



1450 Washington St  
Muscatine, IA 52761-5040  
(563) 263-8022  
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Public Works

City Transit  
263-8152

## MEMORANDUM

Equipment Maintenance  
Roadway Maintenance  
Collection & Drainage  
Building & Grounds  
Engineering

TO: Brian Stineman, PUBLIC WORKS DIRECTOR  
Gregg Mansager, CITY ADMINISTRATOR

FROM: Jim Edgmond, CITY ENGINEER

SUBJECT: Request to Approve Contract and Performance Bond for Phase 4 of the Sewer Separation Project.

DATE: April 16, 2018

### INTRODUCTION:

The West Hill Sewer Separation Project (WHSSP) has been bid and the low bid awarded to KE Flatwork at the April 5, 2018 City Council meeting. See schedule below.

SET PUBLIC HEARING FOR PROJECT		Completed
HOLD PUBLIC HEARING/ APPROVE PLANS AND SPECS		Completed
SEND OUT NOTICE TO BIDDERS		Completed
RECEIVE AND OPEN BIDS	3-21-2018	Completed
RECOMMEND AWARD	4-05-2018	Completed
REQUEST APPROVAL OF CONTRACT AND PREF. BOND	4-16-2018	

### BACKGROUND:

Bids were received on March 3, 2018. The bids were tabbed and evaluated. The lowest responsible bidder for the project was KE Flatwork at \$6,109,522.45. The cost of this project was estimated to be \$8,000,000.00. This bid does fit within the budget identified for this project.

The contractor has signed the contract and submitted the contract, proof of insurance and the performance bond. These documents are contained in the conformed copies of the contract and three originals are submitted for the City's signature. One contract original is to be retained by the city, one by the Contractor and one for the consultant's records.

### RECOMMENDATION/RATIONALE:

City staff requests the approval of the contract and performance and maintenance bond for the WHSSP to KE Flatwork in the amount of \$6,109,522.45.

### BACKUP INFORMATION:

"I remember Muscatine for its sunsets. I have never seen any  
on either side of the ocean that equaled them" — Mark Twain

1. 3 originals of the conformed Contract for the Mayor's signature
2. Letter from Consultant with insurance certificate. 3 Copies.

**RESOLUTION \_\_\_\_\_**

**APPROVING CONTRACT AND BOND  
FOR WEST HILL AREA SANITARY AND STORM  
SEWER SEPARATION - PHASE 4**

WHEREAS, this Council has awarded the contract for the West Hill Area Sanitary and Storm Sewer Separation – Phase 4 to KE Flatwork, dated the 19<sup>th</sup> day of April, 2018 in the amount of \$6,109,522.45; and

WHEREAS, this Council has authorized and directed the Mayor and City Clerk to enter into a written contract for this project with said contractor, subject to final approval by this Council; and

WHEREAS, the contract and bond has been examined by this Council;

NOW, THEREFORE, IT IS RESOLVED that:

1. The above contract between the City of Muscatine, Iowa and KE Flatwork, dated the 19<sup>th</sup> day of April, 2018 in the amount of \$6,109,522.45; is approved.
2. The performance bond accompanying such contract, wherein KE Flatwork appears as principal and Westfield Insurance Company appears as surety, is approved.

The original executed contract and performance bond shall be placed on file in the office of the City Clerk.

PASSED, APPROVED AND ADOPTED THIS 19<sup>th</sup> DAY OF APRIL, 2018.

\_\_\_\_\_  
Diana Broderson, Mayor

ATTEST:

\_\_\_\_\_  
Gregg Mandsager, City Administrator

**THIS CONTRACT** is by and between City of Muscatine, Iowa (Owner) and KE Flatwork, Inc, Eldridge, Iowa (Contractor). Owner and Contractor hereby agree as follows:

**ARTICLE 1 - WORK**

1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as construction of sanitary and storm sewer to separate existing West Hill combined sewer system. Additional work includes general construction of water main improvements and full-width pavement replacement in the West Hill project area.

**ARTICLE 2 - THE PROJECT**

2.1 The Project for which Work under the Contract Documents may be the whole or only a part is generally described as West Hill Area Sanitary and Storm Sewer Separation – Phase 4.

**ARTICLE 3 - ENGINEER**

3.1 The Project has been designed by Stanley Consultants, Inc. who is to assume all responsibilities, and have rights and authority assigned to Owner's Engineering Consultant or Engineer during design and bidding in completion of the Work in accordance with the Contract Documents.

3.2 The Owner will provide a representative to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer during construction in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 - CONTRACT TIMES**

4.1 *Time of the Essence.* All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.2 *Milestones.* Parts of the Work shall be substantially completed on or before the following Milestone(s):

- A. Milestone 1 – Phase 4A: The Work will be substantially completed on or before November 30, 2018, and completed and ready for final payment in accordance with paragraph 1.08 of Section 1090 of SUDAS Standard Specifications on or before December 21, 2018.
- B. Milestone 2 Phase 4B: The Work may begin no earlier than calendar year 2019 unless authorized by Owner. The Work will be substantially completed on or before October 4, 2019, and completed and ready for final payment in accordance with paragraph 1.08 of Section 1090 of SUDAS Standard Specifications on or before November 22, 2019.
- C. Milestone 3 Phase 4C: The Work may begin no earlier than calendar year 2020 unless authorized by Owner. The Work will be substantially completed on or before October 2, 2020, and completed and ready for final payment in accordance with paragraph 1.08 of Section 1090 of SUDAS Standard Specifications on or before November 20, 2020.

4.2 *Liquidated Damages.* Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.1 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.2 A., 4.2B., and 4.2C above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

- A. Substantial Completion: Contractor shall pay Owner \$500.00 for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2 A, 4.2B, and 4.2C above for Substantial Completion until the Work is substantially complete.
- B. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for

completion and readiness for final payment, Contractor shall pay Owner \$300.00 for each calendar day that expires after such time until the Work is completed and ready for final payment.

- C. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.3 After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.2 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

#### ARTICLE 5 - CONTRACT PRICE

5.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item). The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 1.03 of SUDAS Section 1020 of SUDAS Standard Specifications, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.
- B. For all Work, at the prices stated in Document 00 43 22 - Unit Price Schedule, attached hereto as an exhibit.
- C. Total of Bid Prices for Unit Price Work – Phase 4A, 4B, and 4C combined:

Six Million One Hundred Nine Thousand Five Hundred Twenty-Two Dollars and Forty-Five Cents (\$6,109,522.45).

#### ARTICLE 6 - PAYMENT PROCEDURES

6.1 *Submittal and Processing of Payments.* Contractor shall submit Applications for Payment in accordance with Section 1090 of SUDAS Standard Specifications. Applications for Payment will be processed by Engineer as provided in the SUDAS Standard Specifications.

6.2 *Progress Payments; Retainage.* Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 10<sup>th</sup> day of each month during performance of the Work as provided in Paragraph 6.2.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established on the Unit Price Schedule based on the number of units completed.

- A. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract:
1. 95% percent of Work completed (with the balance being retainage).
  2. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100% of the Work completed, less such amounts set off by Owner pursuant to Section 1090 of SUDAS Standard Specifications and less 200% of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- C. Each individual Project Phase shall be closed out and complete prior to beginning the next Phase.

6.3 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 1.08 of the Section 1090 Measurement and Payment of SUDAS Standard Specifications, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 1.08.

#### **ARTICLE 7 - INTEREST**

7.1 All amounts not paid when due shall bear interest at the maximum rate allowed by law.

#### **ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS**

8.1 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Special Provisions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Special Provisions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 9 - CONTRACT DOCUMENTS

9.1 *Contents:* The Contract Documents consist of the following:

- A. This Contract (pages 1 to 5, inclusive).
- B. Section 00 43 22 Unit Price Schedule
- C. Performance and Payment Bond (pages 1 to 3, inclusive).
- D. SUDAS General Provisions and Covenants (pages 1 to 74, inclusive).
- E. Special Provisions (pages 1 to 14, inclusive).
- F. Specifications as listed in Project Manual table of contents.
- G. Drawings as listed on the Drawing Index Sheet.
- H. Addenda number 1, inclusive.
- I. Exhibits to this Contract (enumerated as follows):
- J. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - 1. Notice to Proceed.
  - 2. Instructions to Contractors.
  - 3. Change Orders.
  - 4. Field Orders.

9.2 The documents listed in paragraph 9.1 are attached to this Contract (except as expressly noted otherwise above).

9.3 There are no Contract Documents other than those listed above in this Article 9.

9.4 The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## ARTICLE 10 - MISCELLANEOUS

10.1 *Terms.* Terms used in this Contract will have the meanings indicated in the SUDAS General Provisions and Covenants and the Special Provisions.

10.2 *Assignment of Contract.* Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 *Successors and Assigns.* Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.4 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or

part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.5 **Contractor's Certification.** Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.5:

- A. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
- B. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
- C. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.6 **Other Provisions.** Owner stipulates that the General Conditions that are made a part of this Contract are based on 2018 SUDAS Standard Specifications – Division 1 General Provisions and Covenants for the Construction Contract, published by the Iowa Statewide Urban Design and Specifications (SUDAS) Program and Owner is the party that has furnished said General Conditions, and has plainly shown all modifications to the standard wording of such published document to the Contractor in the Special Provisions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract. This Contract will be effective on \_\_\_\_\_, 20\_\_ (which is the Effective Date of the Contract).

OWNER:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Contract.)

CONTRACTOR:

\_\_\_\_\_ KE Flatwork Inc.

By: \_\_\_\_\_ Lucas Kluver

Title: \_\_\_\_\_ President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest \_\_\_\_\_ Rod Kluver

Title: \_\_\_\_\_ Joe

Address for giving notices:

\_\_\_\_\_ 501 Blackhawk Trail

\_\_\_\_\_ Eldridge, IA 52748

License No. \_\_\_\_\_ C089724

(Where applicable)

END OF DOCUMENT





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/10/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Porter Insurance 102 N. 1ST ST. Eldridge IA 52748	<b>CONTACT NAME:</b> Chris Porter		
	<b>PHONE (A/C, No, Ext):</b> 563-285-4321	<b>FAX (A/C, No):</b> 563-285-7777	
	<b>E-MAIL ADDRESS:</b> CHRIS@PORTERINSURANCEINC.COM		
<b>INSURED</b> KE FLATWORK INC 501 Blackhawk Trl Eldridge IA 52748-9310	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> IOWA MUTUAL		
	<b>INSURER B:</b>		
	<b>INSURER C:</b>		
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		
		<b>INSURER F:</b>	

## COVERAGES

CERTIFICATE NUMBER: 20180410105512186

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	N	A022329MN	01/01/2018	01/01/2019	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	A022329MN	01/01/2018	01/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	BODILY INJURY (Per person) \$						
	BODILY INJURY (Per accident) \$						
	PROPERTY DAMAGE (Per accident) \$						
							\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE	N	N	A022329MN	01/01/2018	01/01/2019	EACH OCCURRENCE \$ 5,000,000
	AGGREGATE \$ 5,000,000						
	DED <input type="checkbox"/> RETENTION \$						
	\$						
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	N	A022329MN	01/01/2018	01/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	E.L. EACH ACCIDENT \$ 500,000						
	E.L. DISEASE - EA EMPLOYEE \$ 500,000						
	E.L. DISEASE - POLICY LIMIT \$ 500,000						
A	LEASED & RENTED EQUIPMENT	N	N	A022329MN	01/01/2018	01/01/2019	\$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

PROJECT: WEST HILL AREA SANITARY AND STORM SEWER SEPARATION - PHASE 4

STANLEY CONSULTANTS INC, THE CITY OF MUSCATINE, IOWA, AND BOARD OF WATER, ELECTRIC AND COMMUNICATIONS TRUSTEES OF THE CITY OF MUSCATINE, IOWA ARE ADDITIONAL INSURED ON THE GENERAL LIABILITY POLICY.

## CERTIFICATE HOLDER

## CANCELLATION

STANLEY CONSULTANTS INC 225 IOWA AVENUE MUSCATINE IA 52761	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 