



STAFF REPORT

DATE: January 16, 2018

CONSENT #13

AGENDA ITEM: Approve Contract for Landscape Architecture Services
SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

The City issued a Request for Proposals for Landscape Architecture Services last October. Council interviewed three firms in November and in December directed staff to enter contract negotiations with Wenck Associates Inc.

ISSUE BEFORE COUNCIL:

Should Council approve the contract with Wenck for Landscape Architecture Services?

PROPOSAL:

A copy of the proposed service agreement is included in your packet. It has been reviewed by the City Attorney and is similar in format to the City's standard professional services agreement.

Compensation will be based upon the hourly rates outlined in Exhibit B. In addition there are flat one hour rates for meetings of the Council.

RECOMMENDATION:

If removed from the consent agenda:

“Move to approve the agreement between the City of Lake Elmo and Wenck for Landscape Architecture Services.”

ATTACHMENT:

- Wenck Landscape Architecture Services Agreement

CITY OF LAKE ELMO, MINNESOTA

LANDSCAPE ARCHITECTURE SERVICES AGREEMENT

This AGREEMENT is made effective on _____, **2018**, ("Effective Date") between the **CITY OF LAKE ELMO, MINNESOTA**, a Minnesota Municipal corporation (hereinafter referred to as the "CITY"), and Wenck Associates, Inc., a Minnesota corporation (hereinafter referred to as "CONSULTANT").

From time to time the CITY intends to engage CONSULTANT to provide landscape architecture 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 or "Work Order" that is authorized by the CITY prior to the start of work. A copy of the form of Work Order to be used is attached hereto and incorporated by reference as **Exhibit A**.
- B. Professional Consulting Services will, in general, include studies and reports; plan review; preparation of design standards and policies of the CITY; design, preparation of working drawings and specifications; construction administration and construction observations; mapping, preparation of cost estimates; and other related tasks of a type normally associated with CITY projects and improvements.
- C. Either Party may propose a Work Order; the other Party agrees to accept or reject within 10 days of receipt of the proposal. If a proposed Work Order is rejected, neither Party shall have further responsibility with respect to that matter.
- D. Additional services outside the scope of a Work Order are to be provided on a fee basis, as set forth in **Exhibit B, Fee Schedule**, which is attached hereto and incorporated by reference. These services will be identified as extra services and CONSULTANT shall obtain the CITY's approval in writing before work begins.
- E. In case of any inconsistency or ambiguity between the provisions of a Work Order and the provisions of this Agreement, the provisions of the Work Order shall prevail.
- F. This Agreement is not a commitment by the CITY to CONSULTANT to request services or to issue any Work Orders.

1.2 Work Order Procedure

- A. CONSULTANT shall provide the CITY with a “Work Order” for specific services or projects when requested by the CITY. Each Work Order will indicate the specific task, scope of services, time for performance, deliverables to be provided, and the basis of compensation.
- B. Individual “Work Orders” or written communications authorizing services by CONSULTANT shall be mutually approved by the CITY and CONSULTANT. Each duly executed Work Order shall be incorporated and made a part of this Agreement and the general considerations thereof.

ARTICLE 2: PERIOD OF SERVICE AND TIMES FOR RENDERING SERVICES

- 2.1 Term: This Agreement shall be effective and applicable to each “Work Order” issued hereunder and shall apply to any service provided by CONSULTANT whether retained under a formal “Work Order” or other written action or approval by the CITY, subject, however, to termination by either party in accordance with Article 6.6.
- 2.2 The times for performing services or providing deliverables shall be as stated in each Work Order or written communication authorizing the service or deliverable.

ARTICLE 3: COMPENSATION

- 3.1 Basis for Compensation: Compensation to CONSULTANT shall be as set forth in each Work Order. When services are requested by the CITY and a Work Order is not executed, the services shall be provided on an hourly rate basis in accordance with the hourly rate sheet on file at the CITY, or as mutually agreed to in written form. The current fee schedule is attached to this Agreement as Exhibit B.
- 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 30 days from the date of original invoice shall be subject to a service charge of 1.0% per month, with interest beginning to accrue 30 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 Emily Becker, Planning Director. 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. The CITY shall also provide services in regards to accounting, fiscal and bond counseling services, insurance, and legal services as may be required for the project.
- 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.
- 4.5 Provide Prompt Notice and Review: The CITY shall promptly review and examine all correspondence, reports, sketches, drawings, specifications and other documents and communications prepared and presented by CONSULTANT and render decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT. The CITY shall also give prompt notice to CONSULTANT whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work.
- 4.6 The CITY shall make timely payments to CONSULTANT as set forth in Article 3.

ARTICLE 5: CONSULTANT'S OBLIGATIONS

- 5.1 CONSULTANT and its employees shall comply with and shall contractually require all subcontractors retained by CONSULTANT to comply with all statutes, ordinances, rules, regulations, and other laws applicable to its performance of Services.
- 5.2 CONSULTANT's services will be provided in a manner consistent with the care and skill ordinarily used by reputable members of the profession practicing under similar conditions at the same time and general location. This statement of duty is exclusive. CONSULTANT shall be responsible for the technical accuracy of its 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.
- 5.3 To the extent the Services, or any part thereof, involve estimates of construction, operating or any other costs, CONSULTANT agrees to make its best estimate of such costs based on information made available to CONSULTANT and based on CONSULTANT's experience and knowledge. CONSULTANT cannot guarantee the accuracy of any such estimates, and it shall not be liable to the CITY or any other person for any loss or damage of any type based upon the use of, or reliance upon, such estimates.
- 5.4 CONSULTANT shall provide the Services in compliance with all reasonable health and safety rules of the CITY that the CITY has made known to CONSULTANT.

- 5.5 CONSULTANT agrees to secure all permits and licenses normally required in CONSULTANT's name for the performance of the Services. The CITY shall cooperate with CONSULTANT in obtaining such permits and licenses as necessary. The fees for such permits and licenses shall be reimbursable expenses.
- 5.6 CONSULTANT reserves the right to engage any subcontractors it deems necessary to provide the services under this Agreement. At the CITY's written request, the CITY shall have the right to approve any subcontractor that CONSULTANT proposes to use in connection with services under this Agreement, but such approval shall not be unreasonably withheld.
- 5.7 CONSULTANT shall appoint a "CONSULTANT Representative" to coordinate provision of the services on any Work Order with the CITY or the City's representative. CONSULTANT's representative shall be authorized to act on CONSULTANT's behalf and to bind CONSULTANT and shall be available at reasonable times during the term of the Work Order to coordinate provision of the services, answer the CITY's questions, and respond to the CITY's problems or complaints. CONSULTANT reserves the right to change the CONSULTANT representative on any Work Order upon written notice to the CITY. The CONSULTANT representative shall be designated in the Work Order.
- 5.8 Except with respect to the work of subcontractors retained by CONSULTANT, CONSULTANT shall not, as a part of the services or in connection with visits to and observations at a work site, supervise, direct, stop, or otherwise control the work of others. CONSULTANT has no authority over, or no responsibility for, the means, methods, techniques, sequences, or procedures selected by others, or for safety precautions and programs incident to the work of others, or for any failure of others to comply with laws, rules, regulations, ordinances, codes, orders, or client safety rules applicable to furnishing and performing work related to, or in connection with, the services. Accordingly, CONSULTANT does not guarantee the performance of any other person or entity and CONSULTANT shall have no responsibility for the failure of any person or entity, other than a subcontractor retained by CONSULTANT, to furnish or perform work in accordance with any documents or any other documents, plans, or specifications.
- 5.9 The CITY acknowledges that CONSULTANT must rely on various engineering studies performed by others, and other information about existing systems in place and prior, and current and anticipated operations at the site, all obtained from others. The CITY further acknowledges that CONSULTANT may rely on such information to the extent that such reliance is reasonable under all the circumstances at the time without independently confirming the accuracy of it, and if such information is later determined to be inaccurate and except to the extent CONSULTANT's reliance was negligent, the CITY releases and discharges CONSULTANT from any liability as to losses caused by such reliance.

ARTICLE 6: GENERAL CONSIDERATIONS

- 6.1 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 CONSULTANT pursuant to this Agreement shall be provided by 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.
- 6.2 Insurance
- A. CONSULTANT shall maintain statutory workers' compensation insurance coverage.

- B. CONSULTANT shall procure and maintain commercial general liability insurance coverage for protection from claims for damages because of bodily injury including personal injury, and from claims against it for damages because of injury to or destruction of property including loss of use resulting therefrom. The policy shall provide coverage for each occurrence in the minimum amount of \$1,000,000. The CITY shall be listed as an additional insured.
- C. CONSULTANT shall also procure and maintain professional liability insurance coverage for damages arising out of the performance of services caused by a negligent error, omission or act for which CONSULTANT is legally liable.
- D. Certificates of insurance will be provided to the CITY upon execution of the contract and thereafter upon request by the CITY.
- E. CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CITY and its officials, agents, and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by CONSULTANT's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom CONSULTANT is legally liable.
- F. The CITY agrees, to the fullest extent permitted by law, to indemnify and hold harmless CONSULTANT, its officers, directors, employees and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CITY's negligent acts and the acts of its contractors, subcontractors or consultants or anyone for whom the CITY is legally liable.
- G. Neither the CITY nor CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

6.3 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. If a data practices request is made to the CITY pursuant to Minnesota Statutes Section 13.03, subdivision 3, upon notification by the CITY to CONSULTANT of the request, CONSULTANT shall promptly provide the CITY with any information that CONSULTANT may have that is responsive to the request.

6.4 Use of Documents

- A. All Documents prepared and submitted by CONSULTANT are instruments of service, except for CITY-furnished data. CONSULTANT shall retain an ownership and property interest therein (including the right of reuse at the discretion of CONSULTANT) whether or not the Project or Service is completed.
- B. At the time of completion or termination of this Agreement or for each "Work Order," CONSULTANT shall make available to the CITY, upon request, copies of all deliverables, maps, reports, and correspondence, pertaining to the work or Project. All such documents are not intended or represented to be suitable for reuse by the CITY for any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at the CITY's sole risk.

C. In the event electronic copies of documents are made available to the CITY, CONSULTANT makes no representations as to long-term compatibility of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

6.5 Conflict of Interest: CONSULTANT shall use best efforts in the performance of its services and professional obligations to avoid conflicts of interest and appearances of impropriety in representation of the CITY. In the event of a conflict, CONSULTANT, with the consent of the CITY, shall arrange for suitable alternative representation. It is the intent of CONSULTANT to refrain from handling matters for any other person or entity that may pose a conflict of interest, or may not be in the best interests of the CITY.

6.6 Termination

A. Either party may terminate this Agreement upon thirty (30) days written notice.

B. Either party has the right to terminate any "Work Order" upon ten (10) days' written notice unless otherwise stated in the Work Order. In addition, the CITY may at any time, reduce the scope of a "Work Order". Such reduction in scope of a Work Order shall be set forth in a written notice from the CITY to CONSULTANT.

C. In the event of a reduction in scope of a "Work Order," CONSULTANT shall be paid for the work performed and expenses incurred on the Work Order thus reduced and for any completed and abandoned work for which payment has not been made.

D. In the event of termination of an "Work Order," copies of all documents prepared by CONSULTANT under the Work Order shall be made available by CONSULTANT to the CITY, pursuant to Article 6.4, and there shall be no further obligation of the CITY to CONSULTANT under the Work Order, except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination.

E. In like manner, if the entire Agreement is terminated, copies of all remaining documents on file with CONSULTANT shall also, upon request, be made available to the CITY pursuant to Article 6.4 upon receipt of payment of amounts due and owing CONSULTANT for any authorized work.

6.7 Controlling Law: This Agreement is to be governed by the laws of the State of Minnesota.

6.8 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. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional

associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

- 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.

6.9 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.
- B. The CITY and CONSULTANT agree that all disputes between them arising out of or relating to this Agreement shall first be submitted to non-binding mediation unless the parties mutually agree otherwise, thereby providing for mediation as the primary method for dispute resolution between the parties to this Agreement.

- 6.10 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.

6.11 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 this 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.

Wenck Associates, Inc.

CITY OF LAKE ELMO, MINNESOTA

By _____

Its: _____

By _____

Mayor

By _____

City Clerk

EXHIBIT A
WORK ORDER FORM

PROJECT AUTHORIZATION NO. _____

In accordance with the Agreement for Landscape Architecture Services between the City of Lake Elmo (City) and Wenck Associates, Inc. (Wenck), this Authorization describes the Scope, Schedule, and Budget for Wenck's services on the Project known as:

Project Name

SCOPE. The Scope of Services for this Authorization includes:

- **Task 1:**
 - **Subtask 1.1**
 - **Subtask 1.2**
- **Task 2:**
 - **Subtask 2.1**
 - **Subtask 2.2**

SCHEDULE. The Estimated Schedule for this Authorization is set forth below:

- **Project Schedule**

BUDGET. The estimated fee for work based on this Authorization shall be the not-to-exceed amount of \$ **x.00** included and made a part of this Project Authorization

TERMS AND CONDITIONS. The terms and conditions of the Landscape Architecture Services Agreement between the City and Wenck shall apply to this Authorization, except as expressly modified herein.

ACCEPTANCE. The terms of this Authorization is acknowledged by the following signatures of the Authorized Representatives.

CITY OF LAKE ELMO

Signature

Emily Becker
Planning Director
Date, 2018 _____

WENCK ASSOCIATES, INC.

Signature

Lucius Jonett, PLA
Landscape Architect
Date, 2018 _____

EXHIBIT B
FEE SCHEDULE

Hourly Rates

Even with our high level of service and no miscellaneous costs, Wenck provides very competitive rates. We are a local, full-service firm that is able to control costs. This makes us highly competitive. Wenck will provide the City of Lake Elmo all of our services at an hourly rate unless lump sum or percentage-based work orders are executed at your direction. A breakdown of assigned staff, hourly rates and fees is provided below.

CATEGORY	STAFF	CITY RATE
City Landscape Architect	Lucius Jonett	\$130/hr
Project Designer/ Assistant City Landscape Architect/Site Inspection	Seth Bossert	\$115/hr
Senior Landscape Architect	Kevin Pfeiffer	\$160/hr
Grant Writer	Thomas Berry	\$120/hr
Construction Inspector	Nick Wyers	\$100/hr
GIS Professional	Hagen Kaczmarek	\$100/hr
Wetland Specialist/ Scientist	Wes Boll	\$120/hr

2017 Rates Will Be Held Through End of 2018

Wenck is proposing that rates will be held for 2018 and reviewed for the 2019 budget.

Flat Fee Meetings

- Wenck will attend Council Meetings as requested by the Council or City Administrator.
- Wenck will attend for a flat fee of one hour per Council meeting regardless of meeting duration.
- Workshops prior to Council or on a separate night will also be at the one-hour flat fee. This allows Council to direct attendance without concern of unknown costs.
- Typically, no fee will be incurred by the City for Planning Commission meetings as time will be allocated to the application being reviewed or project being discussed.

Special Rate/ Fee Option

When preferred by the City, Wenck will perform work on a percentage basis based on construction costs. This may be similar to how you currently conduct large projects. For projects over \$100,000, a fee could be negotiated in the 8% range for design, with hourly work for permits, surveying and construction inspection.