

## **COUNCIL ACTION FORM**

Meeting Date: April 12, 2018

Staff Contact: John Sullivan, Public Works Director

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Agenda Item: Lighting Design & Engineering Services Contract

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### **Background / Description of Item:**

A city-wide goal identified during the planning process for the city's new Master Plan is:

- ***To increase investment in infrastructure and facilities in the city.***

The city's public facilities and infrastructure need reinvestment to improve the appearance and character of the community, and to maximize investments and resources. A more proactive systematic approach and greater investment levels into infrastructure improvements was identified as being needed by the city during the Master Plan planning process.

City staff has identified several different potential Capital Improvement Program (CIP) projects within the city with a preliminary cost estimate of \$2.7 million, that all need to be completed in the very near future.

The City Council authorized the Mayor to engage in an agreement with Springsted Incorporated at the September 21, 2017 meeting, to assist the city in determining the best types of financing for constructing these needed infrastructure projects. As a result of this, a ballot measure for a new ½-cent special sales tax initiative is currently in process, with a final election day being on May 1, 2018 when the submitted mail-in ballots will be tallied.

A Professional Engineering Services contract was approved at the October 12, 2017 Council meeting for design and field inspection services with Uhl Engineering Inc. in an amount not to exceed \$332,827. The City Council had also previously approved a contract with Uhl Engineering at the October 13, 2016 City Council meeting in an amount not to exceed \$32,205 for similar professional services for the 49<sup>th</sup> Terrace street rehabilitation project, between Belinder Ave and Mission Road. Uhl Engineering Inc. is charged with developing the detailed construction plans for the street and storm water infrastructure improvements.

The proposed Lighting Design & Engineering Services contract will supplement the design contract by Uhl Engineering Inc. and will focus on first developing a Street Lighting Master Plan for all of Westwood, then developing specific street lighting construction plans for up to seven (7) different roadway segments. These street lighting plans will coordinate with the street and storm water construction plans that Uhl Engineering Inc. is developing.

The fee structure of the proposed Lighting Design & Engineering Services contract includes:

Street Lighting - \$7,500  
Masterplan

2018 Street Lighting - \$8,000  
Construction  
Documents

**Total - \$15,500**

Funding for this professional services contract would be drawn from the city's Capital Improvement Project Fund, which includes funding sources and transfers from the city's General Fund, the city's Storm Water Utility Fund, and other state and federal funding sources.

**Staff Recommendation:**

Authorize the Mayor to sign the contract for professional services with LightWorks, Inc. in an amount not to exceed \$15,500 subject to the City Attorney's review, corrections and approval.



December 11, 2017 (revised April 10, 2018)

John Sullivan  
City of Westwood  
2545 47<sup>th</sup> Street  
Westwood, KS 66205

City of Westwood

## **AGREEMENT FOR LIGHTING DESIGN AND ENGINEERING SERVICES**

### **1. SCOPE OF WORK**

LightWorks, Inc. will provide professional lighting design and electrical engineering services the streetlighting for the City of Westwood, Kansas.

### **2. SCOPE AREAS**

- Masterplan for City Streetlighting.
- 2018 Streetlighting Project (up to 7 roadway sections) - design of new lighting standards and requirements based on design elements determined during the master planning process.
- 2018 Streetlighting Project (up to 7 roadway sections) - coordination of streetlighting enhancements with existing streetlighting conditions.

### **1. SERVICE PERIOD**

The Service Period outlines specific time periods within the project. This may be defined according to specific blocks of time within project phases and/or calendar dates affiliated with the overall project schedule. For this project, LightWorks understands the Service Period as follows:

- A. Masterplan Phase – to be complete on or before May 31, 2018.
- B. 2018 Streetlighting Design Phase – to be complete on or before June 30, 2018 with bidding to occur in June with construction following immediately afterwards.

## 2. **BASIC SERVICES**

A. The following shall be provided by LIGHTWORKS under the terms of this Agreement:

### MASTERPLAN:

#### MEETINGS:

1. Initial site visit to review the site, gain an understanding of the existing power distribution system, and discuss lighting levels and needs with owner.
2. Local project design meeting(s), maximum of 2 to discuss Basic Services issues.

#### DESIGN AND COORDINATION:

3. Establishment of overall project illumination goals; including research of applicable design standards, codes, and requirements for the Illuminating Engineering Society of North America (IESNA), enough to develop general layout and include in schematic submittal.
4. Evaluation of existing lighting and electrical systems along project scope, including adjacent government entities and municipalities.
5. ~~Evaluation of adjacent government entities and municipalities for application criteria/regulations.~~—(It is determined there will not be any upgrades to the adjacent shared streets.)
6. Coordination with utilities to determine status of existing equipment and future needs.
7. On-site photometric analyses of existing conditions to determine exact conditions along entire project area.
8. Recommendations and schematic design of lighting systems for, streets, intersections and any key locations.
9. Coordination of lighting design with applicable parties involved.
10. Coordination with utility to determine future controller locations and quantities. Information to be included in the deliverable noted below.
11. Schematic design of electrical engineering of power distribution along project length.
12. Estimate of probable costs for lighting system and power distribution system for inclusion in overall estimate and adherence to pre-determined budget.

#### DELIVERABLES:

13. Written description of lighting and electrical systems for Schematic Design.
14. One set of design development drawings indicating basic information for all equipment for pricing.

### FINAL DESIGN (to include up to 7 roadway sections):

#### MEETINGS:

1. Local project design meeting(s), maximum of (2) meetings.

#### DESIGN AND COORDINATION:

2. From above - Incorporation of established overall project illumination goals; including research of applicable design standards, codes, and requirements for the Illuminating Engineering Society of North America (IESNA), enough to develop general layout and include in schematic submittal.
3. From above – Incorporation of approved lighting fixture(s) into project.
4. From above – Verification of photometric analyses including general point-by-point calculations to determine mounting heights and pole spacing.

5. Site and street lighting systems design drawings and specifications.
6. Demolition plans for areas where existing lighting and power is to be removed and/or modified to meet new requirements.
7. Code analysis as it relates to the lighting portion of the project.
8. Coordination of lighting design with applicable parties involved.
9. Coordination with electric utility.
10. Electrical engineering including the lighting system and power distribution system.
11. Further estimate of probable costs at 60% and 100% for lighting system and power distribution system for inclusion in overall estimate and adherence to pre-determined budget.

DELIVERABLES:

12. One set of construction documents for review at 60% completion.
13. One set of 100% construction documents.

B. The following shall not be provided by LIGHTWORKS under the terms of this Agreement:

1. Construction Administration Services.
2. Design of extension of electric and telephone utilities to the site.
3. Detailed life-cycle costs and/or energy-use studies, above and beyond that mentioned above.
4. Design of telephone, data, audio/visual, security, networking and fiberoptic systems. LIGHTWORKS will design for conduit and boxes to support these systems.
5. See "Excluded Services" under Terms and Conditions for additional items not included.

C. The Client shall provide the following under the terms of this Agreement:

1. Electronic copies of site plan.
2. Copy of site survey indicating utility line locations, sizes and capacities.
3. Cut sheets indicating electrical requirements and rough-in locations for any equipment that which have connections or conduit to be shown on plans drawn by LIGHTWORKS.

**3. REIMBURSABLE EXPENSES**

- A. Reimbursable expenses shall be billed above and beyond all fees for professional services, with a multiplier of 1.0. Reimbursable items shall be as follows:
1. All plots and printing for the project required by the Client or requested by the Owner (plotting and printing for LIGHTWORKS's in-house use is not a reimbursable expense).
  2. Local delivery charges.
  3. Automobile mileage.

**4. COMPENSATION FOR PROFESSIONAL SERVICES**

- A. **Fixed Fee:** LightWorks, Inc. will provide professional services for this project in accordance with the Scope of Work, Basic Services and Terms and Conditions of Agreement listed herein for lump sum fees according to the following schedule:

Masterplan -	\$7,500
<u>2018 Streetlighting</u>	
<u>Construction Documents -</u>	<u>\$8,000</u>
Total -	\$15,500

Invoices will be sent out monthly based on a percentage of work completed. All payments are due immediately upon your receipt of payment from your client. All payments received by LightWorks more than thirty (30) calendar days after invoice date are subject to a late fee calculated at 1-1/2 percent monthly.

- B. **Additional Services:** Additional services shall be provided only upon authorization by the Client and shall be paid for by the Client as hereinafter provided. Fees will be billed on a time and expense basis for any Additional Services authorized in writing by the Client, and will be billed separately at the following standard hourly rates:

Principal	\$125 per hour
Engineer	\$105 per hour
Designer	\$95 per hour
Support	\$75 per hour

## 5. TERMS AND CONDITIONS

This Agreement for professional services has been entered into by the Client, and LightWorks, Inc. (LightWorks). The name LightWorks shall pertain to all employees, officers, directors, and all divisions of LightWorks, Inc.

- A. **Performance of Services:** LightWorks shall perform the basic services as outlined above, and any additional services as required or directed by the Client in consideration of the fee arrangements and payment terms described in "Compensation" above.
- B. **Excluded Services:** Other services available from LightWorks and applicable to the project have been made known and explained to the Client. Where LightWorks has deemed a service needed or advisable, LightWorks has made this opinion known to the Client and the Client has confirmed his or her opinion that such services are not requested of LightWorks and/or the Client has made or shall make arrangements to obtain those services from a source other than LightWorks. These excluded services include:
1. Full-time, on-site construction observation.
  2. Providing extraordinary services to investigate existing conditions or facilities or to make measured drawings thereof.
  3. Providing formal life-cycle cost studies of electrical systems.
  4. Providing revisions of drawings, specifications or other documents when such revisions are required by changes to previously approved design criteria.
  5. Providing consultation concerning replacement of any work damaged by fire or other causes during construction.
  6. Providing professional services made necessary by the default of the contractor or by major defects in the work of the contractor in the performance of the Construction Contract.
  7. Preparing to serve or serving as an expert witness in connection with any public hearing, or legal proceeding where LightWorks is not a named party to such a hearing or proceeding.
  8. Preparing detailed cost estimates or opinions of probable construction cost.

The Client hereby agrees, to the fullest extent permitted by law, to indemnify and hold LightWorks harmless from any claim, liability or cost, including reasonable attorney's fees and cost of defense, for injury or loss arising or allegedly arising from LightWorks 's failure to perform a service listed above and excluded at the Client's direction.

- C. **Verification of Existing Conditions:** Because evaluation of the existing structure or site requires that certain assumptions be made regarding existing conditions, and because some of these assumptions cannot be verified without expending additional sums of money or destroying otherwise adequate or serviceable portions of the building, the Client agrees to indemnify and hold LightWorks harmless from and against any and all damage, liability and cost arising or allegedly arising out of the professional services under this Agreement, except for the sole negligence or willful misconduct of LightWorks. LightWorks shall not be required to sign any documents, no matter by whom requested, that would result in LightWorks having to certify, guarantee or warrant the existence of conditions whose existence LightWorks cannot ascertain.
- D. **Betterment:** If, due to the Engineer's error, any required item or component of the project is omitted from the Construction Documents produced by LightWorks, LightWorks's liability

shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. In no event will LightWorks be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.

- E. **Indemnification:** The Client shall, to the fullest extent permitted by law, indemnify and hold harmless LightWorks, his or her officers, directors, employees, agents and subconsultants from and against all damage, liability and costs, including reasonable attorney's fees and cost of defense, to the extent caused by the performance of the services under this Agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of LightWorks or LightWorks's consultants.
- F. **Limitation of Liability:** In recognition of the relative risks and benefits of the project to both the Client and LightWorks, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of LightWorks and their subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all injuries, claims, losses, expenses, damages of any nature whatsoever or claims expenses arising out of this agreement from any cause or causes, so that the total aggregate liability of LightWorks and their subconsultants to all those named shall not exceed LIGHTWORKS's total fee for services rendered on this project. Such claims and causes include, but are not limited to design professional's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.
- G. **Jobsite Safety:** Neither the professional activities of LightWorks, nor the presence of his or her employees and subconsultants at a construction site, shall relieve the Contractors and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing or coordinating all portions of the Work of construction in accordance with the contract documents and any health/safety precautions required by regulatory agencies. LightWorks and their personnel have no authority to exercise any control over any contractor or other entity or their employees in connection with their work or any health/safety precautions. The Client agrees that the Contractor is solely responsible for jobsite safety and warrants that this intent shall be made evident in the Client's agreement with the General Contractor. The Client also agrees that the Client, LightWorks and LightWorks 's consultants shall be indemnified and shall be made additional insureds under the General Contractor's general liability insurance policy.
- H. **Information Provided by Others:** LightWorks shall indicate to the Client the information needed for rendering of services hereunder. The Client shall provide to LightWorks such information as is available to the Client and the Client's consultants and contractors, and LightWorks shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for LightWorks to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees to indemnify and hold LightWorks and LightWorks's subconsultants harmless from any claim, liability or cost for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to LightWorks.
- I. **Opinions of Probable Costs:** In providing opinions of probable cost, the Client understands that LightWorks has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of LightWorks's qualifications and experience. LightWorks makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. LightWorks shall be compensated as Additional Service, as provided for herein, for all time spent to review, redesign and to incorporate revisions due to probable costs.
- J. **Value Engineering:** If the Client retains the services of a Value Engineer (VE) or allows the General Contractor or any of his or her subcontractors to function as a VE to review the Construction Documents prepared for this project by LightWorks, it shall be at the Client's

sole expense and shall be performed in a timely manner so as not to delay the orderly progress of LightWorks's services. All recommendations of the VE shall be given to LightWorks for their review, and adequate time will be provided for LightWorks to respond to these recommendations. LightWorks shall be compensated as Additional Service, as provided for herein, for all time spent to review the recommendations of the VE and to incorporate those accepted by both the Client and LightWorks. If LightWorks objects to any recommendations made by the VE, LightWorks shall so state in writing to the Client, along with their reasons for objecting. If the Client insists on incorporating in the Construction Documents any changes to which LightWorks has objected in writing, the Client agrees to indemnify and hold LightWorks harmless from any damage, liability or cost which arise in connection with or as a result of the incorporation of such design changes insisted upon by the Client.

- K. **Unauthorized Changes:** In the event the Client consents to, allows, authorizes or approves of changes to the Construction Documents, and these changes are not approved in writing by LightWorks, the Client recognizes that such changes and the results thereof are not the responsibility of LightWorks. Therefore, the Client agrees to release LightWorks from any liability arising from the construction, use or result of such changes. In addition, the Client agrees to indemnify and hold LightWorks harmless from any damage, liability or cost arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of LightWorks.
- L. **Design without Construction Phase Services:** It is understood and agreed that LightWorks's Basic Services under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Client. The Client assumes all responsibility for interpretation of the Contract Documents and for construction observation and supervision and waives any claims against LightWorks that may be in any way connected thereto. The Client agrees to indemnify and hold LightWorks harmless from any loss, claim or cost arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of LightWorks.
- M. **Changed Conditions:** The Client shall rely on LightWorks's judgment as to the continued adequacy of this Agreement in light of occurrences or discoveries that were not originally contemplated by or known to LightWorks. Should LightWorks call for contract renegotiation, LightWorks shall identify the changed conditions necessitating renegotiation and LightWorks and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.
- N. **Defects in Service:** The Client shall promptly report to LightWorks any defects or suspected defects in LightWorks's work or services of which the Client becomes aware, so that LightWorks may take measures to minimize the consequences of such a defect. The Client warrants that he or she will impose a similar notification requirement on all contractors in his or her Client/Contractor contract and shall require all sub-contracts at any level to contain a like requirement. Failure by the Client, and the Client's contractors or subcontractors to promptly notify LightWorks, shall relieve LightWorks of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
- O. **Dispute Resolution:** Any claims or disputes between the Client and LightWorks arising out of the services to be provided by LightWorks or out of this Agreement shall, as a condition precedent to litigation, be submitted to non-binding mediation. The Client and LightWorks agree to include a similar mediation agreement with all contractors, subcontractors, subconsultants, suppliers and fabricators, providing for mediation as the primary method for dispute resolution among all parties.
- P. **Ownership of Documents:** All documents, including all documents on electronic media, prepared by LIGHTWORKS under this Agreement are instruments of LIGHTWORKS's professional service and shall remain the property of LIGHTWORKS and may not be used by



the Client for any other purpose without the written prior consent of LIGHTWORKS.

- Q. **Termination of Services:** This Agreement may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, the Client shall pay LIGHTWORKS for all services rendered to the date of the termination, and all reimbursable expenses incurred prior to termination and reasonable termination expenses incurred as a result of termination.

**6. TERMS AND CONDITIONS FOR THE COLLECTION OF PROFESSIONAL SERVICE FEES**

- A. **Interest:** If payment is not received by LightWorks within 30 calendar days of the invoice date, the Client shall pay as interest an additional charge of one-and-one-half (1.5) percent (or the maximum allowable by law, whichever is lower) of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.
- B. **Collection Costs:** In the event legal action is necessary to enforce the payment provisions of this Agreement, LightWorks shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by LightWorks in connection therewith and, in addition, the reasonable value of LightWorks's time and expenses spent in connection with such collection action, computed at LightWorks's prevailing fee schedule and expense policies.
- C. **Suspension of Services:** If the Client fails to make payments when due or otherwise is in breach of this Agreement, LightWorks may suspend performance of services upon five (5) calendar days' notice to the Client. LightWorks shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

**7. EXTENT OF AGREEMENT**

This proposal represents the entire agreement between the Client and LightWorks, Inc. and supersedes all prior negotiations, representations or agreements, whether written or oral. This agreement may be amended only by written instrument signed by both the Client and LightWorks, Inc. Please review this proposal, sign and return one copy to LightWorks, Inc. We look forward to working with you on this project.

Lightworks cannot commence work on this project without a signed agreement between LightWorks and the Client in place.

If it is the Client's desire to use LightWorks and work needs to commence prior to having a signed agreement in place, the statement of intent, signed by the Client and LightWorks, may be used to release LightWorks to start on the project. Should a final agreement between LightWorks and the Client not be reached, the Client agrees to pay LightWorks for their work on the project at the hourly rates and under the terms and conditions contained in this proposal plus any expenses incurred .



4.10.18

\_\_\_\_\_  
Kathi S. Vandel, P.E.  
LightWorks, Inc.

\_\_\_\_\_  
Date

I have read the above agreement and accept the terms and conditions stated herein:

\_\_\_\_\_  
for City of Westwood

\_\_\_\_\_  
Date