

### **Welcome to tonight's City Council meeting!**

The elected officials of the City of Bonners Ferry are appreciative of an involved constituency. Testimony from the public is encouraged concerning issues when addressed under the Public Hearing portion of the agenda. Any individual who wishes may address the council on any issue, whether on the agenda or not, during the Public Comments period. Normal business will preclude public participation during the business portion of the meeting with the discretion left to the Mayor and Council.

### **Vision Statement**

Bonnors Ferry, "The Friendliest City", strives to achieve balanced growth, builds on community strengths, respects natural resources, promotes excellence in Government, and values quality of life.

**AGENDA**  
**CITY COUNCIL MEETING**  
**Bonnors Ferry City Hall**  
**7232 Main Street**  
**267-3105**  
**January 27, 2014**  
**1:30 p.m.**

### **PLEDGE OF ALLEGIANCE**

### **PUBLIC COMMENTS**

Each speaker will be allowed a maximum of five minutes, unless repeat testimony is requested by the Mayor/Council

### **NEW BUSINESS**

1. Street – Authorize Mayor to Sign Professional Services Agreement with HMH Engineering for Augusta Street Sidewalk Construction Cost Estimate (attachment)

### **EXECUTIVE SESSION PURSUANT TO IDAHO CODE 67-2345, SUBSECTION 1**

- (a) Consider hiring a public officer, employee, staff member or individual agent.
- (b) Consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student.
- (c) Conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency.
- (d) Consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code.
- (e) Consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.
- (f) Communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.
- (g) Engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed.

### **ADJOURNMENT**

# PROFESSIONAL SERVICES AGREEMENT

AGREEMENT made between City of Bonners Ferry, a political subdivision of the state of Idaho, herein "ENTITY" and HMH Engineering, herein "CONTRACTOR".

THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF WORK:** ENTITY engages CONTRACTOR to perform the work associated with the Augusta Street Community Choice Grant Application (project) as set forth in Exhibit "A" attached hereto.

2. **PAYMENT:** ENTITY agrees to pay CONTRACTOR for his services rendered under this Agreement \$94.20 per hour with an amount not to exceed the total sum of \$1,500.00 for said services rendered from January 31, 2014 through April 1, 2014. The parties agree that CONTRACTOR will invoice ENTITY for payment under this Agreement for services rendered herein.

3. **RIGHT OF CONTROL:** ENTITY agrees that it will have no right to control or direct the details, manner, or means by which CONTRACTOR accomplishes the results of the services performed hereunder. CONTRACTOR has no obligation to work any particular hours or days or any particular number of hours or days. CONTRACTOR agrees, however, that his other contracts or services shall not interfere with the performance of his services under this Agreement.

4. **INDEPENDENT CONTRACTOR RELATIONSHIP:** CONTRACTOR is an independent contractor and is not an employee, servant, agent, partner, or joint venturer of ENTITY. ENTITY shall determine the work to be done by CONTRACTOR, but CONTRACTOR shall determine the legal means by which it accomplishes the work specified by ENTITY.

5. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES:** Neither federal, state or local income taxes, nor payroll taxes of any kind shall be withheld and paid by ENTITY on behalf of CONTRACTOR or the employees of CONTRACTOR. CONTRACTOR shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. CONTRACTOR understands that CONTRACTOR is responsible to pay, according to law, CONTRACTOR's income tax. CONTRACTOR further understands that CONTRACTOR may be liable for self-employment (Social Security) tax to be paid by CONTRACTOR according to law.

6. **LICENSES AND LAW:** CONTRACTOR represents that he possess the skill and experience necessary and all licenses required to perform the services under this agreement. CONTRACTOR further agrees to comply with all applicable laws in the performance of the services hereunder.

7. **FRINGE BENEFITS:** Because CONTRACTOR is engaged in its own independently established business, CONTRACTOR is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plans of ENTITY.

8. **WORKER'S COMPENSATION:** CONTRACTOR shall maintain in full force and effect worker's compensation for CONTRACTOR and any agents, employees, and staff that the CONTRACTOR may employ, and provide proof to ENTITY of such coverage or that such worker's compensation insurance is not required under the circumstances.

9. **EQUIPMENT, TOOLS, MATERIALS OR SUPPLIES:** CONTRACTOR shall supply, at CONTRACTOR's sole expense, all equipment, tools, materials and/or supplies to accomplish the services to be provided herein.

10. **EFFECTIVE DATE:** This contract will run from January 31, 2014 through April 1, 2014.

# PROFESSIONAL SERVICES AGREEMENT

**11. WARRANTY:** CONTRACTOR warrants that all materials and goods supplied under this Agreement shall be of good merchantable quality and that all services will be performed in a good workmanlike manner. CONTRACTOR acknowledges that it will be liable for any breach of this warranty.

**12. INDEMNITY AND INSURANCE PROVISIONS:** As respects acts, errors or omissions in the performance of professional services, CONTRACTOR agrees to indemnify and hold harmless ENTITY, its officers, employees, and ENTITY-designated volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of CONTRACTOR's negligent acts, errors or omissions in the performance of its professional services under the terms of this contract.

As respects all acts or omissions which do not arise directly out of the performance of professional services including, but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONTRACTOR agrees to indemnify, defend (at ENTITY's option), and hold harmless ENTITY, its officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with CONTRACTOR's (or CONTRACTOR's subcontractors, if any) performance or failure to perform, under the terms of this contract; excepting those which arise out of the sole negligence of ENTITY.

Without limiting ENTITY's right to indemnification, it is agreed that CONTRACTOR shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

1. Worker's compensation insurance as required by Idaho statutes.
2. Comprehensive general liability insurance or commercial general liability insurance, including coverage for premises and operations, contractual liability, personal injury liability, products/completed operations liability, broad-form property damage (if applicable) and independent contractor's liability (if applicable), in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.
3. Comprehensive automobile liability coverage including, as applicable, owned, nonowned and hired autos, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.
4. Professional liability insurance coverage, including contractual liability, in an amount not less than One Million Dollars (\$1,000,000.00), and CONTRACTOR shall maintain such coverage for at least four (4) years from the termination of this Agreement; and during this four-year period, CONTRACTOR shall use CONTRACTOR's best efforts to ensure that there is no change of the retroactive date on this insurance coverage.

ENTITY is hereby authorized to reduce the requirements set forth above in the event he/she determines that such reduction is in ENTITY's best interest.

Each insurance policy required by this Agreement shall contain the following clauses:

1. This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the Clerk of ENTITY.

## PROFESSIONAL SERVICES AGREEMENT

2. It is agreed that any insurance maintained by ENTITY shall apply in excess of and not contribute with insurance provided by this policy.

Each insurance policy required by this Agreement, excepting policies for worker's compensation and professional liability, shall contain the following clause:

ENTITY, its officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured, performed under contract with ENTITY. Prior to commencing any work under this Agreement, CONTRACTOR shall deliver to ENTITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Also, within thirty (30) days of the execution date of this Agreement, CONTRACTOR shall provide to ENTITY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signature's company affiliation and title. Should it be deemed necessary by ENTITY, it shall be CONTRACTOR's responsibility to see that ENTITY receives documentation acceptable to ENTITY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. Also, ENTITY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

In addition to any other remedies ENTITY may have if CONTRACTOR fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, ENTITY may, at its sole option:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - a. Order CONTRACTOR to stop work under this Agreement and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.
  - b. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies ENTITY may have and is not the exclusive remedy for CONTRACTOR's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's, or its subcontractor's, performance of the work covered under this Agreement.

**13. NONWAIVER:** Failure of either party to exercise any of the rights under this Agreement, or breach thereof, shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

**14. CHOICE OF LAW:** Any dispute under this Agreement, or related to this Agreement, shall be decided in accordance with the laws of the state of Idaho.

**15. ENTIRE AGREEMENT:** This is the entire Agreement of the parties and can only be modified or amended in writing by the parties.

**16. SEVERABILITY:** If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

# PROFESSIONAL SERVICES AGREEMENT

**17. ATTORNEY FEES:** Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ENTITY:

\_\_\_\_\_  
(Governmental Entity)

By \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of City of Bonners Ferry

CONTRACTOR:

By Alexander M. Hall  
(Name)

Its Managing Member  
(Title or Office)

WITNESS:

[Signature]  
(Signature of Witness or Notary Public)

Form and content approved by \_\_\_\_\_, as attorney for City of Bonners Ferry.

## **EXHIBIT "A" - SCOPE OF WORK**

### **Community Choices Grant Application FY 2015**

1. Provide civil engineering expertise related to a grant application through ITD's Community Choices program for a project on Augusta Street. The main goal of the project is to construct a sidewalk between US 95 and Valley View Elementary School.
2. Determine the necessary work to construct the sidewalk and estimate construction and engineering costs for the project.
3. Prepare exhibits for the grant application including project plan view and typical cross-sections.