



WEST DES MOINES WATER WORKS BOARD OF TRUSTEES MEETING COMMUNICATION

DATE: March 22, 2023

ITEM:

6. Recommendations from Staff
 - b. Motion – Approving a Professional Services Agreement with Civil Engineering Consultants, Inc. for SE. 35th Street Water Main

FINANCIAL IMPACT:

Hourly Not to Exceed of \$23,000.00.

\$350,000 was included in the 2023 budgeted under item 00800-170-23026.

SUMMARY:

This project will construct approximately 1,600 linear feet of 12” diameter fee-district water main along SE 35th Street from Veterans Parkway to the South. The main is being installed to serve a development planned for 2023 construction in the SW corner of this intersection.

Civil Engineering Consultants (CEC) is completing the design of this development and also the separate roadway plans for improvements to SE 35th Street. Because of their involvement in other aspects of this project, staff contacted CEC to request a Scope and Fee for design services of this main.

The agreement has been reviewed by Amy Beattie of Brick Gentry.

BACKGROUND:

The South Area Water Connection Fee District was established by the Board of Trustees to extend larger diameter water mains into developing areas of town. These water main extensions are funded by a ‘per acre’ fee charged to developers as they develop parcels of land. This is the latest of this type of project.

RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:

To Concur with the Recommendation of Staff and Approve a Professional Services Agreement with Civil Engineering Consultants, Inc. for the SE 35th Street Water Main.

Prepared by: William J. Mabuce

Approved for Content by: Clara Murphy



Civil Engineering Consultants, Inc.

March 10, 2023

West Des Moines Water Works
Attn: William Mabuice, PE, PO
1505 Railroad Avenue
West Des Moines, IA 50265

RE: S 35th Street Water Main – WEST DES MOINES, IOWA

Mr. Mabuice,

We are pleased to present this letter of proposal for engineering and surveying services for the preparation of construction plan drawings for the water main located along S 35th Street in West Des Moines. Below is our estimate of cost and included services.

Scope of Services:

Designers Compensation:

TASK I – SURVEYING:

Topographic and Boundary Survey Phase:

- 1. Topographic Survey

\$ 5,000
Survey Subtotal \$ 5,000

TASK II – CONSTRUCTION DOCUMENT PHASE:

Construction Plans:

- 1. Construction Plan Drawings to include:
a. Cover
b. Notes, Details, Quantities, Specifications Sheet
c. Utility Plan
d. Grading/Erosion Control Plan
2. IDNR Permits Application Submittals
a. NPDES
b. Water Supply Construction Permit
3. Grading Permit Submittal
4. Submittal Coordination
5. Revise quantity takeoffs
6. Bidding and letting assistance
7. Present the plan and request city approval

\$ 7,000
\$ 500
\$ 500
\$ 500
\$ 500
\$ 500
\$ 500
CD Subtotal \$ 10,000

TASK III – EASEMENTS EXHIBITS PHASE:

Easement Exhibits:

- 1. Public Water Main Easement
2. Temporary Construction Easement

\$ 1,500
\$ 1,500
EE Subtotal \$ 3,000

TASK IV – AS-CONSTRUCTED PHASE:

As-Constructed Plan:

- 1. Survey as-constructed items
2. Prepare as-constructed plans

\$ 2,500
\$ 2,500
AC Subtotal \$ 5,000



Civil Engineering Consultants, Inc.

PROJECT UNDERSTANDINGS:

Not included with this proposal:

- a. Submittal Fees
- b. Permit Fees
- c. Attending public meetings
- d. Construction staking
- e. Construction observation
- f. City comment responses after 2 re-submissions
- g. Joint 404 permit application or required studies

Owner's Responsibility:

- a. The owner shall be responsible for all filing fees, permit fees and reimbursable expenses.
- b. The owner shall provide a geotechnical report.
- c. Changes in the plan once work has started may require additional compensation.
- d. Statements for services shall be billed once per month. Payment is expected within 30 days.

Fee Arrangement:

Estimated cost for the above Scope of Services for the site is **\$23,000.00**. Actual Fees will be based on the attached hourly rate schedule. The attached hourly rate schedule, general conditions and the initials required on the attached form are a part of this agreement. These rates are valid through December 31, 2023 and will be subject to annual increase.

Please sign and return this in order for us to proceed with the projects. If you have any questions, please let us know.

Prepared By:

Paul Clausen, P.E.
Partner

The attached hourly rate schedule, general conditions and the initials required on the attached form are a part of this agreement.

Offered by:

CIVIL ENGINEERING CONSULTANTS, INC.

(signature)

3-10-2023

(date)

Accepted by:

(signature)

(date)

Paul Clausen, PE

(printed name/title)

Christina Murphy - General Manager

(printed name/title)

GENERAL CONDITIONS

1. **PARTIES AND SCOPE OF WORK:** Civil Engineering Consultants, Inc. (hereinafter referred to as "CEC") shall perform professional services as set forth in CEC's proposal, the Client's acceptance thereof if accepted by CEC, and these General Conditions. "Client" refers to the person or business entity ordering the professional services to be done by CEC. The Client shall designate representatives who are authorized to make all decisions on the Client's behalf when requested to do so by CEC. If the Client is ordering professional services on behalf of another, the Client represents and warrants that the Client is the duly authorized agent of said party for the purpose of ordering and directing said professional services. Unless otherwise stated in writing, the Client assumes sole responsibility for determining whether the quantity and the nature of the professional services ordered by the Client is adequate and sufficient for the Client's intended purpose. Client shall communicate these General Conditions to each and every third party to whom the Client transmits any part of CEC's work. 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 owner or CEC. The ordering of professional services from CEC shall constitute acceptance of the terms of CEC's proposal and these General Conditions.

2. **SCHEDULING OF WORK:** CEC will perform professional services with due and reasonable diligence consistent with sound professional practices. If CEC is required to delay commencement of professional services or if, upon embarking upon its professional services, CEC is required to stop or interrupt the progress of its professional services as a result of changes in the scope of the professional services requested by the Client, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of CEC, additional charges will be applicable and payable by Client.

3. **ACCESS TO SITE:** Client will arrange and provide such access to the site as is necessary for CEC to perform professional services. CEC shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its professional services or the use of its equipment; however, CEC has not included in its fee the cost of restoration of damage which may occur. If Client desires or requires CEC to restore the site to its former condition, upon written request CEC will perform such additional professional services as is necessary to do so and Client agrees to pay CEC the cost thereof.

4. **CLIENT'S DUTY TO NOTIFY ENGINEER:** Client represents and warrants that he has advised CEC of any known or suspected hazardous materials, utility lines and pollutants at any site at which CEC is to do professional services hereunder, and unless CEC has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save CEC harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to CEC's performance of its professional services and resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof was not revealed to CEC by Client.

5. **RESPONSIBILITY:** CEC's professional services shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. CEC shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. CEC's professional services or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with the contract documents. CEC has no right or duty to stop the contractor's work.

6. **STANDARD OF CARE:** CEC'S professional services will be performed in accordance with this agreement and with generally accepted principles and practices. In performing its professional services, CEC will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession.

7. **LIMITATION OF LIABILITY:** In recognition of the relative risks and benefits of the Project to both the Client and CEC, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of CEC to the client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney fees and cost, and expert-witnesses fees and costs, so that the total aggregate liability of CEC to the Client shall not exceed \$50,000.00 or CEC's total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

8. **PRICING ESTIMATES:** CEC has no control over the costs of labor, materials, equipment, over contractors' methods of determining bid prices, or over competitive bidding, market or negotiation conditions. Accordingly, CEC cannot and does not warrant or represent that bids or negotiated prices will not vary from any established budgetary constraints. Client may perform its own cost analysis or retain its own cost consultant and shall be solely responsible for the accuracy and preparation of cost estimates at each appropriate stage of the project.

9. **ADDITIONAL SERVICES:** Client may request or it may become necessary for CEC to perform Additional Services in order to further the objectives of the project. Whenever reasonably possible, CEC will notify Client in advance of CEC's intention to perform the particular Additional Service, and Client's failure to instruct CEC not to perform the Additional Service shall be considered Client's acquiescence to the performance of the Additional Service and agreement to pay for it. Notwithstanding any other description of Basic or Additional Services, any services which Client requests CEC to perform after final payment has been made to the contractor(s) or more than sixty (60) days after the project has been certified to be substantially complete shall be considered Additional Services. Any modifications or changes requested by Client inconsistent with Client's prior approval(s) shall be considered Additional Services. CEC shall be entitled to rely on the accuracy of any drawings or other information supplied to it by Client, its employees, representatives or other consultants, and any services necessitated because of an error or omission in any drawing or other information supplied by Client, its employees, representatives or other consultants shall be an Additional Service. Additional

Services shall be billed at CEC's normal hourly rates, and Client shall pay such charges above and beyond any charges for Basic Services set forth in the Proposal.

10. CONSTRUCTION ADMINISTRATION: CEC shall have no responsibility for construction administration unless explicitly described in the Proposal. If construction observation services are performed, CEC shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work, for any defects, deficiencies or other acts or omissions of the contractor or any other persons performing any of the construction work or for the failure of any of them to carry out the work in accordance with the plans and specifications. CEC's visits to the construction site shall be for the purpose of becoming generally familiar with the progress and the quality of the construction work and to determine in general if the work when completed will be in accordance with the plans and specifications, and CEC is not authorized to stop the construction work or take any other action relating to job site safety. If CEC reviews contractors' applications for payment, such reviews shall be made to the best of CEC's knowledge, information and belief based on CEC's limited observation of the construction work, and CEC shall be entitled to rely on documentation submitted by the contractor(s) or others which is not inconsistent with CEC's own observations. If the Client requests in writing that CEC provide any specific construction phase services and if CEC agrees in writing to provide such services, then CEC shall be compensated for Additional Services.

11. CLAIMS: Client acknowledges that CEC is a corporation and agrees to make any claim arising out of or relating to the project against CEC only, and not against any of CEC's directors, officers, employees or agents.

12. INSURANCE: CEC shall endeavor to keep and maintain its current insurance policies, including professional liability insurance and comprehensive general liability insurance, for the duration of the project. If Client desires additional insurance, CEC shall endeavor to obtain the additional insurance, but Client shall reimburse CEC for any additional premium or other related costs that CEC thereby incurs. Client will use its best efforts to ensure that the construction contractor(s) name CEC as an additional insured on their comprehensive general liability insurance policies and agree to indemnify Client and CEC in language reasonably satisfactory to both Client and CEC.

13. TERMINATION: This Agreement may be terminated, by either party, upon giving seven days' of prior written notice. In the event of termination, CEC shall be compensated by the Client for all services performed up to and including the termination date, including reimbursable expenses, and for the completion of such services, records and reports as are necessary to place CEC's files in order and/or protect its professional reputation.

14. WITNESS FEES: CEC's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay CEC's legal expenses, administrative costs and fees pursuant to CEC's then current fee schedule for CEC to respond to any subpoena.

15. PAYMENT: Client shall be invoiced as professional services are completed and reported, at CEC's option,

either monthly or at end of project. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay CEC's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees. CEC shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, and provision wherein CEC waives any rights to a mechanics' lien, or any provision conditioning CEC's right to receive payment for its professional services upon payment to Client by any third party. These General Conditions are notice, where required, that CEC shall file a lien whenever necessary to collect past due amounts. Failure to make payment within 30 days of invoice shall constitute a release of CEC from any and all claims which Client may have, either in tort or contract, and whether known or unknown at the time.

16. LATE PAYMENTS: Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% on the then unpaid balance (18.0% true annual rate), at the sole election of CEC. In the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

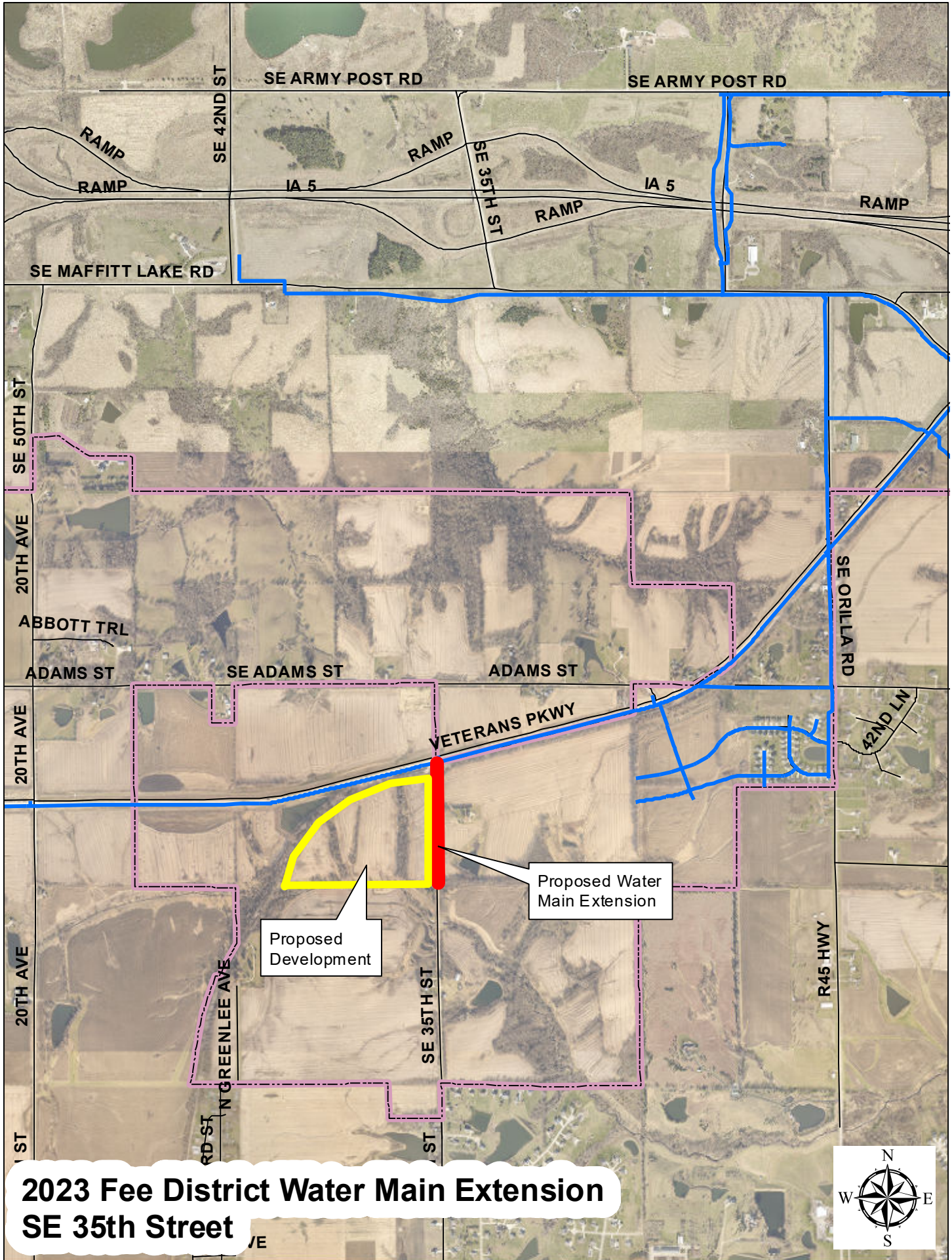
17. ENTIRE AGREEMENT: This agreement constitutes the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.

18. INDEMNIFICATION: The Client shall indemnify and hold harmless Civil Engineering Consultants, Inc. and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of professional services, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent act, omission, and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except CEC), or anyone for whose acts any of them may be liable.

19. MISCELLANEOUS: To the extent within Client's control, CEC shall have the right to take photographs, and make other reasonable promotional use of the project, and CEC shall be given appropriate credit on all construction signs or other promotional materials concerning the project. Client may accept CEC's Proposal either by signature, or oral assent, authorizing CEC to commence providing professional services or making any payments to CEC in consideration of professional services, and any of the above modes of acceptance shall be deemed to incorporate these Business Terms into the contract between the parties thereby formed.

20. OWNERSHIP OF DOCUMENTS: All documents produced by Civil Engineering Consultants, Inc. under this agreement shall remain the property of Civil Engineering Consultants, Inc. and may not be used by the Client for any other endeavor without written consent.

Initials _____



**2023 Fee District Water Main Extension
SE 35th Street**

Proposed Water Main Extension

Proposed Development

