



STAFF REPORT

DATE: 7/17/18

REGULAR

ITEM #: 25

MOTION

TO: City Council
FROM: Emily Becker, Planning Director
AGENDA ITEM: Approval for Additional Costs for Comprehensive Plan
REVIEWED BY: Kristina Handt, City Administrator

BACKGROUND:

The City had established a total project budget of \$100,000 for the Comprehensive Plan update as was reflected in the 2017 budget book. The City applied for and received a Living Healthy in Washington County grant in the amount of \$15,000.

The Council approved the hiring of Swanson Haskamp Consulting at its January 17, 2017 meeting with a budget not to exceed \$80,000. Then, on March 7, 2017, the Council approved a Master Services Agreement with Swanson Haskamp Consulting that increased that budget to \$90,000 in order to include the Living Healthy portion in the planning process. The City received the final invoice from Swanson Haskamp Consulting and was informed that the budgeted \$90,000 had been exceeded along with a request for the City to share in less than half the team's overages related to the project.

ISSUE BEFORE COUNCIL:

Should the City approve additional costs associated with development of the 2040 Comprehensive Plan update?

PROPOSAL DETAILS/ANALYSIS:

Per Swanson Haskamp, the overages related to re-calculating the full land use plan based on the revised directions to ignore the 2015 system statement projections and consequently update nearly every chapter; one of the most time consuming being the Transportation Analysis Zones in the Transportation chapter which was originally planned to be done by the City Engineer; adjusting land use and household breakdowns; and the partial update of the Local Surface Water Management Plan (LSWMP) to comply with the chapter requirements, which will provide data which addresses many of the required items in the LSWMP. The overage amounts to \$3,217.50.

FISCAL IMPACT:

The City had budgeted \$100,000 for the comprehensive plan update. The City has received a Washington County Living Healthy grant in the amount of \$15,000 to apply to the project. The

SHC Master Services Agreement and Addendum for comprehensive planning services including the Living Healthy component for a not to exceed amount of \$90,000. The total amount being paid to Swanson Haskamp Consulting relating to the 2040 Comprehensive Plan update, if the overage is approved, would be \$93,217.50.

The agreement states that any change orders, additional services and/or modifications to the proposal may result in adjustments to the budget and such additional charges would be billed per the Rate Schedule. Any such changes are to be in writing and be attached as an addendum to the agreement.

OPTIONS:

The Council has the following options:

- 1) To approve the requested overage amount.
- 2) Approve a different overage amount.
- 3) To not approve the overage.

RECOMMENDATION:

Staff recommends the Council approve the requested overage amount. Planning Commission and Council recommendation to remove the Urban Reserve from the land use plan resulted in having to make significant changes throughout the plan, requiring more time and effort than originally planned.

“Move to approve an overage of \$3,217.50 to be paid to Swanson Haskamp Consulting.”

ATTACHMENTS:

- SHC Master Services Agreement

MASTER SERVICES AGREEMENT
BETWEEN SWANSON HASKAMP CONSULTING, LLC
AND THE CITY OF LAKE ELMO FOR PLANNING SERVICES RELATED TO
THE 2040 COMPREHENSIVE PLAN UPDATE

The Agreement ("Agreement") is made as of _____ 2017 and between, the City of Lake Elmo ("Client"), 3800 Laverne Avenue N., Lake Elmo, MN 55042, and Swanson Haskamp Consulting, LLC ("SHC"), 246 Albert Street S., Suite 2A, St. Paul, MN 55105, to provide Professional Planning Services ("Services") by SHC for the 2040 Comprehensive Plan Update project ("Project") as directed by the Client.

Description of Services (Scope of Services)

Jennifer Haskamp, President of SHC shall be the primary contact and project manager assigned to perform planning and project management services for the Project. SHC responded to the Client's Request for Proposal on December 22, 2016 which included a defined scope of services, schedule, and budget (hereinafter referred to as "Proposal"). The Proposal is hereby incorporated as Addendum 1, and SHC agrees to perform and complete the work as identified within the Proposal. The following summary of the Project Proposal is provided:

- Phase I: Project Initiation, Issue Identification, Background Report, Visioning and Goal Setting
- Phase II: Plan Development
 - Land Use & Housing
 - Parks & Trails, Natural Resources
 - Transportation, Water & Wastewater
 - Implementation
- Phase III: City Review & Adjacent Jurisdictions
- Phase IV: Metropolitan Council Review
- Phase V: Update Official Controls (Not included within budget)

SHC shall perform the services identified in the Project Proposal and no others unless otherwise agreed to by verbal or written direction, and unless SHC is paid additional compensation.

Standard of Care.

SHC's services shall be performed based on the standard of reasonable professional care for services similar in scope, schedule, and complexity to the services being provided by SHC. All warranties, express or implied, under the Proposal or otherwise, in connection with SHC's services are expressly disclaimed.

Period of Service

This contract shall be effective through commencement of Phase IV: Metropolitan Council Review, or approximately December 2018, as identified in the Project Proposal.

Compensation

SHC shall be paid for the Project per Addendum 1: Proposal, and such services shall not exceed \$80,000. Billing rates of the SHC Team shall be as identified on the attached Addendum 2: Rate Schedule. Client agrees that the not-to-exceed value of this contract correlates directly to the activities identified in the Proposal. Any change orders, additional services and/or modifications to the Proposal may result in adjustments to the budget and such additional charges would be billed per the Rate Schedule included within the Proposal through the duration of this contract. Any such changes shall be in writing and be attached as an Addendum to this Master Services Agreement. Payments are due upon presentation of SHC's invoices, and the Client agrees to pay bills within 30 days of receipt. SHC and the Client shall work together to establish the method for reporting and submitting invoices to assist with the ease of monthly billing and budget management. Client hereby acknowledges that sufficient funds are currently available, or methods to obtain funds, are assigned to pay for the cost of the Project contemplated by the Agreement. SHC has the right, at its sole discretion,

to stop work and withhold work product or Services, if payments have not been received within 30 days of invoicing date. If Payments are not made within 30 days, a service charge of one (1) percent per month (12% annum), or as permitted by law, will be charged on any unpaid balance. Service charges may be compounded.

If Client fails to make payments to SHC consistent with the Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at SHC's option, cause for suspension of performance of the Services under the Agreement. If SHC elects to suspend Services, prior to suspension of Services, SHC shall give seven days written notice to Client. In the event of a suspension of Services, SHC shall have no liability to Client for delay or damage caused to Client because of such suspension of Services. Before resuming Services, SHC shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of SHC's services. SHC's fees for the remaining Services and the time schedules shall be equitably adjusted.

In the event of termination not the fault of SHC, SHC shall be compensated for Services performed prior to termination, together with reimbursable expenses due.

Client's Responsibilities

Client shall provide full information in a timely manner regarding requirements for and limitations for successful execution of the Scope of Services, including objectives, schedule, constraints and criteria, requirements and relationships and any other pertinent information that will assist SHC in achieving the expectations of the Client. The Client further agrees to work collaboratively with SHC on the tasks and responsibilities as identified within the Proposal, particularly as it relates to the Technical Panel, Advisory Panel ("AP") and Public Participation activities.

The Client shall designate a representative authorized to act on the Client's behalf with respect to the Proposal and will serve as the Project point of contact throughout the duration of this contract. The Client, or such designated representative, shall render decisions in a timely manner pertaining to documents submitted by SHC to avoid unreasonable delay in the orderly and sequential progress of the Proposal.

Termination

The Agreement may be terminated by either party at any time should the other party fail to perform in accordance with its terms through no fault of the party initiating the termination. Such termination shall be effective after giving ten days written notice. Client agrees to pay SHC for all Services provided up to the effective date of termination.

Miscellaneous

Work Product

The documents prepared by SHC for the Project are instruments of SHC's service for use solely with respect to the Client and, unless otherwise provided and agreed, SHC shall be deemed the author of these documents. All documents shall be the property of the Client, and both the Client and SHC shall retain all common law, statutory and other reserved rights, including the copyright. The Client and SHC shall be permitted to retain copies, including reproducible copies, of SHC's documents for the Client's information, reference and use in connection with the Services.

Claims and Consequential Damages

SHC and Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's terminating in accordance with the termination clause.

Any claim, dispute or other matter in question arising out of or relating to the Proposal or breach thereof ("Claim") shall be resolved by litigation in the State or (assuming subject matter jurisdiction) Federal Court located in Washington County, Minnesota.

Interpretation and Severability

Each provision of this Agreement is severable from the others. Should any provision of the Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of the Agreement. Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable.

Assignment

The Client and SHC, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Client nor SHC shall assign this Agreement without the written consent of the other.

Team Relationship

The Client and SHC agree to work together on the basis of trust, good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner.

Entire Agreement

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the services to be provided by SHC. Only a written instrument signed by both parties may amend the Agreement.

Governing Law

The Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Minnesota, excluding its conflict of laws. SHC and Client expressly consent to the exclusive personal jurisdiction and venue of the Minnesota courts for all purposes relating to the Proposal. The parties waive trial by jury.

Execution

In witness whereof, the parties hereto have made and executed the Agreement as of the day and first above written.

CLIENT

SWANSON HASKAMP CONSULTING, LLC

Jennifer Haskamp, President | Principal

Printed Name

Date

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Addendum 3 to Master Services Agreement (“MSA”) dated _____, 2017

I. Cost and Fee Summary:

The Project Proposal Not-to-Exceed value of **\$80,000** will accommodate the proposed changes and additional Stakeholder meetings with the allocation of the Health Living Grant as detailed in Sections II and II which follow.

The Living Healthy Grant requires additional Services to the Project Proposal to complete. The additional Services are detailed within Section III b and c which follows. The estimate for the additional Services is approximately \$8,870 with a not-to-exceed value of **\$10,000**.

Total Not-to-Exceed + Addendum 3 = \$90,000

II. Changes to the Proposal

The following changes and additions to the Project Proposal, where Project Proposal is defined within the MSA, are summarized below as discussed with City Staff on February 8, 2017:

- a. All Advisory Panel Meetings will be held in-person, and the scoped Virtual Advisory Panel meetings in the Proposal will be changed to in-person meetings. This result in three (3) additional in-person Advisory Panel meetings, and a cost difference of \$600 based on the flat meeting rates defined within the Proposal.
- b. The City would like to hold in-person stakeholder meetings as part of the public participation process. These meetings were not identified in the Proposal. The following stakeholder groups are identified:
 - i. Cimarron/FamilyMeans
 - ii. South of 10th Street Homeowners Association (HOAs)
 - iii. Church/Faith Groups/Civic Organizations/Schools
 - iv. Rural Residential
 - v. Tri-Lakes Area/Lake Association
 - vi. Village Area/Business Association
- c. The additional stakeholder meetings result in additional Services totaling approximately \$6,340 (includes meeting attendance and meeting preparation)
- d. Schedule has been amended to reflect additional meetings and is attached to this Addendum.

III. Living Healthy Grant Money Allocation

- a. SHC has reviewed the Living Healthy grant which was received by the City after the Proposal was submitted. Some of the objectives associated with the Living Healthy grant can be accommodated within the existing scope as follows:
 - i. Advisory Panel Meetings (9): \$100 of each meeting billed against the grant (\$900)

- ii. Staff Meetings (8): \$100 of each meeting billed against the grant (\$800)
 - iii. Stakeholder Meetings (6): \$100 of each meeting billed against the grant (\$600)
 - iv. Park Commission Meetings (2): \$250 of each meeting billed against the grant (\$500)
- b. The Living Healthy Grant details the expectation of going out to the public to solicit information. Staff identified 4-5 events throughout the duration of the Project where SHC and staff would attend to solicit feedback. Attendance and preparation for these events results in additional Services totaling approximately \$4,600.
- c. To incorporate the elements of Living Healthy Grant throughout the document in plan components and mapping results in an additional Services totaling approximately \$4,270.

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