

## **COUNCIL ACTION FORM**

**SUBJECT: CITY HALL HEAT PUMP REPLACEMENT PROJECT DESIGN**

**BACKGROUND:**

The 2010-15 Capital Improvements Plan (CIP) contains a City Hall Mechanical and Structural Improvements project that includes replacement of all 170 heat pump units in the City Hall and Community Center. These are the original units that were installed in 1990. Some of the units have failed, and all of the units should be replaced in order to maintain adequate heating and cooling capacity in the building.

As shown in the CIP, this project is estimated to cost \$880,000. In 2009 the City received a federal Energy Efficiency and Conservation Block Grant (EECBG) allocation of \$544,000 under the ARRA. The City then sought and received approval to utilize that funding for the acquisition and installation of replacement heat pump units that are more energy efficient than the 1990-era units. The balance of the funding for this project will come from General Obligation bonds.

The City's process for selection of professional services was followed, and the Council previously authorized staff to negotiate a design contract with Shive-Hattery, Inc. of West Des Moines. Those negotiations led to the attached agreement, wherein the needed design services can be procured for a not-to-exceed cost of \$47,000.

It is anticipated that the design and construction work will be completed within the next ten months. This contract includes design development, preparation of construction documents, bidding/negotiations and administration of the construction contract, and miscellaneous expenses for replacement of 143 heat pumps. The contract also provides for design and bidding of approximately 30 additional heat pumps to be installed later as part of the Police Department/City Hall Basement renovation project.

All necessary federal pre-requirements have been met for expenditure of these EECBG monies except for confirming approval from the State Historic Preservation Office (SHPO). That review is required because of City Hall's status as a historic building. SHPO approval should be forthcoming in short order.

**ALTERNATIVES:**

1. Approve the architectural/engineering contract with Shive-Hattery, Inc. for the City Hall Heat Pump Replacement Project at a not-to-exceed cost of \$47,000, subject to receipt of approval from the State Historic Preservation Office.

2. Do not approve the attached contract, and delay selection of a design firm for the City Hall Heat Pump Replacement Project.

**MANAGER'S RECOMMENDED ALTERNATIVE:**

Replacement of these heat pumps is critical for the continued operation of the City Hall and Community Center. A design contract has been negotiated with a qualified firm, and EECBG grant funding is available to help defray costs of the project.

Therefore, it is the recommendation of the City Manager that the Council approve the architectural/engineering contract with Shive-Hattery, Inc. for the City Hall Heat Pump Replacement Project at a not-to-exceed cost of \$47,000, subject to receipt of approval from the State Historic Preservation Office.

**CONTRACT FOR PROFESSIONAL SERVICES FOR THE  
“AMES CITY HALL HEAT PUMP REPLACEMENT PROJECT”  
FOR THE CITY OF AMES**

**THIS AGREEMENT**, made and entered into effective the \_\_\_\_ day of July, 2010 by and between the CITY OF AMES, IOWA, a municipal corporation organized and existing pursuant to the laws of the State of Iowa (hereinafter sometimes called "City") and Shive-Hattery, Inc. (an architectural and engineering design firm organized and existing pursuant to the laws of the State of Iowa and hereinafter called "Provider");

**WITNESSETH THAT:**

**WHEREAS**, the City of Ames has determined that certain services to be provided to the City of Ames and its citizens by Provider, such services and facilities being hereinafter described and set out, should be purchased in accordance with the terms of a written agreement as hereinafter set out;

**NOW, THEREFORE**, the parties hereto have agreed and do agree as follows:

**I  
PURPOSE**

The purpose of this Agreement is to procure for the City of Ames certain services as hereinafter described and set out; to establish the methods, procedures, terms and conditions governing payment by the City of Ames for such services; and, to establish other duties, responsibilities, terms and conditions mutually undertaken and agreed to by the parties hereto in consideration of the services to be performed and monies paid.

**II  
SCOPE OF SERVICES**

Provider shall provide the services set out in the City of Ames, Iowa, Scope of Work, Professional Services for The City of Ames attached hereto as Exhibit A.

The City, without invalidating the Agreement, may direct changes in the project within the general scope of the Agreement, with the authorized payment maximum being adjusted accordingly. Any change in the scope of service by the provider shall be done by written agreement signed by both parties. The added cost or cost reduction to the City resulting from a change in the Agreement shall be determined by mutual acceptance of a lump sum properly itemized and supported by sufficient data to permit evaluation, or by unit prices stated in the Agreement or subsequently agreed upon.

It shall be the responsibility of the provider, before proceeding with any change in scope, to verify that the change has been properly authorized on behalf of the City. No additional charges or any other change in the Agreement will be allowed unless previously authorized in writing by the City, with the applicable compensation method and maximum authorized additional sum stated.

For purposes of this section, and for all other official communications, the authorized representatives of the parties shall be:

City of Ames:  
Paul Hinderaker, Fleet Services Director  
515 Clark Ave.  
Ames, IA 50014  
515-239-5220

Shive-Hattery Inc.:  
Mark Allen, Architect  
1601 48th St., Suite 200  
West Des Moines, IA 50266

Project No: 409589-0

**III**  
**METHOD OF PAYMENT**

- A. Payments shall be made by the City of Ames in accordance with the following task schedule:
- | Task              | Total Amount                                                                                                        |
|-------------------|---------------------------------------------------------------------------------------------------------------------|
| a. Group 1        | \$11,200.00 (Design Development)                                                                                    |
| b. Group 2        | \$15,000.00 (Construction Documents)                                                                                |
| c. Group 3        | \$11,200.00 (Bidding/Negotiations and Administration of the Construction Contract billed in monthly installments)   |
| d. Group 4        | \$ 4,100.00 (Design for pre-purchase units)                                                                         |
| d. Expenses up to | \$ 5,500.00 (Travel, shipping/postage, printing up to 65 bid sets and 1 set of mylars; billed monthly upon accrual) |

The maximum total amount payable by the City of Ames under this Agreement is \$47,000.00 and no greater amount shall be paid without written amendment.

B. Payment will be made upon completion of each task and acceptance by the City of Ames. Provider shall submit an invoice upon completion of the work. The invoice shall include an itemization of the work for which payment is claimed. Invoices referencing the assigned purchase order number shall be sent to the following address:

City of Ames  
Finance Dept. – Accounts Payable  
PO Box 811  
Ames, IA 50010

**IV**  
**FINANCIAL ACCOUNTING AND ADMINISTRATION**

A. All claims for payment shall be supported by properly executed invoices or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified as such and readily accessible for examination and audit by the City or its authorized representative.

B. All records shall be maintained in accordance with procedures and requirements established by the City Finance Director, and the City Finance Director may, prior to any payment under this Agreement, conduct a pre-audit of record keeping and financial accounting procedures of the Provider for the purpose of determining changes and modifications necessary with respect to accounting for charges made hereunder. All records and documents required by this Agreement shall be maintained for a period of three (3) years following final payment by the City.

C. At such time and in such form as the City may require, there shall be furnished to the City such statements, records, reports, data, and information as the City may require with respect to the payments made or claimed under this Agreement.

D. At any time during normal business hours, and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement and Provider will permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

## **V INSURANCE**

A. The provider shall maintain insurance coverage in scope and amounts acceptable to the City's Risk Manager.

B. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Ames, its officials, employees, or volunteers.

C. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

D. Provider shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on standard insurance company forms or forms provided by the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

E. To the fullest extent permitted by law the Provider shall indemnify and hold harmless the City of Ames, their agents, and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom; and (2) is caused in whole or in part by any negligent act or omission of the Provider, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts, any of them may be liable.

F. In no case will the Provider's coverage be constructed to provide coverage for acts of negligence alleged to be caused by the sole negligence of employees of the City of Ames.

## **VI TERMINATION**

The City of Ames may terminate this Agreement without penalty to the City at any time by giving written notice to the Provider at least fifteen (15) days before the effective date of such termination. In any case where the Provider fails in whole or in part to substantially perform its obligations or has delivered nonconforming services, the City shall provide a Cure notice. If after notice the Provider continues to be in default, the City may terminate this agreement immediately. The City shall only be obligated to compensate the Provider for compliant services performed prior to notice of termination.

## **VII INDEPENDENT CONTRACTOR STATUS**

Provider agrees that the relationship between Provider and the City is that of an independent contractor for employment tax purposes. The Provider shall be solely responsible for all taxes relating to payments under this agreement including those of employees.

## **VIII LAWS**

This contract is governed by the law of the State of Iowa with venue in Story County District Court.

**IX  
ASSIGNMENT**

This Agreement may not be assigned or transferred by the Provider without prior written consent of the City.

**X  
AFFIRMATIVE ACTION**

Provider shall place on file with the City a statement of nondiscrimination policy in the form of a completed Assurance of Compliance with the City of Ames, Iowa. Affirmative Action Program satisfactory to the Affirmative Action Officer of the City.

**XI  
DURATION**

This Agreement shall be in full force and effect from the date of its acceptance until completion of the Work, or, until terminated by the City of Ames, Iowa. The parties anticipate that work schedule will be negotiated to complete within a mutually acceptable time from the date of the execution of this Agreement.

**IN WITNESS WHEREOF** the parties hereto have, by their authorized representatives, set their hand and seal as of the date first above written

**CITY OF AMES, IOWA**

By: \_\_\_\_\_  
Ann H. Campbell, Mayor

By \_\_\_\_\_

Attest by: \_\_\_\_\_  
Diane R. Voss, City Clerk

Michelle Bissell, Project Manager  
Printed Name and Title

**EXHIBIT A**  
**(page 1 of 3)**

Shive-Hattery, Inc shall prepare, for your approval documents designed to solicit and execute the construction of your project. The scope of this project is defined as the design for the replacement of 143 new heat pumps in a “one-for-one” Capacity as described in the “Ames City Hall Heat Pump Replacement Evaluation” dated 2-5-2009. This project will also provide for the procurement of approximately 30 additional heat pumps that will be installed at a later date under a different project that renovates the Police Department and City Engineering areas as defined by the “Select Option” in the “Ames City Hall Space Re-Use Report” dated 1-21-2009. The provider will work with the City of Ames such that these professional design services will be performed in a method that provides for compliance with the following identified grants:

1. Energy Efficiency and Conservation Block Grant (EECBG).
  - a. Provide technical information to the Owner so that the Owner may report the status of the improvements and comply with the requirements of this grant.
2. American Recovery and Reinvestment Act (ARRA)
  - a. Provide language in Project Manual requiring General Contractor’s compliance
  - b. Provide AE labor reports to Owner in compliance with ARRA
3. Waste Stream Plan
  - a. Provide language in Project Manual requiring General Contractor’s compliance
4. Davis-Bacon Act
  - a. Provide language in Project Manual requiring General Contractor’s compliance
5. Buy American
  - a. Provide language in Project Manual requiring General Contractor’s compliance
6. State Historic Preservation Office (SHPO)
  - a. Provide technical information to the Owner so that the Owner may report the status of the improvements and comply with the requirements of this grant.

The design services for this project will include design development, construction documents and construction phase services including – administration of the construction contract. These tasks are defined as follows:

**Task Group 1: Design Development** (completed within 45 days from notice to proceed)

Shive-Hattery, Inc. shall review the program furnished by the Owner to ascertain the requirements of the Project and then will provide a preliminary evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other. Based on a mutually agreed upon program, schedule, and construction budget, the Architect/Engineer shall prepare, for owner approval, Design development documents consisting of drawings, and other documents to fix and describe the size and character of the Project as to the mechanical systems and such other elements as may be appropriate.

1. Meet with owner representatives and review project parameters
2. Confirm HVAC scope of work, system selections and budget
3. Identify Electrical scope of work and system selections as necessary
4. Building Systems – Develop and coordinate with design solution
  - a. Heating Ventilation and Cooling (HVAC)
  - b. Piping systems as may be required
  - c. Plumbing systems as may be required
  - d. Electrical systems as may be required
5. Design Development Deliverable items
  - a. Generate design development drawings and documents for Owner approval
  - b. Generate opinion of probable construction cost
  - c. Owner review and approval

**EXHIBIT A CONTINUED**  
**(page 2 of 3)**

**Task Group 2: Construction Documents** (completed within 45 days from Task Group 1 approval)

Based on the approved design development documents and any further adjustments in the scope or quality of the project or in the construction budget authorized by your organization, Shive-Hattery, Inc. shall prepare, for your approval, construction documents consisting of drawings and specifications setting forth in detail the requirements for the construction of your heat pump replacement project.

1. Building Systems
  - a. Develop final heating ventilation and cooling plans and details
  - b. Develop final piping systems plans and details
  - c. Develop final plumbing systems plans and details
  - d. Develop final power system plans and details
  - e. Building systems specification sections
2. Construction Documents Deliverable items
  - a. Generate construction document drawings and project manual
    - Division 00 to include milestone schedule and "direct cost" liquidated damages for non-approved schedule over-runs
  - b. Update opinion of probable construction cost
  - c. Owner review and approval
3. The field notes, design notes, original drawings of the construction plans as instruments of service, are and shall remain, the property of the Provider; however, the City shall be furnished 1 set of construction drawings on reproducible Mylar.

**Task Group 3: Bidding / Negotiations and Administration of the Construction Contract (completion duration to be determined by general contractor)**

Shive-Hattery, Inc. shall provide administration of the contract for general construction. As your representative, Shive-Hattery, Inc. shall visit the site at appropriate stages to become familiar with and keep you informed about the progress and quality of the portion of the work completed, endeavor to guard you against defects and deficiencies in the work, and to determine in general if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the contract documents.

1. Bidding / Negotiations: Following final approval of the construction documents, we shall assist you in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.
  - a) Prepare and help the City distribute an Advertisement/Invitation for Bid
  - b) Distribute bidding documents utilizing ProCopy Reprographics
  - c) Conduct a pre-bid conference to aid prospective bidders in understanding the scope of the project
  - d) Receive and respond to bidders questions
  - e) Evaluate substitution requests
  - f) Issue addenda formally clarifying questions, product substitutions and minutes from the pre-bid conference
  - g) Conduct a bid opening and document the results of all the received bids.
  - h) Prepare an AIA Owner-General Contractor Agreement
2. Administration of the Construction Contract
  - a. Assist with award of construction contract
  - b. Review schedule of values and pay application requests
  - c. Review and process shop drawing submittals
  - d. Provide clarification and supplemental instructions
  - e. Prepare and Process change orders
  - f. Provide up to 10 on site observations
  - g. Prepare Final Punch List / Project Acceptance
  - h. Project close-out

**Task Group 4: Design for Pre-purchase Heat Pumps** (completed within 45 days from Task Group 1 approval)

Based on the select option of the preliminary design, Shive-Hattery, Inc. shall prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for the pre-purchase of the heat pump replacements for the future renovation project.



**EXHIBIT A CONTINUED**  
**(page 3 of 3)**

**Additional Provisions**

1. If the Basic Services covered by this agreement have not been completed within 12 months of the date hereof, through no fault of the architect, additional fees for an extension of the Architect's services beyond 12 months shall be negotiated.
2. The following services beyond those described above may be necessary for your project, but are not included in the Architect's Scope of Work or compensation amounts at this time. Additional services above and beyond the services described herein will require negotiation on a case by case basis.
  - a. asbestos abatement
  - b. design and development for roof top make up air units
  - c. re-design due to significant variations between record drawings and actual conditions
  - d. re-design of previously approved work
  - e. formal preparation of grant funding reports, beyond providing technical assistance to the owner
3. No fixed limit of construction cost is established as a condition of this agreement.
4. ARRA Statement of funding and purpose
  - a. Work performed under this contract will be funded, in whole or in part, with funds appropriated through the American Recovery and Reinvestment act of 2009, Pub. L 111-5 ("Recovery Act" or "ARRA"). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. In the event of conflict between other terms and conditions of this Contract and ARRA requirements, the terms and conditions of the latter shall govern.
5. Cooperation with ARRA requirements
  - a. The Provider must comply with all requirements of ARRA. If the Provider believes there is any inconsistency between ARRA requirements and current contract requirements, the Provider shall report the inconsistency to the Owner's Representative for reconciliation.
  - b. The Provider shall cooperate with the City with respect to the City's reporting requirements under Section 1512 of the Recovery Act, as such requirements may be amended or clarified by law or regulation, by providing any information requested by the City or by other authorized federal or State authorities related to such reporting requirements.
6. Whistleblower Protections under ARRA
  - a. Section 1553 of the Recovery Act provides certain protections for whistleblowers.
  - b. Pursuant to Section 1553(e), the Provider shall post notice of the rights and remedies for whistleblower protections provided under Section 1553. Specifically, the Provider shall post Section 1553 itself.
  - c. The Provider shall include the substance of this clause, including this paragraph (c) in all subcontracts.