



CITY OF WASHINGTON, ILLINOIS
City Council Agenda Communication

Meeting Date: December 16, 2019

Prepared By: Ray Forsythe, City Administrator

Agenda Item: Consulting Engineer Services Agreement: Maurer-Stutz, Inc.

Explanation: The City Administrator entered into a short term engineering contract with Maurer-Stutz, Inc. to provide day-to-day City Engineering services. This provided for 92 hours of assistance primarily from John Anderson with support assistance from other Engineers in the firm as needed. This initial contract was put into place while the reorganization plan was developed and a plan for a permanent solution drafted.

Fiscal Impact: This second contract will cover the balance of the time needed to fill the Public Works Director and City Engineer positions. The maximum contract cost is \$61,750 and could cover the balance of the fiscal year. There is a two week cancellation clause should the City Engineer be hired and start prior to the end of this contract.

Recommendation/

Committee Discussion Summary: The City Administrator recommends approving the proposal. The Committee of the Whole discussed the proposed reorganization at the December 9th Committee of the Whole Meeting. The proposed Contract will be presented to the City Council on December 16th.

Action Requested: Approval of the Contract for Services.

Additional Documentation: Contract



**STANDARD SHORT FORM PROPOSAL AND AGREEMENT FOR
PROFESSIONAL SERVICES**

Client Name and Address: City of Washington

301 Walnut Street

Washington, IL 61571

Client Contact Information: Ray Forsythe

City Administrator

Project Name and Location: Washington Short Term City Engineering Assistance

Effective Agreement Date: _____

Client hereby authorizes Maurer-Stutz, Inc. (MSI, Engineer) to provide Professional Services in connection with the above referenced Project. Client's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Provide short term City engineering assistance until a permanent City engineer can be hired.

Estimated effort is as follows:

PE VI (John Anderson) 20 Weeks @ 20 Hrs/Week @ \$150/Hr = \$60,000

PE VIII (Rick Anderson) 20 Weeks @ 0.5 Hrs/Week @ \$175/Hr = \$1,750

Maurer-Stutz, Inc. proposes to provide professional services on the Project based on the following Fee Method:

Estimated Fee: \$61,750

This Proposal is subject to and governed by the General Terms and Conditions that are attached to hereby made a part of this agreement.

FOR OFFICE USE ONLY	
Proposal No.	
Project No.	23719019.01
Effective April 1, 2011	

GENERAL TERMS AND CONDITIONS

TERMS OF PAYMENT MSI will submit Invoices for work which has been completed and reimbursable expenses incurred. If any invoice is not paid within 30 days of invoice date, late payment charges of 1.5% per month, or fraction of a month, or the highest lawful interest rate of the state in which the CLIENT's office is located, will be due. Fees are not contingent on CLIENT receipt of funds. If invoices under this Agreement, or any other agreement with CLIENT, are not timely paid, MSI may, after giving seven day's written notice to CLIENT, suspend services under this Agreement.

FEE METHODS: CLIENT shall pay MSI on the basis of one of the following methods. The method to be used is stated on the front page of this Agreement.

1. **LUMP SUM.** When the Lump Sum method is utilized, the total amount billed shall include all Direct Payroll Expense costs, overhead business costs, profit, Reimbursable Expenses, and Subconsultant Expenses incurred by MSI. The Lump sum shall be a fixed amount unless a change of scope in the Scope of Services occurs. If a change of the Scope of Services occurs, such change shall be considered additional services and billed at MSI's current Hourly Rates. Monthly invoice statements will be submitted based on an estimated percent of completion of the services.
2. **ESTIMATED FEE:**
 - a. **HOURLY RATE.** When the Hourly Rate method is utilized, the hourly rate shall include all Direct Payroll Expense, overhead business costs, and profit due MSI for the services. Hourly Rates are established for technical classifications of individuals. If Hourly Rates are not listed in the Agreement, they shall be the rates currently in use by MSI for the type of work being done.
 - b. **MULTIPLIER.** When the Multiplier method is utilized, the hourly rate billed per individual expending time on the Project shall include that individual's Direct Payroll Expense (DPE) times a multiplier to cover overhead business costs plus profit. Direct Payroll Expense is defined as the total amount of an individual's labor cost, including basic wages and the mandatory and customary employee benefits, such as insurance, sick leave, holidays, vacations and others.

ESTIMATES OF FEES, BASED ON DPE OR AT HOURLY RATE. MSI's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to MSI under the Agreement. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to MSI that the total compensation amount thus estimated will be exceeded, MSI shall give CLIENT written notice thereof, allowing CLIENT to consider its options, including suspension or termination of MSI's services for CLIENT's convenience. Upon notice, CLIENT and MSI shall promptly review the matter of services remaining to be performed and compensation for such services. CLIENT shall either exercise its right to suspend or terminate MSI's services for CLIENT's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by MSI, so that total compensation for such services will not exceed said estimated amount when such services are completed. If CLIENT decides not to suspend the MSI's services during the negotiations and MSI exceeds the estimated amount before CLIENT and MSI have agreed to an increase in the compensation due MSI or a reduction in the remaining services, then MSI shall be paid for all services rendered hereunder.

REIMBURSABLES: Reimbursable Expenses and Subconsultant Expenses incurred by MSI for the services shall be billed in addition to the hourly rate charges at an amount equal to actual cost plus 10 per cent. Reimbursable Expense is defined as the actual non-labor expenditure incurred on the project, and may include travel, printing, telephones, mailing, specialized equipment tests or others. Subconsultant Expense is defined as the actual expenditure for other firms in providing specialized studies, sub-surface explorations, or other services required on the Project.

In the event that collection proceedings are required to collect unpaid bills for MSI's services and expenses, CLIENT shall be responsible for all unpaid bills, due interest, and all costs incurred in the collection proceedings, including but not limited to attorney's fees, costs, travel, and employee wages, overhead and expenses at the rate specified in this Agreement, or at MSI's current hourly rate if no rate is specified.

CONSTRUCTION PHASE SERVICES. If, as a part of this Agreement, MSI is providing periodic construction observation, MSI shall make visits to the construction site to observe the progress and quality of the contractor's(s) work to determine in general if such work is proceeding in accordance with the construction documents. MSI shall not be required to make exhaustive or continuous on-site inspections to check quality or quantity of such work. MSI shall not be responsible for the means, methods, techniques, sequences or procedures of construction or for the safety precautions and programs incident to the work of the contractor. MSI does not warrant or guarantee contractor's(s) work, and shall not be responsible for the failure of contractors to perform the work in accordance with the construction documents. With respect to the Standard of Care applicable to construction observation services, note the following.

- A. MSI shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall MSI have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- B. MSI neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- C. MSI shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- D. MSI shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except MSI's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a contractor's work, or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by MSI.
- E. While at a Site, MSI's employees and representatives shall comply with the specific applicable requirements of contractor's and CLIENT's safety programs of which MSI has been informed in writing.

CHANGES IN THE SCOPE CHARACTER OR CONTENT OF THE PROJECT: Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by MSI or its design requirements including, but not limited to, changes in size, complexity, CLIENT's schedule, character of construction, or method of financing, and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond MSI's control will require a modification to the Agreement. Any changes, modifications or alterations to the Project's scope impacting cost or schedule will require that MSI and CLIENT mutually agree in writing to such changes or modifications to the Scope prior to undertaking them. Price modifications due to changes in Scope in this Proposal will be calculated by multiplying the rates given in MSI's latest hourly rate schedule times the number of hours worked.

OPINIONS OF PROBABLE COST MSI's Opinions of Probable Construction Cost are to be made on the basis of MSI's experience and qualifications and represent MSI's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because MSI has no control over the cost of labor, materials, equipment, or services furnished by Others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, MSI cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from Opinions of Probable Construction Cost prepared by MSI. If CLIENT requires greater assurance as to probable Construction Cost, CLIENT must employ an independent cost estimator.

INSPECTIONS Unless otherwise provided for in this Agreement, any inspections of existing sites, structures, mechanical and electrical systems or other physical features of the Project are visual inspections only. Tests or extensive calculations are not performed unless specifically requested. CLIENT acknowledges that latent defects may be present and agrees to indemnify and hold harmless MSI and its employees against all claims, damages and losses including attorney's fees resulting from such latent defects. Inspections only cover the specific items listed in the Scope of Services of this Agreement. CLIENT acknowledges that the results of the inspection are meant for CLIENT use only. CLIENT agrees to indemnify and hold harmless MSI and its employees against all claims, damages and losses resulting from a third party's use of the results of the inspection.

NOTIFICATIONS: CLIENT represents and warrants that CLIENT has notified MSI of any known or suspected presence of hazardous materials or pollutants at the Project Site. Unless the Scope of Services includes investigation for hazardous or pollutant materials, MSI's extent of responsibility shall be to notify CLIENT if the presence of hazardous materials or pollutants on the Project Site becomes known by MSI.

ACCESS TO SITE Unless otherwise stated, MSI will have access to the site for activities necessary for the performance of the Scope of Services. MSI will take reasonable precautions to minimize damage to property during these activities, but has not included the cost of repairing or restoring any resulting damage in the Fee, and will not be responsible for the cost of such.

CERTIFICATIONS, GUARANTEES, OR WARRANTIES MSI shall not be required to sign any documents, no matter by whom requested, that would result in MSI having to certify, guarantee, or warrant the existence of conditions whose existence MSI cannot ascertain. CLIENT agrees not to make resolution of any dispute with MSI or payment of any amount due to MSI in any way contingent upon MSI signing any such documents.

STANDARD OF CARE: Services performed by MSI under this Agreement will be conducted in a manner of care and skill ordinarily exercised by members of the profession in the same locale practicing under similar circumstances and conditions. No other representation expressed or implied, and no warranty or guarantee is intended or included in this Agreement, or in any report, opinion, document, or otherwise.

DESIGN WITHOUT CONSTRUCTION PHASE SERVICES MSI shall be responsible only for those Construction Phase services expressly required of MSI in the Scope of Work. With the exception of such expressly required services, MSI shall have no design, Shop Drawing review, or other obligations during construction and CLIENT assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. CLIENT waives all claims against MSI that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of MSI in the scope of work.

LIMITATION OF LIABILITY. *MSI's Liability Limited to Amount of MSI's Compensation* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of MSI and MSI's officers, directors, members, partners, agents, employees, and Consultants, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of MSI or MSI's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by MSI under this Agreement.

MUTUAL INDEMNIFICATION: Subject to the provisions set forth herein, MSI and CLIENT hereby agree to indemnify and hold harmless each other and their respective shareholders, directors, officers, employees, agents (and each of their successors and assigns) from any and all claims, demands, liabilities, suits, causes of action, judgments, costs, and expenses, including reasonable attorneys' fees, arising or allegedly arising from personal injury, death, property damage, including loss of use thereof, due in any manner to the negligence of either of them, their agents, or employees. In the event both of them are at fault, then the liability shall be apportioned between them pursuant to their pro-rata share of negligence or fault. MSI and CLIENT further agree that their liability to any third party shall, to the extent permitted by law, be several and not joint. These indemnities shall not terminate upon termination or expiration of this Agreement.

OWNERSHIP OF DOCUMENTS All documents produced by MSI under this Agreement shall remain the property of MSI and shall not be used by the CLIENT for any other purpose without the permission of MSI.

REUSE OF DOCUMENTS All documents, including drawings and specifications, furnished by MSI pursuant to this Agreement are Instruments of his Services in respect of the Project. They are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any reuse without specific written verification or adaptation by MSI will be at CLIENT's sole risk and without liability or legal exposure to MSI. CLIENT shall indemnify and hold harmless MSI from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom.

TERMINATION OF SERVICES This Agreement may be terminated with at least 2 weeks advance notice by the CLIENT or MSI should conditions change to where services are no longer needed. In the event of termination, all reimbursable expenses and all Scope of Services rendered to date shall be paid by the CLIENT to MSI.

DELAY OF SERVICES: If a delay of services beyond the schedule agreed upon occurs for any reason other than for MSI's fault, it is understood and agreed to that such may result in additional fees, which shall be paid by CLIENT to MSI. If additional fees will be necessary, MSI will notify CLIENT prior to providing such services

DISPUTE RESOLUTION: CLIENT and MSI agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law

APPLICABLE LAWS Unless otherwise specified, this Agreement shall be governed by the laws of the State of Illinois

COMPLETE AGREEMENT This Agreement represents the entire understanding of the parties and may not be modified except in writing.

MISCELLANEOUS. If the CLIENT issues a Purchase Order of which this Agreement becomes part, the terms of this Agreement will take precedence in the event of a conflict of terms. This document shall be governed by the laws of the State of Illinois. In the event that any part of this document is held invalid by any court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

Accepted By:

CLIENT: City of Washington

Sign: _____

Print: Ray Forsythe

Title: City Administrator

Date: _____

Submitted By:

MAURER-STUTZ, INC.

Sign: 

Print: Rick J. Anderson

Title: Senior Project Manager

Date: 11/12/19