

1st Reading 7/23/2024
2nd Reading 7/23/2024

BILL NO. 24-24

ORDINANCE NO. 5473

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH HORNER & SHIFRIN, INC., FOR STORMWATER ENGINEERING CONSULTING SERVICES AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE SAME ON BEHALF OF THE CITY

WHEREAS, the City of Crestwood, Missouri (the “City”) issued a Request for Qualifications for Stormwater Assessment, Engineering Design and Construction Management Services on June 3, 2024 (the “Project”); and

WHEREAS, the City received five responses, which City Staff reviewed and evaluated; and

WHEREAS, City Staff recommends Horner & Shifrin, Inc., for the Project as the respondent with the highest ranking score; and

WHEREAS, the Board of Aldermen finds it is in the best interests of the City to enter into necessary agreements with Horner & Shifrin, Inc. to provide stormwater engineering consulting services to the City on an as-needed basis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CRESTWOOD, MISSOURI AS FOLLOWS:

SECTION 1: The Board of Aldermen hereby authorizes an agreement with Horner & Shifrin, Inc., for Stormwater Assessment, Engineering Design and Construction Management Services in substantially the same form as attached hereto and incorporated herein as Exhibit A.

SECTION 2: The Mayor, City Administrator and City Clerk are hereby authorized and directed to take further action as may be reasonably necessary to carry out the intent of this Ordinance.

SECTION 3: This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and its approval by the Mayor.

PASSED AND SIGNED this 23rd day of July, 2024.



Mayor

ATTEST:



City Clerk

APPROVED this 23rd day of July, 2024.



Mayor

EXHIBIT A

CITY-CONSULTANT MASTER SERVICE AGREEMENT
2024 STORMWATER ASSESSMENT, ENGINEERING DESIGN
AND CONSTRUCTION MANAGEMENT SERVICES

THIS MASTER SERVICE AGREEMENT is made and entered into as of this 23rd day of July 2024, by, and between the City of Crestwood, Missouri ("City"), One Detjen Drive, Crestwood, Missouri, and Horner & Shifrin, Inc. ("Consultant"), with offices at 401 S. 18th Street, Suite 400, St. Louis, MO 63103.

WITNESSETH THAT:

WHEREAS, in accordance with the Purchasing Policy of the City of Crestwood adopted by Ordinance No. 4931 (Nov. 27, 2018) and Section 2-121 of the Municipal Code of the City of Crestwood, Missouri, the City issued a Request for Qualifications dated June 3, 2024, for Crestwood's 2024 Stormwater Assessment, Engineering Design, and Construction Management Services ("RFQ"); and

WHEREAS, Contactor submitted a response to the City's RFQ on June 26, 2024 ("Proposal"); and

WHEREAS, the City has selected the Consultant for Crestwood's 2024 Stormwater Assessment, Engineering Design, and Construction Management Services in accordance with the terms of the RFQ and the Proposal.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements herein contained, the parties do hereby agree as follows:

1. Consultant Selection. City does hereby employ Consultant for the purpose of performing the services and work and providing the equipment set out herein and per the scope as set forth in the RFQ and in the Proposal, and Consultant agrees to perform such services and work and to provide such equipment (hereafter the "Work").

2. Work and Project. The Work to be performed includes the furnishing of all necessary professional, technical and other services for the project as described in Exhibit A attached hereto (“Project”). Consultant shall perform all of the Work described in this Agreement and in the RFQ and in the Proposal attached hereto and made a part hereof in Exhibit A, in accordance with the terms and conditions hereof (the “Contract Documents”). In connection with the Work and the Project, the City requests the Consultant to use American products whenever the quality and price are comparable with other products.

3. Assignment – Subcontracting. No part of the Work to be performed by consultant hereunder shall be assigned or subcontracted without the prior written consent of City. The consent of City shall in no way relieve Consultant of its responsibility for the quality and performance of the Work. Consultant shall include in any such consented to subcontract all of the terms and conditions of this Agreement and make any sub-consultant(s) subject thereto.

4. Providing of Information. Upon reasonable request by Consultant, City will provide to consultant such relevant information of record as is available to City. It is understood that City has no responsibility for the accuracy of any such information provided.

5. Consultant Responsibilities. Consultant shall be responsible for:

(a) Performance of all Work in accordance with the instructions issued by City, and the terms and provisions of this Agreement.

(b) The professional quality, technical accuracy, and coordination of all Work and, without additional compensation, the correction of any errors or deficiencies in the Work.

(c) Consultant and any sub-consultants shall maintain all records pertaining to costs incurred and make such records available for inspection by City at all reasonable times during the performance of the Work and for a period of three (3) years from the date

of final payment hereunder. Copies of any such records shall be furnished to City, if requested by City.

6. Term and Time of Completion. The term of this Agreement shall commence as of the date hereof and continue for 3 years, unless terminated sooner by the City as provided herein. Consultant shall commence work on individual projects after issuance by the City of a notice to proceed and shall complete the Work at a mutually agreeable scheduled date. All time limits stated in the Contract Documents are of the essence. Should the Consultant, or in case of default, the surety, fail to complete the Work and the Project within the completion date specified, a deduction of the amount stipulated in Article 12 will be made for each day that the Work remains uncompleted.

7. Agreement Changes. The City may make changes to this Agreement, provided that no changes shall be made to the scope of the Work, time of performance, compensation or any provision which may affect the cost of the Work, except pursuant to an authorized change order or a written amendment to this Agreement executed by both parties. Any amendments to this Agreement mutually agreed to shall be in writing and signed by the City and the Consultant.

8. Document Forms. Documents to be prepared by consultant hereunder are to be on forms provided by the city, to the extent practicable and relevant.

9. Consultant Insurance. Consultant shall procure and maintain during the period of this Agreement insurance, as follows:

(a) Workers' Compensation as required by law and employer's liability coverage in an amount not less than \$2,000,000.

(b) Commercial general liability which provides combined single limit coverage, including property damage and bodily injury, including:

Death	\$2,000,000 each person
	\$2,000,000 each occurrence

Property Damage \$2,000,000 each occurrence
\$2,000,000 general aggregate

(c) Automobile liability, which provides combined single limit coverage,
including:

Death \$2,000,000 each person
\$2,000,000 each occurrence

Property Damage
(including "X" explosion, "C" collapse, and "U" underground coverage)
\$2,000,000 each accident

(d) Professional liability \$2,000,000 each occurrence
\$2,000,000 general aggregate

The commercial general liability policy shall be endorsed to cover the liability of consultant hereunder. City shall be named as an additional insured on the commercial general liability and automobile liability policies, and such insurance shall be primary and noncontributory with respect to any insurance maintained by the City. Each such policy shall be written by a company or companies licensed to do business in the state of Missouri and acceptable to the City. Certificates of insurance shall be furnished to City prior to the commencement of the Work. Each such policy shall provide that it shall not be canceled or altered, without 15 days prior written notice to City. **The certificate of insurance must state "the City of Crestwood is an additional insured on a primary and non-contributory basis."**

10. Not Used

11. Consultant Indemnity. Consultant shall indemnify and hold harmless the City, its board of aldermen, officers, representatives, agents and employees, from and against any and all liabilities, demands, losses, claims or suits, including costs and reasonable attorneys' fees, for and on account of any kind of injury, loss or damage, or any other circumstances, sustained by the City, its board of aldermen, officers, representatives, agents and employees, arising from the breach of this Agreement or resulting from the negligent acts, errors or omissions of Consultant, any sub-consultant, and each of their respective agents, employees or Consultants arising out of the Work.

12. Performance of the Work. Consultant's completion of the Work and the Project in accordance with the time limits set forth in Article 6, Term and Time of Completion, is an essential condition of this Agreement. If the Consultant fails to complete the Work and the Project in accordance with the requirements of Article 6, unless the delay is excusable under the provisions of Article 15 hereof, the Consultant shall pay the City as liquidated damages and not as a penalty, the sum of \$100.00 for each calendar day the Consultant fails to comply with Time of Completion. The total amount payable to the City as liquidated damages may be deducted from any sums due or to become due to Consultant from City.

13. Not Used

14. Not Used

15. Delays Beyond Consultant's Control.

(a) If the Consultant fails to complete the Work and the Project in accordance with Article 6 solely as a result of the act or neglect of the City, or by strikes, lockouts, fire or other similar causes beyond the Consultant's control, the Consultant shall not be required to pay liquidated damages to the City pursuant to Article 12 hereof. If, as a result of any such cause beyond the Consultant's control, the delay in completion of the Work in accordance with Article 6 is so great that it cannot be remedied in the aforesaid manner, or if the backlog of Work is so great that it cannot be remedied without incurring additional cost which the City does not authorize, then the time of completion shall be extended. The period of delay and extension shall be determined by the City.

(b) Notwithstanding the foregoing paragraph (a), no extension of time shall be granted for any delay the cause of which occurs more than seven (7) days before claim therefore is made in writing by the Consultant to the City, and no extension of time shall be granted if the Consultant could have avoided the need for such extension by the exercise of reasonable care and foresight. In the case of a continuing cause of delay, only one claim is necessary.

(c) Weather shall not constitute a cause for granting an extension of time.

(d) In the event a delay is caused by the City, the Consultant's sole remedy shall consist of its rights under this Article 15.

16. City Representative. The City representative shall be the Director of Public Works, provided that the City Administrator may, at his sole discretion, designate another City representative from time to time. In such event, City shall notify Consultant of such change in writing.

17. Notice. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to have been delivered on the earliest to occur of (a) actual receipt; or (b) three (3) business days after having been deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; or (c) one business day after having been deposited with a reputable overnight express mail service that provides tracking and proof of receipt of items mailed to the parties as follows (or to such other addressee or address as shall be set forth in a notice given in the same manner):

City: Director of Public Works
City of Crestwood
1 Detjen Drive
Crestwood, MO 63126

Consultant: Horner & Shifrin, Inc
401 S. 18th Street, Suite 400
St. Louis, MO 63103

18. Conflict-Discrepancy. In the event of any conflict or discrepancy between the terms of this Agreement and Exhibits A and B hereof, the terms and provisions of this Agreement shall govern.

19. Severability. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed severable. In such event, this Agreement shall be enforced as if such invalid or unenforceable provision had never formed a part of this Agreement

and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision.

20. City Decisions. The City will determine whether the documents to be furnished hereunder are in compliance with the requirements of this Agreement and will decide all questions which may arise concerning the proper performance of this Agreement. The City's decisions in these respects shall be final and conclusive.

21. Consultant Warranties. Consultant warrants and represents that it has the experience, skill, expertise, personnel, and equipment necessary in order to perform and to complete the Work and the Project and that it will perform all of such Work in accordance with the terms hereof and in accordance with the highest standards of competency, in a professional and workmanlike manner.

22. Compensation and Payment. City shall pay Consultant for the Work on a mutually agreeable negotiated sum, on a per project basis. That amount shall be payable for monthly progress payments to the Consultant, in accordance with the provisions of Exhibit B attached hereto and incorporated herein by reference. City shall have the right, upon reasonable prior notice, to examine all of the pertinent records of consultant.

23. Ownership Rights. The City shall own all rights, title and interest, including without limitation, all copyrights and intellectual property rights, to all documents and work product of Consultant created in performance of or relating to this Agreement.

24. Immunity Retention. By execution and performance of this Agreement, the City does not intend to, nor shall it be deemed to have waived or relinquished any immunity or defense on behalf of the City, and the City's board members, officers, directors, servants, employees, agents, successors or assigns.

25. Legal Compliance. Consultant and its employees, agents and representatives shall comply with the City's policies and procedures and all applicable federal, state, county, municipal

and other governmental statutes, laws, rules, orders, regulations, codes and ordinances required of consultant in performing the services pursuant to this Agreement.

26. Independent Consultant. Consultant shall perform all services as an independent Consultant and not as an employee of the City. The City shall not assume any liability for the direct payment of any salary, wage, workers compensation, income tax withholding, or any other type of compensation to consultant for the services. Consultant shall obtain as necessary and pay for all permits, fees, licenses and taxes applicable to consultant and the services for the project.

27. Waiver. No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.

28. Binding Effect. This Agreement shall become effective immediately upon the execution of same by the duly authorized representatives of the City and Consultant.

29. Termination. City shall have the right to terminate this Agreement at any time and for any reason upon ten (10) days advance written notice. In the event of such termination, Consultant shall be compensated in accordance with the terms of the Agreement for all services performed to the effective date of such termination, plus any approved costs. All drawings and documents prepared by consultant shall become the property of City.

30. FWAP Documentation. Consultant has provided to the City, or will provide to the City, no later than the execution of this Agreement, all documentation and required affidavits that Consultant has enrolled in, and participates in, a Federal Work Authorization Program, as required by Section 285.530 Missouri Revised Statutes with respect to the employees working in connection with the contracted services. Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

31. Governing Law-Jurisdiction. This Agreement shall be governed, construed and interpreted under Missouri law, and shall be deemed to be executed and performed in the County of St. Louis, Missouri. Any legal action arising out of, or relating to this Agreement shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive exercise of jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Louis, Missouri, or federal court located in the City of St. Louis, Missouri.

32. Consultant Representations. Consultant acknowledges and represents that (i) Consultant is legally authorized to transact business in the State of Missouri and to provide the services required hereunder, (ii) the entering into this Agreement has been duly approved by the Consultant, and (iii) the undersigned is duly authorized to execute this Agreement on behalf of consultant and to bind Consultant to the terms hereof.

33. Anti-Discrimination Against Israel. Consultant certifies that it is not currently engaged in and agrees for the duration of this Agreement not to engage in, a boycott of goods or services from the State of Israel or any company, person, or entity doing business with or in the state of Israel.

34. Headings. All paragraph headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF CRESTWOOD, MISSOURI

BY: 
Mayor

ATTEST: 
City Clerk

NAME OF CONSULTANT:

CONSULTANT'S AUTHORIZED SIGNATURE:

DATE SIGNED:

City of Crestwood's Representative in receipt of signed contract:

Date City of Crestwood received signed contract:

EXHIBIT A

SCOPE OF SERVICES

1. The scope of work as written in the Request for Qualifications: Stormwater Assessment, Engineering Design, and Construction Management Services.
2. The Consultant's Proposal.

EXHIBIT B

PAYMENT

Upon completion of the Work and the Project, Consultant shall submit to the City an application or request for payment along with adequate supporting documentation, for all labor performed and equipment provided and installed, all of which shall be acceptable to the City. Applications or requests for payment for services rendered shall be not be more than once every month. Consultant shall include and provide to the City documentation warranties on the work performed.

Upon receipt and approval of the application or request for payment, the related supporting documentation, the City shall make payment in full to the Consultant within thirty (30) days