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Public Works

City Transit
263-8152

MEMORANDUM

To: Brian Stineman, Public Works Director

CC: Greg Jenkins, Interim City Administrator

FROM: Pat Lynch, Assistant City Engineer

DATE: August 12, 2020

RE: Request to Enter Into Contract to Assist with Construction Services for Park Avenue Reconstruction and 4 to 3 Lane Conversion Project

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

INTRODUCTION:

The Park Ave. 4 to 3 Lane Conversion Project for 2020 has progressed to the point shown on the schedule below:

SET PUBLIC HEARING FOR May 07, 2020	04-16-2020
PUBLIC HEARING/APPROVE PLANS AND SPECS	05-07-2020
SEND OUT NOTICE TO BIDDERS	N/A
RECEIVE AND OPEN BIDS	06-16-2020
RECOMMEND AWARD	07-02-2020
RESOLUTION APPROVING CONTRACT AND PERF. BOND	07-16-2020

BACKGROUND:

Over two years ago, the City of Muscatine entered into a design contract with Shive-Hattery to prepare construction documents for the conversion of Park Ave. from a narrow 4 lane street to a 3 lane street with a center turning lane. The Iowa Department of Transportation opened bids for this project on June 16, 2020.

DOT staff prepared the contract for this project and provided it to the City and Contractor. The Contract has been fully executed and a Pre-Construction meeting was held on July 27, 2020. The contractor is currently evaluating his schedule and will submit to the City once finalized.

Since this project includes funding from the DOT, the DOT processes must be followed for Construction Project Management and Inspection. Due to staffing changes and current workload, the City issued an RFP for assistance with Construction Phase Services. The City received four proposals and have selected Bolton & Menk, Inc. to assist with the Construction Phase Services for this project. The City has negotiated a contract with Bolton & Menk, Inc. based on provided hourly rates not to exceed \$171,916.00. This contract is for the duration of the entire construction project and includes assistance with APPIA and DocExpress and the DOT Audit at the end of the project.

RECOMMENDATION/RATIONALE:

City Staff recommends approving the request to enter into the contract to allow for the start of the project as soon as possible.

BACKUP INFORMATION:

1. Contract.

Detailed Cost Estimate

Client: City of Muscatine		Bolton & Menk, Inc.					
Project: Construction Management Services for Park Avenue 4 to 3 Lane Conversion Project							
Task No.	Work Task Description	Principal-in-Charge	Project Manager	Project Engineer	Design Engineer	Total Hours	Total Cost
Base Tasks							
1.0	Construction Services	183	40	620	560	1403	\$160,916
2.0	Material Testing			Terracon - Subconsultant			\$11,000
Total Hours		183	40	620	560	1403	
Average Hourly Rate		\$152.00	\$145.00	\$115.00	\$100.00		
Subtotal		\$27,816	\$5,800	\$71,300	\$56,000		
Total Base Fee							\$171,916

**AGREEMENT FOR PROFESSIONAL SERVICES
PARK AVE 4 TO 3 LANE CONVERSION CONSTRUCTION ADMINISTRATION**

CITY OF MUSCATINE, IOWA

This Agreement, made this ____ day of August, 2020, by and between the City of Muscatine, hereinafter referred to as CLIENT, and Bolton & Menk, Inc., 309 E. 5th Street – Suite 202, Des Moines, IA 50309, hereinafter referred to as CONSULTANT.

WITNESS, whereas the CLIENT intends to employ professional services required in conjunction with the Second Avenue Reconstruction Project, and

WHEREAS, the CONSULTANT agrees to furnish the various professional services required by the CLIENT.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

SECTION I - CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to perform the various Basic Services and Construction Phase Services as requested in connection with the specific project as described in Section I.A and Section I.B. of Exhibit I.
- B. Upon mutual agreement of the parties hereto, Additional Services may be authorized as described in Section I.C. of Exhibit I.
- C. The CONSULTANT shall serve as the CLIENT'S professional engineering representative as described herein.

SECTION II - THE CLIENT'S RESPONSIBILITIES

- A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section III of this Agreement.
- B. The CLIENT shall place any and all previously acquired information in its custody at the disposal of the CONSULTANT for its use. Such information shall include but shall not be limited to boundary surveys, topographic surveys, preliminary sketch plan layouts, building plans, soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, zoning limitation. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by CLIENT.
- C. The CLIENT will assist in providing access to and make all provisions for entry upon both public and private portions of the project and pertinent adjoining properties.
- D. The CLIENT will give prompt notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the proposed project.
- E. The CLIENT shall designate a liaison person to act as the CLIENT'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit

instructions, receive instructions, receive information, interpret and define the CLIENT'S policies with respect to the project and CONSULTANT'S services.

- F. The CLIENT shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for completion of contract documents and other CONSULTANT services not included in this Agreement.
- G. The CLIENT shall give prompt and thorough consideration of all reports, sketches, estimates, drawings, specifications, proposals and other documents submitted to the CLIENT by the CONSULTANT, and shall inform the CONSULTANT of all decisions within a reasonable time so as not to delay the work.
- H. The CLIENT shall be responsible for issuing all legal notices, holding all required special meetings, receiving and acting upon protests, and fulfilling all requirements necessary in legal development of the projects as well as paying all costs incidental thereto.

SECTION III - COMPENSATION FOR SERVICES

A. SCHEDULE OF FEES

- 1. The following schedule of fees is based upon competent and responsible engineering and surveying services, and are the minimum rates, below which adequate professional standards cannot be maintained. It is, therefore, to the advantage of both the CONSULTANT and CLIENT that fees be commensurate with the service rendered.

Sr. Project Manager-Principal Engineer/Surveyor.....	\$120-150/Hour
Sr. Project Manager - Associate Engineer/Surveyor	\$100-150/Hour
Project Manager (incl. Landscape Architect)	\$100-145/Hour
Project/Design Engineer/Planner/Landscape Architect.....	\$60-135/Hour
Licensed Surveyor	\$70-135/Hour
Project Surveyor	\$60-100/Hour
Specialist (Nat. Resources, GIS, Traffic, Other).....	\$70-120/Hour
Senior Technician (incl. Survey ¹).....	\$70-145/Hour
Technician (incl. Survey ¹)	\$50-90/Hour
Administrative Support & Clerical	\$35-80/Hour
GPS/Robotic Survey Equipment	No Charge
AutoCAD/Computer Time.....	No Charge
Office Supplies.....	No Charge
Photo Copying/Reproduction	No Charge
Field Supplies/Survey Stakes & Equipment.....	No Charge
Mileage.....	No Charge

¹ No separate charges will be made for GPS or robotic total stations. The cost of this equipment is included in the rates for Survey Technician.

Charges are based on hours spent at hourly rates in effect for the individuals performing the work. The hourly rates for principals, associates and members of the staff vary according to skill and experience.

These rates include an overhead factor that accounts for federal and state taxes and required benefits, as well as insurance, office expenses and profit. In addition, the overhead factor includes vehicle and personal expenses, stakes and supplies as noted above. Unusual expenses, such as large quantities of prints, outside professional assistance and other items of

this general nature, will be billed out separately. Overtime shall not result in additional costs to the CLIENT, but shall be billed at normal hourly rates.

2. Total cost for the Basic Services, as itemized under Section I.A. of EXHIBIT I shall not exceed \$171,916.00
3. The payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly.

SECTION IV - GENERAL

A. STANDARD OF CARE

Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing under similar conditions. No warranty, express or implied, is made.

B. CHANGE IN PROJECT SCOPE

In the event the CLIENT changes or is required to change the scope of the project from that described in Section I and/or the applicable addendum, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to additional compensation at the applicable hourly rates. Changes requested by the CLIENT will be communicated to the CONSULTANT in writing. The CONSULTANT shall give written notice to the CLIENT of any Additional Services, prior to furnishing such additional services. The CLIENT may request an estimate of additional cost from the CONSULTANT, and upon receipt of the request, the CONSULTANT shall furnish such, prior to authorization of the changed scope of work.

C. LIMITATION OF LIABILITY

CONSULTANT shall indemnify, defend, and hold harmless CLIENT and its officials, agents and employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by CONSULTANT'S employees, agents, or subconsultants. In no event shall CLIENT be liable to CONSULTANT for consequential, incidental, indirect, special, or punitive damages.

CLIENT shall indemnify, defend, and hold harmless CONSULTANT and its employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by CLIENT'S employees, agents, or consultants. In no event shall CONSULTANT be liable to CLIENT for consequential, incidental, indirect, special, or punitive damages.

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 CLIENT or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of the paragraph.

D. INSURANCE

The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's compensation coverage.

The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, general liability insurance coverage insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities (including automobile use). The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$1,000,000.

During the period of design and construction of the project, the CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from an error, omission or negligent act in the performance of professional services required by this agreement, providing that such coverage is reasonably available at commercially affordable premiums. For purposes of this agreement, "reasonably available" and "commercially affordable" shall mean that more than half of the design professionals practicing in this state in CONSULTANT'S discipline are able to obtain coverage. The professional liability insurance policy shall provide coverage for each occurrence in the amount of \$1,000,000 and annual aggregate of \$1,000,000 on a claims-made basis.

Upon request of CLIENT, CONSULTANT shall provide CLIENT with certificates of insurance, showing evidence of required coverages.

E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of Exhibit I or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since the CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of the CLIENT and the CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. The CLIENT acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.

F. CONSTRUCTION SERVICES

It is agreed that the CONSULTANT and its representatives shall not be responsible for the means, methods, techniques, schedules or procedures of construction selected by the contractor or the safety precautions or programs incident to the work of the contractor.

G. USE OF ELECTRONIC/DIGITAL DATA

Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a project deliverable by this AGREEMENT or except as otherwise explicitly provided in this AGREEMENT, all electronic/digital data developed by the CONSULTANT as part of the PROJECT is acknowledged to be an internal working document for the CONSULTANT'S purposes solely and any such information provided to the CLIENT shall be on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind. As such, the CLIENT is advised and acknowledges that use of such information may require substantial modification and independent

verification by the CLIENT (or its designees). Provision of electronic/digital data, whether required by this Agreement or provided as a convenience to the Client, does not include any license of software or other systems necessary to read, use or reproduce the information. It is the responsibility of the CLIENT to verify compatibility with its system and long-term stability of media. CLIENT shall indemnify and hold harmless CONSULTANT and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from third party use or any adaptation or distribution of electronic/digital data provided under this AGREEMENT, unless such third party use and adaptation or distribution is explicitly authorized by this AGREEMENT.

H. REUSE OF DOCUMENTS

Drawings and Specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this AGREEMENT are instruments of service in respect to the Project and CONSULTANT shall retain an ownership interest therein. Upon payment of all fees owed to the CONSULTANT, the CLIENT shall acquire an ownership interest in all identified deliverables, including Plans and Specifications, for any reasonable use relative to the Project and the general operations of the CLIENT. CLIENT may make and disseminate copies for information and reference in connection with the use and maintenance of the Project by the CLIENT. However, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project and any reuse other than that specifically intended by this AGREEMENT will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT.

I. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and consultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action.

J. PERIOD OF AGREEMENT

This Agreement will remain in effect for the longer of a period of two years or such other explicitly identified completion period, after which time the Agreement may be extended upon mutual agreement of both parties.

K. PAYMENTS

If payment on any of the CONSULTANT'S invoices is not received within thirty days after date of the invoice, a service charge of two-third of one percent (0.67%) per month will be charged on any unpaid balance.

L. TERMINATION

This Agreement may be terminated by either party for any reason or for convenience by either party upon seven (7) days written notice.

In the event of termination, the CLIENT shall be obligated to the CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Agreement. Consultant shall provide data completed up until date of termination.

M. CONTINGENT FEE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Agreement.

N. NON-DISCRIMINATION

The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.

The CONSULTANT is an Equal Opportunity Employer and it is the policy of the CONSULTANT that all employees, persons seeking employment, subcontractors, consultants and vendors are treated without regard to their race, religion, sex, color, national origin, disability, age, sexual orientation, marital status, public assistance status or any other characteristic protected by federal, state or local law.

O. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Iowa.

P. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall first be submitted to mediation by Iowa General Rules of Practice 114 prior to exercising their rights of law.

Q. SURVIVAL

All obligations, representations and provisions made in or given in Section IV of this Agreement will survive the completion of all services of the CONSULTANT under this Agreement or the termination of this Agreement for any reason.

R. SEVERABILITY

Any provision or part of the Agreement 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 CLIENT and CONSULTANT, who agree that the Agreement 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.

The remainder of this page is intentionally left blank.

SECTION V - SIGNATURES

THIS INSTRUMENT embodies the whole agreement of the parties, there being no promises, terms, conditions or obligation referring to the subject matter other than contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf.

CLIENT: City of Muscatine, Iowa

CONSULTANT: Bolton & Menk, Inc.

By: _____
Printed Name

By: Matt Ferrier, P.E.
Printed Name

Signature: _____

Signature: Matt Ferrier

Title: _____

Title: Principal Engineer

Date: _____

Date: 8/6/2020

And: _____
Printed Name

Signature: _____

Title: _____

Date: _____

EXHIBIT I

PROJECT RELATED SERVICES BY CONSULTANT

PARK AVE 4 TO 3 LANE CONVERSION CITY OF MUSCATINE, IOWA

DESCRIPTION OF PROPOSED PROJECT

The scope of services is based on the following project limits and assumed construction program:

The corridor improvements are along Park Ave from Colorado to Madcreek. The project includes a 4 to 3 lane conversion with minor patching, sidewalks and traffic signal.

- Iowa DOT Doc Express and Appia support for the entire project.
- Construction material testing as needed.
- Construction administration as needed

I.A. BASIC SERVICES

For purposes of this specific project, Basic Services to be provided by the CONSULTANT are as follows:

TASK I – CONSTRUCTION PHASE SERVICES

Construction phase services consist of the following

- A. The CONSULTANT will facilitate a project kick-off meeting with CLIENT Staff to accomplish the following:
 - Introduce CONSULTANT and CLIENT representatives and establish communication protocols
 - Review and confirm the scope of the project
 - Review available information relative to the project
 - Review and verify project schedules
- B. Attend weekly construction progress meetings, on-site every three week and virtually the opposite weeks
- C. The CONSULTANT will provide project and contract administration services throughout the duration of the project.
- D. The Consultant will provide Doc Express and Appia management for the project including the following items.
 - a. Consultant will provide full time support, 40 hours per week for 28 weeks to manage all required Doc Express and Appia items
 - b. Consultant will prepare pay estimate and change orders for the project utilizing Appia and Doc Express.
 - c. Consultant will coordinate with City staff to enter daily logs during construction into Appia and Doc Express.
 - d. Consultant will coordinate with contractor and City for submittal reviews and material certification documentation in Appia and Doc Express.

E. The Consultant will support the City during the final closeout and Audit for the project. The consultant shall help gather required paperwork and documentation for the audit.

TASK 2 – Material Testing

Material testing services will be completed by Terracon and consist of the following as needed:

- A. Subgrade/Soil Testing
 - a. Nuclear Density Testing (up to 12 trips)
- B. Laboratory Testing
 - a. Standard Proctor (up to 5)
 - b. Rock Gradations (up to 2)
- C. PCC Testing
 - a. Aggregate Gradations (up to 4)
 - b. Compressive Strength Testing (up to 20 cylinders made by the City)

I.C. ADDITIONAL SERVICES – NOT IN CONTRACT BUT CAN BE PROVIDED

Engineering services performed other than those authorized under Section I.A and I.B shall be considered not part of the Basic Services or Construction Phase Services and may be authorized by the CLIENT as Additional Services. Additional Services consist of those services that are not generally considered to be Basic Services or Construction Phase Services or are not definable prior to the commencement of the project or vary depending on the technique, procedures or schedule of the project contractor. Additional services may consist of the following:

- A. All other services not specifically identified in Section I.A. or I.B.