

**City Council
Agenda Memo**



TO: Larry D. Gilley, City Manager
FROM: Administration
SUBJECT: Professional Services Contract with Weatherl & Associates

**City Council
Meeting Date:**
February 27, 2014

GENERAL INFORMATION

Ownership of the former Lincoln Middle School facility has been transferred from the Abilene ISD to the City of Abilene. It is the desire of the City to determine how that facility may be repurposed in order to preserve its historical integrity, while using it in a way that will best serve the community. Staff is proposing to engage the architectural firm of Weatherl & Associates to assist in the development of concept design presentation diagrams and an estimated construction budget for the rehabilitation of Lincoln Middle School, including the associated facilities and properties contained in the city block.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

Cost of the study is proposed not to exceed \$50,000, plus the cost of reimbursable expenses. The City has received a grant from the Dian Graves Owen Foundation in the amount of \$50,000 for the purpose of underwriting the professional fees associated with this study.

STAFF RECOMMENDATION

Staff recommends approval of the Professional Services Contract with Weatherl & Associates.

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS

Professional Services Contract

Prepared by: Name <u>Larry D. Gilley</u> Title <u>City Manager</u>	Item No. <u>6.7</u>	Disposition by City Council <input type="checkbox"/> Approved Ord/Res# _____ <input type="checkbox"/> Denied _____ <input type="checkbox"/> Other _____ _____ City Secretary
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PROFESSIONAL SERVICES CONTRACT
ENGINEERS AND ARCHITECTS

This contract, dated February 27, 2014, is between the City of Abilene ("City"), and Weatherl & Associates ("Consultant").

The City wants to contract for architectural services as set forth in the scope of work attached as Attachment A, and the Consultant will provide professional services to assist in accomplishing that objective.

I. TERMS

In consideration of the compensation stated in paragraph II, the Consultant must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Consultant must complete all services by a mutually agreed upon date.

II. PAYMENT

Payment is according to Attachment A.

III. ASSIGNMENT

The Consultant may not assign in whole or in part any rights, duties, obligations or interest arising from this agreement without the City's prior written consent.

IV. AMENDMENT OR MODIFICATION

This contract, including attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent which are not contained in this contract are of no effect. This contract may not be amended or modified except by both parties' written consent.

V. OWNERSHIP OF DOCUMENTS AND MATERIALS

All documents and materials prepared by Consultant under the terms of this contract are the Consultant's property from the time of preparation. Consultant will deliver copies of the documents

and materials to the City or make them available for inspection *whenever requested*. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

VI. NONDISCLOSURE

The Consultant may not show to any person or entity any documents, reports, plans, programs, reports, drawings, or any other material which Consultant prepares or acquires in performing this contract, including any duplicate copies kept by Consultant. The Consultant may not disclose to any person or entity any information regarding the City's activities. The City may, however, specifically authorize a limited disclosure at its discretion.

VII. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

“City” shall mean all officers, agents and employees of the City of Abilene.

“Claims” shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

“Consultant” includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

“Consultant’s employees” shall mean any employees, officers, agents, subcontractors, licensee and invitees of Consultant.

“Damages” shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

“Premise Defects” shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

“Proven” shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

“Sole negligence” shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

The Consultant must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Consultant's work and activities conducted in connection with this Contract.

The Consultant is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Consultant's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Consultant or Consultant's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Consultant.

The City and Consultant must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Consultant or City. The City has the right to compromise and defend the same to the extent of its own interests.

VIII. INSURANCE

A. GENERAL REQUIREMENTS

The Consultant agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The Consultant is solely responsible for providing the required certificates of insurance. The City may terminate this agreement if the Consultant fails to timely comply with the insurance requirements.

The required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by the City's Office of Risk Management for their adequacy as to content, form of protection, and providing company.

The required insurance naming the City as additional insured must be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Before the City executes the notice to proceed with any work under this agreement, the Consultant must provide the City Secretary with either an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the Consultant

must furnish new certificates or copies of the policy before the expiration date.

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates shall:

1. Name the City as an additional insured with respect to operations for which this agreement is made.
2. Provide for 30-day advance written notice of cancellation or material change.

C. TYPES AND AMOUNT OF INSURANCE

The types of insurance required in this contract are those indicated by initials. If no initials appear on any of items 1 through 6, items 1 through 4 shall be required.

<u>Type</u>	<u>Amount</u>
<input checked="" type="checkbox"/> 1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
<input checked="" type="checkbox"/> 2. Commercial (Public) Liability including but not limited to: . Premises/Operations . Independent Contractors . Products/Completed Operations . Contractual Liability (Insuring above indemnity) and where the exposures exist . Explosion Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
<input checked="" type="checkbox"/> 3. Business Automobile Liability to include coverage for: . Owned/Leased Autos . Non-Owned Autos . Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
<input type="checkbox"/> 4. Professional Liability	\$500,000 combined single limit (per occurrence)
<input type="checkbox"/> 5. See Addendum for Special Coverages and/or revisions	
<input type="checkbox"/> 6. No Insurance Required	

IX. VENUE, CHOICE OF LAW AND INTERPRETATION

Venue for any cause of action arising under this contract is Taylor County, Texas. This contract is governed by the laws of the State of Texas both as to interpretation and performance. This contract shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

X. TERMINATION

This contract may be terminated at any time upon 30 days written notice by City to Consultant. In the event of termination, Consultant will be compensated for work satisfactorily performed before the termination date.

If, through any cause, the Consultant fails to fulfill his obligations under this contract, or if the Consultant violates any of the agreements of this contract, the City has the right to terminate the contract by giving five days written notice to the Consultant. The Consultant will be compensated for work satisfactorily performed before the termination date.

The Consultant, however, is not relieved of liability to the City for damages sustained by the City because of any breach of contract by Consultant. The City may withhold any payments to Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

XI. PROJECT REPRESENTATION

The City agrees to appoint a Project Representative to assist in obtaining information from various City departments as requested by Consultant and in coordinating, monitoring, and evaluating the project to its completion. The Project Representative has no control over the means, methods, techniques, or procedures employed by Consultant. The City is interested only in the results obtained under this contract; the manner and means of obtaining those results is solely under the Consultant's control.

XII. NOTICE

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party at the address below. The name and address for notification may be changed by notice to the other party.

**City - ATTN:
Larry D. Gilley
City Manager
P.O. Box 60
Abilene, TX 79604
325-676-6201**

**Consultant - ATTN:
Rick Weatherl

104 Pine Street, Suite 612
Abilene, TX 79601
325-672-1050**

XIII. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

Consultant, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Abilene, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant must obtain all necessary permits and licenses required in completing the work contracted for in this agreement.

XIV. NO INDEBTEDNESS

Consultant agrees that no payments owed by him of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty and interest. Consultant is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty and interest.

XV. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the City to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The City affirms that employment decisions shall be made only on the basis of bonafide occupational qualifications. The City shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Abilene, Texas, is a fact as well as an ideal.

XVI. VERIFICATION OF EMPLOYMENT ELIGIBILITY

Consultant must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Consultant -- not City -- must verify eligibility for employment as required by IRCA.

XVII. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 500 Chestnut St., 6th floor, Abilene, Texas, 79602, 325-690-0300.

XVIII. SALES TAX

The City qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act"), and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The City will provide an exemption certificate to the Consultant. The Consultant must have a sales tax permit issued by the Comptroller of Public Accounts and shall issue a resale certificate complying with the Tax Act, as amended, when purchasing said materials. The Consultant is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the project, tangible personal property purchased for use in the performance of this contract and not completely consumed, or other taxable services used to perform this contract, or other taxes required by law in connection with this contract.

IN WITNESS HEREOF the parties have executed this agreement.

CITY OF ABILENE

Weatherl & Associates

By: _____
Larry D. Gilley

By: _____
Rick Weatherl

Title: City Manager

Title: _____

Address: 104 Pine Street, Suite 612
Abilene, TX 79601

ATTEST:

Phone Number: 325-672-1050

City Secretary

Fax Number: _____

APPROVED:

Federal Tax I.D.# _____

City Attorney

ATTEST: (If Corporation)

Risk Manager

Corporation's Secretary

Corporate Seal (if available):

Weatherl & Associates

104 Pine Street, Suite 612
Abilene, Texas 79601
(325) 672-1050
Fax (325) 672-1060

February 6, 2014

Larry Gilley, City Manager
City of Abilene
PO Box 60
Abilene, Texas 79604

Dear Mr. Gilley,

Per your request we propose the following agreement for the development of concept design presentation diagrams and an Estimated Construction Budget for the Rehabilitation of Lincoln Middle School including the associated facilities and properties contained in the City block.

Please review this proposal, contact me with questions and if satisfactory sign the Agreement where indicated and return two (2) copies to Weatherl & Associates for my signature.

Agreement made as of the sixth (6th) day of February in the year two thousand fourteen (2014).

Between the Owner:

Name: City of Abilene
Address: PO Box 60
City, State, Zip: Abilene, Texas 79604
Phone: (325) 676-6201

And the Architect:

Name: Weatherl & Associates
Address: 104 Pine Street, Suite 612
City, State, Zip: Abilene, Texas 79601
Phone: (325) 672-1050

For the following Project:

Job Name: Rehabilitation of Lincoln Middle School
Address: 1849 South 1st Street
City, State, Zip: Abilene, Texas 79602

Description:

These consulting services will address the preliminary design of a set of conceptual uses of the existing historic buildings and associated property based on hypothetical occupants and uses outlined by the "Design Review" Committee.

The Owner and Architect agree as follows.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural consulting and design services for the Project as described in this Agreement in a manner consistent with locally accepted standards for professional skill and care. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services may include, but may not be limited to, the following consulting services (as required by the Owner), if any:

Conceptual Land and Landscape Planning,
Color Perspective Presentation Rendering,
Measured Drawings of structures, if required by the Owner, beyond those in the Architects possession.

During the Design Phase of the Basic Consulting Services, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a graphic draft of a concept design. Upon the Owner's approval and modifications of the Initial Draft Design, the Architect shall prepare a Final Draft Design indicating the modifications, if any, required by the Owner. Based on these approved diagrams the Architect shall prepare final color concept drawings and diagrams indicating the general concepts for the overall development of the Project. Based on these approved concept diagrams, the Architect shall also provide a preliminary estimate of the Project Cost or Concept Budget.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about objectives, schedule, constraints and existing conditions of the Project. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accurate and completeness of the Owner's information. The Owner shall furnish all available not provided by the Architect, that may be available for the Project, such as surveys, which shall include property boundaries, topography, utilities and wetlands information; geotechnical engineering; and environmental testing services.

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are instruments of the Architect's service and are the Owner's use solely with respect of this Project. The Architect shall retain common law, statutory and other reserved rights, including the copyright. Upon completion of the Project or termination of the Agreement, the Owner's right to use the instruments of service shall cease without written permission of the Architect. The Architect's identifying information is required to remain with all images and reproductions of the instruments of service and shall be protected by the Owner. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for the services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Neither party to this Agreement shall assign contract as a whole without the consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect and Architect's consultants shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project Site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

At the Firm Standard Hourly Rates of:

\$ 125.00	Principal
\$ 110.00	Architect
\$ 65.00	Technician I
\$ 45.00	Technician II

Not to exceed an amount of **fifty thousand dollars (\$50,000.00)** plus the cost of reimbursable expenses and/or additional services as may be required and directed by the Owner.

The Owner shall pay an initial payment of **two thousand dollars (\$2,000.00)** as a minimum payment under this agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus fifteen percent (15%).

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid twenty (20) days after the invoice date shall bear interest from the date payments due at the rate of twenty-four percent (24%). The Architect will cease work if the invoices remain unpaid after twenty (20) days after the invoice date.

At the request of the Owner, the Architect shall provide services not included in Article 1 for additional compensation. Such services may include, but are not limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the scope, quality or budget; evaluating changes in the work; directed out-of-town travel and services not completed with twelve (12) months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS

Reimbursable Expenses:

Auto Travel Expense (if required): actual mileage @ \$.57/Mile x 1.15% (in addition to standard hourly rates for travel and on site time)

Travel Expense: lodging, meals, etc @ actual cost x 1.15%

Printing, Copies, Postage, etc. @ actual cost x 1.15%

Consultants (as required) @ actual cost x 1.15%

Additional Services:

Services directed or requested by the Owner beyond the scope of the typical services shall be provided under the terms of Article 6 above.

This Agreement entered into as the day and year first written above.

OWNER Signature

Printed Name and Title

ARCHITECT Signature

Rick Weatherl, AIA

Owner: Weatherl & Associates

Printed Name and Title

END OF AGREEMENT.