

**Memorandum  
Public Works Department**



**To:** City Manager  
**Subject:** Neighborhood Water Improvement Program, Phase 1  
Project 2678  
**Date:** July 29, 2012  
**Number:** 2012-167

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Attached is a proposed agreement for professional services with Shive-Hattery, Inc. for engineering design and construction inspection services for phase 1 of the Neighborhood Water Improvement Program. The Engineering Division solicited qualifications from engineering firms for design and construction inspection services and Shive-Hattery was selected and approved by the City Council at their July 9, 2012 meeting.

Phase 1 of the Neighborhood Water Improvement Program is to upgrade the existing 6-inch and 4-inch water mains with new 8-inch water main along 12<sup>th</sup> Avenue, between 20<sup>th</sup> and 23<sup>rd</sup> Streets.

Shive-Hattery proposes to provide these additional engineering services at their standard hourly rates at an estimated total cost of \$8,900.

**Recommendation**

The Public Works Department recommends that the City Council approve the agreement for professional services with Shive-Hattery, Inc. at a total estimated fee of \$8,900 and that the City Manager be authorized to sign the agreement on behalf of the City of Rock Island.

**Submitted by:** Robert T. Hawes, P.E., Assistant City Manager/Public Works Director  
Michael J. Kane, P.E., City Engineer

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**Approved by:** Thomas Thomas, City Manager

## **PROFESSIONAL SERVICES AGREEMENT**

**ATTN:** Mike Kane  
**CLIENT:** City of Rock Island, IL  
1528 3rd Avenue  
Rock Island, IL 61201

**PROJECT:** Rock Island 12th Ave 20th/23rd St. Water Main

**PROJECT LOCATION:** Rock Island, IL

**DATE OF AGREEMENT:** July 18, 2012

### **PROJECT DESCRIPTION**

Your project is the construction of approximately 1,000 feet of 8-inch water main on 12th Avenue, between 20th and 23rd Streets. It is our understanding that the City does not intend on reconstructing the street and prefers a project with minimum surface restoration and water service down time. We will explore directional drilling and pipe bursting construction methods along with hot taps to minimize project related inconveniences. Our services will include survey, preliminary design, preparation of construction and bidding documents, permitting, and bidding and construction services.

### **SCOPE OF SERVICES**

We will provide the following services for the project:

1. Preliminary Design Phase
  - A. Meet with you to discuss your goals and objectives for this project. Minutes of this and all meetings will be issued within 3 business days of this and all subsequent meetings.
  - B. Conduct a limited topographic survey of the project site (north side of 12<sup>th</sup> Avenue only). Additional information regarding the project area will be obtained using aerial mapping.
  - C. Prepare a base map of existing features in the project area. Features will include those items critical to completion of the project and will also include visible right of way markers.
  - D. Complete conceptual designs and prepare a preliminary Opinion of Probable Construction Costs for each viable alternate. Develop a recommended design approach that will minimize surface restoration costs and user down time and other project related neighborhood inconveniences and submit for your review and comment.
  - E. Complete preliminary design and prepare an initial plan layout and prepare a preliminary Engineer's Opinion of Probable Construction Costs.
  - F. Meet with the City to review the 30% plan set.
  - G. Facilitate a resident meeting to discuss project.
2. Final Design and Construction Documents Phase
  - A. Develop design, construction and bidding documents based on 30% review comments. The document set will include contract documents, construction plans, construction details, and technical specifications.
  - B. Update the Engineer's Opinion of Probable Construction Cost.



- C. Submit Engineer's Opinion of Probable Construction Cost and construction and bidding documents to you for your review and comments.
  - D. Meet with you to review the 80% complete set of construction documents.
  - E. Finalize the construction documents and bidding documents incorporating your review comments from the 80% complete set.
  - F. Submit final construction and bidding documents to you for your final review.
3. Permitting Phase
- A. Prepare and submit the Application of Water Main Construction Permit to the City of Rock Island, assuming the City of Rock Island has IL-EPA water main permit delegation authority for pipe bursting and/or directional drilling construction methods. If they do not the permit application will be submitted to the IL-EPA.
  - B. Follow up with the City and/or IL - EPA until a water main construction permit is obtained, including revisions to documents, if necessary.
4. Bidding Phase
- A. Place advertisement for bid in local newspaper.
  - B. Distribute documents to contractors.
  - C. Answer contractor inquiries regarding plans and specifications during the bidding phase.
  - D. Prepare addenda, if necessary.
  - E. Facilitate bid opening and prepare bid tabulation and a letter of recommended action for the City Council to act upon.
5. Construction Engineering Phase
- A. Preparation of construction contracts.
  - B. Facilitate a pre-construction meeting.
  - C. Provide contract administration.
    - 1) Preparation of partial and final pay estimates.
    - 2) Preparation and negotiation of change orders, if necessary
  - D. Provide construction observation and documentation:
  - E. Schedule and facilitate construction progress meetings.
  - F. Prepare a punch list of items to be completed prior to close out of the project.
  - G. Prepare record drawings based off of notes on the contractors drawings and submit to the City in AutoCAD 2010 format.
  - H. Prepare other close out documents in accordance with the construction contact.

### **CLIENT RESPONSIBILITIES**

It will be your responsibility to provide the following:

1. Identify a Project Representative with full authority to act on behalf of the Client with respect to this project. The Client Project Representative shall render decisions in a timely manner in order to avoid delays of Shive-Hattery's services.

2. Legal, accounting, and insurance counseling services or other consultants, including geotechnical, or vendors that may be necessary. The Client shall coordinate these services with those services provided by Shive-Hattery.
3. Provide to Shive-Hattery any available drawings, survey plats, testing data and reports related to the project, either hard copy or electronic media. Electronic media is preferred.
4. Unless specifically included in the Scope of Services to be provided by Shive-Hattery, the Client shall furnish tests, inspections, permits and reports required by law, regulation or code including but not limited to hazardous materials, structural, mechanical, chemical, air pollution and water pollution tests.

**SCHEDULE**

We will begin our services upon receipt of the executed Agreement which will serve as a notice to proceed. The services shall be performed in accordance with the following schedule:

- Preliminary Design Phase 3 weeks
- Final Design and Construction Document Phase 2 weeks after City approval of design
- Permitting Phase 3 weeks\*
- Construction Engineering Phase In accordance with the selected Contractor's schedule. We have assumed a 4 week construction period.

\*Schedule assumes the City has IL-EPA water main permit delegation authority for pipe bursting and/or directional drilling construction methods. If they do not, permitting may take 90 days.

**COMPENSATION**

Description	Fee	Fee Type	Reimbursable Expenses
Scope of Services Items A - D	\$8,900	Fixed Fee	Direct expense
Scope of Services - Item E		Hourly (without a max)	Direct expense

Fee Types:

- Fixed Fee - We will provide the Scope of Services for the fee amount(s) listed above.
- Hourly (without a max) - We will provide the Scope of Services on an hourly rate basis at our Standard Hourly Fee Schedule in effect at the time that the services are performed.

Reimbursable Expenses:

- The Reimbursable Expenses will be invoiced in accordance with our Reimbursable Expense Fee Schedule in effect at the time that the expense is incurred.

The terms of this proposal are valid for 30 day(s) from the date of this proposal.

### **ADDITIONAL SERVICES**

The following are additional services you may require for your project. We can provide these services but they are not part of this proposal at this time.

1. Design of additional infrastructure in the project area.
2. Attendance at additional meetings.
3. Revisions to the documents after they have been approved by the City staff.

### **OTHER TERMS**

#### **STANDARD TERMS AND CONDITIONS**

© May 2012 Shive-Hattery, Inc.

#### **PARTIES**

"S-H" shall mean Shive-Hattery, Inc. "CLIENT" shall mean the person or entity executing this Agreement with "S-H."

#### **LIMITATION OF LIABILITY AND WAIVER OF CERTAIN DAMAGES**

The CLIENT agrees, to the fullest extent of the law, to limit the liability of S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, to the CLIENT and any person or entity claiming by or through the CLIENT, for any and all claims, damages, liabilities, losses, costs, and expenses including reasonable attorneys' fees, experts' fees, or any other legal costs, in any way related to the Project or Agreement from any cause(s) to an amount that shall not exceed the compensation received by S-H under the agreement or fifty thousand dollars (\$50,000), whichever is greater. The parties intend that this limitation of liability apply to any and all liability or cause of action, claim, theory of recovery, or remedy however alleged or arising, including but not limited to negligence, errors or omissions, strict liability, breach of contract or warranty, express, implied or equitable indemnity and all other claims, which except for the limitation of liability above, the CLIENT waives.

CLIENT hereby releases S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, and none shall be liable to the CLIENT for consequential, special, exemplary, punitive, indirect or incidental losses or damages, including but not limited to loss of use, loss of product, cost of capital, loss of goodwill, lost revenues or loss of profit, interruption of business, down time costs, loss of data, cost of cover, or governmental penalties or fines.

#### **INDEMNIFICATION**

Subject to the limitation of liability in this Agreement, S-H agrees to the fullest extent permitted by law, to indemnify and hold harmless the CLIENT, its officers, directors, shareholders, employees, contractors, subcontractors and consultants against all claims, damages, liabilities, losses or costs, including reasonable attorneys' fees, experts' fees, or other legal costs to the extent caused by S-H's negligent performance of service under this Agreement and that of its officers, directors, shareholders, and employees.

The CLIENT agrees to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants, and affiliated companies against all damages, liabilities, losses, costs, and expenses including, reasonable attorneys' fees, expert's fees, and any other legal costs to the extent caused by the acts or omissions of the CLIENT, its employees, agents, contractors, subcontractors, consultants or anyone for whom the CLIENT is legally liable.

#### **HAZARDOUS MATERIALS - INDEMNIFICATION**

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold S-H, its officers, directors, shareholders, employees, agents, consultants and affiliated companies, and any of them harmless from and against any and all claims, liabilities, losses, costs, or expenses including reasonable attorney's fees, experts' fees and any other legal costs (including without limitation damages to property, injuries or death to persons, fines, or penalties), arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, polychlorinated biphenyl, petroleum contaminants spores, biological toxins, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

### **STANDARD OF CARE**

Services provided by S-H under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances on projects of similar size, complexity, and geographic location as that of the Project. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

### **RIGHT OF ENTRY**

The CLIENT shall provide for entry for the employees, agents and subcontractors of S-H and for all necessary equipment. While S-H shall take reasonable precautions to minimize any damage to property, it is understood by the CLIENT that in the normal course of the project some damages may occur, the cost of correction of which is not a part of this Agreement.

### **PAYMENT**

Unless otherwise provided herein, invoices will be prepared in accordance with S-H's standard invoicing practices then in effect and will be submitted to CLIENT each month and at the completion of the work on the project. Invoices are due and payable upon receipt by the CLIENT. If the CLIENT does not make payment within thirty (30) days after the date the invoice was mailed to the CLIENT, then the amount(s) due S-H shall bear interest due from the date of mailing at the lesser interest rate of 1.5% per month compounded or the maximum interest rate allowed by law. In the event that S-H files or takes any action, or incurs any costs, for the collection of amounts due it from the client, S-H shall be entitled to recover its entire cost for attorney fees and other collection expenses related to the collection of amounts due it under this Agreement. Any failure to comply with this term shall be grounds for a default termination.

### **TERMINATION**

Either party may terminate this Agreement for convenience or for default by providing written notice to the other party. If the termination is for default, the non-terminating party may cure the default before the effective date of the termination and the termination for default will not be effective. The termination for convenience and for default, if the default is not cured, shall be effective seven (7) days after receipt of written notice by the non-terminating party. In the event that this Agreement is terminated for the convenience of either party or terminated by S-H for the default of the CLIENT, then S-H shall be paid for services performed to the termination effective date, including reimbursable expenses due, and termination expenses attributable to the termination. In the event the CLIENT terminates the Agreement for the default of S-H and S-H does not cure the default, then S-H shall be paid for services performed to the termination notice date, including reimbursable expenses due, but shall not be paid for services performed after the termination notice date and shall not be paid termination expenses. Termination expenses shall include expenses reasonably incurred by S-H in connection with the termination of the Agreement or services, including, but not limited to, closing out Project records, termination of subconsultants and other persons or entities whose services were retained for the Project, and all other expenses directly resulting from the termination.

### **INFORMATION PROVIDED BY OTHERS**

S-H shall indicate to the CLIENT the information needed for rendering of services hereunder. The CLIENT shall provide to S-H such information, including electronic media, as is available to the CLIENT and the CLIENT's consultants and contractors, and S-H shall be entitled to rely upon the accuracy and completeness thereof. The CLIENT recognizes that it is difficult for S-H to assure the accuracy, completeness and sufficiency of such client-furnished information, either because it is provided by others or because of errors or omissions which may have occurred in assembling the information the CLIENT is providing. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them, from and against any and all claims, liabilities, losses, costs, expenses (including reasonable attorneys' fees, experts' fees, and any other legal costs) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the CLIENT.

### **UNDERGROUND UTILITIES**

Information for location of underground utilities may come from the CLIENT, third parties, and/or research performed by S-H or its subcontractors. S-H will use the standard of care defined in this Agreement in providing this service. The information that S-H must rely on from various utilities and other records may be inaccurate or incomplete. Therefore, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them for all claims, losses, costs and damages arising out of the location of underground utilities provided or any information related to underground utilities by S-H under this Agreement.

### **CONTRACTOR MATTERS**

CLIENT agrees that S-H shall not be responsible for the acts or omissions of the CLIENT's contractor, or subcontractors, their employees, agents, consultants, suppliers or arising from contractor's or subcontractors' work, their employees, agents, consultants, suppliers or other entities that are responsible for performing work that is not in conformance with the construction Contract Documents, if any, prepared by S-H under this Agreement. S-H shall not have responsibility for means, methods, techniques, sequences, and progress of construction of the contractor, subcontractors, agents, employees, agents, consultants, or other entities. In addition, CLIENT agrees that S-H is not responsible for safety at the project site and that safety during construction is for the CLIENT to address in the contract between the CLIENT and contractor.

### **SHOP DRAWING REVIEW**

If, as part of this Agreement S-H reviews and approves Contractor submittals, such as shop drawings, product data, samples and other data, as required by S-H, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. S-H's review shall be conducted with reasonable promptness while allowing sufficient time in S-H's judgment to permit adequate review. Review of a specific item shall not indicate that S-H has reviewed the entire assembly of which the item is a component. S-H shall not be responsible for any deviations from the contract documents not brought to the attention of S-H in writing by the Contractor. S-H shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

### **OPINIONS OF PROBABLE COST**

If, as part of this Agreement S-H is providing opinions of probable construction cost, the CLIENT understands that S-H has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that S-H's opinions of probable construction costs are to be made on the basis of S-H's qualifications and experience. S-H makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

### **CONSTRUCTION OBSERVATION**

If, as part of this Agreement S-H is providing construction observation services, S-H shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. Unless otherwise specified in the Agreement, the CLIENT has not retained S-H to make detailed inspections or to provide exhaustive or continuous project review and observation services. S-H does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, its subcontractors, employees, agents, consultants, suppliers or any other entities furnishing materials or performing any work on the project.

S-H shall advise the CLIENT if S-H observes that the contractor is not performing in general conformance of Contract Documents. CLIENT shall determine if work of contractor should be stopped to resolve any problems.

### **OTHER SERVICES**

The CLIENT may direct S-H to provide other services including, but not limited to, any additional services identified in S-H's proposal. If S-H agrees to provide these services, then the schedule shall be reasonably adjusted to allow S-H to provide these services. Compensation for such services shall be at S-H's Standard Hourly Fee Schedule in effect at the time the work is performed unless there is a written Amendment to Agreement that contains an alternative compensation provision.

### **OWNERSHIP & REUSE OF INSTRUMENTS OF SERVICE**

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by S-H as instruments of service shall remain the property of S-H. The CLIENT shall not reuse or make any modifications to the plans and specifications without the prior written authorization of S-H. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless S-H its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them from any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to any unauthorized reuse or modifications of the construction documents by the CLIENT or any person or entity that acquires or obtains the plans and specifications from or through the CLIENT without the written authorization of S-H.

### **DISPUTE RESOLUTION**

If a dispute arises between S-H and CLIENT, the executives of the parties having authority to resolve the dispute shall meet within thirty (30) days of the notification of the dispute to resolve the dispute. If the dispute is not resolved within such thirty (30) day time period, CLIENT and S-H agree to submit to non-binding mediation prior to commencement of any litigation and that non-binding mediation is a precondition to any litigation. Any costs incurred directly for a mediator, shall be shared equally between the parties involved in the mediation.

### **EXCUSABLE EVENTS**

S-H shall not be responsible for any event or circumstance that is beyond the reasonable control of S-H that has a demonstrable and adverse effect on S-H's ability to perform its obligations under this Agreement or S-H's cost and expense of performing its obligations under this Agreement (an "Excusable Event"), including without limitation, a change in law or applicable standards, actions or inactions by a governmental authority, the presence or encounter of hazardous or toxic materials on the Project, war (declared or undeclared) or other armed conflict, terrorism, sabotage, vandalism, riot or other civil disturbance, blockade or embargos, explosion, epidemic, quarantine, strike, lockout, work slowdown or stoppage, accident, act of God, failure of any governmental or other regulatory authority to act in a timely manner, unexcused act or omission by CLIENT or contractors of any level (including, without limitation, failure of the CLIENT to furnish timely information or approve or disapprove of S-H's services or work product promptly, delays in the work caused by CLIENT, CLIENT's suspension, breach or default of this Agreement, or delays caused by faulty performance by the CLIENT or by contractors of any level). When an Excusable Event occurs, the CLIENT agrees S-H is not responsible for damages, nor shall S-H be deemed to be in default of this Agreement, and S-H shall be

entitled to a change order to equitably adjust for S-H's increased time and/or cost to perform its services due to the Excusable Event.

**ASSIGNMENT**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

**SEVERABILITY, SURVIVAL AND WAIVER**

Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the CLIENT and S-H shall survive the completion of the services hereunder and the termination of this Agreement. The failure of a party to insist upon strict compliance of any term hereof shall not constitute a waiver by that party of its rights to insist upon strict compliance at a subsequent date.

**GOVERNING LAW**

This Agreement shall be governed pursuant to the laws in the state of the locale of the S-H office address written in this Agreement.

**EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of S-H to provide equal employment opportunities for all. S-H enforces the following acts and amendments as presented by Federal government or State governments: Title VII of the Civil Rights Act of 1965, Age Discrimination in Employment ACT (ADEA), Americans With Disabilities Act (ADA), Iowa Civil Rights Act of 1965, and Illinois Human Rights Act [ 775ILCS 5]. S-H will not discriminate against any employee or applicant because of race, creed, color, religion, sex, national origin, gender identity, sexual orientation, marital status, ancestry, veteran status, or physical or mental handicap, unless related to performance of the job with or without accommodation.

**COMPLETE AGREEMENT**

This Agreement constitutes the entire and integrated agreement between the CLIENT and S-H and supersedes all prior negotiations, representations and agreements, whether oral or written. If the CLIENT issues a Purchase Order of which this Agreement becomes a part, the terms of this Agreement shall take precedence in the event of a conflict of terms.

**AGREEMENT**

This proposal shall become the Agreement for Services when accepted by both parties. Original, facsimile, electronic signatures or other electronic acceptance by the parties (and returned to Shive-Hattery) are deemed acceptable for binding the parties to the Agreement. The Client representative signing this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of the Client.

Thank you for considering this proposal. We look forward to working with you. If you have any questions concerning this proposal, please contact us.

Sincerely,

SHIVE-HATTERY, INC.



Marti Ahlgren, Project Manager  
mahlgren@shive-hattery.com



Daniel C. Solchenberger, P.E.  
dsolchenberger@shive-hattery.com

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***AGREEMENT ACCEPTED AND SERVICES AUTHORIZED TO PROCEED***

**CLIENT:** City of Rock Island, IL

**BY:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_  
(signature)

**PRINTED NAME:** \_\_\_\_\_ **DATE ACCEPTED:** \_\_\_\_\_