



**Board of County Commissioners - Staff Report**

**Meeting Date:** April 17, 2018

**Presenter:** Heather Overholser

**Submitting Dept:** ISWR/Engineering

Out Landscape Architecture, LLC for Recycling Center Landscape Design

**Subject:** Consideration of Agreement with Inside

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**Statement / Purpose:** To consider approval of a Work Order/Agreement with Inside Out Landscape Architecture, LLC for landscape design at the Recycling Center.

**Background / Description (Pros & Cons):** Once Phase 2 of the Recycling Center improvements is complete, the entrance and berm areas between the highway and the facility will be landscaped. This is a condition of the Development and Conditional Use Permits that were approved for the project. ISWR conducted an informal bidding process for a landscape design consultant and received one proposal as follows:

- Inside Out Landscape Architecture, Wilson, WY - \$5,880

Staff reviewed the proposal and recommends Inside Out Landscape Architecture, LLC. The consultant will be responsible for the following deliverables:

- 1) Provide design and complete bid package with technical specifications and bid schedule. Irrigation system design/build requirements for the Landscaping Contractor shall be included in the bid document's scope of work.
- 2) Provide a landscaping cost estimate based on final plans and specifications.

100% bid documents will be completed by July 6, 2018.

**Stakeholder Analysis & Involvement:** Teton County Engineering, Teton County Planning Department.

**Fiscal Impact:** The total not-to-exceed cost of the landscape design is \$5,880, which will be paid out of ISWR Fund 30.

**Staff Impact:** Staff will work with the consultant to ensure adherence to the Agreement and that all objectives are met.

**Legal Review:** Gingery.

**Staff Input / Recommendation:** Staff recommends approval of the Agreement with Inside Out Landscape Architecture, LLC for the Recycling Center landscape design, with a total not-to-exceed cost of \$5,880.

**Attachments:** Contract Agreement with Inside Out Landscape Architecture

**Suggested Motion:** I move to approve the Agreement with Inside Out Landscape Architecture, LLC for the Recycling Center landscape design, with a total not-to-exceed cost of \$5,880.

**WORK ORDER AND AGREEMENT**  
**INSIDE OUT LANDSCAPE ARCHITECTURE, LLC**  
**5263 Torrence Rd**  
**Wilson, WY 83014**  
**(307) 690-4907**

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<b>Client Name:</b>	Teton County Recycling Center	<b>Project:</b>	Landscape Design for Recycling Center
<b>Company Name:</b>	Teton County Integrated Solid Waste and Recycling	<b>Location:</b>	3270 Adams Canyon Drive
<b>Billing Address:</b>	P.O Box 9088 Jackson WY 83001	<b>PIDN:</b>	22-40-16-17-1-00-015
<b>Client Phone Number:</b>	(307) 733-7678	<b>Project Number:</b>	<b>2018-04</b>

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INSIDE OUT LANDSCAPE ARCHITECTURE, LLC (Landscape Architect) agrees to perform the following professional services for the abovenamed client:

Provide landscape design for the Teton County Recycling Center that will screen the center from the highway as well as providing vegetative screening for Phase II Future Dry Storage. An irrigation system design/build will be provided. A landscape cost estimate will be provided as well. Bid documents and specifications will also be prepared.

**Due Date: 50% Completion documents May 22, 2018**  
**100% Completion documents July 6, 2018**

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Client agrees to pay Landscape Architect as compensation for professional services as follows:

Estimated Fee Range: Not to exceed \$5,880

Unless specified otherwise, Client will be billed monthly. Payment is due on receipt. A service charge of 1.5% per month will be charged on all overdue accounts. Client agrees to pay all reasonable costs of collection and reasonable attorney's fees should collection become necessary.

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The provisions set forth on the reverse of this sheet are incorporated into and made a part of this agreement. There are no understandings or agreements except as expressly stated in this agreement.

\_\_\_\_\_  
Mark Newcomb, Chair            DATE  
Teton County Commissioners

\_\_\_\_\_  
INSIDE OUT LANDSCAPE ARCHITECTURE, LLC

\_\_\_\_\_  
DATE

Attest:

\_\_\_\_\_  
Sherry Daigle, Teton County Clerk    DATE

Landscape Architect may withdraw this agreement if not accepted within 30 days.

## AGREEMENT PROVISIONS

The Client and Inside Out Landscape Architecture, LLC, hereinafter referred to as LANDSCAPE ARCHITECT agree that the following provisions shall be part of their agreement.

### ARTICLE 1 – DEFINITIONS

- 1.1 Claims (or Claim). Any and all claims, demands, liabilities, damages, expenses (including expert and attorneys) of any nature whatsoever directly or indirectly arising out of or related to the services provided under this agreement, whether or not accrued, known, suspected, discovered, discoverable, and/or latent, including but not limited to breach of contract (express or implied), breach of warranty (express or implied), negligence, (sole or joint, active or passive), negligent misrepresentation, strict products liability, strict liability, indemnity, contribution, subrogation, and/or violation of statute, code, ordinance, rule or regulation.
- 1.2 LANDSCAPE ARCHITECT. LANDSCAPE ARCHITECT includes Landscape Architect's shareholders, directors, officers, agents, representatives, employees, and consultants.
- 1.3 Hazardous Materials. Any and all hazardous, toxic, infectious and/or other dangerous irritants, contaminants, pollutants, substances and/or materials of any nature whatsoever, whether organic, inorganic, chemical, biological, radioactive, in any form, including but not limited to asbestos, petroleum-based materials, and all other materials, now or hereafter subject to federal, state, and/or local laws and regulations.
- 1.4 Reimbursable Expenses. Expenditures made by the LANDSCAPE ARCHITECT, specific to the project, including but not limited to: transportation, travel subsistence and lodging, telephone calls, reproduction costs, postage, shipping, field office expenses, miscellaneous supplies and equipment expenses, proprietary software, and permit application and review fees.

### ARTICLE 2 – PAYMENT

- 2.1 Payment. CLIENT agrees to pay for all fees and reimbursable expenses required to complete the services described in this agreement.
- 2.2 Additional Work. CLIENT agrees that any services in addition to those described in this agreement, either requested by the CLIENT, or necessary to address changes in the requirements of any governmental agency, shall be considered additional work.
- 2.3 Additional Work Fees. The CLIENT agrees that all additional work not specifically described in this agreement shall be billed on a time and materials basis in accordance with the attached rate schedule. Wherever practical, changes, or additions, to the scope of work shall be authorized by written change request. However, the absence of written change orders shall not bar the payment of additional fees due LANDSCAPE ARCHITECT hereunder, provided the change was in fact approved or required by the CLIENT.
- 2.4 Progress Payments. Payment is due upon receipt of the invoice. In the event of a dispute regarding an invoice, CLIENT shall pay all undisputed fees.
- 2.5 Late Payment. CLIENT shall pay a service charge of 1.5% per month on invoices not paid within thirty (30) days of the date of invoice. LANDSCAPE ARCHITECT may, in its sole discretion and without notice, suspend its services hereunder should CLIENT not pay in full any amount invoiced within forty-five (45) days after the date of invoice. LANDSCAPE ARCHITECT further reserves the right to withhold from CLIENT any instruments of LANDSCAPE ARCHITECT's services pending full payment of CLIENT's account.
- 2.6 Billing Rates. LANDSCAPE ARCHITECT reserves the right to adjust the standard billing rates in January for each year the agreement is in force.

### ARTICLE 3 – SPECIAL TERMS AND CONDITIONS

- 3.1 Construction Estimates. LANDSCAPE ARCHITECT's estimates of probable construction costs, quantities, or time are subject to judgment and are contingent upon variable factors over which LANDSCAPE ARCHITECT has no control. LANDSCAPE ARCHITECT does not guarantee the accuracy of such estimates.
- 3.2 Construction Services. LANDSCAPE ARCHITECT's construction observation or monitoring services, unless specified otherwise, are neither exhaustive nor continuous and consist solely of periodic visits to the project site to determine whether construction is progressing in general conformance with the plans and specifications. LANDSCAPE ARCHITECT is not responsible for the timeliness, means, methods or sequences of construction nor for the safety of workers or others at or near the project site. LANDSCAPE ARCHITECT does not guaranty the performance of the contractor, subcontractors, suppliers or others providing labor, material or services for the project, nor is it responsible for their acts, errors or omissions. Should LANDSCAPE ARCHITECT not be retained to provide construction observation or monitoring services, CLIENT agrees to hold harmless, indemnify and defend LANDSCAPE ARCHITECT, from and against any and all claims against LANDSCAPE ARCHITECT based in whole or in part upon actual or alleged defects in construction, workmanship and/or materials; excepting those arising out of the LANDSCAPE ARCHITECT's sole negligence.
- 3.3 Termination. The CLIENT or the LANDSCAPE ARCHITECT may terminate this agreement by providing the other party fifteen (15) days written notice, in which case the LANDSCAPE ARCHITECT shall be paid for services performed to the date of termination. If this agreement is terminated through no fault of the LANDSCAPE ARCHITECT, CLIENT shall pay for services required to demobilize personnel and equipment from the project site, to prepare documentation regarding the status of completed and uncompleted tasks, and to assemble project materials in orderly files within 30 days after the termination date.
- 3.4 Representatives. LANDSCAPE ARCHITECT and CLIENT shall each designate in writing a person authorized to act as their representative. Said persons shall serve as sole intermediaries between LANDSCAPE ARCHITECT and CLIENT and shall be authorized to bind their respective principals.
- 3.5 Limitations of Liability. In recognition and equitable allocation of the relative risks and benefits of the project, CLIENT limits, to the fullest extent permitted by

- law, the total aggregate liability of LANDSCAPE ARCHITECT, to CLIENT and all contractors, subcontractors and suppliers on all Claims arising out of, on or related to the project, to not exceed \$50,000 or the LANDSCAPE ARCHITECT's fee, whichever is less. Prior to initiation of LANDSCAPE ARCHITECT's services, this limit may be increased upon mutual agreement and CLIENT's payment of additional charges as determined by the LANDSCAPE ARCHITECT for the increased coverage amount. To the fullest extent permitted by law, CLIENT waives and agrees to hold harmless, indemnify and defend LANDSCAPE ARCHITECT, from and against any and all Claims against LANDSCAPE ARCHITECT, in excess of the limit established hereby; excepting those arising out of the LANDSCAPE ARCHITECT's sole negligence. LANDSCAPE ARCHITECT, is not liable to CLIENT for consequential or incidental damages for any claim. In the event of a liability or settlement based on comparative negligence, CLIENT agrees that the LANDSCAPE ARCHITECT's liability for total negligence shall be limited to the LANDSCAPE ARCHITECT's share of the total negligence of all negligent parties subject to the limits specified herein, and CLIENT shall hold LANDSCAPE ARCHITECT harmless from loss to the extent of CLIENT's share of negligence.
- 3.6 Ownership of Documents. All plans, specifications, reports, data, and other documents, regardless of medium or content, prepared by or on behalf of LANDSCAPE ARCHITECT, are instruments of respective professional services and shall remain LANDSCAPE ARCHITECT's property. Upon payment to LANDSCAPE ARCHITECT of all amounts due hereunder, CLIENT is granted a non-exclusive, unassignable license to use said instruments on and for this project. Such instruments are intended for use solely by CLIENT as an integrated set on this project. Dissemination, modification or use on other projects of any or all such instruments without LANDSCAPE ARCHITECT's prior written consent is not permitted. CLIENT waives and agrees to hold harmless, indemnify and defend LANDSCAPE ARCHITECT from and against any and all Claims against LANDSCAPE ARCHITECT, arising out of any such non permissive dissemination, modification or use.
  - 3.7 Supplied Information. LANDSCAPE ARCHITECT, is entitled to rely on any and all information supplied by, through or on behalf of CLIENT and, absent an express agreement to do so, have no legal or contractual duty to verify the accuracy of such information. CLIENT waives any and all Claims against LANDSCAPE ARCHITECT arising out of actual or alleged deficiencies in any such information and agrees to hold harmless, indemnify and defend LANDSCAPE ARCHITECT, therefrom; excepting those arising out of the LANDSCAPE ARCHITECT's sole negligence.
  - 3.8 Record Documents. Any record documents prepared by LANDSCAPE ARCHITECT are based upon information provided by the contractor, who is to document variations between design and actual construction. LANDSCAPE ARCHITECT is entitled to rely upon and has no legal or contractual duty to verify the accuracy of such information and does not warrant the accuracy of record documents.
  - 3.9 Access. CLIENT warrants timely access for LANDSCAPE ARCHITECT, to all property reasonably necessary for performance of their services.
  - 3.10 Site Conditions. Unless expressly agreed otherwise, LANDSCAPE ARCHITECT's services and compensation contemplate (i) the absence of Hazardous Materials at the project site or nearby properties and (ii) site conditions as represented in information provided by or on behalf of CLIENT, and/or those reasonably anticipated for a site of this nature and locality. Should such Hazardous Materials be discovered or should actual conditions vary materially from those represented or anticipated, either party shall have an absolute and unconditional right to terminate or suspend this agreement. CLIENT waives and agrees to hold harmless, indemnify and defend LANDSCAPE ARCHITECT, from and against any and all Claims against LANDSCAPE ARCHITECT directly or indirectly arising out of or related to (i) the detection, generation, presence, escape, release, movement, stabilization, abatement, handling, removal, transportation, storage or disposal of Hazardous Materials and/or (ii) any material change in represented or anticipated conditions; excepting those arising out of the LANDSCAPE ARCHITECT's sole negligence.
  - 3.11 Performance Standard. The standard of care for all professional and Landscape Architecting services preformed by LANDSCAPE ARCHITECT will be the care and skill ordinarily used by members of the LANDSCAPE ARCHITECT's profession practicing under similar circumstances, at the same time and same locality. LANDSCAPE ARCHITECT makes no warranties, express or implied, under this agreement or otherwise in connection with services.

### ARTICLE 4 – GENERAL TERMS AND CONDITIONS

- 4.1 Jurisdiction. This agreement shall be construed according to the law of the state in which the Project is located. Any legal proceeding related to this agreement or the services provided hereunder shall be processed in the courts of the county and state in which the Project is located.
- 4.2 Assignment; Subcontracting. Neither party shall assign its rights or delegate its duties under this agreement without the prior, express, written consent of the other.
- 4.3 Force Majeure. Any default in the performance of this agreement if caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: act of God, government, or public enemy; strike; embargo; fire, flood, epidemic, unusually severe weather and/or other extraordinary natural event or disaster; and/or quarantine.
- 4.4 Severability Waiver. In the event any provision of this agreement is invalid or unenforceable, the remaining provisions shall remain valid and enforceable. Waiver of a breach of any provision is not a waiver of a subsequent breach of the same or any other provision.
- 4.5 Amendments. This agreement may be amended only by written instrument expressly referring hereto and duly signed by the parties. This agreement constitutes the entire and integrated agreement between the parties and supersedes all prior or contemporaneous negotiations, representations and/or agreements,

whether written or oral.

- 4.6 Third Party Rights. No third party beneficiary rights are created by this agreement, nor does this agreement create any cause of action in favor of any third party against either party hereto.
- 4.7 Limitation Periods. Statutory periods of limitation for CLIENT Claims against LANDSCAPE ARCHITECT shall begin to run no later than the date of substantial completion, the date of occupancy of the project or the portion of the project as to which the Claim is made, or the date of abandonment of the project, whichever date is earliest.