consultant's policies and Certificate of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days' advanced written notice to the City.
12. **Assignment.** This agreement may not be assigned by either party hereto without the other's prior written consent.
13. **Modification.** This agreement embodies the entire agreement between the parties with respect to the subject matter hereof, and all prior discussions, negotiations and agreements are merged herein. This agreement may be amended or modified only by an agreement, in writing, by the City Council or its appointed representative and Consultant and executed on behalf of both parties.
14. **Terms of Agreement.** This agreement will continue until terminated by either party upon giving 60 days written notice to the other party.
15. **Representatives.** Representatives of the parties for the purposes of notices are:
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| Lake Elmo
City Administrator
3800 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747-3900 | Sambatek, Inc.
12800 Whitewater Drive, Suite 300
Minnetonka, MN 55343
763-476-6010 |
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IN WITNESS WHEREOF, the parties hereto have executed this agreement this _____ day of _____, 2015.

SAMBATEK, INC.

By _____

Its President

CITY OF LAKE ELMO

By _____

Its Mayor

And _____

Its Administrator