



STAFF REPORT

DATE: January 2, 2018

CONSENT #6

AGENDA ITEM: Appoint City Engineer and Approve Contract

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Per City Code 31.01, at the first regular council meeting in January of each year the Council shall appoint a city engineer.

ISSUE BEFORE COUNCIL:

Who should the Council appoint as City Engineer?

PROPOSAL:

Following the December work session as Council direction, staff began working on an agreement with Focus Engineering to provide general engineering services for the next five years. A copy of the contract is included in your packet. It establishes a flat monthly retainer of \$2,500 for general engineering services as outlined, a fee schedule for projects beyond general engineering services, and lays out other terms of the agreement. It has been reviewed by legal.

RECOMMENDATION:

If removed from the consent agenda:

“Move to appoint Mr. Jack Griffin, of Focus Engineering, Inc., as the official City Engineer and principal provider of professional engineering services for 2018.”

“Move to approve the agreement between the City of Lake Elmo and Focus Engineering for professional services.”

ATTACHMENT:

- Focus General Engineering Services Agreement

FOCUS ENGINEERING, inc.

AGREEMENT

BETWEEN CITY OF LAKE ELMO AND ENGINEER

FOR

PROFESSIONAL SERVICES

This AGREEMENT is made effective as of the 2ND day of JANUARY, 2018 ("Effective Date") by and between the CITY OF LAKE ELMO, MINNESOTA, a Minnesota municipal corporation (hereinafter referred to as the "City"), and FOCUS ENGINEERING, inc., a Minnesota corporation (hereinafter referred to as "Engineer").

The City intends to engage Engineer to provide Professional Engineering Services and General Consulting Services, and to act as the appointed City Engineer for the City. This AGREEMENT sets forth the general terms and conditions which shall govern the relationship and performance of the City and Engineer.

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

ARTICLE 1: SERVICES OF THE ENGINEER

- 1.1 Scope of Services: The City agrees to and hereby does retain and appoint Engineer as the designated "City Engineer", and Engineer agrees to perform professional engineering services ("Professional Engineering Services") in connection with the responsibilities of the City Engineer, as directed by the City Council and under the direction of the City Administrator.
 - A. Provide assistance on day-to-day matters, acting as the City Engineer, and as requested by the City.
 - B. Attend meetings of the City Council or other Committees or Commissions to address Engineering matters. Participate in internal and external meetings involving engineering questions and issues.

- C. Act as City liaison and representative with other communities and county, state and federal agencies in areas of responsibility.
- D. Respond to and address constituent requests and issues as received or directed by staff. Schedule and attend on-site meetings to review issues as needed.
- E. Meet with developers and members of the public on proposed development projects in order to relate the processes and procedures involved with engineering and infrastructure development. Review development proposals for conformance with City standards.
- F. Engineering services will, in general, include preparation of studies and reports, designing, preparation of working drawings and specifications; construction administration and construction observations; utility mapping, and maintaining engineering records and correspondence; preparing cost estimates, capital improvement planning, and department budgeting; maintaining the Municipal State Aid System; maintaining the MS4 NPDES Permit; providing engineering support to other City departments; guiding and overseeing the design and construction of public infrastructure systems through private development projects; preparing requests for proposals, and assisting with selecting outside professional services consultants for certain projects, and managing the professional services contracts; and other related tasks of a type normally associated with infrastructure and facility planning, design, construction, operation and/or maintenance.
- G. Under this AGREEMENT the Engineer will provide general consulting services as described in this Section in accordance with this Section, engineer's compensation, payment terms, and other provisions as provided herein. When requested by the City, services for each additional engagement or a specific project that is not addressed by this AGREEMENT will be detailed and documented in a duly executed "TASK ORDER".

1.2 Procedure for "TASK ORDERS"

- A. Engineer shall provide the City with a "TASK ORDER" for specific services or projects when requested by the City. Each TASK ORDER will indicate the specific task, scope of services, time for performance, deliverables to be provided, and the basis of compensation.
- B. Individual "TASK ORDERS", if requested, shall be mutually approved by the City and Engineer. Each duly executed TASK ORDER shall be incorporated and made a part of this AGREEMENT and the general considerations thereof.

ARTICLE 2: PERIOD OF SERVICE

- 2.1 Term: Engineer is hereby retained on a continuing basis through December 31, 2022, subject, however, to termination by either party in accordance with ARTICLE 5.9.
- 2.2 Engineer shall complete its obligations for specific projects and services as set forth in any "TASK ORDER".

ARTICLE 3: COMPENSATION

- 3.1 Basis for Compensation: Compensation to Engineer for day-to-day General Engineering Services shall be \$2,500 per month for the five year term of this AGREEMENT. General Engineering Services are defined as attendance at city council meetings and work session, commission, committee or staff meetings as requested; acting as the City's liaison with other agencies; capital improvement planning; responding to or meeting with property owners on matters not related to project engineering services; coordinating map updates and GIS updates; administration of municipal state aid system and certification; assisting with funding solutions for infrastructure projects such as identifying grants or loan programs; reviewing and evaluating suggested revisions to fee schedules, assessment policies and utility rates (not including rate studies); advising the City of current trends and policy formation; and updating and maintaining engineering standards.

Compensation to Engineer for project engineering services and department support services, shall be on an hourly rate basis in accordance with the 2018-2022 Hourly Rate Schedule which is attached to this AGREEMENT as Exhibit A. Project engineering services and department support services shall include engineering support to other city departments including permit and plan reviews (grading, site plans, CUP and PUD applications); reviewing of development applications and plans for conformance with City standards; meeting with developers and members of the public on proposed development projects; guiding and overseeing the design and construction of public infrastructure through private development projects; providing engineering support to the public works department as requested for maintaining the MS4 NPDES Permit, right-of-way applications, and overseeing the annual street maintenance projects; preparing requests for proposals, and assisting with selecting outside professional services consultants for certain projects, and managing the professional services contracts; and other related tasks of the type normally associated with infrastructure and facility planning, design and construction; and acting as the City liaison and representative for other county, state and federal agency projects within the City.

Services described in a specific "TASK ORDER" shall be compensated on an hourly rate basis and/or a lump sum basis as designated in each TASK ORDER in accordance with the attached 2018-2022 Hourly Rate Schedule.

- 3.3 Reimbursable Expenses: The Engineer shall be reimbursed at cost for any direct expenses when incurred in the performance of the City's work in accordance with the attached 2018-2022 Hourly Rate Schedule. Mileage shall not be reimbursed for the performance of any General Engineering Services.
- 3.4 Payments for Services
- A. *Preparation and Submittal of Invoices:* Engineer shall prepare and submit invoices including a detailed description of the tasks performed to the City on a monthly basis. Invoices are due and payable within 30 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 1.5% per month, or the maximum rate of interest permitted by law, whichever is less. Payment will be credited first to any interest owed to Engineer and then to principal.
 - C. *Disputed Invoices:* If the City contests an invoice, the City shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
 - D. *Right to Suspend Work:* Engineer may, after giving ten (10) days written notice to the City, suspend services under this AGREEMENT until the City has paid in full all amounts due for services, expenses, and other related charges. The City waives any and all claims against Engineer for any such suspension.

ARTICLE 4: CITY'S RESPONSIBILITIES

- 4.1 City's Representative: When acting as the "City Engineer", Engineer shall provide services as directed by the City Council and under the direction of the City Administrator. For specific "TASK ORDERS", the City shall designate in writing, a person to act as the City's representatives with respect to the services to be rendered. Such persons shall have authority to transmit instructions, receive instructions, receive information, interpret and define the City's policies with respect to Engineer's services. When no written designation is made by the City, the City's representative shall be the City Administrator.
- 4.2 Provide Access: The City shall provide access to, and make all provisions for Engineer to enter upon public or private property as required to perform its work.
- 4.3 Provide Supporting Documentation and Services: The City shall provide Engineer with 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 consulting services, insurance, and legal services as may be required.

- 4.4 The City shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the City to Engineer pursuant to this AGREEMENT. Engineer 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 Engineer and render decisions pertaining thereto within a reasonable time so as not to delay the services of Engineer. The City shall also give prompt notice to Engineer whenever City observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services or any defect in the work.
- 4.6 The City shall make timely payments to the Engineer as set forth in ARTICLE 3.

ARTICLE 5: GENERAL CONSIDERATIONS

5.1 Standards and Parameters of Performance

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this AGREEMENT will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. *Consultants:* Engineer may employ such consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by City.
- C. *Reliance on Others:* Subject to the standard of care set forth above, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, professional certifications, contractors, suppliers, manufacturers, and the publishers of technical standards.
- D. *Compliance with Laws, Regulations, Policies, and Procedures:* Engineer and the City shall comply with applicable laws, regulations, policies, and procedures.

- E. *Certifications and Signatures*: Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain.
- F. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing its work.
- G. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents, or for the acts or omissions of any consultant, contractor, subcontractor, or supplier who is not retained by Engineer to perform services under this AGREEMENT.

5.2 Independent Contractor: Engineer is an independent contractor. The manner in which the services are performed shall be controlled by Engineer; however, the nature of the services and the results to be achieved shall be specified by the City. All services provided by Engineer pursuant to this AGREEMENT shall be provided by the Engineer 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 and Indemnification.

- A. Engineer shall maintain statutory workers' compensation insurance coverage.
- B. Engineer 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. Engineer 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 Engineer 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. The Engineer 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 the Engineer's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Engineer is legally liable.
- F. The City agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, 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 the Engineer 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.

5.4 Opinions of Cost

- A. Engineer's opinions of probable project cost, construction cost, life cycle cost, alternative evaluations, and considerations for operations and maintenance costs are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. It is recognized, however, that Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions. Engineer, therefore, cannot and does not guarantee that proposals, bids, or actual costs will not substantially vary from opinions of probable costs prepared by Engineer and submitted to the City.
- B. The services of Engineer with respect to total project costs shall be limited to assisting the City in collating the various cost categories which comprise total project costs. Engineer assumes no responsibility for the accuracy of any opinions of total project costs.

- 5.5 Data Practices Act Compliance: Data provided by Engineer 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 Engineer of the request, Engineer shall promptly provide the City with any information that Engineer may have that is responsive to the request.

5.6 Use of Documents

- A. All Documents prepared and submitted by Engineer are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the project or service is completed. The City shall not rely in any way on any document unless it is submitted by the Engineer in its final form.
- B. At the time of completion or termination of this AGREEMENT or for each "TASK ORDER," Engineer shall make available to the City, upon request, copies of all deliverables, maps, reports, and correspondence, pertaining to the work performed under this AGREEMENT or a project described in a TASK ORDER. All such documents are not intended or represented to be suitable for reuse by the City or others on extensions of the work or project or to any other project. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to Engineer. In this regard, the City will indemnify and hold harmless Engineer from any and all suits or claims of third parties arising out of such reuse, which is not specifically verified, adapted, or authorized by Engineer.
- C. In the event electronic copies of documents are made available to the City, the Engineer makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

5.7 Design without Construction Phase Services: The City acknowledges that it is customary for the Engineer who is responsible for the design of a project to be employed to provide professional services during the construction phases of that project. Therefore, the following provisions apply in the event that the City does not retain the Engineer for construction phase services. The City waives all claims against the Engineer that may be connected in any way to construction phase engineering or professional services except for those services that are expressly required of Engineer on the project.

5.8 Conflict of Interest: The Engineer 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. The Engineer will not accept any client or project work that places the Engineer in ethical conflict during its representation of the City and shall immediately notify the City, and take necessary corrective actions, upon learning of the existence of any potential conflict of interest. The Engineer does hereby fully disclose that Engineer is currently designated the Town Engineer for West Lakeland Township.

5.9 Termination

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

- B. Either party has the right to terminate any "TASK ORDER" upon ten (10) days' written notice. In addition, the City may at any time, reduce the scope of a "TASK ORDER". Such reduction in scope of services shall be set forth in a written notice from the City to the Engineer.
- C. In the event of a reduction in scope of a TASK ORDER or termination of this AGREEMENT, Engineer shall be paid for the work performed and expenses incurred thus reduced and for any completed and abandoned work for which payment has not been made.
- D. In the event of termination of a "TASK ORDER," copies of all documents prepared by Engineer under the authorization shall be made available by Engineer to the City, pursuant to ARTICLE 5.5, and there shall be no further obligation of the City to Engineer under the task order, except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination, plus expenses incurred by Engineer to gather, compile, copy, and transmit all documents requested by the City.
- E. In like manner, if the entire AGREEMENT is terminated, copies of all remaining documents on file with the Engineer shall also, upon request, be made available to the City pursuant to ARTICLE 5.6 upon receipt of payment of amounts due and owing Engineer for any authorized work, plus expenses incurred by Engineer to gather, compile, copy, and transmit all documents requested by the City.

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

5.11 Successors and Assigns

- A. The City and Engineer are hereby bound and the successors and assigns, and legal representatives of the City and Engineer are hereby bound to the other party to this AGREEMENT and to the successors, assigns and legal representatives of such other party, in respect of all covenants, agreements, and obligations of this AGREEMENT.
- B. Neither the City nor Engineer may assign 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 Engineer from employing such independent professional associates and consultants as Engineer 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 Engineer.

5.12 Dispute Resolution

- A. The City and Engineer 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 Engineer 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.

5.13 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.

5.14 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 Engineer.
- 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.

FOCUS ENGINEERING, inc.

CITY OF LAKE ELMO, MINNESOTA

By _____

By _____

John (Jack) W. Griffin, P.E.
Principal / Chief Financial Officer

Mayor

By _____

City Clerk

EXHIBIT A

FOCUS ENGINEERING, inc.

2018-2022 Hourly Rate Schedule

Standard Hourly Rates include salaries and wages paid to personnel in each staff position plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

HOURLY RATES					
PROFESSIONAL ENGINEERING STAFF	2018 \$/HR.	2019 \$/HR.	2020 \$/HR.	2021 \$/HR.	2022 \$/HR.
Sr. Municipal Engineer III – Jack Griffin	\$120	\$123	\$123	\$130	\$130
Sr. Municipal Engineer II – Cara Geheren	\$112	\$115	\$115	\$120	\$120
Sr. Municipal Engineer I – Mark Scholle	\$105	\$108	\$108	\$113	\$113
Municipal Engineer III – Ryan Stempski	\$98	\$100	\$100	\$105	\$105
Municipal Engineer II	\$90	\$92	\$92	\$97	\$97
Municipal Engineer I – Chad Isakson	\$85	\$87	\$87	\$92	\$92
Project Engineer – Amanda Groh	\$72	\$74	\$74	\$78	\$78
Graduate Engineer	\$65	\$67	\$67	\$70	\$70
Interns	\$48	\$50	\$50	\$50	\$52
Construction Field Engineer	\$85	\$87	\$87	\$92	\$92
Hyperion Consulting LLC (Dave Klocker)					

★ *Staffing is subject to change. Names are provided for reference only.*

Reimbursable Expenses Schedule

- Vehicle Mileage reimbursed at the current Federal IRS Rate. Mileage shall not be reimbursed for any tasks performed under the General Engineering Retainer Services.
- Identifiable printing and reproduction costs when incurred in the direct performance of the City's work.
- Other expenses for items and services as may be required by the City to fulfill the terms of a specific Task Order.

