

MEMORANDUM

To: Mayor and City Council

From: Chris Pike, Finance Director

Date: July 25, 2016

Subject: Amendment to Lowe Engineering Municipal Service Contract

ITEM DESCRIPTION

To amend the municipal service contracts with Lowe Engineering.

BACKGROUND

In 2015, the City entered into new contracts that extend up through the year 2020. During the transition from the previous contract to the current contract, staff realized and experienced a situation where transition could be improved when a new service provider is selected. When issuing the RFP, the City gave careful attention ensure all parties had adequate time to adjust to a potentially new contract by conducting the selection over half a year before the new contract was to begin. In doing so, it was the City's goal to provide ample opportunity to address any potential turnover and transition planning. Should a new contractor be selected, the incumbent would have time to decide whether they would release or retain staff assigned to the City. Accordingly, the new contractor would have time to determine whether to assign (hire) staff currently assigned to the City or hire new personnel.

Despite our best efforts and intentions, a problem was identified after not one but two staff assigned to the City were told they would no longer be retained by the incumbent could be hired on by the new contractor. However, in the last few weeks before the contract ended, the service provider made the business decision to retain the staff who had already accepted employment offers from the new contractor. This left both the new contractor and the City in the predicament of searching, interviewing, selecting and training new staff during the difficult Thanksgiving, Christmas and New Year holidays. This hurdle was compounded by the natural business cycle of the department gearing up for the busier time of year for the annual audit process and the business license renewal process. Ideally, had the City known the staff would leave, we would have worked with the new service provider to select new personnel sooner so that proper training could be completed.

This experience demonstrated that providing as much time as the City provides for a smooth transition only works well for our continuity of operations when all parties use that time to ensure the effects of turnover (both contractor and staff) are minimized by smoothing out the changes. The experience led to additional concerns for continuity even beyond a situation where the service provider changes. The City worked closely with the five service providers to communicate the need. All agreed and cooperated with the City to help prevent this situation from happening in the future.

This amendment to the contracts aims to avoid a situation like the one noted above by requiring the service contractor to make a decision whether to retain or release staff early in the transition process to allow both parties time to ensure a smooth transition takes place as well as provide consequences should it not take place. In short, should the City notify the contractor they will no longer be providing for one or more positions, the contractor limited window to decide whether they retain that employee. If so, they must replace the employee assigned to the City with enough time to train a replacement. If they decide to not retain the employee, they agree not to hire/rehire the employee for a specified period of time.

RECOMMENDATION

It is respectfully requested Council approve an amendment to our municipal service provider contracts to address transitional periods and staff retention/turnover.

**1st AMENDMENT AND SUPPLEMENT
SERVICE PROVIDER AGREEMENT**

This 1st AMENDMENT to the Municipal Services Provider Agreement is made this 25th day of July, 2016 among City of Dunwoody (“City”), and Lowe Engineers, LLC (“Service Provider”).

WHEREAS, the parties hereto have entered into that certain Municipal Services Agreement for the provision of Public Works and Parks Services for the City on May 26, 2015; and

WHEREAS, the parties wish to amend said Municipal Services Agreement to stipulate concerning employee retainage, non-competition and liquidated damages related thereto; and

WHEREAS, the parties mean to give effect to this Agreement as of January 1, 2016 and be effective for so long as the Municipal Services Agreement is in force between the parties.

NOW THEREFORE, for and in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. The following provisions are added as new Paragraph 16 to the Municipal Services Agreement to read as follows:

16. EMPLOYEE RETAINAGE AFTER PARTIAL OR TOTAL TERMINATION OF MUNICIPAL SERVICES AGREEMENT

(a) If at any point during the Initial or any Renewal Term(s) of the Municipal Services Agreement, the City determines to terminate a contracted position and create the identical position as a City Employee, and the parties agree to revise the Municipal Services Agreement therefor, within sixty (60) days after the City determines to give the contractually mandated notice of termination of this Agreement, the Service Provider shall notify the City Manager in writing whether it wishes to retain the services of any of the staff assigned to City positions at that time following the date of termination of the contracted position. If the Service Provider chooses not to exercise that option for any particular staff member, the Service Provider shall not offer employment to said staff member, if the City and/or the new Service Provider choose to retain said Staff member following the termination date, for a period of twelve (12) months following the date of termination.

(b) If the City should notify Service Provider of the termination of this Agreement pursuant to its terms or notify the Service Provider of a different Service Provider at the termed expiration of the Contract, within sixty (60) days after the City determines to give the contractually mandated notice of termination of this Agreement, as a result of an award of the Services Agreement being made

to a different Service Provider, the Service Provider shall notify the City Manager in writing whether it wishes to retain the services of any of the staff assigned to City positions at that time following the date of termination of the Agreement. If the Service Provider chooses not to exercise that option for any particular staff member, the Service Provider shall not offer employment to said staff member, if the City and/or the new Service Provider choose to retain said Staff member following the termination date, for a period of twelve (12) months following the date of termination.

(c) If the Service Provider exercises the option to retain said Staff member following the termination date of the Agreement, the Service Provider or the City or new Service Provider, at the City's election, shall replace said Staff member no at least 30 days prior to the date of termination and Service Provider shall train said new Staff member for the position at its expense.

(d) City and Service Provider agree that if the Service Provider violates the terms of this Paragraph, the City will suffer damages as a result of the expense of training a new staff member and/or being unable to locate a comparable staff member prior to the termination date that cannot be determined at the time of the execution of this Agreement. Therefore, the parties agree that if the Service Provider violates the terms of this Paragraph, it shall pay liquidated damages to City in the amount equal to 500 hours at the fully burdened rate of the affected Staff member.

2. Except as amended hereby, the Municipal Services Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this 1st Amendment to Municipal Services Agreement to be executed by their respective officers, thereunto duly authorized, as of the date first above written.

[SIGNATURES ON NEXT PAGE]

