

REQUEST FOR COUNCIL ACTION

Date: December 21, 2009
Item No.: 12.e

Department Approval

City Manager Approval



Item Description: Approve Standard Agreement for Professional Services

BACKGROUND

Staff have worked to develop a standard professional agreement that the City can use for all professional services contracts. Adopting such a form will:

- allow the City standardized expectations of services;
- provide the City with a starting point for all contracts;
- inform potential vendors of our City's expectations and work practices; and
- allow the City Council to know what is included in all agreements without having to read each agreement word for word.

The proposed Standard Agreement for Professional Services has been prepared by the City Attorney and reviewed by the League of Minnesota Cities Insurance Trust (LMCIT) attorney.

It is possible that some aspects of the agreement could be modified (e.g. different insurance requirements).

POLICY OBJECTIVE

Allow the City Council and staff to negotiate contracts fully and openly.

FINANCIAL IMPACTS

Potential cost saving by reducing staff time dedicated to contract negotiations.

STAFF RECOMMENDATION

Approve the proposed Standard Agreement for Professional Services.

REQUESTED COUNCIL ACTION

Approve the proposed Standard Agreement for Professional Services.

Prepared by: William J. Malinen, City Manager
Attachments: A: Proposed Standard Professional Services Agreement

Standard Agreement for Professional Services

This Agreement is made on the _____ day of _____, 20____, between the City of Roseville, Minnesota (hereinafter "City"), whose business address is 2660 Civic Center Drive, Roseville, MN 55113-1899, and _____, a Minnesota _____ (hereinafter "Consultant") whose business address is _____.

Preliminary Statement

The City has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the provision of professional services by Consultant for _____ hereinafter referred to as the "Work".

The City and Consultant agree as follows:

1. **Scope of Work/Proposal.** The Consultant agrees to provide the professional services shown in Exhibit "A" in connection with the Work. The terms of this standard agreement shall take precedence over any provisions of the Consultants proposal and/or general conditions.
2. **Term.** The term of this Agreement shall be from _____ through _____, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
3. **Compensation for Services.** City agrees to compensate the Consultant for the services as described in Exhibit A as follows:
 - A. Any changes in the scope of the work which may result in an increase to the compensation due the Consultant shall require prior written approval by an authorized representative of the City or by the City Council. The City will not pay additional compensation for services that do not have prior written authorization.
 - B. Special Consultants may be utilized by the Consultant when required by the complex or specialized nature of the Project and when authorized in writing by the City.
 - C. If Consultant is delayed in performance due to any cause beyond its reasonable control, including but not limited to strikes, riots, fires, acts of God, governmental actions, actions of a third party, or actions or inactions of City, the time for performance shall be extended by a period of time lost by reason of the delay. Consultant will be entitled to payment for its reasonable additional charges, if any, due to the delay.

4. **City Information.** The City agrees to provide the Consultant with the complete information concerning the Scope of the Work and to perform the following services:
 - A. Access to the Area. Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. As may be necessary, the City shall obtain access to and make all provisions for the Consultant to enter upon public and private lands or property as required for the Consultant to perform such services necessary to complete the Work.
 - B. Consideration of the Consultant's Work. The City shall give thorough consideration to all reports, sketches, estimates, drawings, and other documents presented by the Consultant, and shall inform the Consultant of all decisions required of City within a reasonable time so as not to delay the work of the Consultant.
 - C. Standards. The City shall furnish the Consultant with a copy of any standard or criteria, including but not limited to, design and construction standards that may be required in the preparation of the Work for the Project.
 - D. Owner's Representative. A person shall be appointed to act as the City's representative with respect to the work to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the services provided or materials, equipment, elements and systems pertinent to the work covered by this Agreement.
5. **Method of Payment.** The Consultant shall submit to the City, on a monthly basis, an itemized invoice for professional services performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to the City for:
 - A. Progress Payment. For work reimbursed on an hourly basis, the Consultant shall indicate for each employee, his or her name, job title, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, and the total amount due for each project task. Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, the Consultant shall provide an itemized listing and such documentation as reasonably required by the City. Each invoice shall contain the City's project number and a progress summary showing the original (or amended) amount of the contract, current billing, past payments and unexpended balance of the contract.
 - B. Suspended Work. If any work performed by the Consultant is suspended in whole or in part by the City, the Consultant shall be paid for any services performed prior to receipt of written notice from the City of such suspension, all as shown on Exhibit A.
 - C. Payments for Special Consultants. The Consultant shall be reimbursed for the work of special consultants, as described in Section 3B, and for other items when authorized in writing by the City.
 - D. Claims. To receive any payment on this Agreement, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."

6. **Project Manager and Staffing.** The Consultant has designated _____ and _____ to serve on the Project. They shall be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms established herein. Consultant may not remove or replace these designated staff from the Project without the approval of the City.
7. **Standard of Care.** All Work performed pursuant to this Agreement shall be in accordance with the standard of care in Ramsey County, Minnesota for professional services of the like kind.
8. **Audit Disclosure.** Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential, shall not be made available to any individual or organization without the City's prior written approval. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Contract. The Consultant shall at all times abide by Minn. Stat. 13.01 et seq., the Minnesota Government Data Practices Act, to the extent the Act is applicable to data and documents in the possession of the Consultant.
9. **Termination.** This Agreement may be terminated by either party by seven (7) days written notice delivered to the other party at the address written above. Upon termination under this provision, if there is no fault of the Consultant, the Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If however, the City terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, no further payment shall be made to the Consultant, and the City may retain another consultant to undertake or complete the work identified in Paragraph 1.
10. **Subcontractor.** The Consultant shall not enter into subcontracts for services provided under this Agreement except as noted in the Scope of Work, without the express written consent of the City. The Consultant shall promptly pay any subcontractor involved in the performance of this Agreement as required by the State Prompt Payment Act.
11. **Independent Consultant.** At all times and for all purposes herein, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
12. **Non-Discrimination.** During the performance of this Agreement, the Consultant shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.

13. **Assignment.** Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.
14. **Services Not Provided For.** No claim for services furnished by the Consultant not specifically provided for herein shall be honored by the City.
15. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
16. **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.
17. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant shall abide by statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided. The Consultant and City, together with their respective agents and employees, agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
18. **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.
19. **Indemnification.** Consultant agrees to defend, indemnify and hold the City, its officers, and employees harmless from any liability, claims, damages, costs, judgments, or expenses, including reasonable attorney's fees, resulting directly or indirectly from a negligent act or omission (including without limitation professional errors or omissions) of the Consultant, its agents, employees, or subcontractors in the performance of the services provided by this Agreement and against all losses by reason of the failure of said Consultant fully to perform, in any respect, all obligations under this Agreement.
20. **Insurance.**
 - A. **General Liability.** Prior to starting the Work, Consultant shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by Consultant or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law. The policy(ies) shall name the City as an additional insured for the services provided under this Agreement and shall provide that the Consultant's coverage shall be primary and noncontributory in the event of a loss.
 - B. Consultant shall procure and maintain the following minimum insurance coverages and limits of liability on this Project:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee
Comprehensive Liability	\$1,000,000 property damage per occurrence \$2,000,000 general aggregate \$2,000,000 Products – Completed Operations Aggregate \$100,000 fire legal liability each occurrence \$5,000 medical expense
Comprehensive Automobile Liability	\$1,000,000 combined single limit (shall include coverage for all owned, hired and non-owned vehicles.
C.	The Comprehensive General/Commercial General Liability policy(ies) shall be equivalent in coverage to ISO form CG 0001, and shall include the following:
a.	Premises and Operations coverage with no explosions, collapse, or underground damage exclusion (XCU).
b.	Products and Completed Operations Property Damage coverage. Consultant agrees to maintain this coverage for a minimum of two (2) years following completion of its work.
c.	Personal injury with Employment Exclusion (if any) deleted.
d.	Broad Form CG0001 0196 Contractual Liability coverage, or its equivalent.
e.	Broad Form Property Damage coverage, including completed operations, or its equivalent.
f.	Additional Insured Endorsement(s), naming the "City of Roseville" as an Additional Insured, on ISO form CG 20 10 11 85, or CG 20 10 10 01 and CG 20 37 10 01, or an endorsement(s) providing equivalent coverage to the Additional Insureds. ISO form CG 20 10 07 04, and later versions of said form, are not acceptable.
g.	If the Work to be performed is on an attached community, there shall be no exclusion for attached or condominium projects.
h.	"Stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state fund if Employer's liability coverage is not available.
i.	Incidental Malpractice and Host Liquor Liability insurance applicable to the Consultant's performance under this Agreement.

- j. Severability of Insureds provision.
- D. Professional Liability Insurance. The Consultant agrees to provide to the City a certificate evidencing that they have in effect, with an insurance company in good standing and authorized to do business in Minnesota, a professional liability insurance policy. Said policy shall insure payment of damage for legal liability arising out of the performance of professional services for the City, in the insured's capacity as the Consultant, if such legal liability is caused by an error, omission, or negligent act of the insured or any person or organization for whom the insured is legally liable. Said policy shall provide an aggregate limit of \$2,000,000. Said policy shall not name the City as an insured.
- E. Consultant shall maintain in effect all insurance coverages required under this Paragraph at Consultant's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by City in writing. In addition to the requirements stated above, the following applies to the insurance policies required under this Paragraph:
- a. All policies, except the Professional Liability Insurance policy, shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable);
 - b. All policies, except the Professional Liability Insurance policy, shall be apply on a "per project" basis;
 - c. All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall contain a waiver of subrogation naming "the City of Roseville";
 - d. All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall name "the City of Roseville" as an additional insured;
 - e. All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall insure the defense and indemnity obligations assumed by Consultant under this Agreement; and
 - f. All policies shall contain a provision that coverages afforded there under shall not be canceled or non-renewed or restrictive modifications added, without ten (10) days prior written notice to the City.

A copy of the Consultant's insurance declaration page, Rider and/or Endorsement, as applicable, which evidences the compliance with this Paragraph 20, must be filed with City prior to the start of Consultant's Work. Such documents evidencing Insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, City's right to enforce the terms of Consultant's obligations

hereunder. City reserves the right to examine any policy provided for under this paragraph.

- F. **Effect of Consultant's Failure to Provide Insurance.** If Consultant fails to provide the specified insurance, then Consultant will defend, indemnify and hold harmless the City, the City's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the City (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Consultant, its subcontractors, agents, employees or delegates. Consultant agrees that this indemnity shall be construed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, the City may require Consultant to:

- a. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from Consultant's insurance company.

Consultant will take the action required by the City within fifteen (15) days of receiving notice from the City.

21. **Ownership of Documents.** All plans, diagrams, analyses, reports and information generated in connection with the performance of the Agreement ("Information") shall become the property of the City, but Consultant may retain copies of such documents as records of the services provided. The City may use the Information for its purposes and the Consultant also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Agreement ("Project") does not relieve any liability on the part of the Consultant, but any use of the Information by the City or the Consultant beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.
22. **Dispute Resolution/Mediation.** Each dispute, claim or controversy arising from or related to this Service Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Roseville unless another location is mutually agreed upon

by the parties. The parties shall memorialize any agreement resulting from the mediation in a Mediated Settlement Agreement, which Agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

23. **Governing Law.** This Agreement shall be controlled by the laws of the State of Minnesota.
24. **Conflicts.** No salaried officer or employee of the City and no member of the Board of the City shall have a financial interest, direct or indirect, in this Contract. The violation of this provision renders the Contract void. Any federal regulations and applicable state statutes shall not be violated.
25. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

Executed as of the day and year first written above.

CITY OF ROSEVILLE

Mayor

City Manager

FIRM NAME

By: _____

Its: _____

RRM: #137785/lmj
Rev 12/21/09