

CITY OF BATAVIA

DATE: January 11, 2013
TO: Public Utilities Committee
FROM: Mustafa Kahvedzic, Project Engineer
SUBJECT: Resolution 13-08-R Authorizing Execution of Master Service Agreement with EEC, P.C.

Summary:

- The City of Batavia Electric Utility is seeking to retain professional engineering services from Electrical Engineering Consultants, P.C., hereinafter referred to as EEC, by entering into a Master Services Agreement. EEC will work with Electric Utility Staff with various engineering tasks as they are deemed necessary. Such tasks will include the development of construction standards and designing and planning projects. The nature of the Master Services Agreement will be Task oriented where a scope of work and cost will be provided and agreed upon prior to any professional services being performed.

Staff recommendations:

- Recommend Public Utilities Committee and City Council approve Resolution 13-08-R, Authorizing Execution of Master Service Agreement with EEC, P. C.

Attachments:

1. Master Service Agreement with EEC, P.C.
2. Resolution 13-08-R

CITY OF BATAVIA, ILLINOIS
RESOLUTION 13-08-R

AUTHORIZING EXECUTION OF MASTER SERVICES AGREEMENT WITH
ELECTRICAL ENGINEERING CONSULTANTS, P.C.

WHEREAS, the City of Batavia owns and operates an electric utility whereby it purchases wholesale power and resells same to its citizens; and

WHEREAS, in connection therewith, it is necessary and appropriate to retain professional engineering services for the preparation of plans to upgrade and to improve the electric system; and

WHEREAS, the City of Batavia shall execute a Master Services Agreement with Electrical Engineering Consultants, P.C., hereinafter referred to as EEC, for Professional Engineering Services; and

WHEREAS, EEC has the appropriate expertise and experience necessary to provide the professional engineering services for the City of Batavia and has submitted qualifications for said services.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute the Master Services Agreement between EEC and the City of Batavia for professional engineering services. The Master Services Agreement between the City of Batavia and EEC Professional Corporation is attached hereto as Attachment "1".

CITY OF BATAVIA, ILLINOIS RESOLUTION 13-08-R

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 22nd day of January, 2013.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 22nd day of January, 2013.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Sparks				
2	Dietz					Wolff				
3	Jungles					Chanzit				
4	Volk					Stark				
5	Frydendall					Theelin Atac				
6	Liva					Clark				
7	Tenuta					Brown				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

Heidi Wetzell, City Clerk

AGREEMENT

THIS AGREEMENT, made this 22 day of JANUARY , 2013 by and between the CITY OF BATAVIA, (hereinafter referred to as the “City”), and ELECTRICAL ENGINEERING CONSULTANTS, P.C., (hereinafter referred to as the “Company), with regard to certain professional consulting engineering services performed by the Company per individual purchase order issued by the City (hereinafter referred to as the “Project”).

NOW THEREFORE, the City and the Company, in consideration of the mutual covenants hereinafter set forth, agree to as follows:

1. The Company agrees to perform services in connection with the Project as hereinafter stated. The Company shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, and local governments, which may in any manner affect the preparation of proposals or the performance of the Agreement.
2. The Company shall perform various electrical engineering services for the City in relation to the Project per individual purchase order issued by the City, including but not limited to the following:
 - a. Assist the City with preparation of electrical construction standards and exhibits.
 - b. Review plans, contract documents and reports prepared by others; perform value engineering; provide opinions and recommendations.
 - c. Provide design engineering services, including but not limited to the following:
 - i. Attend progress meetings, public meetings and City Committee/Council meetings as needed.
 - ii. Perform topographic and land surveying tasks.
 - iii. Prepare plans, specifications and opinions of probable construction costs.
 - iv. Prepare plats to accompany easements.
 - v. Assist City in obtaining permits.
 - vi. Provide opinions of probable construction costs
 - vii. Furnish City copies of plans and contract documents for review and comments, bidding and construction.
 - viii. Assist City in advertising and endeavoring to interest competent contractors in submitting bids; Attend pre-bid meetings and issue addenda as appropriate to clarify, correct or change the final design plans and bidding documents; Attend bid opening, prepare bid tabulation sheets, assist City in evaluating the bids received and advise the City in the matter of letting contracts for work on the basis of bids received
 - d. Provide construction engineering services, including but not limited to the following:
 - i. Provide consultation on interpretation of plans and specifications and changes under consideration as construction proceeds.
 - ii. Review shop drawings, if provided by the City.
 - iii. Conduct site visits and attend progress meetings as needed.

January 8, 2013

Re: Electrical Engineering Master Services Agreement – Electrical Engineering Consultants, P.C.

- iv. Review reports by testing laboratories on equipment and material tested, if provided by the City.
 - v. Review change orders, records and reports as needed.
 - vi. Review record drawings prepared by others.
3. This contract shall constitute the entire agreement and understanding by and between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless done so in writing with signatures by both the City and the Company.
4. The terms and conditions of this agreement shall be the sole terms and conditions followed for this Agreement, unless otherwise approved in writing by the City Attorney and attached as an exhibit to this agreement. Any and all terms and conditions contained in Company's Proposal shall be superseded by the terms and conditions of this agreement.
5. The Company shall obtain, at its own expense, all permits and licenses which may be required to complete the Agreement, and/or required by federal, state, and local regulations and laws.
6. The Company shall not discriminate on the basis of handicapped status in the admission of, access to, or treatment of employment in its programs and activities.
7. Illinois Prevailing Wages: To the extent the proposed contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. ("the Act"), and to the extent the Company's work, or any portion thereof, is subject to the Act, Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12 including, without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. The contractor is advised that failure to timely submit such reports shall be cause for the withholding of payments otherwise due the contractor until compliance with the reporting requirements is achieved. The current Illinois Department of Labor Prevailing Wage Rates for the County of Kane are available at their website <http://www.state.il.us/agency/idol/>. Prevailing wage rates are subject to revision monthly. Copies of the current prevailing wage rates are also available at the Kane County Purchasing Department, 719 Batavia Avenue, Geneva, Illinois. Certified payroll shall be timely submitted when applicable as required by law

Any bond furnished shall include such provisions as will guarantee the faithful performance of such prevailing wage clause as provided by the contract. The Contractor and each of his Sub-Contractors shall pay each of its employees engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.

If a contractor or subcontractor deems the work is not subject to the Act, the contractor or subcontractor shall then submit to the City, a letter indicating receipt of this notice and their determination that the Act does not apply. If the contractor or subcontractor believes the work is not subject to the Prevailing Wage Act, and it is later determined by the Illinois Department of Labor or a court of competent jurisdiction that prevailing wages should have been paid, the contractor shall indemnify and hold the City harmless therein for all costs and

January 8, 2013

Re: Electrical Engineering Master Services Agreement – Electrical Engineering Consultants, P.C.

penalties incurred by the City related to the violation, including reasonable attorneys fees incurred by the City to defend such an action.

8. Freedom of Information Act: Contractor acknowledges that the Freedom of Information Act, 5 ILCS 140/1 et seq. (the “Act”) places an obligation on the City to produce certain records that may be in the possession of Contractor. Contractor shall comply with the record retention and documentation requirements of the Local Records Retention Act 5 ILCS 160/1 et seq. and shall maintain all records relating to this Agreement in compliance with the Local Records Retention Act. Contractor shall review its records promptly and produce to the City within two business days of contact from the City the required documents responsive to a request under the Act. If additional time is necessary to comply with the request, the Contractor may request the City to extend the time do so, and the City will, if time and a basis for extension under the Act permits, consider such extensions.
9. Any payment made to the Company shall be strictly on the basis of quantum merit. The Company shall submit to the City a detailed breakdown of hourly rates billed to date with each pay request. The detailed breakdown shall be based on the hourly rate breakdown contained in the approved purchase order. The City will pay the Company for the performance of the Agreement as follows:
 - a. Monthly payments based on actual work satisfactorily completed, ~~less 10% retainage until final completion of the work~~
 - b. The total payment shall not exceed the agreed upon amount of the approved individual purchase order issued by the City. Compensation for services shall be in accordance with the current Engineer’s Fee Schedule (see attached Exhibit 1), or the fee schedule for the calendar year in effect at the time the work is being performed.
 - c. Additions or deductions to the approved total amount for services shall be authorized in writing by the City. Any out of scope work must be authorized in writing by the City. Any work performed without written approval from the City shall be solely at the expense of the Company.
 - d. Final payment to the Company will be made once the project has been completed, all paperwork completed and turned into the City of Batavia and/or State of Illinois, and approved with the State of Illinois and/or the City of Batavia.
10. The Company will perform those phases of the Project to which this Agreement applies, and will give consultation and advice to the City during the performance of the services.
11. The Company will provide certificates of insurance evidencing the types and limits of insurance. Each insurance company shall be acceptable to the City. The General Liability coverage shall name the City as an additional named insured. All insurance is primary, and in no event will be considered contributory to any insurance purchased by the City. All insurance will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

The Company shall not commence work under this contract until they have obtained all insurance required and such insurance has been approved by the City, nor shall the Company allow any subcontractors (hereafter Subs) to commence work on their subcontract until the same insurance has been obtained by the Sub. The Company and their Subs shall maintain all insurance for not less than one (1) year after completion of this contract.

Special Requirement: If the Company is an architectural or engineering firm, said Company shall also file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage.

12. The Company will provide the services as required herein in accordance with the Project Schedule.
13. The Company will attend conferences and visit the site of the work as may be outlined in the scope of services at any reasonable time when requested to do so by the City.
14. The Company warrants that they are technically qualified and entirely conversant with the requirements of this Project; and that they have sufficient properly trained, organized, and experienced personnel and/or subcontractors to perform the services enumerated herein.
15. The City and the Company each binds themselves and their partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, and as noted in the attachments, neither the City nor the Company shall assign, subcontract, or transfer their interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and Company.

The Company may subcontract portions of the work upon written approval from the City. These Subs shall conform, in all respects, to the applicable provisions specified and shall further be subject to approval by the City. The Company shall identify all proposed Subs who will furnish services under the terms of this proposal. The work to be done by the Subs shall be outlined in detail in the proposal submitted by the Company. None of the services to be furnished by the Company shall be subcontracted, assigned, or transferred to any other party or parties without the written consent of the City. The consent to subcontract, assign, or otherwise transfer any portion of the services to be furnished by the Company shall not be construed to relieve the Company of any responsibility for the fulfillment of this Agreement. Any request for payment to the company, for work that was subcontracted, shall be supported with a waiver of lien and contractor's affidavit indicating the subcontractor has been paid and waives any lien on the project or funds for the project.

16. Company shall indemnify, protect, defend and hold the City and its employees harmless from and against any and all claims, liabilities, judgments, costs, damages and expenses, including reasonable attorney's fees, arising out of or in any way related to the work performed pursuant to this contract, including all work performed by its employees, agents, subcontractors and assigns, except to the extent that such claim, liability, judgment, cost, damage

or expense arises from the negligence or willful misconduct of the City, its employees or agents.

17. The City agrees to review each and every phase of the Project as in the aforementioned proposal in a timely manner. Upon approval of each phase, the Company shall then proceed to the next phase.
18. All drawings, specifications, reports, and any other project documents prepared by the Company in connection with any or all of the services to be furnished thereunder shall be delivered to the City for the expressed use of the City. The Company does have the right to retain original documents, but shall cause to be delivered to the City such quality of documents so as to assure total reproducibility of the documents delivered. All information, worksheets, reports, design calculations, plans, and specifications shall be the sole property of the City unless otherwise specified in the negotiated agreement. The Company agrees that the basic survey notes and sketches, charts, computations, and other data prepared or obtained by the Company pursuant to the Agreement will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports shall be available to the City upon request.
19. The City reserves the right by written amendment to make changes in requirements, amount of work, or engineering time schedule adjustments. The Company and the City shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes.
20. The City may, at any time by written order, require the Company to stop all or part of the services required by this Agreement. Upon receipt of such an order the Company shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. The City will pay for costs associated with suspension provided, they are deemed reasonable by the City.
21. The City reserves the right to terminate the whole or any part of this Agreement, upon ten (10) calendar day's written notice to the Company. The City further reserves the right to cancel the whole or part of the Agreement, if the Company fails to perform any of the provisions in the Agreement or fails to make delivery within the time stated. The Company will not be liable to perform if situations arise by reason of acts of God or public enemy, acts of City, fires, or floods.
 - a. Should any of the key personnel identified in the Proposal become unavailable to work on the project, and no permanent substitute personnel reasonably satisfactory to the City is provided by the Company within thirty (30) days, and/or no temporary replacement personnel is provided by the Company immediately following the commencement of the subject Key Personnel's unavailability, the City may, at its election, declare such contract terminated and at an end, reserve the right to maintain and action to recover damages arising due to breach of contract.
 - b. The City reserves the right to terminate in whole or any part of this contract, upon written notice to the Company, in the event of default by the Company. Default is defined as failure of the Company to perform any of the provisions of this contract of failure to make sufficient progress so as to endanger performance of this contract in accordance

January 8, 2013

Re: Electrical Engineering Master Services Agreement – Electrical Engineering Consultants, P.C.

with its terms. In the event of default and termination, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated.

The Company shall be liable to the City for all excess costs for such similar supplies or service unless evidence is submitted to the City that in the sole opinion of the City clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the Company.

- c. Upon termination, the Company shall cause to be delivered to the City all surveys, reports, permits, agreements, calculations, drawings, specifications, partially and completed estimates, and data, as well as products of computer aided drafting, design, and writing that have been paid for by the City. Cost of termination incurred by the Company before the termination date will be reimbursed by the City only, if prior to the effective termination date, the City receives from the Company a list of actions necessary to accomplish termination and the City agrees in writing that those actions be taken. Upon receipt of the termination notice, the Company shall stop all work until said Agreement is reached.

22. The City agrees to notify the Company at least twenty-four (24) hours in advance of the need for personnel or services.

23. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including the City's Contractors, if any.

24. Any notice relating to claims for damages or relating to allegations of default shall be in writing and shall be made by certified or registered mail, postage prepaid, return receipt requested, or reliable overnight courier, to the parties as follows:

If to Company: Electrical Engineering Consultants, P.C.
Attention: President
230 Woodlawn Avenue
Aurora, IL 60506

with copy to: Mickey, Wilson, Weiler, Renzi & Andersson, P.C.
Attn: Peter K. Wilson, Jr.
2111 Plum Street
P.O. Box 787
Aurora, IL 60507

If to the City: City of Batavia
Attention: City Clerk
100 North Island Avenue
Batavia, IL 60510

January 8, 2013

Re: Electrical Engineering Master Services Agreement – Electrical Engineering Consultants, P.C.

with copies to: City of Batavia
Attention: Public Works Director
200 North Raddant Road
Batavia, IL 60510

and: City of Batavia
Attention: City Attorney
100 North Island Avenue
Batavia, IL 60510

25. This Agreement contains the entire agreement between the parties. No other writing, discussion or any other communication about possible terms is to be construed as forming part of the agreement between the parties. Any terms and conditions submitted by the Company as part of its proposal are specifically disavowed and such terms and conditions shall not supersede this Agreement.
26. This Agreement shall be binding upon the partners, heirs, successors, executors, administrators, and assigns of all the parties hereto.
27. This Agreement shall be construed in accordance with the laws of the State of Illinois. Venue for any litigation arising from this Agreement shall be limited to the Courts of the Sixteenth Judicial Circuit, Kane County, Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF BATAVIA, an Illinois
Municipality,

Company,

By: _____
Mayor

By: _____
President

Attest:

By: _____
City Clerk