

MEMORANDUM

June 10, 2021

TO: Mayor John P. Kahl and Members of the City Council

FROM: Scott A. Brunton, City Attorney

SUBJECT: Master Service Agreement for Water Main Installation Projects /
2021-22 Fiscal Year

DISCUSSION:

The City seeks to enter into a Master Service Agreement with a contractor for assisting with City water main installation projects for the 2021-22 fiscal year. Under the terms of the Master Service Agreement, the contractor will provide a work crew to the City to assist with the water main installation work, and the work crew will be superintended and overseen by the City's Public Works Department (the Superintendent of Water/Wastewater). The City will pay the contractor for each member of the work crew on an hourly basis based upon the work performed by each work crew member. Under the Illinois Municipal Code, public works projects can be bid out and completed in this manner. Further, City Public Works employees will provide assistance with certain aspects of the water main installation projects as well, and their work will be coordinated with the contractor's work crew to ensure timely completion of the project.

The City seeks to use this approach as a cost savings option for completing designated water main installation projects. The City has designated two projects for completion under this Master Service Agreement approach, being water main replacements projects along Faulkner Road and Highview Road.

The City has issued a Request For Proposals (RFP) seeking bids from local contractors for their hourly rates for the specified laborers and equipment operators. All contractor employees will be paid in accordance with the Illinois Prevailing Wage Act. The bid opening will be held on Monday, June 14th, with the lowest responsible bid being presented to the City Council for approval at the Council meeting on June 15th.

RECOMMENDATION:

Approval of this Resolution accepting the lowest responsible bid for the Master Service Agreement and entering into the Master Service Agreement with the contractor that has submitted the lowest responsible bid.

c: Cord Crisler, Superintendent of Water/Wastewater

RESOLUTION NO. 2122-025

East Peoria, Illinois

_____ , 2021

RESOLUTION BY COMMISSIONER _____

**RESOLUTION ACCEPTING LOWEST RESPONSIBLE PROPOSAL FOR
MASTER SERVICE AGREEMENT FOR WATER MAIN INSTALLATION SERVICES
DURING 2021-2022 FISCAL YEAR**

WHEREAS, City Officials have issued a Request For Proposals (the “RFP”) for seeking bids from local contractors for entering into a master service agreement for providing work crews for assisting the City with water main installation projects during the 2021-2022 fiscal year (the “Water Main MSA”); and

WHEREAS, the current projects identified for which the Water Main MSA may be used by the City shall be a water main replacement project along Faulkner Road and a water main replacement project along Highview Road in the City of East Peoria (the “Projects”); and

WHEREAS, under the terms of the RFP, contractors were required to submit bids for providing specific workers and specific operators with designated equipment for undertaking the Projects on an hourly basis; and

WHEREAS, the work of these specific workers and specific operators (the “Work Crew”) shall be superintended and overseen by the City’s Superintendent of Water/Wastewater Operations in the City’s Public Works Department; and

WHEREAS, the City has the authority to enter into the Water Main MSA for payment of a Work Crew on an hourly basis in accordance with the provisions of Section 4-5-11 of the Illinois Municipal Code (65 ILCS 5/4-5-11); and

WHEREAS, in response to the RFP, the City has received bids from local contractors for providing a Work Crew under the Water Main MSA; and

WHEREAS, City Officials have determined that the lowest responsible bid for hourly rates for a Work Crew has been submitted by _____ (the “Contractor”), and the Contractor’s Work Crew rates are set forth in Exhibit A, attached hereto and incorporated by reference (the “Work Rates”); and

WHEREAS, City Officials have also prepared the Water Main MSA for the Contractor, which is attached hereto as Exhibit B and incorporated by reference (the "Contract MSA"); and

WHEREAS, the City Council hereby determines that it is in the best interests of the City to accept the lowest responsible bid from the Contractor as provided in the Work Rates as set forth In Exhibit A and to enter into the Contractor MSA as set forth in Exhibit B in accordance with the terms and conditions set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The above recitations are found to be true and correct.

Section 2. The Work Rates provided by the Contractor as set forth in Exhibit A are hereby accepted and approved.

Section 3. _____ is awarded the contract for the Water Main MSA as provided in the Contractor MSA for the 2021-2022 fiscal year for project work on the Projects, as set forth in Exhibit B.

Section 4. The amount expended for the Projects under the Contract MSA for the 2021-2022 fiscal year shall not exceed \$_____. City Council approval shall be required for expenditures under the Contractor MSA beyond this maximum amount.

Section 5. The Mayor and City Clerk are authorized and directed on behalf of the City to execute the Contractor MSA with the Contractor for assisting the City with the Projects as provided in the Water Main MSA, together with such changes therein as the Mayor in his discretion deems appropriate, at a total expenditure not to exceed \$_____ under the Contractor MSA; provided, however, that the City shall have no obligation under the Water Main MSA with the Contractor until such time as an executed original of such documentation has been delivered to the Contractor.

APPROVED:

Mayor

ATTEST:

City Clerk

EXHIBIT A

Hourly Work Rates:

May 1, 2021 through April 30, 2022

Laborer (with tools): \$_____ / hour

Plumber (with tools): \$_____ / hour

Operator with Excavator: \$_____ / hour

Operator with Directional Boring Equipment / Water Main Install: \$_____ / hour

Operator with Directional Boring Equipment / Water Service Install: \$_____ / hour

Operator with Vector (utility locate): \$_____ / hour

EXHIBIT B

Master Service Agreement with Contractor

CITY OF EAST PEORIA

**MASTER SERVICE AGREEMENT:
WATER MAIN INSTALLATION AND REPLACEMENT WORK**

THIS MASTER SERVICE AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2021, by and between the CITY OF EAST PEORIA, an Illinois municipal corporation ("City"), and _____, with a business address of _____ ("Contractor"). The City and Contractor hereby agree as follows:

WITNESSETH:

WHEREAS, the City has issued a Request for Proposal ("RFP") for a master service agreement for construction services related to the City's water main replacement and installation projects during the City's 2021-2022 fiscal year that runs from May 1, 2021, through April 30, 2022; and

WHEREAS, the Contractor has been selected by the City as the lowest responsive responsible bidder to the RFP; and

WHEREAS, the City and the Contractor now seek to enter into this Agreement in accordance with the terms and conditions set forth in the RFP;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the Parties agree as follows:

1. Scope of Work

1.01 Contractor shall complete all work as directed by the by the City's Superintendent of Water/Wastewater (the "Superintendent") or his designee. In general, the work is generally described as follows (the "Work"):

Install new water main sections with an average depth of five (5) feet, which may include boring, paving and related landscaping.

This scope of work would require a construction crew of two (2) laborers, an excavator (having a maximum depth of ten and one half (10.5) feet), and an operator to load tandems and all hand tools necessary to perform assigned work (the "Work Crew"). The contractor may be required, when necessary, to bore horizontally. The City will provide all materials necessary to perform assigned work.

- 1.02 Work Crews. The Work will typically be completed by work crews consisting of two (2) laborers and an excavator operator (the "Work Crew"). The Superintendent, or his designee, shall superintend and direct the performance of each Work Crew.

If the City determines that the work performed by a Work Crew member or by the entire Work Crew is subpar and not meeting generally accepted construction principles, practices, and experience, the City shall have the right to seek removal of the Work Crew member or the entire Work Crew. Further, in such case of subpar performance, the City shall also have the right to immediately cease work being undertaken by the Work Crew until the Work Crew member or Work Crew, as applicable, has been removed and replaced by the Contractor.

- 1.03 Equipment. The Contractor shall provide each Work Crew with all hand tools necessary to perform assigned Work. The Contractor shall also provide each Work Crew with an operational excavator that can handle a maximum depth of ten and one half (10.5) feet) and be able to load tandems. When necessary to complete the Work, the Contractor may be required to provide boring equipment allowing the Work Crew to undertake and completed directional, horizontal boring and installation of water main sections.

Contractor shall be fully responsible for all costs related to operation, maintenance, fuel, insurance, and transportation for the excavating equipment, boring equipment, and all other tools and equipment required for performance of the Work under this Agreement.

- 1.04 Materials. The City will provide all materials necessary to perform assigned Work.

- 1.05 Scheduling of Work. Except in extraordinary circumstances, prior to the beginning of each water main installation or replacement project, the Superintendent shall provide the Contractor with a schedule as to when each project will be undertaken and when Work will be performed by the Contractor's Work Crew for that project. The Superintendent will determine when a Work Crew is needed for each particular project and for how long the Work Crew will be needed at the project site for the project. The Parties acknowledge that due to the possibility of unknown or unseen physical or subsurface conditions, scheduling flexibility will be necessary in order to accommodate the actual conditions encountered for each project

2. Term

- 2.01 This Agreement shall commence on the date of this Agreement as first set forth above and shall remain in effect until April 30, 2022. This Agreement may be cancelled by the City at any time upon forty-five (45) days' written notice to the Contractor.

3. Contact Information

- 3.01 The Superintendent shall be the contact person for the City under this Agreement. All communications with the City under this Agreement shall be directed to the Superintendent unless otherwise designated by the Superintendent.
- 3.02 The Contractor shall name a designated representative for handling scheduling matters with the City, who shall be available for prompt communications with the Superintendent by phone, text, and email. The Contractor shall also designate a lead member of each Work Crew to handle communications with the Superintendent or his designee. The Contractor shall provide the names of these persons, along with their contract information and work phone numbers, the Superintendent.

4. Cost for Services

- 4.01 The cost for the services of each member of the Work Crew is set forth in Exhibit A, attached hereto and incorporated by reference. The City shall pay the Contractor for each member of a Work Crew performing labor for the City under this Agreement in accordance with the pricing schedule in Exhibit A on an hourly basis.

5. Prevailing Wages

- 5.01 The Contractor shall pay all employees comprising a Work Crew in accordance with current prevailing wages applicable to Tazewell County as set forth by the Illinois Department of Labor in accordance with the Illinois Prevailing Wages Act (820 ILCS 130/0.01, *et seq.*) for all Work performed by the Contractor under this Agreement.
- 5.02 The Contractor shall comply with all requirements of the Illinois Prevailing Wages Act when performing Work under this Agreement, which includes a copy of the Contractor's certified payroll for each project undertaken by the Contractor under this Agreement when seeking payment for services performed under this Agreement.

6. Payment Procedures

- 6.01 Submittal of Payment Requests. The Contractor will invoice the City for the services performed by the Contractor's Work Crew or Crews for each month work is performed for a project. The Contractor shall submit the payment request to the City no later than five (5) days after the first of the month for the work performed for the prior month, which shall be extended to the first business day should such day fall on a weekend or holiday. The Contractor shall submit the certified payroll for all employees who performed work for the project when submitting a payment request. Payment requests shall be submitted to the Superintendent.

- 6.02 Review by the City. The Superintendent, or his designee, shall review each payment request and promptly notify the Contractor regarding any discrepancy, dispute, or question regarding the payment request. Should the Superintendent determine that there is a discrepancy, dispute, or question regarding the payment request, Superintendent and Contractor shall promptly meet and review the discrepancy, dispute, or question and seek to reasonably resolve the issue in good faith.
- 6.03 Payment by City. The City shall make payment to the Contractor within thirty (30) days of receiving a payment request unless promptly notified by the City that there is a discrepancy, dispute, or question regarding the payment request. Should the City determine that there is a discrepancy, dispute, or question regarding the payment request, the City shall make payment as provided in this Section 6.03 of the undisputed portion of the payment request while the Parties work to resolve the issues regarding the disputed portion of the payment request.

7. Insurance

- 7.01 For the duration of this Agreement, the Contractor shall purchase and maintain insurance coverages for the Contractor, the Work Crew, anyone directly or indirectly employed by the Contractor to perform any of the Work, and the related Contractor equipment for the Work being performed and as will provide protection from claims which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under this Agreement. The Contractor in compliance with parts (a) through (e) of Section 1-8-4.13 of the City Code, attached hereto as Exhibit B and incorporated by reference and as amended from time to time. Upon the effective date of this Agreement as first set forth above, the Contractor shall provide the City with a certificate of insurance in standard form demonstrating compliance with these provisions of Section 1-8-4.13 of the City Code, which shall include listing the City as an additional insured as provided in Section 1-8-4.13 of the City Code.
- 7.02 The Contractor shall hold harmless and indemnify the City and its officers, employees, agents, and volunteers from and against any and all claims, losses, liabilities, damages, expenses incurred by the City including court costs and attorneys' fee, for damage to property or injury to persons, including death, which may arise from or which may be occasioned by any work or activity carried on pursuant to the services being performed by the Contractor under this Agreement.

8. Miscellaneous

- 8.01 The City shall remain free to seek bids and to enter into other contracts for work on the City's water and wastewaters systems. By entering into this Agreement, the Parties acknowledge that nothing in this Agreement shall limit the City's ability

to contract for other work on the City's water and wastewaters systems or to do such work by City employees.

8.02 Amendment. The provisions of this Agreement may only be modified or altered by written mutual agreement of the Parties made pursuant to a duly signed amendment.

8.03 Successor Parties. In the event of any occurrence rendering either Party incapable of performing under this Contract, the successor of that Party, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of that Party hereunder. Within thirty (30) days after a successor of that Party succeeds to the rights of that Party, the successor shall provide written notice to the other Party of the succession.

8.04 Indemnification.

A. The City hereby agrees to indemnify, save, defend, and hold harmless Contractor and its agents and employees, from and against any and all third-party claims, made or asserted against Contractor or its agents or employees arising out of or in any way connected with the performance or non-performance of this Agreement by the City. In addition, the City agrees to indemnify, defend, and hold harmless Contractor from and against any and all claims for damages or injuries sustained arising out of or related to the operations of with City's waterworks system.

B. Contractor hereby agrees to indemnify, save, defend, and hold harmless the City, and its elected officials, agents, and employees, from and against any and all third-party claims, made or asserted against the City, or its elected officials, agents, or employees arising out of or in any way connected with the performance or non-performance of this Agreement by Contractor or any actions of the Contractor or Contractor's employees that is contrary to or outside the direction of the City when conducting Work under this Agreement.

8.05 Notices. All notices or communications provided for herein shall be in writing and shall be delivered in person or by certified United States mail, return receipt requested, postage pre-paid, addressed as follows:

To the City: City of East Peoria
 Attn: Mayor
 401 W. Washington Street
 East Peoria, IL 61611

With a copy to: East Peoria Public Works Department
 Attention: Superintendent of Water/Wastewater
 2232 E. Washington Street
 East Peoria, IL 61611

To Contractor: _____
Attn: _____
_____, Illinois _____

or at such other address or by other method as the Parties may agree, by notice given in accordance herewith.

8.06 Governing Law. This Agreement shall be construed exclusively under the laws of the State of Illinois.

8.07 Assignment. No Party shall assign, sublet, sell or transfer its interest in this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party. Unless the Parties mutually consent to an assignment, the assignment shall be void and terms and conditions of this Agreement shall remain binding upon and shall inure to the benefit of the Parties.

8.10 Severability. If any provision or part of this Agreement is found or determined to be void or unenforceable under any law or regulation, such provision or part shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, 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.

IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Agreement to be duly executed in counterparts, each of which shall constitute an original, all as of the day and date first hereinabove set forth.

CITY OF EAST PEORIA

[CONTRACTOR]

By _____
Its Mayor

By _____
Its _____

ATTEST:

Its City Clerk

EXHIBIT A

Contractor Pricing Schedule for Work

Laborer (with tools): \$_____ / hour

Plumber (with tools): \$_____ / hour

Operator with Excavator: \$_____ / hour

Operator with Directional Boring Equipment / Water Main Install: \$_____ / hour

Operator with Directional Boring Equipment / Water Service Install: \$_____ / hour

Operator with Vector / Utility Locate: \$_____ / hour

EXHIBIT B

1-8-4.13. Contractor insurance and hold harmless requirements.

All contractors, vendors, or subcontractors performing any services for the city shall meet the following requirements:

- (a) Except as expressly set forth in any other provision of the city Code, any contractor or subcontractor who agrees to perform any services for the city shall carry and maintain general liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence with an aggregate limit of not less than one million dollars (\$1,000,000.00). If the contractor or subcontractor is to perform any service whereby the contractor or subcontractor, including their employees or agents, will be using a motor vehicle in any aspect of performing the contracted service for the city, the contractor or subcontractor shall also carry and maintain separate automobile (vehicle) liability insurance coverage in an amount not less than one million dollars (\$1,000,000.00) combined single limit (per accident).
- (b) Any contractor or subcontractor performing services for the city shall provide the necessary certificates of insurance in the general commercially accepted format as proof of carrying and maintaining the required general liability insurance limits and automobile liability insurance limits as set forth in this section. The certificates of insurance shall be provided to the city before the contractor begins any work for the city. The certificate of insurance shall include a clause that the contractor or subcontractor doing business in the city under that certificate waives its subrogation rights in favor of the city. Furthermore, the city shall be listed as an additional insured under the contractor's and subcontractor's general liability insurance coverage, which shall be listed on the certificate of insurance provided to the city. Also, the contractor or subcontractor shall ensure that the insurance company or carrier providing its coverage will notify the city if the insurance coverage for the contractor or subcontractor is revoked, canceled, or otherwise terminated during the period when the contractor or subcontractor is performing services for the city.
- (c) A contractor shall ensure that any subcontractors used by the contractor carry and maintain general liability insurance to the limits as provided herein and otherwise comply with the requirements of this section. The contractor shall be responsible for providing its subcontractors' certificates of insurance to the city.
- (d) Contractors or subcontractors doing business with the city on a regular or on-call basis shall annually file certificates of insurance with the city and shall ensure that the required insurance coverage is maintained throughout the following twelve-month period. These certificates of insurance shall be provided every year to the city on or before the beginning of the city's fiscal year.
- (e) Any contractor or subcontractor who agrees to perform any services for the city shall carry and maintain workers' compensation insurance coverage meeting the statutory limits required under Illinois law. Any contractor or subcontractor performing services for the city shall provide proof of the required workers' compensation insurance coverage by including this coverage on the certificate of insurance that is provided to the city as set forth herein. Contractors shall ensure that any subcontractors used by the contractor carry and maintain workers' compensation insurance as provided herein and otherwise comply with the requirements of this section. The contractor shall be responsible for providing its subcontractor's certificates of insurance evidencing workers' compensation insurance coverage to the city.