



# City of Muscatine

ITEM NUMBER 2022-0342

## AGENDA ITEM SUMMARY

DATE: 8/18/2022

### STAFF

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Pat Lynch, City Engineer

### SUBJECT

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Request to Enter into a Professional Services Agreement with Martin & Whitacre Surveyors & Engineers, Inc. for West Hill Sewer Project

### EXECUTIVE SUMMARY

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Presented for City Council's consideration is a request to enter into a Professional Services Agreement with Martin & Whitacre Surveyors & Engineers, Inc. for \$45,000 for the creation of 28 Permanent Easement Plats for the West Hill Sewer Separation Project, Phase 6 (WHSSP-PH6).

### STAFF RECOMMENDATION

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Staff recommends City Council approve the request to enter into a Professional Services Agreement with Martin & Whitacre Surveyors & Engineers, Inc. This agreement will allow Martin & Whitacre to assist the Public Works Department with the creation of 28 Permanent Easement Plats for the WHSSP-PH6. This will allow staff to begin negotiations with the affected property owners.

### BACKGROUND/DISCUSSION

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This is Phase 6 of the West Hill Sewer Separation Project that started in 2013 and is scheduled to run through 2028. The proposed schedule for this phase is shown below:

|  |            |
|--|------------|
| SET PUBLIC HEARING FOR FEBRUARY 02, 2023 | 01-19-2023 |
| HOLD PUBLIC HEARING                      | 02-02-2023 |
| APPROVE PLANS AND SPECIFICATIONS         | 02-16-2023 |
| RECEIVE AND OPEN BIDS                    | 03-07-2023 |
| RECOMMEND AWARD                          | 03-16-2023 |
| REQUEST APPROVAL OF CONTRACT AND BONDS   | 04-06-2023 |
| NOTICE TO PROCEED – PH6A                 | 04-07-2023 |

PHASE 6B IS ANTICIPATED TO BEGIN IN SPRING 2024.

**CITY FINANCIAL IMPACT**

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The budget is available to complete these projects from identified sources. The cost for this project was estimated to be between \$8,000,000 and \$8,250,000. A portion of this project will be reimbursed by MP&W for water main work in this area. The City share will come from the Local Option Sales Tax.

**ATTACHMENTS**

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1. Stanley West Hill 6 Perm Ease Plats Rev1



**Martin & Whitacre  
Surveyors & Engineers, Inc.**

Gary Whitacre, President  
Matt Krause, Vice President  
Seth Whitacre, Sec/Treas

August 1, 2022

Karmen K. Heim, P.E.  
Stanley Consultants  
225 Iowa Avenue  
Muscatine, Iowa 52761

Re: West Hill Phase 6A & 6B Permanent Easement Plats

Karmen,

Thanks for the RFP for additional work on the West Hill Sewer Separation Project. Based on your email from July 11<sup>th</sup>, we understand the scope of work will be to prepare 28 permanent easement plats for the areas outlined in the provided exhibits. No temporary easements will be included in our scope. No easement staking is included in our scope. It is assumed that the easement staking, if needed, will be done as part of the construction survey work or under separate agreement.

Our fee to complete all research, fieldwork, computations and Easement Plat drafting will be \$45,000 and work can begin immediately upon notice to proceed.

Please contact me if you have any questions or need additional information. We look forward to continuing our work with you.

Sincerely,

MARTIN & WHITACRE SURVEYORS & ENGINEERS, INC.

Matt Krause



CONTRACT AGREEMENT

TO ENGAGE THE SERVICES OF MARTIN & WHITACRE SURVEYORS & ENGINEERS, INC. AS A CONSULTANT, ENGINEER, SURVEYOR, AND/OR ADVISOR.

This Contract, entered into on the 26 day of August, 2022, between City of Muscatine, Iowa, hereinafter called "Client" and Martin & Whitacre Surveyors & Engineers, Inc., hereinafter "MW" is as follows:

The Client and MW, for mutual consideration hereinafter set forth, agree as follows:

A. MW agrees to perform certain services for the Client as follows: Martin & Whitacre will prepare 28 permanent easement plats for the areas outlined in the provided exhibits. No temporary easements or easement staking will be included in our scope.

Project Location: West Hill Phase 6A & 6B
Estimated completion date of services:

B. Client agrees to pay MW as compensation for these services as follows:

- Time and Materials \$ (estimate)
Lump Sum of \$ 45,000.00
Other:

Invoices to be submitted:

- Monthly
Upon Completion of Services
Other

Terms of Payment:
Net due 30 days

Invoices will be submitted to:

Client's name and address: City of Muscatine
Attention: Pat Lynch
215 Sycamore Street
Muscatine, Iowa 52761

Email: plynch@muscatineiowa.gov Phone No.
Fax No.

C. Conditions: The Standard Provisions set forth upon the reverse side thereof are hereby incorporated into and made a part of this Contract.

D. Services will be scheduled upon receipt of this signed "Contract". By signing below, each of the parties affirm that they have read and understand the terms and conditions of this Contract as set forth herein, front and back, and by signing hereby acknowledge and agree to all such terms and conditions.

ACCEPTED
By:
Printed Name:
Date:

MARTIN & WHITACRE SURVEYORS & ENGINEERS, INC.
By:
Title: President
Date: 10/04/2022
Subject to acceptance within 30 days



# Martin & Whitacre Surveyors & Engineers, Inc.

**Standard Terms and Conditions:** These standard terms and conditions are incorporated by reference into and made a part of the proposal and agreements between Martin & Whitacre, Surveyors & Engineers, Inc. and the Client. In the event of a conflict between these standard terms and conditions and any proposal or agreement, these standard terms and conditions shall govern.

**Parties:** "Client" shall be the party identified as such in the proposal or agreement, or, if none is defined, shall be the party to whom the proposal or agreement is addressed. "MW" shall mean Martin & Whitacre, Surveyors & Engineers, Inc.

**Client and Project Information:** Client shall provide accurate information regarding the Project, as applicable and as is available, including surveys, as-built drawings, all known site conditions, restrictions, permit requirements, easements and legal requirements applicable to the property. MW shall be entitled to rely on the accuracy and completeness of all information and services provided by Client.

**Scope of Services:** MW's scope of services shall include only those services identified in the proposal or agreement. The duties, responsibilities and limitations of authority of MW shall not be restricted, modified or extended without a signed, written agreement between Client and MW. Neither Client nor MW shall make changes to the other's instruments of service.

**Standard of Care:** Services provided by MW under this Agreement will be performed in a manner consistent with the human degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

**Additional Services:** Services requested, authorized or confirmed in writing, or initiated by Client, including any services not expressly included in the proposal or agreement shall constitute Additional Services. If no agreement is reached in advance, time spent by MW providing said services shall be billed at the rates set forth in the current MW Hourly Rate Schedule.

**Compensation:** Services provided by MW on a time and material basis shall be performed in accordance with the MW's current fiscal year Standard Hourly Rate Schedule in effect at the time of performance. This schedule is updated yearly and is available upon request.

**Billing/Payment:** Client agrees to pay MW for all services performed and all costs incurred. Invoices for MW's services shall be submitted either upon completion of such services or on a monthly basis. Invoices shall be due and payable within 30 days of invoice date (direct) or 15 days from payment by Owner (consultant). Client shall notify MW of any objections to the invoice within five working days of receipt. Payment of any invoice indicates Client's acceptance of this Agreement, these Terms & Conditions, and satisfaction with MW's services. Payment of invoices is in no case subject to unilateral discounting, back-charges, or set-offs by Client, and payment is due regardless of suspension or termination of this Agreement by either party. Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum legal rate) on the unpaid balance. In the event any portion of an account remains unpaid 120 days after the billing, MW may institute collection action and Client shall pay all costs of collection, including reasonable attorney's fees.

**Indemnification:** MW and Client shall, to the fullest extent permitted by law, indemnify and hold harmless each other and their respective officers, directors, employees, agents and consultants from and against damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of this Agreement, excepting only those damages, liabilities or costs attributable to negligence or willful misconduct.

**Certification, Guarantees and Warranties:** MW shall not be required to execute any document that would result in MW certifying, guaranteeing or warranting the existence of any conditions.

**Assignment:** Neither party to this Agreement shall transfer, sublet or assign any rights or duties 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. Subcontracting to subconsultants, normally contemplated by MW as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

**Dispute Resolution:** Any claims or disputes between Client and MW arising out of the services to be provided by MW or out of this Agreement shall be submitted to non-binding mediation. Client and MW agree to include a similar mediation agreement with all contractors, subconsultants, subcontractors, suppliers and fabricators, providing for mediation as the primary method of dispute resolution among all parties. The laws of the State of Iowa will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in

any way from this Agreement shall be brought in the courts of that State.

**Construction Means and Methods:** MW shall not be responsible for, nor have control over or charge of, construction means, methods, sequences, techniques, or procedures, or for any health or safety precautions. Neither Client nor MW shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, walkouts, accidents, Government acts, or other events beyond the control of Client's or MW's employees, agents, or consultants.

**Construction Observation:** When MW does not provide construction observation services, it is agreed that the professional services of MW do not extend to or include the review or site observation of the Contractor's work, performance, or pay request approval. During construction, Client assumes the role of the engineer and will hold harmless MW for the Contractor's performance or the failure of the Contractor's work to conform to the design intent and the contract documents.

**Project Signs:** Project signs displayed at the construction site shall include "MARTIN & WHITACRE, SURVEYORS & ENGINEERS" as the Engineer. Articles for publication regarding this project shall acknowledge MARTIN & WHITACRE SURVEYORS & ENGINEERS as the civil engineer, as applicable.

**Adjustments, Changes or Additions:** It is understood that adjustments, changes, or additions may be necessary during construction. A contingency fund will be maintained until construction is completed to pay for field changes, adjustments, or increased scope items. All change order amounts requested by Contractors constructing MW designed systems shall be submitted to MW for review prior to being approved by contract holder. MW will not approve amounts requested that are above a normal bid amount for the work involved. In no case will costs be assessed to MW at the discretion of the Contractor, Client, or the Owner without prior agreement and approval of MW. MW shall not be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

**Ownership:** All drawings, specifications and other work product of MW developed for this Project are instruments of service for this Project only. Reuse of any instruments of service of MW by Client, or others acting for Client, for extensions of the Project or for any other use without the written permission of MW shall be at Client's risk. Client agrees to defend, indemnify and hold harmless MW for all claims, damages and expenses, including reasonable attorney's fees, arising out of such unauthorized reuse.

**Electronic Files:** Client hereby grants permission for MW to use electronic background information produced by Client in the completion of the project. Client also grants permission to MW to release MW's documents (including Client's backgrounds) electronically to Clients, Contractors, and Vendors as required in the execution of the project. Before release, MW will require an executed waiver of liability for the use of any electronic documents.

**Electronically Transmitted Data:** Data, design information, specifications, CAD files or other information transmitted electronically are provided for Client's convenience and are "as-is" without warranty of media, content or compatibility with Client's systems. Client acknowledges and accepts the risk and responsibility for damages to Client's hardware or software related to the use or transfer of MW's electronic data. Client understands that MW cannot be responsible for unauthorized changes in electronic data and that differences may exist between electronically delivered or transmitted data and the paper hard copy of instruments of service. In the event of any conflict between MW's electronically delivered or transmitted data and paper hard copies of MW's instruments of service, the paper hard copies shall govern.

**Employment:** For the duration of this contract plus six (6) months from final payment received, neither MW nor Client will offer employment to any person who is or was employed by the other during the course of this contract.

**Termination:** Client or MW may, after giving seven (7) days written notice, terminate this agreement and MW shall be paid for services provided up to the termination notice date, including reimbursable expenses due plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributed to the termination.

**Survivability:** In the event any provisions of this agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

**Limitation of Liability:** It is agreed that MW's liability for this project for negligent acts, errors, or omissions, and all claims, losses, costs,

damages, cost of defense, or expenses from any cause, including Client, Contractors, and Attorney fees, is limited to fees collected or \$10,000, whichever is greater.

**Contract Exhibit:** If attached to another contract or agreement, that agreement shall take precedence over all clauses listed in these Terms and Conditions. If that is silent on or does not include a clause, this document shall take precedence.

**Risk Allocation:** MW's liability to Client for injury or damage to persons or property arising out of work performed for Client and for which liability may be found to rest upon MW, other than for professional errors, omissions or negligence, will be limited to MW's general liability insurance coverage.

**Hazardous Environmental Conditions:** Unless expressly stated in writing, MW does not provide assessments of the existence or presence of any hazardous or other environmental conditions or environmental contaminants or materials ("Hazardous Environmental Conditions"). Client shall inform MW of any and all known Hazardous Environmental Conditions before services are provided involving or affecting them. If unknown Hazardous Environmental Conditions are encountered, MW will notify Client and, as appropriate, government officials of such conditions. MW may, without liability or reduction or delay of compensation due, proceed to suspend services on the affected portion of the project until Client takes appropriate action to abate, remediate, or remove the Hazardous Environmental Condition. MW shall not be considered an "arranger", "operator", "generator", "transporter", "owner", or "responsible party" of or with respect to contaminants, materials or substances. MW shall assume no liability whatsoever for correction of any Hazardous Environmental Conditions; and shall be entitled to payment or reimbursement of expenses, costs or damages occasioned by undisclosed Hazardous Environmental Conditions.

**Buried Utilities:** Client shall be responsible for designating the location of all utility lines and subterranean structures within the limits of the Project. Client agrees to waive any claim against MW and to defend, indemnify and hold MW harmless for any claim or liability for injury or loss arising from MW or other persons encountering utilities or other manmade objects that were not brought to MW's attention or which were not properly located on the plans furnished to MW. Client further agrees to compensate MW for any and all time, costs and expenses incurred by MW in defense of any such claim, in accordance with MW's then effective standard hourly fee schedule and expense reimbursement policy.

**Boundary Conflict:** Boundary determinations occasionally disclose unseen or unknown conflicts between the record documents and the location of physical improvements. Upon discovery of any latent or patent ambiguity, uncertainty, or dispute disclosed by the records or by placement of the boundaries on the ground, work on the boundary survey will be suspended and you will be immediately notified. MW will present alternatives for possible resolution and any additional work required to achieve resolution will be negotiated. If you should choose to forego resolution, all work completed to date will be invoiced for payment and the project file will be archived by MW for future resolution. If you choose resolution, MW will act as your mediator, consultant and expert until satisfactory resolution is achieved. Upon resolution, this initial agreement will be reinstated and completed in accordance with its initial terms subject to potential interim rate increases.

**Force Majeure:** Except as hereinafter provided, no delay or failure in performance by Client or MW shall constitute a default under this Agreement if and to the extent the delay or failure is caused by Force Majeure. Unless the Force Majeure substantially frustrates performance of the Services, Force Majeure shall not operate to excuse, but only to delay, performance of the Services. If Services are delayed by reason of Force Majeure, MW promptly shall notify Client. Once the Force Majeure event ceases, MW shall resume performance of the Services as soon as possible. "Force Majeure" means any event beyond the control of the Party claiming inability to perform its obligations and which such Party is unable to prevent by the exercise of reasonable diligence, including, without limitation, the combined action of workers, strikes, embargoes, fire, acts of terrorism, explosions and other catastrophes, casualties, a moratorium on construction, delays in transportation, governmental delays in granting permits or approvals, changes in laws, expropriation or condemnation of property, governmental actions, unavailability or shortages of materials, national emergency, war, acts of terrorism, civil disturbance, floods, unusually severe weather conditions or other acts of God or public enemy. Inability to pay or financial hardship, however, shall not constitute Force Majeure regardless of the cause thereof and whether the reason is outside a Party's control.