



TO: SHYANNE HARNAGE, CRA ADMINISTRATOR

FROM: ANDREA H. DUENAS, ASSISTANT CITY ATTORNEY **AHD**

THROUGH: SARA HEDGES, CITY ATTORNEY **SH**

RE: CONTINUING CONTRACTS FOR PROFESSIONAL SERVICES PURSUANT TO RFP 2024-005

CAO RLS FILE: 24-347 MBV ENGINEERING, INC. -PROFESSIONAL ENGINEERING (AMENDED)  
24-348 DON BERGMAN ARCHITECTURE, LLC-ARCHITECTURE (AMENDED)  
24-349 & 364 ARCHITECTS DESIGN COLLABORATIVE, LLC -ARCHITECTURE, LANDSCAPE  
ARCHITECTURE, AND URBAN PLANNING (AMENDED)  
24-350 & 351 EXP U.S. SERVICES, INC.-ARCHITECTURE AND PROFESSIONAL ENGINEERING  
(AMENDED)  
24-352 GFA INTERNATIONAL, INC. DBA UNIVERSAL ENGINEERING-PROFESSIONAL  
ENGINEERING  
24-353 ROYAL CONSULTING SERVICES, INC.- PROFESSIONAL ENGINEERING  
24-354 CAPE DESIGN ENGINEERING, INC. -PROFESSIONAL ENGINEERING  
24-355 SGM ENGINEERING, INC.-PROFESSIONAL ENGINEERING  
24-356 TLC ENGINEERING SOLUTIONS, INC. -PROFESSIONAL ENGINEERING  
24-358 & 363 COTLEUR & HEARING, INC.-ARCHITECTURE AND URBAN PLANNING  
(AMENDED)  
24-359 BCER ENGINEERING, INC.-PROFESSIONAL ENGINEERING  
24-360 & 362 ZYSCOVICH – ARCHITECTURE AND URBAN PLANNING  
24-367 INSPIRE PLACEMAKING COLLABORATIVE – LANDSCAPE ARCHITECTURE

RELATED RLS 24-238 – TEMPLATE  
24-315 – REJECTING CHANGES BY ZYSCOVICH AND INSPIRE

DATE: SEPTEMBER 10, 2024

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These Requests for Legal Services (RLS) ask the City Attorney's Office to review and approve Continuing Contracts for Professional Services pursuant to RFP 2024-005.

Nine of these agreements were on the Consent Agenda for the July 15, 2024 City Commission meeting, however, only five were actually signed. Those five are listed above as "Amended" and contain special language acknowledging the procedural history.

This Office has combined agreements and made appropriate changes to the language of the agreements so that each vendor will have only one agreement for all professional services. Additional changes were also made which you can review in the uploaded redline versions.

With the suggested changes, the Agreements are approved as to form and correctness. For your convenience, I uploaded "changes accepted" versions of each agreement.

You advised that two vendors (Zyscovich and Inspire) asked for changes to the standard terms contained in the City's Agreement. The vendors' requested changes were previously addressed **and rejected** by the City Attorney in RLS 24-315 (attached). As such, I have rejected all of the vendors' changes.

Zyscovich has proposed language requiring mediation and arbitration for disputes. This Office has made several changes to the Standard Agreement including changing the Dispute Resolution procedures set forth in Paragraph 38 to require mediation. The changes already made by this Office may address Zyscovich's concerns.

/ahd



TO: GELENCIA CARTER, PURCHASING MANAGER

FROM: SARA HEDGES, CITY ATTORNEY *SH*

RE: CONTINUING CONTRACT FOR PROFESSIONAL SERVICES - REQUESTED CHANGES TO CONTRACT

CAO RLS FILE: RLS 24-315

DATE: AUGUST 23, 2024

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I have reviewed the above Request for Legal Services (RLS) related to the requests from Zyscovish, LLC and Inspire Placemaking Collective, Inc (Vendors) to change the standard terms of our Continuing Services Contract language. As an initial and general observation for all contracts, I do not recommend changing standard terms to contracts that the City requires others to follow. In this instance, specifically, this RFQ was awarded to numerous other Vendors, all of whom, except these two, have agreed to the City's standard language.

I will point out, the Agreements prepared for these two companies did not utilize the approved template from RLS 24-238. These Agreements should be prepared using that template and submitted for review as to form and correctness prior to being provided to the Vendors for signature. As it relates to the requests to change terms, I have compared the language to the Template in RLS 24-238, and it is the same. Therefore, I am able to address each requested change at this time. Each Vendor's requests are addressed below.

### **Zyscovish, LLC**

1. Paragraph 5 (Time of Performance) language: I do not recommend removing this language, as it is standard in all City contracts to require liquidated damages in an appropriate and reasonable amount. While you could legally remove this language, it is not recommended. Additionally, all other Vendors to this RFQ (excepting these two) have been required to agree to this language.
2. Paragraph 12(B)(4) Professional Liability) language: The Risk Manager has uploaded a Memorandum to Agenda Quick for your review regarding this request. The request to change the maximum deductible or self-insured retention from \$10,000 to \$100,000 per claim/occurrence is not recommended, please see Risk Manager's Memorandum. All other Vendors have been required to agree to this language and amount.

3. Paragraph 13 (Indemnification) language: The Vendor has requested “when recoverable by law” be added to the recoverable costs. While I would not recommend that language be used, I do believe “unless prohibited by law,” would be acceptable. Again, I will reiterate that it is ill-advised to change standard language that others have been required to agree to.
4. Paragraph 21 (Attorneys’ Fees and Costs) language: The Vendor has requested removal of the prevailing party language. While this language is not legally required to be in the Agreement, this is the language you elected to include in all other Agreements with Vendors for this RFQ. It is therefore not recommended to changed standard language that results in different terms for different Vendors of the same RFQ award.
5. Paragraph 38 (Dispute Resolution) language: The Vendor has proposed language requiring mediation and arbitration for disputes. The language they have proposed is legally permissible. The language as you drafted, however, has been included in all other Agreements with Vendors for this RFQ. It is therefore not recommended to changed standard language that results in different terms for different Vendors of the same RFQ award.

#### **Inspire Placemaking Collective, Inc**

1. Paragraph 5 (Time of Performance) language: I do not recommend removing this language, as it is standard in all City contracts to require liquidated damages in an appropriate and reasonable amount. While you could legally remove this language, it is not recommended. Additionally, all other Vendors to this RFQ (excepting these two) have been required to agree to this language.
2. Paragraph 12(B)(4) (Professional Liability): The City requires Professional Liability coverage for a contract providing for this type of service. The Risk Manager has prepared a Memorandum, which has been uploaded to Agenda Quick. Mr. Rios points out the minimum acceptable Professional Liability coverage is \$2,000,000. Again, all other Vendors (excepting these two) have agreed to the \$3,000,000 as originally included. For fairness and consistency, it is not recommended that this term be changed, even though it legally can be changed. I will also point out, I did review the RFQ, and the Required Limits of Insurance stated \$3,000,000 was required for Professional Liability coverage.

If you have any questions, please do not hesitate to contact this Office via phone or e-mail.

Thank you.

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