



STAFF REPORT

DATE: April 18, 2017

CONSENT

ITEM #: 16

AGENDA ITEM: Professional Services Agreement for Space Needs Study

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

At the April 4, 2017 meeting, Council authorized staff to negotiate with BKV Group for a space needs study.

ISSUE BEFORE COUNCIL:

Should the Council approve the Professional Services Agreement with BKV Group?

PROPOSAL:

A copy of the agreement is included in the packet. It outlines the scope of services, compensation, completion date, termination date, indemnification, insurance, and other standard contract provisions.

The draft report will be due by September 8, 2017 and the final report by September 26, 2017.

FISCAL IMPACT:

Not to exceed cost of \$13,600 is within the anticipated budget

OPTIONS:

- 1) Approve Professional Services Agreement with BKV Group
- 2) Amend and then Approve the Professional Services Agreement with BKV Group
- 3) Do not approve the Professional Services Agreement with BKV Group

RECOMMENDATION:

If removed from the consent agenda:

“Move to approve the Professional Services Agreement with BKV Group.”

ATTACHMENTS:

- Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

Lake Elmo Municipal Facilities Space Needs Assessment

THIS AGREEMENT made this _____ day of _____, 20____, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the “City”) and **Boarman Kroos Vogel Group (dba BKV Group)** (the “Consultant”).

IN CONSIDERATION OF THEIR MUTUAL COVENANTS THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES. The City retains the Consultant to conduct a Facility Space Needs Assessment of the Lake Elmo Municipal Facilities. At a minimum, as part of the Facility Space Needs Assessment, the Consultant’s assessment and report shall include:

- A. Identify Current Facility Conditions and Deficiencies
 - Age of Facility
 - Structural Issues
 - Size (sq. ft.)
 - Number of Staff
 - Equipment
 - * Storage
 - * ADA Compliance
 - * Utility Costs
 - * Hours of Operation
 - * Photos
- B. City Population and Growth Projections based upon published data prepared by others
- C. Future Facility Needs
 - Identify Shared Space Potential
 - Workspace
 - Storage
 - Meeting Rooms
 - Sustainable Buildings/LEED
 - IT and Computer Equipment
- D. Space Needs
 - Square Footage, as requested by staff
 - Square Footage, as suggested by standard
- E. Preliminary Cost Estimates
- F. Preliminary Site Design layouts
- G. Potential Funding Sources
- H. Potential Improvements to Existing Buildings
- I. Timeline
- J. Facilities to be included are the City Hall, 2 fire stations and public works.

The Consultant agrees to perform the assessment and prepare the report consistent with the Request for Proposals issued by the City dated February 8, 2017 and the Consultant's proposal submitted to the City dated March 14, 2017.

2. COMPENSATION. The Consultant shall be paid \$ 13,600.00 by the City in accordance with the Consultant's proposal, which is a not-to-exceed amount. Upon submittal and acceptance by the City of the draft report, the City shall pay the Consultant the first installment of \$ 10,700.00, and the City shall pay the Consultant the remaining \$ 2,900.00 upon presentation of the final report by the Consultant to the City Council.

3. COMPLETION DATE. The Consultant must complete the services on or before September 8, 2017 for the draft report and no later than September 26, 2017 for the final report.

4. TERMINATION. The City may terminate this Agreement at any time without cause upon not less than seven (7) days' prior written notice to the Consultant. Upon termination of this Agreement, the Consultant shall only be paid for work in progress or completed as of the effective date of termination.

5. DOCUMENTS. The City shall be the owner of all documents, reports, studies, analyses and the like prepared by the Consultant in conjunction with this Agreement. Consultant retains all rights to its pre-existing intellectual property, which is licensed to the City for purposes of this Agreement.

6. COMPLIANCE WITH LAWS AND REGULATIONS. In providing services hereunder, the Consultant shall abide by all statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided.

7. STANDARD OF CARE. The Consultant shall exercise the same degrees of care, skill, and diligence in the performance of the services under this Agreement as is ordinarily possessed and exercised by a professional consultant under similar circumstances. No other warranty, expressed or implied, is included in this Agreement. The City is not responsible for discovering deficiencies in the accuracy of the Consultant's services.

8. INDEMNIFICATION. The Consultant shall indemnify and hold harmless the City, its officials, agents, consultants, and employees, from and against any and all claims, demands, actions, causes of action, including costs and attorney's fees, to the extent caused by Consultant's negligence or other fault in the execution or performance of the work or services provided for the City by the Consultant herein.

9. INSURANCE. The Consultant shall secure and maintain such insurance as will protect the Consultant from claims under the Worker's Compensation Acts, automobile liability, and from claims for bodily injury, death, or property damage which may arise from the performance of services under this Agreement. Such insurance shall be written for amounts not less than:

| | |
|------------------------------|---------------------------------------|
| Commercial General Liability | \$2,000,000 each occurrence/aggregate |
| Automobile Liability | \$2,000,000 combined single limit |
| Excess/Umbrella Liability | \$2,000,000 each occurrence/aggregate |
| Workers' Compensation | Statutory limits |

Professional Liability

\$1,000,000 each occurrence/aggregate

The City shall be named as an additional insured on the commercial general liability and umbrella policies.

Before commencing work, the Consultant shall provide the City a certificate of insurance evidencing the required insurance coverage in a form acceptable to the City. The Consultant shall provide either a certificate of insurance or an endorsement to the policy that provides that the City will be provided with at least 30 days' written notice of any intended cancellation or non-renewal of the policy and at least 10 days' written notice of cancellation for nonpayment of premium.

10. INDEPENDENT CONTRACTOR. The City hereby retains the Consultant as an independent contractor upon the terms and conditions set forth in this Agreement. The Consultant is not an employee of the City and is free to contract with other entities as provided herein. The Consultant shall be responsible for selecting the means and methods of performing the work. The Consultant shall furnish any and all supplies, equipment, and incidentals necessary for the Consultant's performance under this Agreement. The City and the Consultant agree that the Consultant shall not at any time or in any manner represent that the Consultant or any of the Consultant's agents or employees are in any manner agents or employees of the City. The Consultant shall be exclusively responsible under this Agreement for the Consultant's own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

11. SUBCONTRACTORS. The Consultant shall not enter into subcontracts for services provided under this Agreement without the express written consent of the City. The Consultant shall comply with Minnesota Statutes Section 471.425. The Consultant must pay subcontractors for all undisputed services provided by the subcontractor within ten days of the Consultant's receipt of payment from the City. The Consultant must pay interest of 1.5 percent per month or any part of a month to a subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.

12. NONDISCRIMINATION. The Contractor and any subcontractors employed by the Contractor to perform work under this Agreement shall comply with all applicable provisions of all federal, state and municipal laws which prohibit discrimination in employment to members of a protected class and all rules and regulations, promulgated and adopted pursuant thereto. The Contractor will include a similar provision in all subcontracts entered into for the performance of this Agreement.

13. ASSIGNMENT. Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.

14. WAIVER. Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

15. ENTIRE AGREEMENT. The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

16. CONTROLLING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

17. COPYRIGHT. The Consultant shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by it, and it shall hold the City harmless from loss or damage resulting therefrom.

17. RECORDS. The Consultant shall maintain complete and accurate records of time and expense involved in the performance of services.

18. MINNESOTA GOVERNMENT DATA PRACTICES ACT. The Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the City pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the Consultant pursuant to this Agreement. The Consultant is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event the Consultant receives a request to release data, the Consultant must immediately notify the City. The City will give the Consultant instructions concerning the release of the data to the requesting party before the data is released. The Consultant agrees to defend, indemnify, and hold the City, its officials, agents, employees, and consultants harmless from any claims resulting from the Consultant's officers', agents', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

CITY OF LAKE ELMO

By: _____

Mike Pearson

Its: Mayor

By: _____

Kristina Handt

Its: City Administrator

ATTEST:

Julie Johnson, City Clerk

Company Name

By: _____

Its _____