



City Council Memorandum

To: Mayor Fasbender and City Council

From: John Hinzman, Community Development Director

Date: November 7, 2022

Item: Authorize Signature: Agreement for Professional Services - Guardian Inspections

Council Action Requested:

Authorize signature of the attached agreement between the City of Hastings and Guardian Inspections, Inc. to provide supplemental plan review services for the Building Department. A simple majority is necessary for action.

Background Information:

The Guardian Inspection agreement is submitted in conjunction with a similar agreement from Stensland Inspections. Guardian would provide plan review services only while Stensland would provide both plan review and inspection services. Both contracts are for one year and shall be automatically extended unless terminated. Staff seeks approval of both contracts to create a pool to better ensure the ability to provide services and may consider execution of similar contracts in the future.

The Building Department is experiencing a substantial increase in the number of building permits leading to additional hours worked by staff. The additional volume has led to some employees exceeding their cap on accrual of compensatory time. Contracting for additional assistance will better balance the load to ensure timely review and inspection services.

Financial Impact:

Building permit revenue would offset the cost of services. Guardian would receive 50 percent of the total plan review fee collected for each project reviewed.

Advisory Commission Discussion:

N/A

Attachments:

- Agreement for Professional Services

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (“Agreement”) is made and executed this ____ day of _____, 2022, by and between the City of Hastings, 101 4th Street East, Hastings, Minnesota, 55033, (“City”) and Guardian Inspections, Inc., 30 Queensland Lane North, Plymouth, Minnesota, 55447 (“Consultant”).

WHEREAS, the City has accepted the proposal of the Consultant for certain professional Services; and

WHEREAS, Consultant desires to perform the Services for the City under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual consideration contained herein, it is hereby agreed as follows:

1. SERVICES.

- a. City agrees to engage Consultant as an independent contractor for the purpose of performing certain professional Services (“Services”), as defined as follows:
 - i. Plan Review: All services will be rendered under the strict guidance of Minnesota Statutes, Ch. 326B and Minnesota Rules, Ch. 1300, including but not limited to: building plan review for any type of projects in order to ensure compliance with all chapters of Minnesota State Building and any other applicable regulations.
- b. Consultant covenants and agrees to provide Services to the satisfaction of the City in a timely fashion, subject to Section 7 of this Agreement.
- c. The Consultant will establish a regular communication process with the Building Official in order to communicate on issues and discuss timing for Consultant to provide and complete the Services under this Agreement.
- d. Consultant agrees to comply with all federal, state and local laws and ordinances applicable to the Services to be performed under this Agreement. Consultant represents and warrants that it has the requisite training, skills, and experience necessary to provide the Services and is appropriately licensed and has obtained all permits from all applicable agencies and governmental entities.

2. PAYMENT.

- a. City agrees to pay and Consultant agrees to receive and accept payment for Services as provided under this Agreement as follows: fifty percent (50%) of the City’s total plan review fee for permitting, on each project reviewed by Consultant.

- b. Any changes in the scope of the work of the Services that may result in an increase to the compensation due the Consultant shall require prior written approval by the 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.
 - c. Consultant shall submit itemized bills for Services provided to City on a monthly basis. Bills submitted shall be paid in the same manner as other claims made to City.
- 3. TERM. The term of this Agreement shall commence on the date written in the initial paragraph of this Agreement and shall continue for one year from the date of commencement. This Agreement will automatically be extended for additional one-year terms, upon the same terms and conditions as herein stated, unless terminated pursuant to Section 4.
- 4. TERMINATION.
 - a. Termination by Either Party. This Agreement may be terminated by either party upon 30 days' written notice delivered to the other party to the addresses listed in Section 13 of this Agreement. Upon termination under this provision, if there is no default by the Consultant, Consultant shall be paid for Services rendered and any reimbursable expenses until the effective date of termination.
 - b. Termination Due to Default. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure that is acceptable to the other party.
 - c. Upon termination of this Agreement, Consultant shall furnish to the City copies or duplicate originals of all documents or memorandum prepared for the City pursuant to this Agreement and not previously furnished.
- 5. SUBCONTRACTORS. Consultant shall not enter into subcontracts for any of the Services provided for in this Agreement without the express written consent of the City. The Consultant shall pay any subcontractor involved in the performance of this Agreement within the ten (10) days of the Consultant's receipt of payment by the City for undisputed services provided by the subcontractor.
- 6. STANDARD OF CARE. In performing its Services, Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the Services are provided. No warranty, express or implied, is made or intended by Consultant's undertaking herein or its performance of Services.

7. DELAY IN PERFORMANCE. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. If such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Consultant will be entitled to payment for its reasonable additional charges, if any, due to the delay.
8. CITY'S REPRESENTATIVE. The City has designated Building Official Travis Dunn to act as the City's representative with respect to the Services to be performed under this Agreement. He shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the Services covered by this Agreement.
9. PROJECT MANAGER AND STAFFING. The Consultant has designated Mike Bunnell to be the primary contact for the City in the performance of the Services. He shall be assisted by other staff members as necessary to facilitate the completion of the Services in accordance with the terms established herein. Consultant may not remove or replace the designated staff without the approval of the City.
10. INDEMNIFICATION.
 - a. Consultant and City each agree to indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and City, they shall be borne by each party in proportion to its own negligence.
 - b. Consultant shall indemnify City against legal liability for damages arising out of claims by Consultant's employees. City shall indemnify Consultant against legal liability for damages arising out of claims by City's employees.
11. INSURANCE. During the performance of the Services under this Agreement, Consultant shall maintain the following insurance:
 - a. Professional Liability Insurance, with a limit of \$2,000,000 for any number of claims arising out of a single occurrence.

Consultant shall furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without written notice to the City. The City shall be named as an additional insured on the Professional Liability Insurance policy.

12. OWNERSHIP OF DOCUMENTS. Professional documents, drawings, and specifications prepared by the Consultant as part of the Services shall become the property of the City when Consultant has been compensated for all Services rendered, provided, however, that Consultant shall have the unrestricted right to their use. Consultant shall retain its rights in its standard drawing details, specifications, databases, computer software, and other proprietary property. Rights to proprietary intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of the Consultant.

13. NOTICES. Notices shall be communicated to the following addresses:

If to City: City of Hastings
101 4th Street East
Hastings, Minnesota, 55033
Attention: City Administrator

Or e-mailed: dwietecha@hastingsmn.gov

If to Consultant: Guardian Inspections, Inc.
30 Queensland Lane North
Plymouth, Minnesota 55447
Attention: Mike Bunnell

Or emailed:

14. INDEPENDENT CONTRACTOR STATUS. All services provided by Consultant, its officers, agents and employees pursuant to this Agreement shall be provided as employees of Consultant or as independent contractors of Consultant and not as employees of the City for any purpose.

15. GENERAL PROVISIONS.

- a. Assignment. This Agreement is not assignable without the mutual written agreement of the parties.
- b. Waiver. A waiver by either City or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

- c. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota and any action must be venued in Dakota County District Court.
- d. Severability. If any term of this Agreement is found be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- e. Data Practices Compliance. All data collected by the City pursuant to this Agreement shall be subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
- f. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.
- g. Nondiscrimination. The parties agree to comply with all applicable federal and state laws, rules, regulations, and executive orders with regarding to unlawful discrimination on account of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability or age.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF HASTINGS

By: _____
Mary Fasbender, Mayor

By: _____
Kelly Murtaugh, City Clerk

Date: _____

GUARDIAN INSPECTIONS, INC.

By: _____
Mike Burnell

Its: _____

Date: _____