



Public Works Utility Operations Department

DATE: October 4, 2021

FROM: Michelle Klose, Public Works Utility Water Director

ITEM: Task Order No. 3 to the agreement with Bartlett & West for O&M Projects for Utility Operations - 43rd Avenue Tank Rehabilitation Project

REQUEST:

Approve Task Order No. 3 to the agreement with Bartlett & West for the 43rd Avenue Tank Rehabilitation Project.

Please place this item on the October 12, 2021 City Commission meeting agenda.

BACKGROUND INFORMATION:

On April 13, 2021, the City Commission approved professional engineering contracts for operations and maintenance activities for Utility Operations. Bartlett & West is a contract recipient. Task orders not exceeding \$20,000 per task are approved by the Director of Utility Operations, and task orders exceeding \$20,000 are approved by the Commission.

Task Order No. 3 will perform contract administration and construction observation services during the 43rd Avenue Tank Rehabilitation Project. The total estimated fee for Task Order No. 3 is not to exceed \$110,000.00.

RECOMMENDED CITY COMMISSION ACTION:

Approve Task Order No. 3 to the agreement with Bartlett & West in the amount not to exceed \$110,000.00 for contract administration and construction observation services during the 43rd Avenue Tank Rehabilitation Project.

STAFF CONTACT INFORMATION:

Michelle Klose, PE | Utility Operations Director, 355-1700 or mklose@bismarcknd.gov

Task Order No. 3

43rd Avenue Tank Contract Administration & Construction Observation

In accordance with Paragraph 1.02 of the Short Form of Task Order Agreement Between Owner and Engineer for Professional Services, dated April 13, 2021, (Agreement), Owner and Engineer agree as follows:

A. Background Data

- a. Effective Date of Task Order: October 12, 2021
- b. Owner: City of Bismarck
- c. Engineer: Bartlett & West
- d. Specific Project: 43rd Avenue Tank Rehabilitation
- e. Specific Project: The purpose of this Task Order is to perform Contract Administration and Construction Observation services during the rehabilitation of the 43rd Avenue Tank.

B. Services of Engineer

Work to be completed by the Engineer is as follows:

Task 1 – Construction Administration

1. Provide General Construction Contract Administration. Consult with Owner and act as Owner's representative. Owner's instructions to Contractor will be issued through Engineer who shall have authority to act on behalf of Owner in dealings with Contractor. For purposes of this project, the Engineer shall not be considered a construction manager, nor shall Engineer be the Contractor's quality control/quality assurance program manager.
2. Assist the Owner in assembling and the signing of the Contract Agreement between the Owner and the Contractor.
3. Participate in a Pre-Construction Conference prior to commencement of Work at Site.
4. Review and approve or take appropriate action in respect to Shop Drawings and other data which Contractor is required to submit, but only for conformance with information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole.
5. Make periodic visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work.
6. Issue necessary clarifications and interpretations of the Contract Documents as appropriate for the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents.

7. Recommend Change Orders to Owner, as appropriate, and prepare Change Orders as required.
8. Render formal written decisions on all claims of Owner and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work.
9. Based on Engineer's review of the Contractor's Application for Payment and the accompanying support documentation, recommend the amounts that Contractor(s) be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents, and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the work.
10. Receive and review maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents.
11. In company of Owner and Contractor, conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice that the Work is acceptable to the best of Engineer's knowledge, information and belief and based on the extent of the services provided by Engineer under this Task Order.
12. The purpose of the Engineer's visits at the jobsite shall be to enable the Engineer to better carry out the duties and responsibilities assigned to and undertaken by the Engineer during the construction phase, and, in addition, by the exercise of the Engineer's efforts as an experienced and qualified design professional, to express an informed professional opinion that the completed work of the contractor will conform, in general, to the construction documents and that the integrity of the design concept of the completed Project as a function whole, as indicated in the construction documents, has been implemented and preserved by the construction contractor. The Engineer shall not be held to a higher standard of care than that prevalent in the Engineering profession. The Engineer shall not be responsible for the acts or omissions of any construction contractor, or any subcontractors, vendors, suppliers, or of any other individual or entity performing or furnishing any of the work. Engineer shall not be responsible for a construction contractor's failure to perform or finish the work in accordance with the construction documents. The Engineer shall not be liable or given the responsibility to supervise, direct or control the construction contractor's work or for the construction contractor's means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or the construction contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to the construction contractor's furnishing and performing work.
13. The Services to be provided by the Engineer under this Authorization, and under his direction, shall be rendered in accordance with the professional standard of skill and prudence of the Engineering profession. The Engineer shall perform only those Services authorized by the Owner under this Authorization.

14. Consistent with the professional standard of care and unless specifically provided herein, the Engineer shall be entitled to rely upon the accuracy of data and information provided by the Owner, or others without independent review or evaluation.
15. The Owner agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during construction of the Project; including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. The Engineer shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction contractor. The Engineer shall not have the authority to stop the work of the construction contractor as this is the sole authority of the Owner.

Task 2 – Construction Observation

The Engineer shall provide a full-time, on-site Resident Project Representative during the duration of the Work. The Resident Project Representative (RPR) shall:

1. Monitor the Work as an experienced and qualified technician or professional to observe the progress and quality of the various aspects of Contractor's work. Observation shall include spot checking, selective sampling, and similar methods of general observation of the work based on RPR's exercise of professional judgment. Based on information obtained during the observation, RPR shall determine in general if such work is proceeding in accordance with the Contract Documents and RPR will endeavor to inform Owner of the progress of the work.
2. RPR shall not, while on-site, or as a result of observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor shall RPR have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for and failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work.
3. Inspections and Tests. Require such special inspections or tests of the work as deemed reasonably necessary, and receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. RPR's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. RPR shall be entitled to rely on the results of such tests.
4. Following notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is substantially complete. If RPR observes apparent defects in the completed Work, the RPR will assist Owner in consultations and discussions with Contractor concerning correction of such defects and make recommendations as to replacement or correction of defective Work.
5. In company with Owner and Contractor, perform a final inspection of the Project.

C. Owner's Responsibilities

Owner shall enter into an agreement with the selected contractor to perform the work.

Owner shall provide access to the site.

Owner will make timely reviews of information and other data which needs Owner approval upon receipt of information from the Engineer. In all such instances, Engineer will advise the Owner of time restraints, if any, which may apply to such reviews.

D. Task Order Schedule

It is anticipated the work will take place between May 1st and October 1st of 2022.

E. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows: Hourly plus reimbursable expenses not to exceed **\$110,000**. The estimated amount for Task 1 is \$35,000 and the estimated amount for Task 2 is \$75,000. The actual fee for these Tasks may be more or less than the estimated fee based on the actual duration of construction and the level of oversight required of the contractor. Compensation to the Engineer will be based on the actual level of effort. The Engineer will request prior approval from the Owner if the estimated fee is anticipated to be exceeded.

B. The terms of payment are set forth in the Agreement.

F. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is October 13, 2021

Owner:
By: _____

Engineer:
By: _____

Print Name: Steve Bakken

Print Name: Jame L. Todd

Title: President of Board of City Commissioners

Title: SR V.P.

Designated Representative for Task Order

Designated Representative for Task Order

Name: Jeron Fueller

Name: Larry Kirschmann

Title: Water Dist. & Collections Superintendent

Title: Lead Field Representative

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