

SUBJECT: Group Three Design Contract Change Order

REQUESTED BY: Public Works

PREPARED BY: Public Works

DATE: October 12, 2000

FOR AGENDA OF: October 23, 2000

SUMMARY:

Earlier this year the Council approved a contract with Group Three Design to provide landscape architectural services to Public Works. The contract amount estimated for this year has now been exceeded. Additional funds are requested to provide design services for the Honor Garden. The work will be part of the City match for the Memorial.

Previous to this work, this firm prepared a design for the Memorial for \$2,800. This new work will provide construction plans for building the Memorial. Generally, such services are twenty percent of the estimated construction cost. Group Three Design's proposal for \$16,000 is only ten percent. Funding will come from previously authorized funds in the Iditapark account.

Old Contract Amount	\$20,000.00
Change Order No 1	\$16,000.00
New Contract Amount	\$36,000.00

FISCAL IMPACT: No X Yes, amount requested: \$16,000

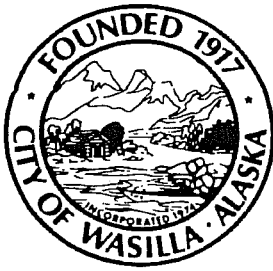
Fund: 11 55 476 820 01 Iditapark Account

RECOMMENDED ACTION: Council is requested to amend the Group Three Design contract, by a Change Order, to include design services for the Armed Forces Honor Garden in Iditapark.

Presented to council on 10/23/00
 Action taken: Approved Denied
 other: Removed from agenda
 Verified by [Signature]

[Signature]
 Reviewed by: SARAH PALIN, Mayor

Attachments: Group Three Design Contract with Amendment



CITY OF WASILLA

290 E. HERNING AVE.
WASILLA, ALASKA 99654-7091
PHONE: (907) 373-9050
FAX: (907) 373-9054

October 12, 2000

Group Three Design
374 Sarahs Way
Wasilla, AK 99654

Regarding: Contract for Professional Services "Landscape Architectural Services"
Change Order No. 1

The following changes are hereby made to the Contract Documents:

The Consultant to provide Design Services for the Armed Forces Honor Garden in Iditapark as per proposal dated October 10, 2000.

Original Contract	\$20,000.00
Change Order No 1	+ \$16,000.00
Revised total	\$36,000.00

The foregoing change (s) is (are) hereby RECOMMENDED by:

Bert Lent, Group Three Design

Date: _____

Don Shiesl, Director
City of Wasilla, Public Works

Date: _____

**CONTRACT FOR PROFESSIONAL SERVICES
WITH Group Three Design**

In consideration of the mutual promises herein, City of Wasilla and Group Three Design agree as follows. This Contract consists of:

- A. Part I, consisting of 15 sections of Special Provisions;
- B. Part II, consisting of 11 sections of General Provisions;
- C. Appendix A consisting of Proposal as Submitted; and
- D. Appendix C Insurance Certificate

**PART I
SPECIAL PROVISIONS**

Section 1. Definitions. In this contract:

- A. "Administrator" means the **Director** of the **Department of Public Works** or his designee.
- B. "City" means the **City of Wasilla**.
- C. "Consultant" means **Landscape Architect**.

Section 2. Scope of Services

- A. The Consultant shall perform professional services in accordance with Scope of Services identified below and will be formalized with the selected Consultant.
- B. The selected Consultant shall enter into a contract with the City of Wasilla. This contract will be umbrella in nature; they will not include a specific scope of work but will state general terms, rates and method of payment. No work will occur under the contract until a specific Notice to Proceed is entered into between the Consultant and the City of Wasilla. Each specific Notice to Proceed shall be negotiated and will be made a binding part of the contract itself. The Notice to Proceed will state the scope of work for a project and establish the maximum fee allowable for the project.

This method of contracting will be used for projects where the estimated Consultant fee is under \$10,000. In instances where the fee will exceed this amount, a separate Consultant Selection Process (RFP) shall be utilized. It is expected that the selected Consultant will perform several projects during the contract period. However, the City of Wasilla does not

anticipate exceeding \$20,000/year during the contract period with any particular Consultant.

Generally, the projects will be minor in size and technical nature. The projects will be managed by representatives of the Public Works Department.

Since all projects are anticipated to be smaller type projects, the City of Wasilla will not require professional liability insurance as part of these contracts. Projects which fall into the category of requiring professional liability insurance will be handled through a separate RFP process and will not be performed under this contract(s). The Public Works Department will determine which projects may fall into this category.

- C. Wasilla shall not allow any claim for services other than those described in this section. However, the Consultant may provide, at its own expense, any other services that are consistent with this contract.

Section 3. Time for Performance

- A. This contract becomes effective when signed on behalf of the City of Wasilla.
- B. The Consultant shall commence performance on February 1, 2000 and complete that performance no-later-than January 31, 2001.
- C. The period of performance may, by mutual consent, be extended for two (2) one-year periods.

Section 4. Compensation; Method of Payment

- A. Subject to the Consultant's satisfactory performance, Wasilla shall pay the Consultant no more than \$20,000 in accordance with this section. If all option periods are exercised, the maximum compensation will be \$60,000.
- B. Wasilla shall pay the Consultant in accordance with the schedule of professional fees attached as Appendix B and incorporated herein by reference for services actually performed under this contract.
- C. The Consultant is not entitled to any compensation under this contract, other than is expressly provided for in this section.
- D. As a condition of payment, the Consultant shall have paid all municipal taxes currently due and owing by the Consultant.

Section 5. Termination of the Consultant's Services.

The Consultant's services under Section 2 may be terminated.

- A. By mutual consent of the parties.
- B. For the convenience of Wasilla, provided that Wasilla notifies the Consultant in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within thirty (30) days after receiving the notice.

Section 6. Duties Upon Termination.

- A. If Wasilla terminates the Consultant's services for convenience; Wasilla shall pay the Consultant for its actual costs reasonable incurred in performing before termination. Payment under this subsection shall never exceed the total compensation allowable under Section 4. All finished and unfinished documents and materials prepared by the Consultant shall become the property of Wasilla.
- B. If the Consultant's services are terminated for cause, Wasilla shall pay the Consultant the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Wasilla because of the Consultant's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed the contract rate for such services, and payment under this subsection shall not exceed ninety percent (90%) of the total compensation allowable under Section 4. Any finished or unfinished documents or materials prepared by the Consultant under this contract shall become the property of Wasilla at its option.
- C. If the Consultant receives payments exceeding the amount to which it is entitled under subsections A or B of this section, he shall remit the excess to the Administrator within thirty (30) days of receiving notice to do so.
- D. The Consultant shall not be entitled to any compensation under this section until the Consultant has delivered to the Administrator all documents, records, work product, materials and equipment owned by Wasilla and requested by the Administrator.

- E. If the Consultant's services are terminated, for whatever reason, the Consultant shall not claim any compensation under this contract, other than that allowed under this section.
- F. If a final audit has not been performed before the Consultant's services are terminated, Wasilla may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this section, termination of the Consultant's services under Section 5 does not affect any other right or obligation of a party under this contract.

Section 7. Insurance

- A. The Contractor shall maintain in good standing the insurance described in subsection B of this section. Before rendering any services under this contract, the Consultant shall furnish the Administration with proof of insurance in accordance with subsection B of this section in a form acceptable to the Risk Manager for Wasilla.
- B. The Contractor shall provide the following insurance.
 - 1. Workers' Compensation and Employer's Liability Insurance as required by Alaska law.
 - 2. Comprehensive automobile liability - \$1,000,000 per accident.
 - 3. Comprehensive general liability - \$1,000,000 per accident.
- C. Each policy of insurance required by this section shall provide for no less than thirty days' advance notice to Wasilla prior to cancellation.
- D. The City of Wasilla **MUST** be listed as an additional insured on Comprehensive General Liability and Comprehensive Auto Liability. For the purposes of this project, the City of Wasilla shall obtain a waiver of subrogation against the City of Wasilla.

Section 8. Assignments.

- A. Unless otherwise allowed by this contract or in writing by the Administrator, any assignment by the Consultant of its interest in any part of this contract or any delegation of duties under this contract shall be void, and an attempt by the Consultant to assign any part of its interest or delegate duties under this contract shall give Wasilla the right immediately to terminate this contract without any liability for work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material

- A. Except as otherwise provided herein, all data, documents and materials produced by the Consultant under this contract shall be the property of the City of Wasilla, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright.
- B. Equipment purchased by the Consultant with contract funds shall be the sole property of Wasilla marked and inventoried as such with a copy of the inventory forwarded to Wasilla.

Section 10. Notices.

- A. Any notice required pertaining to the subject matter of this contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following address:

Wasilla: City of Wasilla
Department of Public Works
290 E. Herning
Wasilla, AK 99654
FAX: (907) 373-9054

Consultant: Group Three Design
374 Sarahs Way
Wasilla, AK 99654-2300
FAX: (907) 376-6298

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or five (5) days after proof of proper posting.

Section 11. Contract Budget.

- A. In connection with its performance under this contract the Consultant shall not make expenditures other than as provided in line items in the contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this contract, including without limitation:
 - 1. Any interruption, suspension or interference resulting solely from the act of the City of Wasilla or neglect of the City of Wasilla not otherwise governed by the terms of this contract.
 - 2. Strikes or work stoppages.
 - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 - 4. Order of court, administrative agencies or governmental officers other than the City.

Section 13. Financial Management System.

The Consultant shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the contract.
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Consultant's performance under this contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance of productivity data including unit cost information where applicable.
- E. Allocates administrative costs to direct service delivery units;

- F. Minimizes the time between receipt of funds from Wasilla and their disbursement by the Consultant;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

- A. In the event that any funding source for this contract should impose additional requirements upon Wasilla for the use of those funds, the Consultant agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Wasilla.

Section 15. Subcontracts.

The Consultant may enter into subcontracts for the purchase of goods and services necessary for the performance of this contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Consultant delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Consultant.
- C. Every subcontract in an amount exceeding \$1,000.00 shall require reasonable access to business records of the sub-Consultant relating to the purchase of goods or services pursuant to the subcontract.

PART II
GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties

- A. The Consultant shall perform its obligations hereunder as an independent Consultant of Wasilla. Wasilla may administer the contract and monitor the Consultant's compliance with its obligations hereunder. Wasilla shall not supervise or direct the Consultant other than as provided in this section.
- B. The Consultant shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Consultant shall comply with any and all reporting requirements that may apply to it which the Anchorage Office of Equal Employment Opportunity Contract Compliance may establish by regulation.
- D. The Consultant shall include the provisions of subsections A through C of this section in every subcontract or purchase order under this contract, so as to be binding upon every such subconsultant or vendor of the Consultant under this contract.
- E. The Consultant shall comply with all applicable federal, state and municipal laws concerning the prohibition of discrimination.

Section 3. Permits, Laws and Taxes

- A. The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Consultant under this contract shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this contract.


Section 4. Nonwaiver.

- A. The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This contract shall only be amended, modified or changed by writing, executed by authorized representatives of the parties, with the same formality as this contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this contract, the only authorized representatives of the parties are:

Consultant: Burdett Lent
(owner)

Wasilla: Mayor Sarah Palin 

- C. Any attempt to amend, modify, or change this contract by either and unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

- A. Any civil action rising from this contract shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Palmer. The law of the State of Alaska shall govern the rights and obligations of the parties under this contract.

Section 7. Severability.

- A. Any provision of this contract-decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

Section 8. Integration.

- A. This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this contract shall supersede all previous communications, representations or agreements, either oral or written between the parties hereto.

Section 9. Liability.

- A. The Consultant shall indemnify, defend, save, and hold Wasilla harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Consultant or any sub-consultant as a result of the Consultant's or any subconsultant's performance pursuant to this contract.

- B. The consultant shall not indemnify, defend, save and hold Wasilla harmless from claims, lawsuits, liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Wasilla occurring during the course of or as a result of the performance of this contract.

- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Wasilla and the Consultant, the Consultant shall indemnify, defend, save and hold Wasilla harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Consultant's or any sub-Consultant's wrongful or negligent acts occurring as a result of the Consultant's performance pursuant to this contract.

Section 10. Inspection and Retention of Records.

- A. The Consultant shall, at any time during normal business hours and as often as Wasilla may deem necessary, make available to Wasilla, for examination, all of its records with respect to all matters covered by this contract for a period ending three years after the date the Consultant is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Consultant shall submit such other information and reports relating to its activities under this contract, to Wasilla, in such form and at such times as Wasilla may reasonably require. The Consultant shall permit Wasilla to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this contract. Wasilla may, at its option, permit the Consultant to submit its records to Wasilla in lieu of the retention requirements of this section.

Section 11. Availability of Funds.

- A. Payments under this contract require funds from future appropriations and are subject to future appropriations. If sufficient funds are not appropriated for payments required under this contract, this contract shall terminate without penalty to Wasilla and Wasilla shall not be obligated to make payments under this contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this contract on the date and at the place shown below.

CITY OF WASILLA

Sarah Palin
City of Wasilla
Date: 2-22-00

ATTEST:

Heather L. Vander
City Clerk
Date: 2-22-00

FUNDS AVAILABLE
Various Accounts, NTE \$20,000 Year

[Signature]
Department of Finance
Date: 2-23-00

CONSULTANT

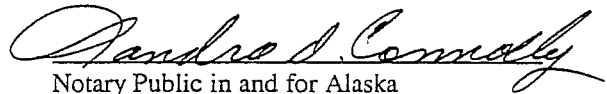
Group Three Design
Name: Durden B. Lent
Title: Owner
Date: Feb 22, 2000
IRS Tax Identification No.
328-32-3495
Tax Status: Taxable []
Non-Taxable []

(for corporations)

STATE OF ALASKA)
)ss:
THIRD JUDICIAL DISTRICT)

This is to certify that on the 22ND day of February 2000, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared (Burt Lent) of (Group 3 Design), the corporation named in the foregoing instrument, acknowledged to me that he/she had in his/her official capacity is authorized by the corporation to execute the foregoing instrument as the free act and deed of the said corporation for the uses and purposes therein stated.

WITNESS my hand and official seal the date and year first above written.


Notary Public in and for Alaska
My Commission expires: 3-2-2003