



City Council Memorandum

To: Mayor Fasbender & City Councilmembers

From: John Hinzman, Community Development Director

Date: June 26, 2023

Item: Authorize Signature – Building Inspection and Review Services – Dunn Solutions

Council Action Requested:

Authorize signature of the attached Agreement for Professional Services between the City and Dunn Solutions, LLC (Travis Dunn) to perform certain building inspection and plan review duties. A simple majority is necessary for action.

Background:

Building Official Travis Dunn has submitted his resignation effective July 3, 2023. Mr. Dunn has agreed to perform limited services on behalf of the City through his company, Dunn Solutions, until a new Building Official is hired.

The contract establishes a six month time frame for services and is limited to plan review and building inspections. All services performed would be at the direction of the Community Development Director.

Financial Impact:

Proceeds for contract payment would be collected through Building Department revenue. There would also be a salary savings due to vacancy of the Building Official position.

Advisory Commission Discussion:

N/A

Attachments:

- Agreement for Professional Services – Dunn Solutions.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (“Agreement”) is made and executed this ____ day of _____, 2023, by and between the City of Hastings, 101 4th Street East, Hastings, Minnesota, 55033, (“City”) and Dunn Solutions, LLC, 30747 670th Street, Lake City, Minnesota, 55041 (“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”) on an as-needed basis. On behalf of the City, Consultant shall perform such Services as defined as follows:
 - i. Building Plan Review: Review all plans and specifications for residential and commercial construction to ensure compliance with the Minnesota State Building Code, City Code, and all other applicable building regulations. All plan review services shall be performed in strict compliance with the requirements of Minnesota Statutes, Chapter 326B and Minnesota Administrative Rules, Chapter 1300.
 - ii. Building Inspections: Perform residential and commercial building inspection services as directed by City staff to ensure compliance with the Minnesota State Building Code, City Code, and all other applicable building regulations. All building inspection services shall be performed in strict compliance with the requirements of Minnesota Statutes, Chapter 326B and Minnesota Administrative Rules, Chapter 1300.
 - iii.
- b. Consultant covenants and agrees to provide Services to the satisfaction of the City in a timely fashion, subject to Section 9 of this Agreement.
- c. The Consultant will establish a regular communication process with the Community Development Director and City Administration in order to

communicate on issues and discuss timing of Consultant providing and completing 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, including all applicable safety standards. Consultant shall be solely and completely responsible for the safety of all persons and property during the performance of the Services. 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 provided under this Agreement as follows:
 - i. Plan Review: Seventy percent (70%) of the City's total plan review fee for permitting on each project reviewed by Consultant.
 - ii. Building Inspections: \$85.00 per hour.
- b. Any changes in the scope of the work of the Services that may result in an increase to the compensation due to 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 six (6) months from the date of commencement. This Agreement may be extended upon the written mutual consent of the parties for such additional periods as they deem appropriate, and upon the same terms and conditions as stated herein.

4. TERMINATION.

- a. Termination by Either Party. This Agreement may be terminated by either party upon thirty (30) days' written notice delivered to the other party to the addresses listed in Section 15 of this Agreement. Upon termination under this provision, if there is no default by the

Consultant, Consultant shall be paid for Services rendered and 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. CITY CODE COMPLIANCE. Consultant shall review and abide by the manner in which the inspections and other activities are conducted within the City and determine what enforcement action is appropriate consistent with the Hastings City Code and other policies and ordinances as established by the City. Consultant shall confer with City staff regarding interpretation of the City Code. City shall have a duty to inform Consultant of any and all updates or changes to the Hastings City Code.
8. OFFICE HOURS. Consultant is not required to maintain office hours at Hastings City Hall. However, if Consultant finds it necessary to meet with citizens at Hastings City Hall, City shall arrange for a work area for such meetings.
9. 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.

10. CITY'S REPRESENTATIVE. The City has designated John Hinzman, Community Development Director 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. No work is to be performed by the Consultant without prior authorization of the City's Representative.
11. PROJECT MANAGER AND STAFFING. The Consultant has designated Travis Dunn to be the primary contact for the City in the performance of the Services. He may 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.
12. 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 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.
13. INSURANCE. During the performance of the Services under this Agreement, Consultant shall maintain the following insurance:
 - a. General Liability Insurance, with a limit of \$2,000,000 for any number of claims arising out of a single occurrence.

- b. Professional Liability Insurance, with a limit of \$2,000,000 for any number of claims arising out of a single occurrence.
- c. Workers' Compensation Insurance in accordance with statutory requirements.
- d. Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

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 General Liability Insurance policy.

14. OWNERSHIP OF DOCUMENTS. Professional documents, drawings, and specifications are subject to the Data Practices Act, Minn. Stat. Ch. 13. 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. The books, records, documents, and accounting procedures of Consultant relevant to this Agreement are subject to examination by City and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, subd. 5, as it may be amended from time to time. Consultant agrees to maintain these records for a period of six (6) years from the date of termination of this Agreement.

15. 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: Dunn Solutions, LLC
 30747 670th Street
 Lake City, Minnesota 55041
 Attention: Travis Dunn

Or e-mailed:

16. INDEPENDENT CONTRACTOR STATUS. All services provided by Consultant, its offices, 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.

17. 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 to 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 REMINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

CITY OF HASTINGS

By: _____
Mary Fasbender, Mayor

By: _____
Kelly Murtaugh, City Clerk

Date: _____

DUNN SOLUTIONS, LLC

By: _____
Travis Dunn

Its: _____

Date: _____