

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF AN  
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND BURNS & McDONNELL**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,  
as follows:

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Burns & McDonnell (the “Consultant”), for Phase I & II engineering services related to watermain improvements for Rogers Street, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

## AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between Burns & McDonnell Engineering ("Consultant") and the Village of Downers Grove, Illinois, an Illinois municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515, ("Village").

WHEREAS, the Village wishes to retain the services of the Consultant to provide design work related to watermain improvements for the Rogers Street watermain and

WHEREAS, the Consultant is willing to perform these services for compensation and in accordance with the terms and conditions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits that will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

### **I. Scope of Services**

See attached Scope of Services-Rogers Street Watermain Replacement Project (undated) incorporated herein by reference as **Exhibit A**.

### **II. Term of Agreement**

- A. The term of this Agreement shall be one (1) year from the date first written above with two optional one year renewals in conformance with the Village Purchasing Policy or until its termination pursuant to Section V (D).

### **III. Compensation**

#### **A. Basic Fees:**

Attached hereto and herein incorporated is Rogers Street Watermain Replacement Estimate of Labor Expenses (undated)(**Exhibit B**). All fees shall be based upon the structure set forth in Exhibit B and shall not exceed the total amount of \$29, 826.85.

#### **B. Consultant Invoices:**

The Consultant shall prepare invoices that contain a reference number, the billing period, the classifications and/or names of staff, numbers of hours billed to the project (with clear itemization for hours spent), all reimbursable expenses and a total reimbursable amount for the billing period including receipts therefor, amounts billed to date, and amounts received to date.

#### **C. Prompt Payment Act:**

The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to the Consultant within 60 days of receipt of a proper bill or invoice. If

payment is not issued to the Consultant within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify the Consultant requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

#### **IV. General Terms and Conditions**

##### **A. Relationship Between the Consultant and the Village**

The relationship between the Village and the Consultant is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

##### **B. Equal Employment Opportunity**

In the event of the Consultant's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Consultant agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
2. That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the consultant's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the consultant in its efforts to comply with such Act and Rules and Regulations, the consultant will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
5. That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subconsultant. In the same manner as with other provisions of this contract, the consultant will be liable for compliance with applicable provisions of this clause by such subconsultants; and further it will promptly notify the contracting agency and the Department in the event any subconsultant fails or refuses to comply therewith. In addition, the Consultant will not utilize any subconsultant declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

#### **C. Sexual Harassment**

Consultant, as a party to a public contract, has a project specific written sexual harassment policy amended so that it:

1. Notes the illegality of sexual harassment;
2. Sets forth the State law definition of sexual harassment;
3. Describes sexual harassment utilizing examples;
4. Describes the Consultant or supplier's internal complaint process including penalties;
5. Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities, and;
6. Describes the protection against retaliation afforded under the Illinois Human Rights Act.

#### **D. Drug Free Work Place**

Consultant, as party to a public contract, certifies and agrees that it will provide a drug free workplace by:

1. Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or Consultant's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will abide by the terms of the statement; and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
2. Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's or consultant's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
3. Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
4. Notifying the contracting or granting agency within ten (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.
5. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by Section 5 of the Drug Free Workplace Act.
6. Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
7. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

#### **E. Discrimination**

Consultant, its employees and subconsultants, agree not to commit unlawful discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the Public Works Employment Discrimination Act, the U.S. Civil Rights Act and Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The equal opportunity clause of the Department of Human Rights rules is specifically incorporated herein.

The Americans with Disabilities Act (42 U.S.C. 12101) and the regulations

thereunder (28 CFR 35.130)(ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this contract, the undersigned vendor certifies that services, programs and activities provided under this contract are and will continue to be in compliance with the ADA.

**V. Insurance and Indemnification of the Village**

- A.** The Consultant shall be required to obtain, from a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, such general liability insurance as will protect the Consultant from claims, at a minimum set forth below which may arise out of or result from the Consultant's operations under this agreement and for which the Consultant may legally liable:
1. Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operation to be performed;
  2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Consultant's employees;
  3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Consultant's employees;
  4. Claims for damages insured by the usual personal injury liability coverage which are sustained: (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Consultant, or (2) by another person;
  5. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
  6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
  7. Claims for damages as a result of professional or any other type of negligent action by the Consultant or failure to properly perform services under the scope of the agreement between the Consultant and the Village.
- B.** The Consultant shall demonstrate having such insurance coverage for a minimum of \$2 million for professional liability (errors and omissions).
- C.** As evidence of said coverages, Consultant shall provide the Village with certificates of insurance naming the Village of Downers Grove as an additional insured and include a provision for cancellation only upon at least 30 days prior notice to the Village. In addition, the Consultant shall indemnify and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent action on the part of the Consultant or any sub-consultant to the Consultant under the Consultant's agreement with the Village.

**D. Termination**

In the event of the Consultant's nonperformance, breach of the terms of the Agreement, or for any other reason, the Agreement may be canceled, in whole or in

part, upon the Village's written notice to the Consultant. The Village will pay the Consultant's costs actually incurred as of the date of receipt of notice of default. Upon termination, the Consultant will deliver all documents and products of whatever kind, and their reproducible originals related to the project, which have been produced to the date of the notice of default.

#### **E. Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the County of DuPage.

#### **F. Successors and Assigns**

The terms of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Agreement in whole or in part without the prior written approval of the other.

#### **G. Waiver of Contract Breach**

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

#### **H. Amendment**

This Agreement will not be subject to amendment unless made in writing and signed by all parties.

#### **I. Indemnification**

The Consultant will indemnify and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent action on the part of the Consultant or any sub-consultants under this Agreement. This indemnification does not apply to liability caused by the Village's own negligence.

#### **J. Severability of Invalid Provisions**

If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

#### **K. Assignment**

The Consultant will not assign or subcontract any portion of this Agreement, unless the Village agrees to the assignment or subcontract in writing. Any assignment will not relieve the Consultant from its obligations or change the terms of this Agreement.

The Consultant will provide a list of key staff, titles, responsibilities, and contact information to include all expected sub consultants.

#### **L. Campaign Disclosure**

Any contractor, proposer, Proposer or vendor who responds by submitting a bid or proposal to the Village of Downers Grove shall be required to submit with its bid submission, an executed Campaign Disclosure Certificate, attached hereto as **Exhibit C**.

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the bid documents, contractor/proposer/Proposer/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

#### **M. Notice**

Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to designated representatives of both parties as follows:

**Village Manager  
Village of Downers Grove  
801 Burlington Ave.  
Downers Grove, IL 60515**

**Burns & McDonnell Engineering  
1431 Opus Place  
Suite 400  
Downers Grove, Illinois 60515**



IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.

Burns & McDonnell Engineering

By: [Signature]

Title: A.V.P.

Date: 10/23/08

Village of Downers Grove

By: \_\_\_\_\_

Title: Village Manager

Date: \_\_\_\_\_

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## Scope of Services -- Rogers Street Water Main Replacement Project



### Work Plan

The following section details the requested scope of work and work plan that will be utilized by Burns & McDonnell in performance of this project. Burns & McDonnell is pleased to perform the following tasks in providing engineering services for this project:

#### Preliminary Engineering Phase I

- Task 1. Project Initiation Meeting**  
Burns & McDonnell will meet with Village representatives to review proposed scope, schedule and project milestones.
- Task 2. Data Collection and Deliverables Identification**  
As part of this task, Burns & McDonnell will contact I.U.I.E. and request information for all utilities located in the project area. Once base sheets have been created, Burns & McDonnell will meet with the Village to finalize the routing to be used for design. We have assumed that the Village of Downers Grove requirements and standards will be the primary standards used for the project. These will be supplemented if necessary with the Standard Specifications for Water and Sewer Construction in Illinois and the Illinois Department of Transportation (IDOT) Standards.
- Task 3. Preliminary Plan Preparation and Review**  
Burns & McDonnell will prepare construction plans, per Downers Grove requirements, and detail sheets. The plans shall contain all necessary information to allow bidding and construction by contractors. Plans shall be prepared on 24" by 36" paper. Burns & McDonnell will submit preliminary plans to the Village and utility companies for review and comment at the 50% level of completion.

#### Design Engineering Phase II

- Task 4. Pre-Final Plans and Specifications**  
Burns & McDonnell will prepare 95% Pre-Final Plans and Specifications including the Project Manual using the Village of Downers Grove Standards. The contract documents shall include all required bidding documents based on estimated pay item quantities and unit prices, supplemental standard specifications to meet job specific and Village requirements and appropriate appendices. Contract documents shall be prepared in Microsoft Word format. Five (5) sets of pre-final plans and specifications including Project Manual (bid forms, instructions to bidders, bond requirements, special provisions, and contractual forms), engineer's cost estimate, and anticipated project schedule for construction will be submitted to the Village for review at 95% completion.
- Task 5. Obtain Required Permits**  
Burns & McDonnell will identify permit requirements for the project, furnish the engineering data necessary and assist the Village in preparing the documents necessary to obtain the required permits of such governmental authorities, such as

IEPA, that have jurisdiction over the design criteria applicable to the Project. Burns & McDonnell will submit the permit applications at the times appropriate for inclusion into final design and construction scheduling.

**Task 6.**

**Meetings with Village Personnel and Final Plans and Contract Documents**

Burns & McDonnell will meet with the Village personnel to obtain their comments regarding the preliminary plans and contract documents. Revisions will be made to the plans and contract documents as necessary and a disposition of comments will be provided. Five copies of the final plans, specifications, contractual documents, and any other necessary work to cause the Rogers Street Water Main Replacement project to proceed with and through the Village's formal bidding process will be submitted to the Village. A final engineer's opinion of probable construction cost based on the completed plans and contract documents will be submitted with Final Plans and Contract Documents.

**Task 7.**

**Bidding Support**

Burns & McDonnell will furnish up to twenty-five (25) copies of the plans and contract documents in final form ready for bid advertisement. We will submit a list of Contractors qualified to bid on and complete the work. After discussing the list, we will contact selected contractors notifying them of the project and bid date. We will also assist the Village in advertising for the project in local and regional project publications, as requested.

**Task 8.**

**Pre-bid Conference**

Burns & McDonnell will conduct a pre-bid conference and prepare any Addenda that may be necessary to clarify the Contract Documents. Burns & McDonnell will respond to bidder questions.

**Task 9.**

**Bid Recommendation Support**

Burns & McDonnell will review bids, prepare a bid tabulation, make reference checks, make a recommendation for contract award, and attend a project pre-construction meeting. We will assist the Village in preparing construction contracts.

# Exhibit B

## Village of Downers Grove Rogers Street Watermain Replacement Estimate of Labor Expenses

Client: Village of Downers Grove  
Project: Professional Engineering Services for Rogers Street Watermain Replacement  
Location: Village of Downers Grove



Overhead Rate = 1.445  
Complexity Factor (CF) = 14.5%

Item Description	Hours	Payroll	Overhead and Burden	Traffic/Direct Costs	Fixed Fee	Services by Others	Total
Task 1: Project Initiation Meeting	4	\$171.42	\$247.70		\$60.77		\$479.89
Task 2: Data Collection and Deliverable Identification	10	\$412.86	\$596.58		\$146.37		\$1,155.81
Task 3: Preliminary Plan Preparation and Review	56	\$2,283.56	\$3,278.07	\$82.00	\$804.26		\$6,447.89
Task 4: Preliminary Plans and Specifications	104	\$4,173.12	\$6,055.94	\$201.00	\$1,489.88		\$12,919.94
Task 5: Obtain Required Permits	6	\$231.44	\$338.16	\$23.00	\$65.80		\$658.40
Task 6: Meet with Peers, Clients & Council Documents	84	\$2,928.36	\$4,248.24		\$851.59		\$7,928.19
Task 7: Bidding Support	7	\$263.57	\$381.10		\$102.82		\$747.49
Task 8: Pre-bid Conferences	4	\$156.70	\$228.24		\$65.84		\$450.78
Task 9: Bid Process Management Support	3	\$117.99	\$171.18		\$45.81		\$334.98
<b>TOTAL</b>	<b>298</b>	<b>\$10,622.50</b>	<b>\$15,191.50</b>	<b>\$396.00</b>	<b>\$2,706.26</b>		<b>\$28,916.26</b>



Exhibit C

Professional Services

CONSULTANT'S CERTIFICATION

Consultant, BURNS & MCDONNELL ENGINEERING CO., INC., hereby certifies that it is not barred from agreeing to this contract for:

Phase I & II design work related to water main improvements for the Rogers Street Watermain

as a result of a violation of either Section 720 ILCS 5/33E-3 and 720 ILCS 5/33E-4 of Article 33E of Chapter 31 of the Illinois Compiled Statutes.

Consultant further certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue, or that consultant is contesting its liability for the tax delinquency or the amount of a tax delinquency, in accordance with the procedures established by the appropriate Revenue Act. Consultant further certifies that if it owes any tax payment(s) to the Department of Revenue, Consultant has entered into an agreement with the Department of Revenue for the payment of all such taxes that are due, and Consultant is in compliance with the agreement.

By: [Signature] Consultant's Authorized Agent

[Boxed ID Number] FEDERAL TAXPAYER IDENTIFICATION NUMBER

Subscribed and sworn to before me this 15 day of Oct, 20 08. [Signature] Notary Public

or Erin Hartigan NAME 305-56-6094 Social Security Number



By signing the bid documents, contractor/proposer/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

[ ] Bidder/vendor has not contributed to any elected Village position within the last five (5) years.

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

[X] Bidder/vendor has contributed to a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information: Name of Contributor: Burns & McDonnell (company or individual)

To whom contribution was made: Mayor's Golf Outing

Year contribution made: 2006 Amount: \$ 500.00

[Signature] Signature Randy Patchett Print Name