



MAYOR AND COUNCIL COMMUNICATION

DATE: May 3, 2016

REGULAR

ITEM #: 17

MOTION

AGENDA ITEM: Parliamentary Contract

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Council began having a parliamentarian attend and assist with Council meetings in late 2015. In January 2016, a three month contract was approved which expired April 30, 2016.

ISSUE BEFORE COUNCIL:

Should the Council approve another contract with Kevin Wendt for parliamentarian services? If so, what should be the term of the contract?

PROPOSAL DETAILS/ANALYSIS:

Two Council members have requested the parliamentarian be contracted for another three months so a copy of that contract is included in your packet. Nothing has changed in this contract from the previous one approved by the Council other than the dates.

Also included in your packet is a rate schedule as previously presented. If Council intends to keep the Parliamentarian for longer than 3 months, there could be additional cost savings by entering into a 6 month contract rather than 3.

FISCAL IMPACT:

So far this year, the City has incurred just over \$8,500 in costs for the parliamentarian. The 2016 budget does not include any costs for a parliamentarian.

Going forward, cost may be reduced if meetings are shorter, particularly no more than 5 hours when the higher rate kicks in. This is now more likely given our ordinance changes that require the last agenda item to start before midnight. Also, Council could consider a longer contract in order to obtain a 25% discount as opposed to 15%.

OPTIONS:

- 1) Approve a 3 month contract with Kevin Wendt
- 2) Approve a 6 month contract with Kevin Wendt
- 3) Approve a 1 month contract with Kevin Wendt
- 4) Do not approve a contract

CITY OF LAKE ELMO, MINNESOTA

CLIENT-PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is made effective on **May 1, 2016** (“Effective Date”) between the **CITY OF LAKE ELMO, MINNESOTA**, a Minnesota Municipal corporation (hereinafter referred to as the “CITY”), and **Kevin Wendt** Individual (hereinafter referred to as “CONSULTANT”).

From time to time the CITY intends to engage CONSULTANT to provide Professional Services. This AGREEMENT sets forth the general terms and conditions which shall govern the relationship and performance of the CITY and CONSULTANT.

In consideration of the foregoing recitals and following terms and conditions contained herein, the CITY and CONSULTANT agree as follows:

ARTICLE 1: SERVICES OF THE CONSULTANT

1.1 Scope of Services:

- A. The services to be provided by CONSULTANT shall be set forth in a written communication if outside the scope of parliamentarian services for City Council Meetings.
- B. Professional Services will, in general, include parliamentarian services for the CITY and related review prior to meetings
- C. This AGREEMENT is not a commitment by the CITY to CONSULTANT to request services beyond period of service listed below

ARTICLE 2: PERIOD OF SERVICE AND TIMES FOR RENDERING SERVICES

2.1 Term: This AGREEMENT shall be effective and applicable for a **3 month period starting on May 1, 2016 and ending July 31, 2016**, subject, however, to termination by either party in accordance with ARTICLE 5.7.

2.2 The times for performing services shall be directed by the City Clerk.

ARTICLE 3: COMPENSATION

3.1 Basis for Compensation: Compensation to CONSULTANT shall be as follows

Being the chair for meetings as a parliamentarian(up to 5 hours)	\$200.00/hr
Being the chair for meetings as a parliamentarian(over 5 hours)	\$250.00/hr
Document Review	\$125.00/hr
Discount for 3 month commitment/contract	15% off

3.2 Payments for Services

- A. *Preparation and Submittal of Invoices:* CONSULTANT shall prepare and submit invoices to the CITY on a monthly basis, unless otherwise mutually agreed. Invoices are due and payable within 45 days of receipt.
- B. *Unpaid Invoices:* All accounts unpaid after 45 days from the date of original invoice shall be subject to a service charge of 1.0% per month, with interest beginning to accrue 45 days after the date of receipt of the invoice. Payment will be credited first to any interest and then to principal.
- C. *Disputed Invoices:* If the CITY contests an invoice, the CITY shall advise CONSULTANT of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 4: CITY'S RESPONSIBILITIES

- 4.1 The CITY shall designate a person to act as the CITY's representative with respect to services to be rendered under this AGREEMENT. Unless otherwise designated in writing, the CITY's representative shall be the CITY ADMINISTRATOR. Such persons shall have authority to transmit instructions, receive instructions, receive information, interpret and define CITY's policies with respect to CONSULTANT's services, and render decisions relative to a specific project.
- 4.2 *Provide Access:* The CITY shall provide access to, and make provisions for CONSULTANT to enter upon public or private property as required to perform their work.
- 4.3 *Provide supporting documentation and Services:* The CITY shall provide all necessary information regarding its requirements as necessary for orderly progress of the work, including records, data, instructions, and requirements for completeness. .
- 4.4 The CITY shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the CITY to CONSULTANT pursuant to this AGREEMENT. CONSULTANT may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this AGREEMENT.

ARTICLE 5: GENERAL CONSIDERATIONS

- 5.1 *Standards and Parameters of Performance*
 - A. *Standard of Care:* The standard of care for all professional services performed or furnished by CONSULTANT under this AGREEMENT will be the care and skill ordinarily used by members of the subject profession practicing under like circumstances.
 - B. *Technical Accuracy:* CONSULTANT shall be responsible for the technical accuracy of his services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in CITY-furnished information.

C. *Subconsultants*: CONSULTANT **may not** employ Subconsultants without prior approval of the City.

D. *Compliance with Laws and Regulations, and Policies and Procedures*: CONSULTANT and CITY shall comply with applicable Laws and Regulations and CITY mandated standards.

5.2 Independent Contractor: CONSULTANT is an independent contractor. The manner in which the services are performed shall be controlled by CONSULTANT; however, the nature of the services and the results to be achieved shall be specified by the CITY. All services provided by the CONSULTANT pursuant to this AGREEMENT shall be provided by the CONSULTANT as an independent contractor and not as an employee of the CITY for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, and eligibility for employee benefits.

5.3 Insurance

A. CONSULTANT shall procure and maintain professional liability insurance for all damages arising out of the performance of services caused by an error, omission or negligent act for which CONSULTANT is legally liable. It shall be in an amount of not less than \$1,000,000 and require notice to the CITY before any cancellation or modification. All provisions relating to indemnification and insurance shall survive termination of this contract to the full extent required for the benefit of the parties.

B. CONSULTANT, on behalf of himself and his insurers, agrees to indemnify and hold the City harmless against all claims, losses, causes of action, and expenses, including legal expenses, arising from, or based in the whole, or in any part, on any negligent act or omission by CONSULTANT in the performance of work or services pursuant to this Agreement. The City shall not be liable for any loss suffered by the CONSULTANT due to personal injury or because of damage to, or destruction of, any property, or any loss of profits or other consequential damage or any inconveniences resulting from the theft, damage to, or destruction of personal property. City may, at its option, but with no obligation to do so, obtain insurance covering CONSULTANT against liability to third parties relative to CONSULTANT'S performance of this Contract. CONSULTANT shall be solely responsible for obtaining at his own expense, any insurance coverage which he may desire insuring himself against personal injury or property damage.

5.4 Data Practices Act Compliance: Data provided by CONSULTANT or created under this AGREEMENT shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

5.5 CONSULTANT shall comply with the Minnesota Data Practices Act and all other state and federal laws relating to data privacy or confidentiality. CONSULTANT will immediately report to the City any requests from third parties for information. The City will immediately notify CONSULTANT of any requests from third parties or the City for information.

5.6 Conflict of Interest: The CONSULTANT shall use best efforts in the performance of his services and professional obligations to avoid conflicts of interest and appearances of impropriety in representation of the CITY. In the event of a conflict, the CONSULTANT, with the consent of the CITY, shall arrange for suitable alternative representation.

5.7 Termination

- A. Either party may terminate this AGREEMENT upon thirty (30) days written notice.
- B. In like manner, if the entire AGREEMENT is terminated, copies of all remaining documents on file with the CONSULTANT shall also, upon request, be made available to the CITY pursuant to ARTICLE 5.4 upon receipt of payment of amounts due and owing CONSULTANT for any authorized work.

5.8 Controlling Law: This AGREEMENT is to be governed by the laws of the State of Minnesota.

5.9 Successors, Assigns, and Beneficiaries

- A. The CITY and CONSULTANT are hereby bound and the successors, executors, administrators, assigns, and legal representatives of the CITY and CONSULTANT are hereby bound to the other party to this AGREEMENT and to the successors, executors, administrators, assigns and legal representatives of such other party, in respect of all covenants, agreements, and obligations of this AGREEMENT.
- B. Neither the CITY nor CONSULTANT may assign, sublet, or transfer any rights under or interest in this AGREEMENT, or any portion thereof, without the written consent of the other party.
- C. Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than the CITY and CONSULTANT.

5.10 Dispute Resolution

- A. The CITY and CONSULTANT agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to invoking other provisions of this AGREEMENT, or exercising their rights under law.

5.11 Notices: Any notice required under this AGREEMENT will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

5.12 Survival, Severability, Waiver

- A. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this AGREEMENT will survive its completion or termination for any reason.
- B. *Severability*: Any provision or part of the AGREEMENT held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the CITY and CONSULTANT.
- C. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the date first above written.

Kevin Wendt

CITY OF LAKE ELMO, MINNESOTA

By _____

By _____

Mayor

By _____

City Clerk



6232 5th Avenue South • Richfield, MN 55423 • info@kdwconsulting.com

Rate Schedule 1A

Service	Rate per hour
Meeting - Governmental	\$200.00
Document Review – City Code of Ordinance, Agenda, Council Packet, etc.	\$125.00
DISCOUNT – 1 month contract	5%
DISCOUNT – 3 month contract	10%
DISCOUNT – 6 month contract	20%

Rate Schedule 1B

Service	Rate per hour
Meeting – Governmental (Up to 5 hours)	\$200.00
Meeting – Governmental (Beyond 5 hours)	\$250.00
Document Review – City Code of Ordinance, Agenda, Council Packet, etc.	\$125.00
DISCOUNT – 1 month contract	10%
DISCOUNT – 3 month contract	15%
DISCOUNT – 6 month contract	25%

SCHEDULE 2

Sit with staff and rule on points of order	\$165/hr.
Document Review	\$100/hr

Both rate schedules include a 2 hour meeting minimum charge.