



To: City Council

Agenda Item #: IV. O.

From: Karen M. Kurt

Action

Discussion

Date: August 19, 2014

Information

Subject: Professional Services Agreement with Peter Musty, LLC for Consulting Services for Wooddale Ave and Valley View Road Small Area Plan.

Action Requested:

Approve Professional Services Agreement with Peter Musty, LLC.

Information / Background:

In June, City staff issued a Request for Information (RFI) for consulting services to develop a small area plan for the commercial node at Wooddale Avenue and Valley View Road. This project is one of the City Council's commercial and mixed use redevelopment goals for 2014. Staff received seven responses to the RFI. Proposed costs for the project ranged from \$29,930 to \$55,000 with a median proposed cost of \$39,303.

Planning Team Co-chairs Susan Lee and Arlene Forrest met with City staff to prescreen the responses to the RFI. Three firms were selected to interview with the full planning team, who ultimately recommended Peter Musty, LLC as their preferred consultant partner. Besides Peter Musty, members of the consultant team include Joe Hollman, Maxfield Research; Janna King, Economic Development Service Inc; Bill Smith, Biko Associates; and Bill Weber, Weber Community Planning. Peter Musty has met once with Planning Team to refine the expectations and engagement outline included with contract. The cost of the consulting services contract will be \$35,300.

Attachment

- Professional Services Agreement with Peter Musty, LLC

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT made this 17 day of June, 2014, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City") and PETER MUSTY LLC, a Minnesota Limited Liability Company ("Consultant").

IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES. The City retains Consultant to facilitate a small area planning process and small area plan document for the neighborhood node at Wooddale Avenue and Valley View Road.

2. CONTRACT DOCUMENTS. The following documents shall be referred to as the "Contract Documents," all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Professional Services Agreement
- B. Project Plan

In the event of conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document "A" having the first priority and Contract Document "B" having the last priority.

3. COMPENSATION. The City shall pay the Consultant and the Consultant shall accept as payment Thirty-Five Thousand Three Hundred dollars (\$35,300), inclusive of reimbursables, taxes and all other charges (the "fee"). This fee shall not be adjusted if the estimated hour to perform a task, the number of required meetings, or any other estimate or assumption is exceeded. The City shall make payments on the basis of work performed upon receipt of an invoice from the Consultant.

4. DOCUMENT OWNERSHIP. Documents, diagrams, sketches, surveys, computer files, contract documents and any other materials created or prepared by PETER MUSTY, LLC, or its subcontractors as part of its performance of this Agreement (the "Work Products") shall become the property of the City. PETER MUSTY, LLC, and its subcontractors may retain copies of such Products for reference and marketing purposes. The City hereby releases PETER MUSTY, LLC, from any liability arising from the City's re-use of such Work Products on this project or any other project.

5. CHANGE ORDERS. All change orders, regardless of amount, must be approved in advance and in writing by the City. No payment will be due or made for work done in advance of such approval.

6. COMPLIANCE WITH LAWS AND REGULATIONS. In providing services hereunder, Consultant shall abide by all statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided.

7. STANDARD OF CARE. Consultant shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by a professional consultant under similar circumstances. No other warranty, expressed or implied, is included in this Agreement. City shall not be responsible for discovering deficiencies in the accuracy of Consultant's services.

8. INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify Client, its officers, directors, partners, employees, and representatives from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to have been caused by a negligent act, error, or omission of Consultant or Consultant's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this Agreement."

9. INSURANCE. Consultant shall secure and maintain such insurance as will protect Consultant from claims under the Worker's Compensation Acts, and from claims for bodily injury, death, or property damage which may arise from the performance of services under this Agreement. Such insurance shall be written for amounts not less than:

Commercial General Liability	\$500,000 each occurrence/aggregate
Professional Liability	\$500,000 each claim

The City shall be named as an additional insured on the general liability policy. Before commencing work the Consultant shall provide the City a certificate of insurance evidencing the required insurance coverage in a form acceptable to City.

10. INDEPENDENT CONTRACTOR. The City hereby retains Consultant as an independent contractor upon the terms and conditions set forth in this Agreement. Consultant is not an employee of the City and is free to contract with other entities as provided herein. Consultant shall be responsible for selecting the means and methods of performing the work. Consultant shall furnish any and all supplies, equipment, and incidentals necessary for Consultant's performance under this Agreement. City and Consultant agree that Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's agents or employees are in any manner agents or employees of the City. Consultant shall be exclusively responsible under this Agreement for Consultant's own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

11. SUBCONTRACTORS. Consultant shall not enter into subcontracts for services provided under this Agreement without the express written consent of the City. Consultant shall comply with Minnesota Statute § 471.425. Consultant must pay subcontractor for all undisputed

services provided by subcontractor within ten days of Consultant's receipt of payment from City. Consultant must pay interest of 1.5 percent per month or any part of a month to subcontractor on any undisputed amount not paid on time to subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.

12. CONTROLLING LAW/VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Hennepin County

13. MINNESOTA GOVERNMENT DATA PRACTICES ACT. Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the City pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by Consultant pursuant to this Agreement. Consultant is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event Consultant receives a request to release data, Consultant must immediately notify City. City will give Consultant instructions concerning the release of the data to the requesting party before the data is released. Consultant agrees to defend, indemnify, and hold City, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Consultant's officers', agents', city's, partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

14. COPYRIGHT. Consultant shall defend actions or claims charging infringement of any copyright or software license by reason of the use or adoption of any software, designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom.

15. PATENTED DEVICES, MATERIALS AND PROCESSES. If the Contract requires, or the Consultant desires, the use of any design, devise, material or process covered by letters, patent or copyright, trademark or trade name, the Consultant shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the City. If no such agreement is made or filed as noted, the Consultant shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend the City for any costs, liability, expenses and attorney's fees that result from any such infringement.

16. ASSIGNMENT. Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.

17. 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.

18. 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.

19. TERMINATION. This Agreement may be terminated by the City for any reason or for convenience upon written notice to the Consultant. In the event of termination, the City shall pay the Consultant for completed work

Dated: _____, 20__.

CITY OF EDINA

BY: _____
James Hovland, Mayor

BY: _____
Scott Neal, City Manager

Dated: _____, 20__.

BY: _____
Its _____

Contract Document B: Project Plan

- A. Consultant Understanding of Overall Project Intent
- B. Consultant Criteria for Success
- C. Consultant Summary Scope of Work
- D. List of Consultant Deliverables
 - Small Area Planning Team (SAPT) Support
 - 1. SAPT Meetings
 - 2. Additional Meetings
 - 3. Reviews of Small Area Plan Guidebook
 - Community Engagement & Planning Process
 - 4. Draft Community Engagement Plan
 - 5. Contributions to City of Edina's WVV Small Area Plan FAQ Document
 - 6. Facilitation of City of Edina Information Processing & Exchange Events (2)
 - 7. Facilitation of City of Edina Information Exchange Events (3)
 - 8. Contributions to City of Edina's Event Records
 - 9. Coordination, Facilitation of Key Stakeholder Interviews (8)
 - 10. Public Agency Consultations
 - 11. Advisory and Assistance Role: all other Community Engagement Techniques in CEP
 - 12. Discovery Report
 - 13. Vision Report
 - Small Area Plan Document
 - 14. Draft
 - 15. Final
- E. Timeline of Work
- F. Payments to Consultant
 - Payment Schedule and Invoicing
 - Additional Work
- G. Consultant Expense Budget
- H. Support from Client
 - Printing
 - SAPT Meeting Agendas
 - Additional Research Requests and Departmental Consultations
- I. List of Consultant's Sub-Contractors

A. Consultant Understanding of Overall Project Intent

The City of Edina wishes to conduct a community based planning process leading to the creation of a document that will be adopted by City Council as Small Area Plan amendment to the City of Edina's Comprehensive Plan.

The study area to be addressed in the planning process is near the intersection of Valley View Rd and Wooddale Avenue. The exact boundaries of the area covered in the Small Area Plan will be set during the planning process.

B. Consultant Criteria for Success

The consultant team's criteria for success:

1. There was a community engagement plan that provided for consistent and effective communication and interaction within the community. The intent was to ...
 - a. Inform the public about the role of Small Area Plans.
 - b. Maximize quality and quantity of participation at events.
 - c. Provide clarity in regards to the goals and benchmarks of the process.
 - d. Reduce the potential for misinformation in regards to issues.
 - e. The public felt heard.
 - f. Establish a perception in the community that the process was positive.
2. The project served as a pilot project for the Small Area Plan Guidebook.
3. There was timely adoption by the City Council.
4. The project set in place a community supported plan with lasting relevance.

C. Consultant Summary Scope of Work

“Consultants will be responsible for the following activities during the small area planning process:

- Developing a current area profile that includes demographics, physical conditions, land use/zoning and other pertinent information; also projecting population, demographic, economic and environmental trends for the future,
- Working with the Small Area Planning Team to develop a community engagement plan,
- Leading or assisting with the implementation of the community engagement plan,
- Identifying issues or conflicts and potential options for consideration by the Small Area Planning Team,
- Drafting the small area plan document, and
- Providing feedback on the draft Small Area Plan Guidebook”

D. List of Consultant Deliverables

The following list is the entirety of commitments made by the consultant and consultant team members for the fee amount identified in previous section.

1. **Small Area Planning Team (SAPT) Meetings.** The Consultant Team will ensure that at least one consultant team member will be present at Small Area Planning Team Meetings until final approval of the Small Area Plan document by the City Council, or until released from the commitment by City Staff.
2. **Additional Meetings.** Through May of 2015, an unlimited number of additional meetings can be requested of Consultant Team project manager (Peter Musty LLC) by Client. These can be requested for any reason related to the advancement of Client's Project Intent as stated above. This commitment does not extend to Consultant Team sub-contractors. Meetings requested after this date may require Additional Compensation at the rates specified in this attachment.

3. **Reviews of Small Area Plan Guidebook** - Beginning in the first meeting and continuing throughout the entire process, the Consultant Team will provide ideas regarding ways to make the Small Area Plan Guidebook a more useful and effective document. There is no formal deliverable or written recommendations expected from Consultant.

“The Community Engagement Plan should generate the following small area plan components:

- *Values, Trends and Assessments* - A SWOT-type analysis should be done to determine strengths, weaknesses, opportunities and threats. In addition, strongly-held community values should be identified.
- *Visioning and Issue Identification* - Descriptive end-states or visions of what the community wants for the future. Fundamental conflicts or key challenges should also be identified and discussed.
- *Strategy Formulation* - Major programs, initiatives or actions should be identified to address key issues, including land use, and to move the community towards its shared vision. The strategy should assign accountability and a timeframe for action steps.”

4. **Draft Community Engagement Plan (CEP)**. This summary plan will identify the rationale, timing, logistical details, and assigned responsibility for a range of community engagement techniques. This document will be the result of a collaboration between City Staff, Small Area Planning Team Chair(s), and the Consultant Project Manager. Once this Community Engagement Plan is adopted by the SAPT, the consultant agrees to take active lead and primary responsibility for the following (or their equivalent) list of tasks:
5. **Facilitation of City of Edina Information Processing & Exchange Events (2)**
 - a. Neighborhood Workshop #1: Discovery
 - b. Neighborhood Workshop #2: Vision
6. **Facilitation of City of Edina Information Exchange Events (3)**
 - a. Neighborhood Update #1: Vision
 - b. Neighborhood Update #2: Small Area Plan Document
 - c. Neighborhood Update #3: tbd
7. **Contributions to City of Edina’s Event Records**
8. **Coordination, Facilitation of Key Stakeholder Interviews (8)**
 - a. Land-Owners
 - b. Community Members
 - c. Development Experts
 - d. Others
9. **Public Agency Consultations (Non-Client)** – Also see *Support From Client*
10. **Consultant Advisory and Assistance Roles: all other Community Engagement Techniques in CEP** – These are tasks outlined in the CEP, outside of the events and activities above, that are coordinated by Small Area Team or City Staff such as:
 - a. Community FAQ Sheet
 - b. Project Webpage
 - c. Listserv
 - d. Project Email
 - e. Survey
11. **Discovery Report** – This will be a summary list of key issues followed by a catalog of information including past and present day information about the immediate area and context. This will include, at minimum, the following or their equivalent:
 - a. Real Estate Market Analysis
 - b. Neighborhood Profile
 - c. Long Range Built Form (and related Land Use) Up to six *Alternative Scenarios*

- d. Transportation-related Conditions:
 - Daily traffic volumes (past, current, forecast)
 - Access between the roadway system and adjacent property
 - Parking (quantitative supply, quality of supply, and demand by day of week and time of day)
 - Alternative modes of travel (pedestrian and bike): such as facilities, safety and security, convenience, and comfort, appropriateness for current and future environments
- e. Summaries of Community Input Gained from CEP activities
- f. Summary of Previous Planning and Relevant Comprehensive Plan Policy
- g. Summary of Existing Zoning
- h. List of Shared Community Values (Preliminary Draft)
- i. Brief Historic Narrative of Immediate Area and Context
- j. Summary of Heritage Preservation Efforts
- k. Map of Context identifying various Boundaries to be covered in Small Area Plan policy
- l. Graphical or Map-based Analyses of Existing Conditions (x3)
- m. Summary of Background Information and Research still needed for Vision and Small Area Plan phases.

12. Vision Report – This will be a catalog of information containing text lists and diagrams representing preliminary versions of community-based visions, values, preferences, future land use and built form alternatives, public realm ideas, and a list of potential policies or approaches to guidelines, best practices and solutions for key issues. This will include, at minimum, the following or their equivalent:

- a. Preliminary Statement of Vision
- b. Preliminary Guiding Principles
- c. Preliminary List of Strategic Goals
- d. Long Range Built Form (and related Land Use) Up to four *Preferred Scenarios*
- e. Preliminary List/Map of Future Public Realm Improvements

Small Area Plan Document

The following documents will be issued in accordance with description below:

13. Draft

14. Final

“The small area plan document should follow the same general outline as Edina’s Comprehensive Plan. Content would include (as applicable)*:

- | | |
|----------------------------------|--------------------------------------|
| • Introduction | • Transportation* |
| • Vision, Goals and Objectives | • Water Resource Management* |
| • Neighborhood Profile* | • Parks* |
| • Land Use and Community Design* | • Energy and Environment* |
| • Housing* | • Community Services and Facilities* |
| • Heritage Preservation* | • Implementation Plan* |

Within each chapter, the following information should be summarized:

- General background information, including current conditions
- Trends and challenges
- Specific goals and tactics to reach the goal.

While the goal is to follow a common format to promote alignment with the comprehensive plan, there is flexibility to add information or topics based on specific community concerns, needs or interests.”

* Please see note below regarding Additional Research Requests and Departmental Consultations.

E. Timeline of Project

“The City is anticipating a six-month timeframe for the project. However, the project may extend to February if public review of the draft plan cannot be completed prior to December 15.”

F. Payments to Consultant

Payments and Invoicing

Consultant will issue invoices to Client in the following amounts and according to the following schedule:

Invoice I	Start up, due upon signing of contract	\$5,000 + expenses
Invoice II	Due after delivery of draft Discovery Report	\$10,000 + expenses
Invoice III	Due after delivery of draft Vision Report	\$10,000 + expenses
Invoice IVa	Due after delivery of draft Small Area Plan	\$5,000 + expenses
Invoice IVb	Due after delivery of Small Area Plan (Final)	\$5,300 less all project expenses

Invoices issued to client on any day of the month will be accepted, approved and processed for payment and issued in person or postmarked within 30 days to the address listed on Consultant invoice.

Additional Work

The scope of work above is written with the expectation that additional work will not be necessary in order to reach project completion. In the case that Additional work, outside of the work specified in this agreement, may become necessary and may be requested by Client. Such work will require addendum to the primary Client-Consultant contract, and will be negotiated separately based on an estimate of hours worked. Unless previously arranged by Client and Consultant, Consultant will oversee all work and related payments/invoicing for additional work related to this project during the duration of this project.

G. Consultant Expense Budget

Expenses may be incurred during the course of this project. A portion of the Consultants total fee in the amount of Eight Hundred (\$800) dollars will be reserved for this purpose. Any portion of the expense budget not utilized for expenses will revert to fee and paid to Consultant within the final invoice.

H. Support from Client

Printing – The printing and/or reproduction of all project documents will be performed by the City of Edina. Materials for SAPT evening meetings will be printed if received by 3pm the same day. Large orders or oversized maps, print orders or board mounted materials may require longer notice.

SAPT Meeting Agendas- it will be the responsibility of Client to develop and print SAPT meeting agendas.

Additional Research Requests & Departmental Consultations - The Consultant team (see below) comes to the Wooddale Valley View Small Area Plan project with expertise and skill in a wide range of disciplines necessary for the completion of a successful plan. However, there may arise during the course of the project certain issue areas where the consultant team does not possess the necessary qualifications, skills and/or experience to make credible assessments or recommendations. In these instances the consultant team will inform the city’s project manager (Ms. Karen Kurt) and seek to learn about these issue areas from staff who will provide technical assistance during the project. Examples of such

requests include but are not limited to: infrastructure condition and related engineering ratings/rankings, water resource management, soil condition information, heritage preservation, etc.

I. List of Consultant's Sub-Contractors

The following companies will be involved in the execution of Consultant services described above.

<u>Company</u>	<u>Business Location</u>	<u>Principal/Contact</u>
Biko Associates	Minneapolis, MN	Bill Smith
Economic Development Services, Inc.	Minneapolis, MN	Janna King
Maxfield Research	Minneapolis, MN	Joe Hollman
Weber Community Planning	St. Louis Park, MN	Bill Weber