



**Item:** Professional Services Agreement: Street and Sanitation Building Addition, O. F. 1455.5

**From:** Engineering Division

**Initiated By:** Public Works Department

**Presented By:** Jim Rearden, Public Works Director

**Action Requested:** Approve Agreement

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**Suggested Motion:**

1. Commissioner moves:

"I move the City Commission approve the attached professional services agreement in the amount of \$71,813.00 with Gordon Whirry Architecture for the Street and Sanitation Building Addition, O.F. 1455.5; and authorize the City Manager to sign the agreement."

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

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**Staff Recommendation:** Approve the professional services agreement.

**Background:**

Significant Impacts

This building addition will allow the street and sanitation offices, employee break/meeting room, and locker/wash rooms to be separated from the vehicle and equipment shops.

Citizen Participation

Not applicable

Workload Impacts

Gordon Whirry will complete the design in a timely manner.

Purpose

The street and sanitation facility has been enlarged over the years. The original building constructed in 1971 was used for vehicle storage and included a vehicle wash bay. In 1995, the building was remodeled to add offices, a break room, and locker/wash rooms. At the same time the building was expanded for additional vehicle and equipment storage. The

offices, break room and locker rooms lack adequate ventilation, and are exposed to vehicle exhaust and other fumes. Numerous attempts to improve ventilation and provide relief from the vehicle exhaust fumes in these areas have been unsuccessful. The existing facilities are antiquated and take space away from the vehicle and equipment storage, which was the original purpose of the buildings. The new facilities will be physically separated from the existing building to insure no transfer of air pollution.

#### Project Work Scope

Whirry will complete the subsurface investigation, analyze building system options, develop plans and specifications for construction, and perform construction inspection. Two offices, a break room, and new locker/wash rooms, with adequate heating and ventilation systems will be designed.

#### Evaluation and Selection Process

Whirry was selected in accordance with the Architects Engineers Surveyors Selection Policy. Whirry designed a similar building expansion project for the utility division in 2001.

#### Conclusion

Whirry has performed satisfactorily on past projects for the City. The estimated cost for services is comparable to previous project architectural costs.

#### **Concurrences:**

Not Applicable.

#### **Fiscal Impact:**

This project will be funded by the Street Maintenance Building Improvement fund and a loan from the Equipment Revolving Schedule Fund. As of February 3, 2012 the available building improvement funds were \$419,575.00. Funds have gradually been built up over the years to accommodate this project. The equipment fund is anticipated to be reimbursed within a 3 to 4 year period.

#### **Alternatives:**

The City Commission could vote to deny award of the design agreement.

**Attachments/Exhibits:** Professional Services Agreement (2 originals)

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into on the 21st day of February, 2012, by and between **City of Great Falls**, Montana (herein referred to as the "**City**") and **Gordon Whirry Architecture**, 1912 4<sup>th</sup> Avenue North, Great Falls, MT 59401 (herein referred to as the "**Consultant**"), and, collectively, the "**Parties**".

WHEREAS, the City desires to retain a consultant to provide architectural services for the Street and Sanitation Building Addition, O.F. 1455.5,

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. **EMPLOYMENT OF CONSULTANT.** The City agrees to engage the Consultant, and the Consultant agrees to provide the services as set forth in paragraph 5 below.
2. **INDEPENDENT CONTRACTOR.** It is understood by the parties hereto that the Consultant is an Independent Contractor and that neither its principals nor its employees, if any, are employees of the City for purposes of tax, retirement system, or social security (FICA) withholding and that no deductions made from the payments under this Agreement for federal or state income tax, FICA (social security), retirement or other reasons will be withheld by the City. Further, the Parties agree and understand that pursuant to section 39-71-401, MCA, the Consultant has obtained, and will maintain at its expense for the duration of this Agreement, coverage in a workers' compensation plan for its principles and employees for the services to be performed hereunder.
3. **LIAISON.** The City's designated liaison with the Consultant is Senior Civil Engineer Jason Handl, P.E.
4. **EFFECTIVE DATE AND TIME OF PERFORMANCE.** This Agreement takes effect on the date hereinabove written and time is of the essence.
5. **SCOPE OF SERVICES.** The Consultant will perform the following services as set forth in the "Scope of Service," attached hereto as Exhibit "A."
6. **ACCURACY OF WORK.** The Consultant will be responsible for the accuracy of the work and will promptly make necessary revisions or corrections resulting from errors and omissions on the part of the Consultant without additional compensation.

A. If any errors are made by the Consultant in any phase of the work under this Agreement which will require additional field or office work, the Consultant will be promptly notified and will be required to perform such additional work as may be necessary to correct these errors without undue delay and without additional cost to

the City to conform to the terms of this Agreement. Acceptance of the work will not relieve the Consultant of the responsibility for subsequent correction of any such errors and the clarification of any known ambiguities.

B. It will be part of the Consultant's responsibilities to assist in the resolution of problems or conflicts that arise as a result of errors and omissions in Consultant's findings and recommendations to the City to conform to the terms of this Agreement. The Consultant will be notified of all such errors and omissions and will be requested to assist in determining corrective action at no cost to the City. The initial liability of the Consultant for the cost of the corrective action will be reasonably determined by the City.

7. CHANGES IN WORK. If, during the terms of this Agreement, additional services are required other than those services identified in the Scope of Work, or major changes in the work become necessary or desirable the City may, in writing, direct the Consultant to perform such services or make such changes. If the Consultant believes that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant must promptly notify the City in writing prior to performing such work. In the event the City determines that such work does constitute extra work, the Consultant will be reimbursed on a mutually agreed upon rate.

8. INSURANCE REQUIREMENTS. The Consultant hereby agrees to maintain professional liability insurance to cover claims arising out of the performance of professional services under this Agreement. Such professional liability insurance shall be maintained in an amount not less than Five Hundred Thousand (\$500,000.00) per claim. A certificate attached as "Exhibit B" showing the coverage shall be forwarded to the City on or before the execution of this Agreement.

9. OBLIGATION OF THE CITY TO THE CONSULTANT. In addition to the obligations of the City to the Consultant listed elsewhere in this Agreement, the City shall:

A. Cooperate with the Consultant in making necessary arrangements with City staff for the purposes of gathering and providing data for the project.

10. PAYMENT FOR SERVICES. For all services performed by the Consultant under this Agreement and as full and complete compensation therefore, including all expenditures made and all expenses incurred by the Consultant in connection with this Agreement, the City agrees to pay the Consultant on a time and material basis not to exceed Seventy One Thousand Eight Hundred Thirteen and 00/00 Dollars (\$71,813.00) without prior approval, subject to and in conformity with all the provisions of this Agreement and as provided in the "Fee Proposal" attached hereto as "Exhibit C".

Consultant shall provide a monthly billing statement summarizing work activity. Standard City processing for invoices will apply.

11. MODIFICATION AND ASSIGNABILITY OF AGREEMENT. This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Agreement, are valid or binding. This Agreement may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Consultant may not subcontract or assign its rights, including the right to compensation, or duties arising hereunder without the prior written consent of the City.

12. TERMINATION OF AGREEMENT. This Agreement may be terminated by either Party, in whole or in part, by giving seven (7) days written notice.

13. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Consultant pursuant to this Agreement are the property of the City. The City has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Consultant.

14. GENERAL COMPLIANCE WITH LAWS. The Consultant will observe and comply with any and all current laws, ordinances, and regulations.

- A. The Consultant agrees to indemnify and hold harmless the City while acting within the scope of his duties as such, from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Consultant's negligent acts, errors, or omissions arising out of services performed, or in any way resulting from a negligent act, error, or omission of the Consultant and/or its agents, employees, subcontractors, or its representatives under this Agreement.
- B. The City agrees to indemnify and hold harmless the Consultant from and against all claims, demands, and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the City's non-negligent but wrongful acts, errors, or omissions arising out of services performed, or in any way resulting from a non-negligent but wrongful act, error, or omission of the City and/or its agents or employees under this agreement.

15. GOVERNING LAW. This Agreement shall be governed by the law of the State of Montana. The venue for any litigation concerning a dispute arising from this Agreement shall be Cascade County, Montana.

16. ENTIRE AGREEMENT. This Agreement is the sole and entire agreement between the parties, and supersedes all prior negotiations, representations, and customary relationships between the parties whether oral or in writing.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement on the 21st day of February, 2012.

**CITY OF GREAT FALLS**

REVIEWED FOR LEGAL CONTENT

\_\_\_\_\_  
Gregory T. Doyon, City Manager

\_\_\_\_\_  
James W. Santoro, City Attorney

ATTEST:

\_\_\_\_\_  
Lisa Kunz, City Clerk

(Seal of the City)

**GORDON WHIRRY ARCHITECTURE**

By: \_\_\_\_\_  
Gordon Whirry  
Architect

STATE OF MONTANA            )  
County of Cascade            : ss.  
City of Great Falls            )

On this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public in and for the State of Montana, personally appeared Gordon Whirry, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at Great Falls, Montana  
My Commission Expires: \_\_\_\_\_

## **Exhibit 'A'**

### **SCOPE OF ARCHITECT'S SERVICES**

#### **1. BASIC SERVICES**

##### **A. SUMMARY**

- 1) The Architect's Basic Services consist of the usual and customary architectural, structural, mechanical and electrical design services. These shall be performed with the skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances and as expeditiously as is consistent with such professional skill and orderly progress of the Project.
- 2) The project consists of an addition of approximately 3,600 square feet to the existing Sanitation and Streets Division building as defined in the "Architectural Program", hereto attached as "Exhibit D".

##### **B. DESIGN PHASE SERVICES**

- 1) The Architect shall use the Owner-approved Program as the basis for design and come to a mutual understanding with the Owner about project requirements.
- 2) The Architect shall consider alternate construction methods and systems to meet the project needs in developing a design consistent with the project schedule and budget.
- 3) The design documents and construction cost estimates shall be presented to the Owner for approval.
- 4) The Architect shall assist the Owner in obtaining bids on the approved documents and awarding construction contracts.

##### **C. CONSTRUCTION DOCUMENTS PHASE SERVICES**

- 1) Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of drawings and specifications detailing requirements for the construction of the Work.
- 2) The Architect shall update the estimate for the cost of the Work.
- 3) The Architect shall submit the Construction Documents and estimate to the Owner.
- 4) Following the Owner's approval, the Architect shall assist in bidding the Work, awarding and preparing contracts for construction.

##### **D. CONSTRUCTION PHASE SERVICES**

- 1) The Architect shall provide administration of the contract between the Owner and Contractor. The scope of this work shall be that normally given the Architect in standard AIA contracts for similarly sized projects and will not include full time inspection.

- 2) The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions in connection with the Work. The Architect shall not be responsible for acts or omission of the Contractor or other entities performing portions of the Work.
- 3) The Architect shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work. However the Architect shall not be required to make exhaustive or continuous on-site observations to check on the quality or quantity of the Work. Reports to the Owner shall be made regularly and include any known deficiencies. The Basic Service fee includes 14 site visits and assumes a maximum 6 month construction period. Additional visits necessitated by extension of the project time shall be paid for as Additional Services.
- 4) The Architect has authority to reject Work that does not conform to the Contract Documents.
- 5) The Architect shall review and certify amounts due the Contractor in accordance with his best knowledge, information and belief.
- 6) The Architect shall review and take appropriate action on Contractor submittals of product data and shop drawings for general conformance with the Contract Documents. Such review does not relieve the Contractor of the responsibility for dimensions, quantities, installation, performance, or Contract compliance.
- 7) Changes to the Work, except minor no-cost revisions approved by the Architect, which involve an adjustment in Contract Sum or Contract Time shall be by written Change Order with Owner approval.
- 8) The Architect shall conduct inspections to determine the dates of Substantial Completion and Final Completion. The Architect's responsibility for Construction Phase Services terminates upon issuance of the Final Certificate for Payment.

## **2. ADDITIONAL SERVICES**

### **A. DESCRIPTION**

- 1) Additional Services are those services which are not normally included in the Basic Services but which may be provided at Owner request. Those currently in the scope of work are listed below.

### **B. ARCHITECTURAL PROGRAM**

- 1) Review and verify information developed for 2008 preliminary design.
- 2) Inspect and document existing conditions.
- 3) Hold architectural programming meetings with users and administrators to verify project goals, facts, needs, concepts, etc. Develop program document as basis for design.



**C. GEOTECHNICAL REPORT**

- 1) Do 3 test borings at site and develop geotechnical report including foundation recommendations.
- 2) Assist structural engineer during foundation design.

**D. RECORD DRAWINGS**

- 1) Provide Owner with record drawings in PDF and DWG format.

**E. WARRANTY INSPECTION**

- 1) Conduct one-year warranty inspection and issue report.

END

EXHIBIT B  
CERTIFICATE OF INSURANCE

EXHIBIT C  
FEE PROPOSAL

EXHIBIT D  
ARCHITECTURAL PROGRAM