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Public Works

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MEMORANDUM

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

TO: Mayor and City Council Members

CC: Gregg Mandsager, City Administrator

FROM: Brian Stineman, Director of Public Works

DATE: October 27, 2017

RE: Request to Enter Project Management Agreement with HNI for Storm Water Improvements at 5th and Cypress

INTRODUCTION:

HNI has requested assistance from the City of Muscatine to help alleviate flooding concerns at their Technical Services building located at 912 E. 5th Street.

BACKGROUND:

During extreme rainfall events the existing storm sewer system at 5th and Cypress becomes overwhelmed and cannot drain water fast enough to prevent flooding of the intersection. In 2014 water backed up into the Technical Services Building causing \$650,000 in damage. Since that time HNI has spent over \$1 million in engineering studies, building improvements and stormwater collection improvements on their property. The City of Muscatine is planning to install a larger storm sewer pipe during construction of Mississippi Drive and 2nd Street. This larger pipe will allow water to drain more quickly however, it will not be installed until spring or summer of 2018. In the near term improvements can be made to the intake capacity of the storm sewer system on 5th Street at Poplar and Cypress and on 6th Street near Cypress. HNI and the City have agreed upon a plan to install new larger intake structures and pipe at the intersection of 5th and Poplar to divert stormwater to the existing storm sewer line that runs down Poplar Street. Additionally new intakes will be constructed at 5th and Cypress to increase capacity and new intakes will be added on 6th Street west of Cypress to collect drainage and take it to Mad Creek before it collects in the intersection of 5th and Cypress.

In order to facilitate construction as soon as possible HNI has volunteered to bid and manage construction of the project to city specifications. City inspectors will be allowed to inspect the work and HNI will invoice the city for the cost of construction to an amount not to exceed \$40,000. It is anticipated that this arrangement will save a substantial amount of time and allow construction to be completed before spring of 2018.

RECOMMENDATION/RATIONALE:

Staff recommends approving a Project Management Agreement with HNI for an amount not to exceed \$40,000 for stormwater improvement construction.

BACKUP INFORMATION:

Site Plan

Project Management Agreement

PROJECT MANAGEMENT AGREEMENT

This **Project Management Agreement** (the “Agreement”) is effective as of November 3, 2017, by and between **HNI Corporation**, an Iowa corporation (“HNI”), and the **City of Muscatine**, an Iowa municipality (“City”).

Background

A. The City intends to undertake a storm water improvement project to address storm water flooding at the intersection of Fifth Street and Cypress Street in Muscatine (the “Project”). The Project requires installation of new storm water intakes and pipes on Fifth and Poplar Street, Fifth and Cypress, and Sixth and Cypress Streets as described more completely herein

B. The City wishes to retain HNI to provide project management services for the Project, on the terms and subject to the conditions set forth herein.

Section 1 Scope of Services

1.1 **Basic Services.** On the terms and subject to the conditions set forth in this Agreement, HNI will perform the project management services described on the attached **Exhibit A** with respect to the Project (collectively, the “Services”) in accordance with the project specifications set forth on the attached **Exhibit B** (the “Specifications”). HNI will use commercially reasonable efforts to perform the Services in accordance with the schedule set forth on **Exhibit A**. The execution by the City of this Agreement shall constitute HNI’s authority to proceed in providing the Services with respect to the Project.

1.2 **Contractors.** The City and HNI acknowledge and agree that the City may require the services of architects, engineers, general contractors and/or other consultants and contractors in connection with the Project (collectively, “Contractors”). HNI shall be responsible for the selection and engagement of any Contractors, and all Contractors shall be compensated by HNI.

1.3 **Independent Contractor.** HNI shall perform all duties under this Agreement as an independent contractor, and in no event shall this Agreement be considered an agreement of employment, partnership or agency.

1.4 **Project Manager.** HNI shall assign a Project Manager, and additional personnel if necessary, to perform the Services for the Project. The Project Manager shall provide and coordinate all Services through completion of the project. The initial Project Manager is set forth in **Exhibit A**; provided, however, HNI may replace the Project Manager at any time if the Project Manager is unable for any reason to perform such duties.

1.5 **Force Majeure.** HNI’s obligations under this Agreement shall be suspended to the extent and for so long as the performance of such obligations are prevented or hindered in whole or in part by reason of strikes, acts of God, federal, state, county, or municipal laws, rules, orders, or regulations, or for any other cause which are beyond HNI’s reasonable control.

1.6 **Technical Matters.** The City shall be responsible for the evaluation of regulatory requirements related to the Project, including zoning ordinances, public facilities requirements and other requirements.

1.7 **No Guaranty.** The City acknowledges and agrees that HNI’s obligation under this Agreement is to use reasonable efforts to cause the Project to be completed in accordance with Specifications, budgets and schedules approved by the City, but that HNI shall not be deemed to have given any guaranty or warranty that any of the foregoing can be accomplished and shall not be liable for the errors, omissions or breaches of contract by any other party providing goods or services to the Project, including any Contractors. HNI, however, shall

promptly notify the City when it reasonably anticipates that the Project cannot be constructed in accordance with the Specifications, budgets, and schedules approved by the City.

Section 2 Compensation

2.1 Construction Costs. The City shall reimburse HNI for all out-of-pocket costs and expenses relating to the Project, up to a maximum amount of \$40,000. HNI will not charge the City a separate fee for performing the Services.

2.2 Payments. HNI will issue invoices to City at the end of each month stating, in reasonable detail and with supporting documentation, all costs and expenses incurred for such month. Such fees and expenses shall be due and payable by the City to HNI within 30 days of receipt by the City of HNI's invoice.

Section 3 Indemnification

3.1 HNI's Indemnity. HNI shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the City and its officials and employees harmless from any and all third-party losses, liabilities, costs and expenses (including, without limitation, reimbursement of actual attorney's fees, expert witness fees, and court costs) incurred either as a defendant or witness and arising out of claims by third parties in connection with, by reason of, or arising out of HNI's negligence, intentional misconduct or fraud in connection with this Agreement or the Services.

3.2 City's Indemnity. The City shall defend (with counsel reasonably acceptable to HNI), indemnify and hold harmless HNI, its subsidiaries and affiliates and the employees, officers, directors, members, shareholders and agents of each from and against all third-party losses, liabilities, costs and expenses (including, without limitation, reimbursement of actual attorney's fees, expert witness fees and court costs) incurred either as a defendant or witness and arising out of claims by third parties in connection with any breach of this Agreement by the City, except to the extent such claims arise out of HNI's negligence, intentional misconduct or fraud.

3.3 Limitation on Liability. Notwithstanding anything else contained herein to the contrary, each party shall look solely to the assets of the other party for satisfaction of any liabilities or obligations relating to this engagement, and no officer, director, employee, partner, affiliate, shareholder or agent of either party shall be personally responsible for any such liabilities or obligations. In addition, each party waives any claims for punitive, consequential, speculative or exemplary damages, including, without limitation, lost revenue or profit, even if a party has knowledge of the possibility of such damages.

Section 4 Insurance

4.1 HNI's Insurance. HNI shall carry the following insurance, at its own expense:

(i) Workers' compensation insurance, to the extent of the statutory limits required by applicable law, and employer's liability insurance in the minimum amount of \$1,000,000, which insurance shall contain a waiver of subrogation against the City.

(ii) Commercial General Liability Insurance (Primary and Umbrella/Excess) with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, personal injury and property damage. Coverages must include the following: blanket contractual liability, products and completed operations, independent contractors and severability of interest. The City shall be named as an additional insured under such insurance.

(iii) Professional liability (errors and omissions) insurance in the amount of not less than \$2,000,000. Such insurance coverage shall be on a claims-made basis and shall remain in force for the term of this Agreement and for two years following expiration or termination of this Agreement.

The foregoing policies are collectively referred to as the “HNI Policies.” HNI shall provide the City with certificates of insurance evidencing the HNI Policies within 10 days of the execution of this Agreement. All certificates shall also indicate that the insurer will endeavor to give the City at least 30 days’ prior written notice in the event of cancellation or non-renewal of the applicable insurance coverage.

4.2 City’s Insurance. The City shall carry the following insurance, at its own expense:

(i) All-risk property insurance, covering the full replacement cost of the property at which the Phase 1 work is performed.

(ii) Builder’s risk insurance for construction that covers special risk perils including earthquake, flood, fire, and theft of materials stored at or within 1,000 feet of the Phase 1 work site.

(iii) Commercial general liability insurance, in limits of not less than \$10,000,000 combined single limit for bodily injury and property damage, including contractual liability coverage.

The foregoing policies are collectively referred to herein as the “City Policies.” HNI shall be named an additional insured under the City’s Commercial General Liability Insurance in its capacity as project manager of Phase 1 of the Project. The City’s Commercial General Liability policy shall be primary and any commercial general liability insurance policy carried by HNI shall be non-contributory thereto with respect to any claims arising out of the performance or non-performance of the Services or the condition of the real property which is the site of the Project work. The City shall furnish to HNI a certificate of insurance evidencing such coverage within ten (10) days of the execution of this Agreement. The insurance certificate shall provide that the insurer will endeavor to give HNI not less than 30 days written notice prior to policy cancellation or non-renewal of the applicable insurance.

4.3 Mutual Waiver. All property damage insurance policies required of each of the parties shall contain appropriate clauses pursuant to which the respective insurance carriers shall waive all rights of subrogation with respect to losses payable under such policies; and each party waives any claims against the other party for any damage to its property.

Section 5
Termination

5.1 Termination. Either party may terminate this Agreement immediately in the event of a material default hereunder by the other party if such default has not been cured within 10 days after written notice to the other party.

5.2 Effect of Termination. If this Agreement is terminated, HNI shall issue a final invoice to the City for project costs incurred through the date of termination. The City shall promptly remit payment to HNI of the total undisputed amount of the final invoice. HNI may, in its sole discretion, continue construction of the Project pursuant to and in accordance with the Specifications; provided, that the City’s obligations to pay construction costs under Section 2.1 shall terminate as of the effective date of termination.

Section 6
Miscellaneous

6.1 General. This Agreement: (a) constitutes the entire understanding between the parties hereto as to the subject matter hereof and merges all prior negotiations, agreements, or discussions between them relating thereto; (b) shall be binding upon the parties and their respective successors and permitted assigns; (c) may not be amended or modified unless such amendment or modification is made in writing and signed by each of the parties; (d) may not be assigned by either party without the prior written consent of the other party; and (e) shall be governed by the laws of the State of Iowa (excluding Iowa law with respect to conflict of laws). No provision of this Assignment may be waived unless such waiver is made in writing and signed by the party to be bound thereby. The unenforceability, invalidity, or illegality of any provision of this Agreement does not affect or impair any other provision or render it unenforceable, invalid, or illegal. The rights and remedies of the parties set forth herein are cumulative and are not exclusive of any other rights or remedies which the parties would otherwise have at law, in equity or otherwise. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.2 Litigation Expenses. If there is any litigation between the parties with respect to this Agreement or the subject matter hereof, the prevailing party in such litigation shall be entitled to collect all of its costs and expenses in such litigation, including reasonable attorneys' fees and court costs, from the other party.

The parties have duly executed this Agreement as of the day and year first above written.

City of Muscatine

By _____
Name _____
Title _____

HNI Corporation

By _____
Name _____
Title _____

Exhibit A
Project Management Services

A. Project Budget Costs

- Evaluate existing site conditions.
- Create budget estimates.
- Provide preliminary schedules.

B. Planning Review and Consulting

- Review plans with City and Contractor to determine value engineering opportunities if required.
- Ensure all requirements are incorporated in the final plans submitted for permits.
- Attend plan review meetings.

C. Construction Oversight

- Review proposals with the City and provide recommendations.
- Review and agree to a final schedule with the selected Contractor.
- Collect necessary documentation needed prior to work commencement (i.e. contracts and insurance).
- Ensure the Contractors remains on schedule and completes the project per the Specifications.
- Attend calls with the City and Contractor as needed.
- Review and approve all change orders.
- Provide detailed accounting documents for project costs.

D. Project Closeout

- Complete a final walkthrough with the City and Contractor and assist in creating a punch list.
- Follow up with Contractor, to ensure all punch list items get completed.

Estimated Completion Schedule

The parties expect the Project will commence on November 6, 2017, and be completed by January 31, 2018.

Project Manager

The Project Manager for the Project shall be _____, or such other individual as designated by HNI from time to time.

