



# City of Muscatine

ITEM NUMBER 2024-0056

## AGENDA ITEM SUMMARY

DATE: 2/15/2024

### STAFF

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Richard Klimes, Parks and Recreation Director  
Melissa Baker, Parks Supervisor  
Blake Allington, Program Supervisor  
Kevin Coon, City Engineer

### SUBJECT

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Request to Enter into a Professional Services Agreement with Waters Edge Aquatic Design for Design Services for the Riverfront Fountain Renovation Project in the Amount of \$12,000.00.

### EXECUTIVE SUMMARY

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Presented for City Council's consideration is a request to enter into a Professional Services Agreement with Waters Edge Aquatic Design in the amount of \$12,000.00 for the engineering services for the Riverfront Fountain Renovation Project.

### STAFF RECOMMENDATION

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Staff recommends City Council approve the request to enter into a Professional Services Agreement with Waters Edge Aquatic Design for the amount of \$12,000.00 for engineering services for the Riverfront Fountain Renovation Project.

### BACKGROUND/DISCUSSION

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The City of Muscatine has recently been notified by the Iowa Department of Inspections, Appeals, & Licensing that the Riverfront Fountain located on the City of Muscatine Riverfront has several deficiencies that will need to be addressed before the "Fountain" can open for public usage. The deficiencies include: electrical grounding plans, center flume engineers review, filtration rate review, grate cover gap and stabilization plan, and spray feature surface gap adjustments. The State of Iowa requires that a licensed engineer develop and sign off on the aquatic amenity repairs before the facility can open and be used by the public. Waters Edge Aquatic Design is a licensed aquatic engineering firm that specializes in building aquatic amenities in Iowa and is familiar with the requirements of the Iowa Code for aquatic facilities. The City of Muscatine has a positive working relationship with Waters Edge Aquatic Design as they are the engineering firm of record for the Muscatine Aquatic Center and the Taylor Park Splash Pad. The services required by the state have been reviewed by our City

Engineer, and he has concurred with contracting with Waters Edge Aquatic Design for these services.

#### **CITY FINANCIAL IMPACT**

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The Riverfront Fountain Renovation Project is estimated to cost roughly \$125,000.00 including the estimated \$12,000.00 professional services engineering fees. The project will be funded with future year bond funding.

#### **ATTACHMENTS**

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1. MuscatineIA\_MississippiMistSprayGroundRenovations\_Agreement\_12-01-2023

## **AGREEMENT FOR ENGINEERING SERVICES**

**PROJECT:** The project related to the scope of services of this agreement is an existing splash pad referred to as Mississippi Mist Splash Pad. The existing splash pad was designed and constructed in 2006. Modifications to the existing splash pad are necessary to address the deficiencies identified by the Iowa Department of Public Health.

**PROJECT DELIVERY METHOD:** The project delivery methods will be managed by the City. The documents produced by the Engineer to provide basic direction to those performing the work are not expected to be the typical (extensively detailed) documents used for public bidding on most municipal projects. The intent is for the engineering documents to be utilized by the City for self-performed work and/or by City selected contractors.

**BUDGET:** A project budget has not been identified. The general intent is to limit the scope of work necessary to keep the overall cost to a minimum but allow the acceptance of the State for the renewed operation of the splash pad for public use.

**SCHEDULE:** The basic schedule for the Project is to perform design to allow construction to occur prior to the summer of 2024.

### **SCOPE OF SERVICES:**

The intent of the professional engineering services is to provide minimal documents to provide the intended scope modifications of the splash pad to address the identified deficiencies. The scope of services includes the following:

Engineer to provide general direction for a contractor/manufacturer to modify the existing spray feature structures. Basic direction will be provided to modify the structures to eliminate (grind) sharp edges, pinch points, gaps, and other safety concerns. Basic direction will be provided to manufacture coverings or purchase flange covers. Basic direction will be provided to recoat the modified structures. Engineer will work with nozzle manufacturer to address nozzle opening with modification or replacement.

Engineer to come up with a solution for maintaining spacing of pavers and alongside drain grating.

Engineer to provide basic direction to address electrical items by an electrical contractor. Direction is expected to include the following: remove and replace breakers with GFCI breakers, perform bonding requirements per NEC 680 (including bonding rebar grid, nozzles, metallic paver supports, metallic drains, feature structures, and mechanical equipment), abandon all fountain/splash pad lighting, interlock features pump with recirculation pump to only operate when recirculation pump is operating, and perform and report on bonding test.

Engineer to provide documents reflecting the intended scope of modification work for submission to State.

**FEE**

We will provide the above services at an hourly rate of \$150/hour. An estimated budget for this effort is projected to be approximately \$12,000.

**TERMS AND CONDITION:** Reference attached Terms and Conditions.

If this letter agreement is acceptable, please return a signed electronic copy to us.

**Proposed by Water's Edge Aquatic Design, PLC:**

Name Michael J. Fisher

Title Project Engineer

Date December 1, 2023

**Accepted by Owner: City of Muscatine**

Name Bradley Bark  
Bradley Bark (Feb 22, 2024 18:31 CST)

Title Mayor

Date 22/02/2024

## Terms and Conditions

- A. **Times for Providing Services:** ENGINEER's obligation to provide services hereunder will be for a period of time that may reasonably be required for the completion of said services, and will perform these services with reasonable diligence and expediency consistent with sound professional practices. If OWNER requests changes in scope, the time of performance and compensation for services shall be adjusted equitably. There are many factors outside the ENGINEER's control may affect their ability to complete the services. ENGINEER cannot guarantee a construction completion date because construction activities are the Contractor's responsibility.

- B. **Suspension:** The OWNER agrees that the ENGINEER is not responsible for damages arising from any delays for causes beyond the ENGINEER's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in a timely manner; failure of performance by the OWNER or their contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by the ENGINEER to perform its services, the ENGINEER shall be entitled to a reasonable adjustment in schedule and compensation.

If ENGINEER's services are extended by Contractor's actions or inactions for more than the scheduled final construction completion, ENGINEER will be entitled to equitable and agreeable adjustment of rates and amounts of compensation provided in this Agreement.

- C. **Payment Provisions:** Invoices shall be submitted monthly in proportion to services provided, are due upon presentation, and shall be considered past due if not paid within thirty (30) calendar days of the due date. If payment in full is not received by the ENGINEER within thirty (30) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principle.

OWNER shall notify ENGINEER if they object to any portion of an invoice in writing within seven (7) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement.

**Suspension of Services:** If the OWNER fails to make payments when due, the ENGINEER may suspend performance of services upon seven (7) calendar days' notice to the OWNER. Upon payment in full by the OWNER, the ENGINEER shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the ENGINEER to resume performance.

Payments to the ENGINEER shall not be withheld, postponed or made contingent on the construction, completion or success of the Project or upon receipt by the OWNER of offsetting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the ENGINEER's compensation for any reason unless the ENGINEER has been found to be legally liable for such amounts.

- D. **Opinions of Cost:** Opinions of probable construction costs for the PROJECT will be made on the basis of ENGINEER's professional judgment and experience. The OWNER understands that the ENGINEER has no control over the cost or availability of labor, materials, equipment, or services provided by others, or over Contractor's methods of determining prices, or over market conditions. ENGINEER makes no warranty, express or implied, that bids, the negotiated cost of the PROJECT or actual construction costs will not vary from opinions of probable construction cost prepared by ENGINEER.
- E. **Performance Standards:** The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill normally furnished by members of the ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
- F. **Use of Documents:** All Documents are instruments of service in respect to this PROJECT, and ENGINEER will retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the PROJECT is completed. OWNER may make and retain copies of Documents for information and reference in connection with use on the PROJECT by OWNER for use, maintenance and repair of the PROJECT. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other project.

If the ENGINEER for any reason is not allowed to complete all the services called for by this Agreement, the ENGINEER shall not be held responsible for the accuracy, completeness, or constructability of the construction documents prepared by the ENGINEER if used, reused, changed or completed by the OWNER or by another party. Accordingly, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees, and subconsultants (collectively, ENGINEER) from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from such use, change or completion by any other party of any construction documents prepared by ENGINEER.

- G. **Insurance:** ENGINEER will procure and maintain insurance as set forth in the attached certificate. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the PROJECT.

- H. **Termination:** The OWNER may terminate this Agreement for the OWNER's convenience and without cause upon giving the



ENGINEER not less than seven (7) calendar days written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons: Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party; Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party; Suspension of the Project or the ENGINEER's services by the OWNER for more than ninety (90) calendar days, consecutive or in the aggregate; Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of termination of this Agreement by either party, the OWNER shall, within fifteen (15) calendar days of termination, pay the ENGINEER for all services rendered and all reimbursable costs incurred by the ENGINEER up to the date of termination.

- I. **Successors, Assigns, and Beneficiaries:** Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent mandated or restricted by law.
- J. **Third-Party Beneficiaries:** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or the ENGINEER. The ENGINEER's services under this Agreement are being performed solely for the OWNER's benefit, and no other party or entity shall have any claim against the ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. The OWNER and ENGINEER agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.
- K. **Controlling Law:** This Agreement is to be governed by the law of the state in which the project is located.
- L. **Dispute Resolution:** OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to other provisions of this Agreement, or under law. OWNER and ENGINEER agree to use mediation for dispute resolution if the previously described negotiation process is not successful. In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, each party shall pay their own legal expenses, including staff time, court costs, attorney's fees and all other related expenses in such litigation.
- M. **Hazardous Environmental Conditions:** OWNER represents to ENGINEER that to the best of its knowledge a hazardous environmental condition does not exist at or near the PROJECT Site. Both parties acknowledge that the ENGINEER's scope of services does not include any services related to the presence or removal of any hazardous or toxic materials.
- N. **Allocation of Risks:** To the fullest extent permitted by law, ENGINEER and OWNER agree to indemnify and hold harmless each other against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, where such fees are recoverable under applicable laws, to the extent caused by their own negligent acts of performance of professional services under this Agreement.  
  
In recognition of the relative risks and benefits of the PROJECT to both the OWNER and the ENGINEER, the risks have been allocated such that the OWNER agrees, to the fullest extent permitted by law, to limit the liability of the ENGINEER to the OWNER for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the ENGINEER to the OWNER shall not exceed the ENGINEER's total fees for services rendered on this PROJECT. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
- O. **Survival:** All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.
- P. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision that comes as close as possible to expressing the intention of the stricken provision.
- Q. **Waiver:** Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- R. **Betterment:** When a Change Order is necessitated by an act or omission of ENGINEER or an error in the design of the Project, responsibility for such act, omission, or error shall be determined in good faith by OWNER and ENGINEER. To the extent that such act, omission, or error arose out of the lack of quality professional services provided by ENGINEER or of the lack of professional quality deliverables prepared by ENGINEER, OWNER shall be entitled to an amount equal to the difference between the actual cost of the change Work and the estimated cost of the change Work (less added value to the OWNER) if there had been no such act, omission, or error. ENGINEER shall pay such sum to OWNER.
- S. **Permits and Approvals:** The ENGINEER shall assist the OWNER in applying for those permits and approvals normally required by law for projects similar to the one for which the ENGINEER's services are being engaged. This assistance shall consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by the ENGINEER and included in the scope of Basic Services of this Agreement.

**Signature:**   
Cinda Hilger (Feb 22, 2024 16:51 CST)

**Email:** [chilger@muscatineiowa.gov](mailto:chilger@muscatineiowa.gov)