
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
*KENNETH J. ROHLF
◊STEPHEN H. FOCHLER
◊JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
*KORINE L. LAND
ANN C. O'REILLY
◻*DONALD L. HOEFT
DARCY M. ERICKSON
DAVID S. KENDALL
BRIDGET McCAULEY NASON
DAVID B. GATES
•
HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
• ROGER C. MILLER
1924-2009

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◊ALSO ADMITTED IN MASSACHUSETTS
◻ALSO ADMITTED IN OKLAHOMA

MEMO

TO: Mayor, Councilmembers and Consultants
FROM: Timothy J. Kuntz, City Attorney
DATE: January 30, 2013
RE: 2013 Contract for the Position of City Forester – February 5, 2013 City Council Meeting; Agenda Item 8(a)

Section 1. Background. The contract for the position of City Forester expired December 31, 2012. Current compensation is as follows:

City Forester: Hourly rate of \$42.43 per hour

At the January 8, 2013 City Council meeting, the Council agreed that it would discuss compensation with the City Forester during the month of January 2013 and make a decision with respect to compensation changes for the City Forester at the February 5, 2013 meeting. The City Forester and Councilmember Hovey and Councilmember Bulach will be meeting with the City Forester on January 31, 2013 to review and discuss compensation changes. Councilmember Hovey and Councilmember Bulach will make a recommendation to the Council at the February 5, 2013 Council meeting.

Section 2. Council Action. The Council is asked to consider the attached Resolution approving the following Addendum at the February 5, 2013, Council meeting:

1. Addendum No. 4 to Independent Contractor Agreement between the City of Sunfish Lake and Living Sculpture Tree and Shrub Care, Inc. for City Forester Services.

The compensation amount shown in the attached Addendum has been left blank and will be finalized by the Council at the February 5, 2013 Council meeting, as stated above.

Attachment

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 13-_____

**RESOLUTION APPROVING ADDENDUM NO. 4 TO INDEPENDENT CONTRACTOR
AGREEMENT BETWEEN THE CITY AND LIVING SCULPTURE TREE AND SHRUB
CARE, INC. FOR CITY FORESTER SERVICES**

WHEREAS, the Independent Contractor Agreement for the position of City Forester expired on December 31, 2012.

WHEREAS, the parties desire to adjust the terms of the Independent Contractor Agreement and to adjust the compensation of the Independent Contractor Agreement.

WHEREAS, the following attached Addendum has been prepared with respect to adjusting the terms and compensation of the above-referenced Independent Contractor Agreement:

1. Addendum No. 4 to Independent Contractor Agreement between the City of Sunfish Lake and Living Sculpture Tree and Shrub Care, Inc. for City Forester Services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNFISH LAKE:

The Council hereby approves the following attached Addenda:

1. Addendum No. 4 to Independent Contractor Agreement between the City of Sunfish Lake and Living Sculpture Tree and Shrub Care, Inc. for City Forester Services.

Passed this 5th day of February, 2013.

Molly Park, Mayor

ATTEST:

Catherine Iago, City Clerk

ADDENDUM NO. 4 TO INDEPENDENT CONTRACTOR AGREEMENT
RELATING TO FORESTER SERVICES
FOR THE CITY OF SUNFISH LAKE

This **ADDENDUM NO. 4 TO INDEPENDENT CONTRACTOR AGREEMENT RELATING TO CITY FORESTER SERVICES FOR THE CITY OF SUNFISH LAKE** ("Addendum No. 4") is entered into this 5th day of February, 2013, by and between Living Sculpture Tree and Shrub Care, Inc., a Minnesota corporation ("Living Sculpture"), and the City of Sunfish Lake, a Minnesota municipal corporation ("City"). Subject to the conditions and terms of this Addendum No. 4 and in reliance upon the covenants of the parties herein contained, the parties hereby agree as follows:

ARTICLE 1
RECITALS

WHEREAS, the City and Living Sculpture entered into an Independent Contractor Agreement dated July 1, 2009 ("Agreement") for forester services.

WHEREAS, the Agreement is for a finite term.

WHEREAS, Section 2.2 of the Agreement sets forth the term.

WHEREAS, Section 3.4 of the Agreement sets forth the compensation.

WHEREAS, effective January 1, 2013, the parties desire to adjust the term by making an amendment to Section 2.2 and to adjust the compensation by making an amendment to Section 3.4.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ARTICLE 2
AMENDMENT

2.1 Amendment. The parties agree that Section 2.2 of the Agreement is hereby amended to read as follows:

2.2 Contract Term. "Contract Term" shall mean from January 1, 2013, to December 31, 2013.

2.2 Amendment. The parties agree that Section 3.4 of the Agreement is hereby amended to read as follows:

3.4 Compensation for Forester Services. As and for consideration for Living Sculpture performing Forester Services, the City shall pay Living Sculpture the following amounts:

a.) An hourly amount of \$_____ per hour for Forester Services performed during the Contract Term.

- b.) To the extent tasks or projects require supplies and materials (such as trees, shrubs and mulch) and to the extent the Council requests that Living Sculpture provide such supplies and materials, the City shall pay Living Sculpture for the supplies and materials at the same price that Living Sculpture purchased such supplies and materials; there shall be no mark-up in price by Living Sculpture above that which Living Sculpture paid for the supplies and materials.

Living Sculpture shall bill the City on a monthly basis for the hours worked; the City shall pay Living Sculpture within thirty (30) days after the invoice.

2.3 No change to other terms. Other than the Amendments referenced in Sections 2.1 and 2.2, all of the other terms, conditions and provisions of the Agreement, as amended, shall remain in full force and effect without modification.

2.4 Effective Date. The Effective Date of the Amendments set forth in Section 2.1 and 2.2 above shall be January 1, 2013.

IN WITNESS WHEREOF, the parties have executed this Addendum No. 4 to the Agreement the day and year first set forth above.

CITY OF SUNFISH LAKE

By: _____
Molly Park, Mayor

ATTEST:

City Clerk

LIVING SCULPTURE TREE AND SHRUB CARE, INC.

By: _____
Jim Naves
Its President