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BENTON COUNTY DITCH AUTHORITY

Tuesday, August 6, 2019, Approximately 10:20 AM
Benton County Board Room

AGENDA

1. Call to Order by Chair Bauerly
2. Approve or Amend the Agenda
3. Approve or Amend Minutes of July 16, 2019
4. Proposal from Engineering Consultant to Provide Engineering Services on County Ditch 6
5. Adjourn

Ditch Authority:
Warren Peschl, District 1
Ed Popp, District 2
Steve Heinen, District 3
Spencer Buerkle, District 4
Jake Bauerly, District 5

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Foley, MN 56329
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BENTON COUNTY DITCH AUTHORITY

Tuesday, July 16, 2019

Benton County Board Room

The Benton County Ditch Authority met in special session on July 16, 2019 in the Benton County Board Room in Foley, MN with Board members Ed Popp, Jake Bauerly, Warren Peschl, Spencer Buerkle and Steve Heinen present. Also present was Chris Byrd, County Engineer; Monty Headley, County Administrator; and Vicki Feuling, Administrative Assistant.

Call to order by Chair Jake Bauerly was at 11:21 AM.

Heinen/Peschl unanimous to approve the agenda as written.

Heinen/Peschl unanimous to approve the minutes of May 21, 2019 as written.

Chris Byrd, County Engineer, presented a proposal from Houston Engineering, Inc. of Maple Grove to provide engineering services on County Ditch 6. He stated that discussions included determining what the original as-built construction was and providing direction on how to move forward (Ditch 6 has the documented issue, as it appears today, of deviating from the original plans). Byrd stated that the total cost of the proposal is \$39,500; the proposal includes four different phases—1) field survey of the way the ditch looks today, 2) plan development, 3) reviewing records of when the ditch was originally established and re-creating what the intent was—determining the original benefitted landowners and the original value of the benefit—also recommending whether a redetermination of benefits is needed; and 4) develop a repair report with preliminary construction plans. Bauerly inquired if an improvement could be recommendation if warranted. Byrd confirmed that a recommendation for moving forward would result from task three or task four. Peschl inquired if this ditch was “tampered with” originally. Byrd stated that, in the 1980’s, it was brought to the County Attorney’s attention that some landowners were straightening and realigning the ditch; no action was taken at that time. Byrd pointed out that we currently have a repair petition for County Ditch 6.

Referencing the proposal from Houston Engineering, Inc., Byrd noted that they have the expertise to perform the benefit versus cost test. He asked “...do we clean out up to the part that it starts deviating from the original alignment knowing that everybody from that point upstream is still going to be assessed...we do have some landowners upstream that are concerned with the current state of the ditch...do we skip a part...” Byrd clarified that County Ditch 6 is located between Silver Corners and Gilman; the proposal cost would be assessed against the benefitted landowners—there is no county ditch fund for Ditch 6. He explained that the field survey and re-establishment of drainage records is a public process; meeting with landowners would be included in the process.

Bauerly asked if there are any cost synergies to doing more than one ditch at a time. Byrd asked if the Board desired to expand the scope to other ditches; the next step would be to get into a professional services agreement with Houston Engineering, Inc. Peschl commented “...do we wait until somebody requests a cleanout or is it the county’s obligation every five years to do it...” Byrd confirmed that the county should be inspecting the ditches and repairing them as necessary without waiting for people to ask us to do it. Bauerly stated “...I’d like to see us repair two ditches a year...” Noting the proximity of County Ditch 7 to County Ditch 6, Popp suggested looking at Ditch 7 “to see what the issues are”. Peschl noted that County Ditch 7 was recently repaired. Byrd commented “...we have about 13 ditches...we just did a re-establishment on County Ditch 13 and County Ditch 15...”

Board consensus to move forward with County Ditch 6, Byrd to bring back a contract with Houston Engineering, Inc. for Board consideration. He will also inquire of any cost savings to expand the scope to additional ditches.

Heinen/Peschl unanimous to adjourn at 11:34 AM.

A. Jake Bauerly, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator



**BENTON COUNTY DITCH AUTHORITY
AGENDA ITEM REQUEST**

Meeting Date:	8/6/19	Regular Agenda:	X
Requesting Department:	Public Works	Consent Agenda:	

Title of Requested Item As It Will Appear on Board Agenda:

Proposal from Engineering Consultant to provide engineering services on County Ditch 6

Background Information:

As discussed at the July 16, 2019 Ditch Authority meeting, attached is a professional services agreement to provide engineering services related to County Ditch 6.

Action Requested:

Authorize Board Chair Signature on Agreement

Fiscal Impact:

Estimated Cost (\$):	\$39,500
Source of Funds:	County Ditch 6 Fund
New or Additional Revenue (\$):	N/A
Cost Budgeted in Current Year? (Yes/No)	N/A

Approved by:	Signature	Date
Chris Byrd		7-26-19
County Attorney (for contracts)		7-29-19

Amt of Time Requested	Specific Time on Agenda	Laptop Needed?	Overhead Needed?
10 min	No	No	Yes

Professional Services Contract Between Benton County and Houston Engineering, Inc.

THIS AGREEMENT is made and entered into by and between the County of Benton, State of Minnesota (hereinafter County), 531 Dewey Street, P.O. Box 129, Foley, MN 56329, and Houston Engineering Inc. (Consultant), 7550 Meridian Circle North Suite 120 Maple Grove, MN 55369.

1. Purpose

The Consultant shall provide professional engineering and surveying services related to a repair on County Ditch 6 in Benton County.

2. Scope of Services and Products to be Provided:

The scope of services are detailed in **Attachment A**. The scope of services include but is not limited to”

- Field survey of existing county Ditch,
- As-built (existing) plan development,
- Reestablishment of drainage system record,
- Development of a repair report with preliminary construction plans.

Deliverables are defined as the work product created or supplied by the Consultant pursuant to the terms of this Contract. The brief summary of the deliverables of this Contract are as follows:

- Digital field survey data
- Draft and final report to reestablish records
- Attend and present at a public hearing to reestablish records
- In-person meeting with County staff to discuss draft repair report
- Draft and final repair report
- Attend and present at a public hearing on the repair report.

Contract Documents: It is understood and agreed that any Request for Proposals, Exhibits, any addenda issued by the County, the signed Proposal Response, and the Contract shall collectively constitute the Agreement between the County and the “Consultant”, and shall be referred to as the Contract Documents and the work shall be done in accordance therewith.

- If there is a conflict between the Contract, the RFP and the Proposal Response, the Contract shall govern, then the Proposal.

3. Consultant Responsibilities and Acceptance of Consultant’s Work Product

County will have the authority to disapprove or reject services and/or goods that are defective. Consultant will be responsible for the accuracy of its work under this Contract and must make immediate, necessary revisions, repairs, or corrections without compensation resulting from errors and omissions of Consultant’s standard of care on the part of Consultant.

Services and/or goods delivered under this Contract must be in accordance with applicable federal or state standards and/or specifications and must be of a quality that is satisfactory to County. Acceptance of the services and/or goods by County will not be considered a waiver of any provision of this Contract and will not relieve Consultant of the responsibility for subsequent correction of any such errors or omissions and the clarification of any ambiguities.

In the event revisions, repairs, or corrections to the deliverables must be made, resulting from errors and omissions of Consultant's standard of care, Consultant must invoice County for any employee's time necessary to revise, repair, or correct errors or omissions at a rate of zero dollars per hour for the number of hours necessary to perform the work.

The services and/or goods provided to County by Consultant must be of such quality that they are suitable for their intended purpose which meets the design requirements provided for in the Special Terms.

The standard of care for all professional and related services performed or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time in the same locality.

Neither party will be held responsible for delay or failure to perform when such delay or failure is due to any of the following, unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, unusually severe weather, or delays or defaults caused by public carriers, provided the defaulting party gives written notice as soon as possible to the other party of its inability to perform.

4. Compensation and Term

The Agreement shall be in effect from the date of execution by all parties, and shall continue in effect until all contracted deliverables are recieved. The County and Consultant are aware that many factors outside the Consultant's control may affect the Consultant's ability to complete the services to be provided under this Contract. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices.

The County shall pay Consultant for all work, materials and taxes, subject to additions and deletions by change orders, the total sum of **\$39,500**. A breakdown of the costs are attached hereto and incorporated by reference as in Exhibit A.

Consultant may invoice the County for goods prior to completion of the project. Consultant shall only bill the County for services rendered upon completion of the project. The County shall pay for purchased services and/or materials as follows: Ninety percent of the cost of all work satisfactorily performed and/or all materials supplied during the course of each month shall be paid within 35 days of the date on which the invoice is received. The balance of the total contract sum shall be due and payable to the County within thirty days of the satisfactory completion of all work specified above.

Said sum is not subject to increase in consequence of any errors Consultant may have made in estimating and bidding labor and materials required for the successful completion of the project according to the terms of the bidding documents. Any errors or misstatements Consultant may have made in the bid proposal are solely the responsibility of Consultant.

If an invoice is incorrect, defective or otherwise improper, the County shall notify the Consultant within 10 days of the date of receipt. Upon receiving a corrected invoice from the Consultant, the County shall pay the obligation within 35 days.

Payment of claims and interest shall be governed by the Minnesota Prompt Payment Act, Minn. Stat. §471.425

5. Unavoidable Circumstances

The Consultant shall not be held responsible for damages caused by delay or failure to perform hereunder, when such delay or failure is due to Fire, Strikes, Acts of God, Legal acts of the public authorities, or delays or defaults caused by public carriers, or acts or demands of the Government in time of war or national emergency.

6. Termination

Benton County may terminate the contract at any time for breach of contractual obligation, convenience, or non-appropriation of funds by providing the Consultant with a written notice of such termination. Should the County exercise its right to cancel the contract for such reasons, the termination shall become effective on the date as specified in the notice of termination sent to the Consultant.

The Consultant may terminate the contract if payment terms contained in Section 4 are not met.

Consultant will provide detailed invoices to collect payment. If payment has not been collected by the Consultant for services rendered, the County will make full payment for services received through the date of termination. The County shall make full payment for services within thirty (35) days of receipt of the invoice.

Notwithstanding anything to the contrary in this Agreement, the parties' obligations contained in Section 7, 8, 9, 10, 11, 15, 16, and 17 of this Agreement shall survive any termination of this Agreement pursuant to this Section or otherwise.

7. Consultant Representations

The Consultant's services provided hereunder shall conform in to the requirements of this Agreement.

8. Independent Consultant

Consultant acknowledges that the services rendered under this Agreement are independently contracted. Consultant shall not enter into any contract or commitment on behalf of the County. Consultant further acknowledges that it is not considered an affiliate or subsidiary of the County, and is not entitled to any County employment rights or benefits. Consultant shall be solely responsible for payment of all wages, benefits, taxes and insurance on behalf of its employees. It is expressly understood that this undertaking is not a joint venture. It is also understood that the County will not determine or exercise control regarding general procedures or formats necessary to have these services meet the County's satisfaction. Nothing contained in this Agreement can or shall be interpreted as an employee relationship between the County and Consultant. Consultant hereby agrees to accept and perform any and all responsibilities imposed under Minnesota state or federal law, rule, regulation or otherwise necessary for it to maintain its independent Consultant status under this Agreement.

9. Data Practices and Confidentiality

Pursuant to Minn. Stat. Ch. 13, Consultant agrees to maintain and protect data that is not public received, or to which Consultant has access according to the statutory provisions applicable to data. No private, non-public or confidential data developed, maintained or reviewed by Consultant under this Agreement may be released to the public by the Consultant or Consultant's employees or representatives. Consultant agrees to indemnify and save and hold the County, its agents and employees, harmless from any and all claims or causes of action arising from or in any manner attributable to any violation of any provisions of the Minnesota Government Data Practices Act by Consultant or its agents or employees, including legal fees and disbursements paid or incurred to enforce this provision of this Agreement.

10. Intellectual Property Indemnification

Consultant warrants that any materials and, or work product provided or produced by the prime Consultant and subconsultants, utilized in the performance of this Agreement, will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against the County, upon prompt notice from the County of such claim, Consultant, at its expense, shall indemnify and hold harmless the County against any loss, cost, expense or liability, including reasonable attorney's fees, arising out of such claim. If such claim occurs, or is likely to occur, Consultant shall either procure for the County the right to continue using the materials and, or work product, or replace or modify the materials and, or work product. If an option satisfactory to the County is not reasonably available, upon the written request of Consultant, and at the expense of Consultant, the County shall return the materials and, or work product to Consultant.

11. Ownership of Documents

The County acknowledges the Consultant's documents, including electronic files, as the work papers of the Consultant and the Consultant's instruments of professional service. Notwithstanding, upon completion of the services and payment in full of all monies due Consultant, *all* work products of the Consultant, which results from this contract are the

exclusive property of Benton County. No material produced in whole or in part under the negotiated contract shall, during the life of the negotiated contract, be subject to copyright in the United States or in any other country. Permission and approval must be obtained from Benton County before any report, handbook, manual, interim data, or results are published in any medium. Draft copies of all deliverables must be prepared by the Consultant, and reviewed for approval by Benton County before publication. The consultant, subject to the approval by Benton County, shall have the authority to publish, disclose, distribute, and otherwise use in whole and part, any reports, data, or other materials prepared under the negotiated contract. All maps provided for each item identified in the scope of work to clarify findings, data, projections, and trends must be clear and concise in their purpose and delivery. When available, GIS information shall be provided to the County in electronic form compatible with or easily converted to ArcGIS software. Any use or reuse of Consultants work product by Benton County or others without written consent, verification, or adaptation by the Consultant except for the specific purpose intended will be at Benton County's risk and full legal responsibility and Benton County expressly releases all claims against Consultant arising from re-use of Consultant's work product without Consultant's written consent, verification, or adaptation.

Under no circumstances shall transfer of instruments of service be deemed a sale by Consultant, and Consultant makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. Consultant shall be entitled to compensation for any consent, verification, or adaptation of the Instruments of Service for extensions of the Project or any other project.

12. Subcontracting/Assignment.

The Consultant shall not assign or transfer the Consultant's interest in the negotiated contract without express written consent of Benton County. Any agreement between the Consultant and any subconsultant shall obligate the subconsultant to comply with the terms of this contract. Consultant shall be responsible for the performance of all subconsultants. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

13. Labor, Equipment and Supplies and Conflicts of Interest

Consultant shall be solely responsible for providing and supplying all labor, equipment and supplies necessary to perform its responsibilities as described under or contemplated by this Agreement. The County shall have no obligation or responsibility whatsoever to furnish Consultant with any such labor, equipment or supplies.

No official or employee of the County who is authorized in his or her capacity to negotiate, accept, or approve, or to take part in negotiating, accepting, or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector, or other person performing services for the County in connection with the project shall have, directly or indirectly, a financial or other personal interest other than his or her employment or

retention by the County in any contract or subcontract in connection with such project. No officer or employee or such person retained by the County shall have, directly or indirectly, any financial or other personal interest in a project unless such interest is openly disclosed upon the public records of the County.

14. Equal Employment Opportunity - Civil Rights Clause

- a. During the performance of this Agreement, Consultant agrees to the following: No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, creed, or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all applicable federal and state laws against discrimination including but not limited to the Civil Rights Act of 1964. Consultant will furnish the Purchaser all reports required by Executive Order No. 11246 and Revised Order No. 4, and by the rules and regulations and orders of the Secretary of Labor, the Minnesota Department of Human Rights for purposes of investigation to ascertain compliance with such rules, regulations and orders. The provisions of Minn. Stat. § 181.59, regarding nondiscrimination and violations related there from are incorporated in this paragraph by reference as an obligation of Consultant.

- b. If during the term of this contract or any extension thereof, it is discovered that Consultant is not in compliance with the applicable statutes and regulations or if the Consultant or engages in any discriminatory practices, then the County, through the Department, may cancel this contract as provided by the cancellation clause.

15. Insurance and Indemnification

Consultant further agrees that in order to protect itself as well as the County under the indemnity provisions set forth above, it will at all times during the term of this contract keep in force:

- (1) Commercial General Liability/Professional Liability: \$500,000 per individual; \$1,500,000 per incident

- (2) Automobile Coverage: \$500,000 per individual; \$1,500,000 per incident

- (3) Workers' Compensation Insurance.

Prior to the effective date of this contract, and as a condition precedent to this contract, the Consultant will furnish the County with certificates of bonding and insurance.

An Umbrella or Excess Liability insurance policy may be used to supplement the Consultant's policy limits to satisfy the full policy limits required by this contract.

Any insurance policy obtained and maintained under this clause shall provide that it shall not be cancelled without thirty (30) days' prior notice thereof to County.

The County reserves the right to immediately rescind this Agreement if Consultant is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against County. All insurance policies must be open to inspection by County, and copies of policies must be submitted to the County's Authorized Agent upon written request.

The Consultant agrees it will indemnify and hold harmless the County, its officers, employees, agents, and servants against any and all liability, loss, costs, damages and expenses (including reasonable attorney's fees) which the County, its officers, employees may hereafter sustain, incur, or be required to pay to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable Consultant.

16. Records Auditing and Retention.

Consultant's records, documents, papers, accounting procedures and practices, and other evidences relevant to this Agreement are subject to the examination, duplication, transcription and audit by the County and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement. Consultant agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

17. Governing Law

The Consultant shall comply with all applicable federal and state statutes and regulations as well as local ordinances now in effect and hereafter adopted. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota. Proper venue and jurisdiction for all lawsuits, claims, disputes, and other matters in questions between the parties to this agreement or any breach thereof shall be in the courts of County of Benton in the State of Minnesota.

18. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

19. Modifications/Amendment.

Any amendments, alterations, or modifications of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representatives of the County and Consultant.

20. Severability

If any provision or condition of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision or condition. The validity of the remaining provisions and conditions shall not be affected thereby and this Agreement shall be carried out as if such invalid or unenforceable provision or conditions were not contained therein.

21. Entire Agreement and Notice

This Agreement contains the entire understanding of the parties and may not be amended without the specific written consent of both parties. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as designated hereafter in writing by the parties:

Chris Byrd
Benton County Public Works Director
7752 Highway 25 NE, P.O. Box 247
Foley, MN 56329
cbyrd@co.benton.mn.us

Garrett Monson
Houston Engineering Inc.
7550 Meridian Circle North, Suite 120
Maple Grove, MN 55369
gmonson@houstoneng.com

IN WITNESS WHEREOF, the County and Consultant have duly executed this Agreement as of the day and year above written.

Houston Engineering Inc.

COUNTY OF BENTON

By: Chris Otterman
Title: Principal / Project manager
Date: 7/18/19

By: _____
A. Jake Bauerly, Board Chair
Date: _____

Attested By: _____
Monty Headley, County Administrator
Date: _____

APPROVED AS TO FORM AND EXECUTION

By: _____
County Attorney
Date: _____