CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 6/13/2013

Action Requested By:
Fire and Rescue

Agenda Item Type
Resolution

Subject Matter:

Approval of Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with Stanard & Associates, Inc. for the professional services to develop and administer written and practical examinations for the Captain position.

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.

This agreement will allow proper written and practical examinations for the Captain position.

Associated Cost:

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: DW McFall Jr.

Date: 5/29/2013

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Fire and Rescue** Council Meeting Date: **6/13/2013**

Department Contact: **Chief Howard W. McFarlen, Jr.** Phone # **256-427-7401**

Contract or Agreement: **Agreement with Stanard & Associates, Inc.**

Document Name: **Stanard Captain Exam 06-13-2013**

City Obligation Amount: **Not to Exceed $4,000.00**

Total Project Budget:

Uncommitted Account Balance:

Account Number: **01-5300-0511-1201**

Procurement Agreements

Select...	**Select...**

Grant-Funded Agreements

Select...	**Grant Name:**

Department	Signature	Date
1) Originating	HW McFarlen Jr	5-29-13
2) Legal	Mary C Cates	5-30-13
3) Finance		6/3
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

RESOLUTION NO. 13- _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized to enter into an Agreement, by and between the City of Huntsville, a municipal corporation in the State of Alabama, and Stanard & Associates, Inc., which said Agreement is attached hereto and identified as "Agreement between the City of Huntsville and Stanard & Associates, Inc., for the professional services to develop and administer written and practical examinations for the Captain position" consisting of ten (10) pages and the date of June 13th, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and 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 13th day of June, 2013.

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

APPROVED this the 13th day of June, 2013.

_____
Mayor of the City of Huntsville,
Alabama

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND STANARD & ASSOCIATES, INC.

STATE OF ALABAMA)
)
COUNTY Of MADISON)

This Agreement is made this _____ of _____, 2013, between Stanard & Associates, Inc. (hereinafter referred to as "Stanard"), and the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter referred to as "City").

RECITALS

WHEREAS, the City of Huntsville, Alabama has a requirement to develop a revised written examination for the position of Fire Captain; and

WHEREAS, Stanard & Associates, Inc. offers professional services to develop and administer these types of written examinations and has previously provided similar professional services to the City of Huntsville;

WITNESSETH

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties do hereby agree as follows, to-wit:

1.0 Development of Written Examinations.

Stanard agrees to provide to the City the following services in the development of revised content valid, written job knowledge examinations,:

Step 1. Huntsville Fire and Rescue Department Subject Matter Experts (SMEs) will review current exam items related to the Department's Standard Operating Procedures (SOPs) and determine if new items need to be written.

Step 2. Stanard will review and update items from outdated source material to ensure they are up-to0date with the most current source materials and determine if new items need to be written.

Step 3. Stanard will update the study guide and test administration guide and incorporate any necessary changes.

Step 4. Stanard will write new items, as needed.

Step 5. Stanard will incorporate any changes into the exam and answer key (scramble items, etc.)

Step 6. Stanard will print study guides and exams in sufficient quantity for all candidates.

Step 7. Stanard will respond in writing to and thoroughly address all challenges made to items by candidates taking the examination.

Step 8. Stanard shall score the exams and provide a written report of the results to the Human Resources point of contact designated by the City of Huntsville.

2.0 In consideration of the services rendered hereunder, the City shall pay to Stanard the sum of Two Thousand ninety-five dollars for services related to review and development of the written examination. The City shall also pay to Stanard One Hundred Seventy-five Dollars ($175.00) per hour for responding to challenges to the written examination. Any additional consulting by Stanard will be billed at a rate of One hundred seventy-five Dollars ($175.00) per hour for Bachelors and Masters-level staff and Two Hundred and Fifty Dollars ($250.00) per hour for Ph.D.-level staff. It at all necessary, additional questions will be written at a rate of $45.00 per question. One thousand forty-seven dollars ($1,047.00) shall be due and payable within fifteen days of contract execution with the remainder being payable within thirty (30) days from the date of the final invoice from Stanard. Stanard may invoice the City upon final completion of the work.

3.0 In the performance of this work it is understood between the parties that Stanard and its employees, agents, subcontractors and consultants, if any, shall be acting as independent contractors and not as employees of the City of Huntsville. Stanard shall have no authority to obligate the City to any indebtedness or other obligation.

4.0 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 United States Postal Service, Federal Express, DHL or United Parcel Services or by hand delivery, to the addressee, addressed as follows:

Michael J. Thomason
Stanard and Associates, Inc.
309 West Washington Street
Suite 1000
Chicago, IL 60606

Byron Thomas
City of Huntsville
Director of Human Resources

P.O. Box 308
308 Fountain Circle
Huntsville, Alabama 35804

5.0 The contract between the City and Stanard consists of this written Agreement and any documents or drawings furnished by the City and referenced herein. This written Agreement constitutes the entire agreement between the City and Stanard 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 Stanard.

6.0 This contract shall be effective on the date this Agreement is executed by the last party to execute it.

7.0 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 Stanard.

8.0 This agreement may be terminated by either party without cause prior to the completion of the project upon thirty (30) days written notice of the intent to terminate to the other party. Notice to terminate shall be given to the City by written notification mailed to Mr. Byron Thomas, Director of Human Resources, City of Huntsville, Alabama at 308 Fountain Circle, Huntsville, Alabama 35801. Notice to terminate shall be given to Stanard by written notification mailed to Mr. Michael J. Thomason, Stanard and Associates, Inc., 309 West Washington Street, Suite 1000, Chicago, IL 60606. In the event of such termination without cause, Stanard shall be compensated for all services actually performed in a timely manner prior to receipt of the notice of termination, provided however, that such compensation shall be conditioned upon Stanard providing in a timely manner to the City all documents developed and copies of the work product produced pursuant to the Contract which were performed in furtherance of the Scope or Work up to the receipt of the notice of termination. In such event, Stanard shall promptly submit the City its invoice for final payment.

9.0 This agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

10.0 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 Stanard's obligations for future performance of such shall continue in effect.

11.0 If Stanard persistently fails or refuses to perform the work in accordance with this contract, the City may order Stanard to stop the work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that work be resumed. In such event, Stanard shall immediately obey such order.

12.0 Stanard 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. Stanard 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 Stanard, it 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 Industrial Board of Relations. Waivers of subrogation in favor of the City shall be endorsed to Worker's Compensation coverage.

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:

$ 3,000,000 General Aggregate Limit
$ 1,000,000 Products - Completed Operations Aggregate
$ 1,000,000 Personal & Advertising Injury
$ 1,000,000 Each Occurrence

2. **Professional Liability:**

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

$ 100,000 Per Claim - Land Surveyors
$ 250,000 Per Claim - Other Professionals

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 elected and appointed officials, 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 Stanard for products used by and completed operations of Stanard; or automobiles owned, leased, hired or borrowed by Stanard. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. Stanard's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, 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 Stanard's insurance and shall not contribute to it.

c. Stanard'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. Stanard 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 Stanard 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:

Stanard 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:

Stanard agrees to indemnify, hold harmless and defend 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 Stanard 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 Stanard, and granting Stanard the sole right to defend such claim. In the event of any infringement or claimed infringement Stanard, 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.

13.0 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama. For any action concerning this Agreement, (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

14.0 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by Stanard.

15.0 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.

16.0 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 within the Contractual industry; and third, if there is no generally accepted meaning in the Contractual industry, according to its common and customary usage.

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

18.0 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.

19.0 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.

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

21.0 The reports, drawings, specifications and other documents or things prepared by Stanard for the Project shall become and be the sole property of the City. Stanard shall be permitted to retain copies thereof for its records and for its future professional endeavors.

22.0 Stanard 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 Stanard, 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.

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

24.0 The City may, at any time by written order, make changes within the general scope of this contract in any one or more of the following:

1. Description of the services to be performed;
2. Time of performance;
3. Place of Performance.

If any change causes an increase or decrease in the fixed sum amount or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the City shall make an equitable adjustment in the fixed sum amount or delivery schedule or other affected terms and shall modify the contract accordingly. Stanard must assert its right to an adjustment under this clause within 14 calendar days from the date of receipt of the written order.

25.0 Stanard 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 Stanard of any responsibility for performing this contract.

26.0 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.

27.0 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

28.0 Stanard, including its officers, employees, agents, and any other personnel providing services through Stanard pursuant to this agreement agree to hold all materials and information both for any proposal and for any contract services with the City in the strictest confidence, and to take all necessary steps to assure and maintain the security of any information, test materials or other materials received, used, or developed pursuant to this contract.

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

Stanard and Associates, Inc.

Attest:

By :_____
Its: President

CITY OF HUNTSVILLE
a municipal corporation
in the State of Alabama

Attest:

_____
Charles E. Hagood
Its: Clerk-Treasurer

By:_____
Tommy Battle
Its: Mayor