

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 1-24-2013

Action Requested By:
Landscape
Management

Agenda Item Type
Resolution

Subject Matter:

Resolution authorizing the City of Huntsville to enter into a contract with Land Design Solutions, Inc. to provide concept drawings and construction drawings of an Interpretive Center, entrance drive and parking areas at Goldsmith Schiffman Wildlife Sanctuary.

Exact Wording for the Agenda:

Resolution authorizing the City of Huntsville to enter into a contract with Land Design Solutions, Inc. to provide drawings for improvement to Goldsmith Schiffman Wildlife Sanctuary.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

The drawings will ensure that the Interpretive Center @ Goldsmith Schiffman Wildlife Sanctuary will have the necessary improvements made.

Associated Cost: \$3,360.00

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Jay Hmckee

Date: 12-28-12

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Landscape Management Council Meeting Date: 1-24-2013

Department Contact: Joy McKee Phone # 427-5048

Contract or Agreement: Agreement between the City of Huntsville and Land Design Solutions, Inc.

Document Name: Agreement Land Design Solutions, Inc.

City Obligation Amount: \$3,360.00

Total Project Budget:

Uncommitted Account Balance:

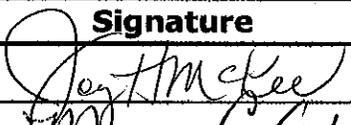
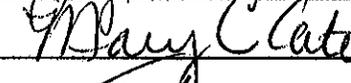
Account Number: 23-7200-0301-8406

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name:
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Department	Signature	Date
1) Originating		12-28-12
2) Legal		12-28-12
3) Finance 		1/3
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO 13-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and Land Design Solutions, Inc. on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said document is substantially in words and figures similar to that certain document attached hereto and identified as "Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville and Land Design Solutions, Inc.," consisting of nine(9)pages and the date of January 24, 2013 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 24th day of January, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 24th day of January, 2013.

Mayor of the City of
Huntsville, Alabama

ARCHITECTURAL SERVICES AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE AND
LAND DESIGN SOLUTIONS, INC. FOR
THE PREPARATION OF CONSTRUCTION AND
DESIGN DRAWINGS FOR IMPROVEMENTS
TO THE GOLDSMITH-SHIFFMAN
NATURE PRESERVE

STATE OF ALABAMA)
)
COUNTY OF MADISON)

ARCHITECTURAL SERVICES AGREEMENT

This Agreement is made this _____ of _____, 2012, between Land Design Solutions, Inc. (hereinafter referred to as "Architect"), and the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter referred to as "City").

RECITALS

WHEREAS, the City plans to construct an Interpretive Center at the Goldsmith-Shiffman Nature Preserve (hereinafter referred to as the "Project"); and

WHEREAS, the City desires to retain the Architect to complete concept and construction drawings for the Project and to perform certain related architectural and engineering services

WHEREAS the City's engagement of the Architect is based upon the Architect's representations to the City that it is an organization of professionals experienced in the type of services the City is engaging the Professional to perform, is authorized and licensed to do business in the State of Alabama, is qualified, willing and able to perform professional services for the Project, and has the expertise and ability to provide professional services which will meet the City's objective and requirements, and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

WHEREAS the City and the Architect each acknowledge that it has reviewed and familiarized itself with this Agreement for Professional Architectural Services, including all documents enumerated herein, and agree to be bound by the terms and conditions contained therein.

NOW THEREFORE, for good and valuable consideration, the parties do mutually agree as follows:

ARTICLE 1: **Statement of Work:** The Architect hereby agrees to provide the following services to the City of Huntsville:

Provide concept drawings of the area where the Interpretive Center is to be located. The said concept drawings shall include building location, entrance drive, parking, sign location, pedestrian access and setting around building. The Architect shall submit the concept drawings to the City and, upon receiving comments or corrections, shall make any appropriate revisions and resubmit the concept drawings to the City. The Work shall be complete upon acceptance of the concept drawings by the City.

ARTICLE 2: **Period of Performance and Schedule:** The period of performance of the contract shall commence within thirty (30) days of the execution of this Agreement, and shall extend until the Work is completed. The work shall be completed within three (3) months from the commencement of the period of performance.

ARTICLE 3: **Contract Price:** In consideration of the services rendered hereunder, the City shall pay to the Architect for the work performed pursuant to the Statement of Work at the following hourly rate:

Registered Landscape Architect	\$90.00/hour
Draftsman	\$50.00/hour
Administration	\$50.00/hour

The total amount due from the City pursuant to this Agreement shall not exceed the sum of Three Thousand Three Hundred Sixty Dollars (\$3,360.00).

ARTICLE 4: **Architect Performing as an Independent Contractor:** In the performance of this work it is understood between the parties that the Architects and its employees, agents, subcontractors and consultants, if any, shall be acting as independent contractors and not as an employee of the City of Huntsville. The Architect shall have no authority to obligate the City to any indebtedness or other obligation.

ARTICLE 5: **Notices:** All notices to be delivered hereunder shall be delivered to the other party by placing the same in the United States Mail, First Class postage prepaid, by prepaid overnight service through Federal Express or United Parcel Services or by hand delivery, to the addressee, addressed as follows:

City Of Huntsville
Attention: Joy McKee
P.O. Box 308

Huntsville, Alabama 35804

Land Design Solutions, Inc.
Attention: Mike Donnelly
6996 Linda Street
Huntsville, Alabama 35811

ARTICLE 6: **Entire Agreement:** The contract between the City and the Architect consists of this written Agreement and any documents, drawings or attachments furnished by the City and referenced herein. This written Agreement constitutes the entire agreement between the City and the Architect with reference to the Scope of Work delineated within. Except to the extent specifically excluded herein, this Contract supersedes any bid or proposals documents and all prior written or oral communication, representation and negotiations, if any, between the City and the Architect.

ARTICLE 7: **No Privity of Contract with Third Parties:** Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and person or entity other than the Architect.

ARTICLE 8: **No Waiver Clause:** The failure of the City to insist in one or more instances upon the performance of any term of this Contract is not a waiver of the City's right to future performance of such terms, and the Architect's obligations for future performance of such shall continue in effect.

ARTICLE 9: **Insurance and Indemnification Requirements:** The Architect shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The Architect shall procure and maintain for the duration of the job until final acceptance by the City, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Architect, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval.

Commercial General Liability

Products and Completed Operations
Contractual
Personal Injury
Broad Form Property Damage

2. Professional Liability:

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage will be maintained for three years after completion of the professional services and Certificates of Insurance will be submitted to the City within reasonable economic terms. For purposes of this provision, reasonable economic terms shall mean that such coverage is carried by at least 25% of the firms within the discipline of concern in the United States. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

3. Automobile Liability:

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

4. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Board of Industrial Relations. The Workers' Compensation Insurance carrier or self-insured fund shall waive all subrogation rights against the City of Huntsville, its officers, employees, agents and specified volunteers.

5. Employers Liability Insurance:

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 1,000,000 General Aggregate Limit
\$ 500,000 Products - Completed Operations Aggregate
\$1,000,000 Personal & Advertising Injury
\$ 500,000 Each Occurrence

2. Professional Liability:

Insurance may be made on a "claims-made" basis:

\$ 1,000,000 Per Claim

3. Automobile Liability:

\$ 500,000 Combined Single Limit per accident for bodily injury and property damage.

4. Workers' Compensation:

As Required by the State of Alabama Statute

5. Employers Liability:

\$ 100,000 Bodily Injury by Accident or Disease

\$ 500,000 Policy Limit by Disease

C. OTHER INSURANCE PROVISIONS:

The City is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the City's best interest. If the insurance requirements are not adjusted by the City prior to the City's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

a. The City, its officers, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Architect for products used by and completed operations of Architect; or automobiles owned, leased, hired or borrowed by Architect. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents or specified volunteers. Additional Insured status on the CGL shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide coverage as per this Agreement.

b. The Architect's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of Architect's insurance and shall not contribute to it.

c. The Architect's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

a. The Architect is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder and the Architect shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE CONTRACTOR:

The Architect shall include all subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

G. INTELLECTUAL PROPERTY RIGHTS:

The Architect agrees to indemnify, hold harmless and defend the City from and against any and all liability, losses, judgments, damages, and expenses arising from third party claims that the Products delivered by and/or Services performed by the Architect pursuant to this Agreement infringe on or violate any patents, copyrights, or trade secrets of such third parties. This indemnification is contingent upon City providing prompt written notice of such a claim to the Architect, and granting the Architect the sole right to defend such claim. In the event of any infringement or claimed infringement, the Architect, in its sole discretion, shall: (i) modify the infringing Services to be non-

infringing as long as there is no loss of functionality by such modification; (ii) obtain a license for City to use the infringing Services; or (iii) terminate the City's right to use the infringing Services and refund to City all amounts paid for such infringing Services, amortized over a period of (5) years from the acceptance of Services.

H. HOLD HARMLESS AGREEMENT:

The Architect, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, court awarded attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is directly attributable to personal injury, including bodily injury or death, or to injury to or destruction of tangible property, therefrom, and (2) is caused by any negligent act or omission of the Architect or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

ARTICLE 10: This agreement shall be governed by the laws of the State of Alabama. Venue of any action to enforce the terms of this agreement shall be in the state or federal courts of Madison County, Alabama.

ARTICLE 11: This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

ARTICLE 12: When a word, term or phrase is used in this Contract, it shall be interpreted or construed. First, as defined herein; second, if not defined, according to its generally accepted meaning the Contractual industry; and third, if there is no generally accepted meaning in the Contractual industry, according to its common and customary usage.

ARTICLE 13: The words "include," "includes," or "including," as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."

ARTICLE 14: The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

ARTICLE 15: Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

ARTICLE 16: Time limitations contained herein, or provided for hereby, are of the essence of this Agreement.

ARTICLE 17: The Architect shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the City. Subject to the provisions of the immediately preceding sentence, the City and the Architect, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

ARTICLE 18: Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

ARTICLE 19: The Architect shall obtain the City's written consent before placing any subcontract for furnishing any of the work called for in this contract. Consent by the City to any subcontract shall not constitute approval of the acceptability of any subcontract terms or conditions, acceptability of any subcontract price or of any amount paid under any subcontract, nor relieve the Architect of any responsibility for performing this contract.

ARTICLE 20: The Services will comply with any and all applicable federal, state, and local laws as the same exist and may be amended from time to time.

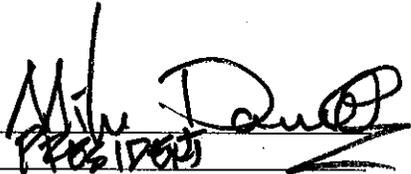
ARTICLE 21: In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, age, sex, disability or national origin with reference to the subject matter of this contract, no matter how remote. This nondiscrimination provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

**LAND DESIGN SOLUTIONS,
INC.**

Attest:

By :
Its: _____



CITY OF HUNTSVILLE
a municipal corporation
in the State of Alabama

Attest:

Charles E. Hagood
Its: Clerk-Treasurer

By: _____
Tommy Battle
Its: Mayor