



Staff Report

Date: December 9, 2021

To: Mayor Robbins and Council Members

From: Richard Simonitch, Public Works Director

Subject: Town Council approval of an amendment to the Consultant Services Agreement for Moe Engineering Inc. related to additional design and project management services for the 2021 Pavement Rehabilitation project.

Recommendation

It is recommended that the Town Council authorize the Town Manager to execute a contract amendment (Amendment #1) with Moe Engineering Inc. (MEI) related to additional design and project management services for the 2021 Pavement Rehabilitation project.

Background and Discussion

At its March 11, 2021 meeting the Ross Town Council approved and authorized the Town Manager to execute a Consultant Services Agreement (CSA) with MEI for Civil Engineering professional services related to the 2021 Pavement Rehabilitation Project. The approved CSA base contract amount is \$78,318. In the March 11, 2021 staff report, the Town Engineer reserved an additional \$11,750 (15%) budget amount to cover costs related to unforeseen changes in scope. Amendment #1 in the amount \$15,982 exceeds this reserve budget amount and therefore requires Town Council approval.

Between the time of approval of the CSA on March 11, 2021 (Attachment 1) and the start of construction in September 2021, additional project elements were added to the MEI scope of work at the request of the Town Engineer. The Amendment for the additional scope of work (Attachment 2) included the design and specifications for a regulatory green bike lane stripe behind the Ross Post Office connecting the multi-use path and County Bike Route 20 from Frederick Allen Park to the sidewalk at Lagunitas Road, underground electrical conduits in the Post Office parking lot for future EV charging, and additional irrigation conduits across Ross Common for a future irrigation connection from the Post Office irrigation well to the Ross Common field.

Fiscal, resource and timeline impacts:

The base CSA contract amount from MEI is \$78,318. Amendment #1 in the amount of \$15,982 brings the total contract amount to \$94,300. The CSA and Amendment #1 are funded by the Roadway Fund and Gas Tax Fund. The roadways were made available for public use within the time required by the construction documents. Except for the completion of minor punch-list items, the 2021 Pavement Rehabilitation project is complete as of October 31, 2021 and no further amendments to the MEI CSA are anticipated.

The final invoicing from Maggiora and Ghilotti for the construction of the project has not yet been received from staff. If costs related to construction contract change orders exceed the 15% reserve budgeted amount for the construction contract, staff will present these change orders to the Town Council for approval at a future meeting.

Alternative actions

None

Attachments

1. Consultant Services Agreement approved March 11, 2021
2. CSA Amendment #1

ATTACHMENT 1

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Town of Ross, California, as of March 11, 2021, by and between the Town of Ross, a municipal corporation (the "CITY") and Moe Engineering, Inc. ("CONSULTANT"), who agree as follows:

1) SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A" or as may be mutually agreed upon between CITY and CONSULTANT.

2) PAYMENT. CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) INSURANCE REQUIREMENTS. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

EXECUTED as of the day first above-stated.

Town of Ross, a municipal corporation

By: 

CONSULTANT

By: 

President
Moe Engineering, Inc.

Exhibit A

SCOPE OF SERVICES

See proposal letter, attached as Exhibit "A".

EXHIBIT B

PAYMENT SCHEDULE

1) The total contract price for services rendered by CONTRACTOR under this Agreement shall be as specified below:

**Time and Materials per attached Exhibit "B-1" annual Fee Schedule
as approved by Town Manager**

NOT TO EXCEED \$78,318 WITHOUT AUTHORIZATION BY THE TOWN OF ROSS

2) Payment shall be made to CONTRACTOR on a time and materials basis, and CONTRACTOR shall submit monthly invoices to the City for the same.

3) Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to by the CITY and CONTRACTOR, and shall be billed on a time and materials basis to the CITY.

EXHIBIT C

GENERAL PROVISIONS

- 1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent CONSULTANT and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.
- 2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.
- 3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.
- 4) CONSULTANT NOT AN AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.
- 5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.
- 6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.
- 7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.
- 8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to

receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the CITY.

10) INDEMNIFY AND HOLD HARMLESS.

a) If AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(b)(2), CONSULTANT shall hold harmless, defend and indemnify the CITY, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

b) If AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

11) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

12) LOCAL EMPLOYMENT POLICY. The CITY desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The CITY encourages an active affirmative action program on the part of its CONSULTANTS, consultants, and developers. When local projects require, sub Consultants, CONSULTANTS, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, CONSULTANT, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

13) CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

14) EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, Limited Liability Corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT's federal tax identification number.

15) TERM OF THIS AGREEMENT. The term of this agreement shall be for a period of 2 years from the date this agreement was executed.

EXHIBIT D

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- Fidelity / Crime / Dishonesty Bond in the minimum amount of \$_____
- MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as additional

insured's as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.

- ii) For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
 - iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
 - iv) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled 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.
 - vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT's policy limits of coverage.
- c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.
- d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.
- e) SUB-CONSULTANTS. CONSULTANT shall require all sub Consultants to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-CONSULTANT's insurance shall not relieve CONSULTANT from any claim arising from sub-CONSULTANTS work on behalf of CONSULTANT.

EXHIBIT A



2950 Montecito Avenue
Santa Rosa, CA 95404
(707) 544 - 6274 FAX (707) 544 - 9086

January 15, 2021

Richard Simonitch, Director of Public Works/City Engineer
Town of Ross
P.O. Box 320
Ross, CA 94957

Subject: Cost Proposal for Professional Engineering Design Services for
2021 Pavement Rehabilitation Project:
Ross Common, Post Office Parking Lot, portion of Redwood Drive & El
Camino Bueno in the Town of Ross

Dear Rich:

We are pleased to provide this proposal for engineering services for the subject project. The project involves curb ramp upgrades to ADA requirements, concrete sidewalk reconstruction, asphalt pavement grinding, dig-out repairs as needed, overlay, curb repair as appropriate and pavement striping within limits shown on attached exhibit. Additionally, El Camino Bueno will be Type II Micro-surfaced and raised pavement markers installed on two portions of SFD, as shown on attached exhibit.

We offer the following cost proposal for the above-described services.

The services included in this proposal are provided as separate tasks (and detailed in the attached Estimated Level of Effort):

Task 1 – Project Setup, Site Review, Coordination **\$ 9,228.00**

- Project Setup & Management
- Two Meetings - estimated
- Site Review
- Scoping Complete

**Task 2 – Develop Plans, Specifications, and Estimate (PS&E) \$ 43,476.00
for Construction**

- Field Survey
- Base map prep, including Ross Common, Post Office parking Lot & portion of Redwood Dr., edge of pavement, curb & gutter, driveway and pedestrian ramp locations, parking & other striping.

- Design / Draft Plan Sheets, design coordination
- Prepare Technical Specifications for Bid Documents
- Prepare Construction Cost Estimate

TOTAL PS&E DESIGN TASKS

\$ 52,476.00

ADDITIONAL SERVICES

Task 3 – Construction Support

\$ 25,842.00

- Construction Preparation Support
- Field Inspections
- Project Closeout
- Mileage & Reimbursables

TOTAL ALL TASKS

\$ 78,318.00

We propose to provide the above **Engineering Design & Support Services** based on time and materials, the attached Estimated Level of Effort and Fee Schedule for an amount of **\$ 78,318.00.**

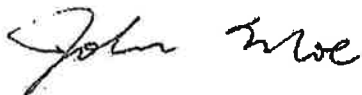
The following items are specifically **excluded** from this proposal:

- Environmental compliance studies and technical memos.
- Geotechnical, Structural or Traffic engineering services.
- Utility relocation beyond identifying utility cover to grade adjustments.
- Coordination with any City-hired consultants or sub-consultants.
- Right-of-way or property line boundary determination or Record of Survey.
- Payment of any fees associated with the submittal or completion of this project.

If you have any questions or would like clarification of the proposed services, please feel free to call.

Thank you for the opportunity to provide this proposal. We look forward to working with you on this project.

Sincerely,



John L. Moe, PE
President, Moe Engineering, Inc.

**Attachments: 2 Project Limits Exhibits
Estimated Level of Effort
2020 Fee Schedule**

ATTACHMENT 2

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE TOWN OF ROSS AND
MOE ENGINEERING RELATIVE TO
2021 PAVEMENT REHABILITATION PEOJECT**

This First Amendment to Professional Services Agreement, ("**Amendment #1**"), is entered into this _____ day of _____, 2021 (the "**Effective Date**"), by and between the TOWN OF ROSS, a municipal corporation, ("**Town**"), and MOE ENGINEERING, ("**Consultant**"), who agree as follows.

RECITALS

A. Town and Consultant entered into a Professional Services Agreement for Engineering Design and Inspection Services for the 2021 Pavement Rehabilitation Project in the Town of Ross, ("**Agreement**"), on March 11, 2021.

B. Various added scope of work items that have been requested by and discussed with the Town and/or other tasks that have required added effort outside of the original scope of work that are required to be exercised to successfully deliver the project require additional compensation for the Consultant to cover the costs associated with the change of project scope. See Exhibit A, attached.

C. Town and Consultant agree that Consultant will continue providing Engineering Design and Inspection Services for the 2021 Pavement Rehabilitation Project.

D. The Town now desires to amend the Agreement as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereby agree to amend the Agreement as follows:

AGREEMENT

1. Terms. Unless otherwise defined in this Amendment, all terms used in this Amendment shall have the same meaning as set forth in the Agreement.

2. Term, Delays and Extensions. There is no amendment to the Term, Delays and Extensions in the Agreement as a result of this Amendment.

3. Compensation. The existing Contract amount is \$78,318. With the addition of Amendment #1 in the amount of \$15,981, the new Contract amount is \$94,299.

4. Ratification. Except as modified by this Amendment, the Agreement is ratified, affirmed, in full force and effect, and incorporated herein by this reference.

5. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

6. Effective Date. This Amendment shall be effective as of the Effective Date.

7. Exhibits. COST PROPOSAL AND SCOPE OF WORK FOR THIS AMENDMENT #1 IS ATTACHED AS EXHIBIT A.

“Town”

Town of Ross,
a municipal corporation

By: _____

Name: _____

Its: _____

“CONSULTANT”

Moe Engineering, Inc,
a California Corporation

By: _____

Name: _____

Its: _____



2950 Montecito Avenue
Santa Rosa, CA 95404
(707) 544 - 6274 FAX (707) 544 - 9086

October 26, 2021

Richard Simonitch, Director of Public Works/City Engineer
Town of Ross
P.O. Box 320
Ross, CA 94957

Subject: Consultant Services Agreement Amendment Request
2021 Pavement Rehabilitation Project:
Ross Common, Post Office Parking Lot, portion of Redwood Drive & El Camino Bueno
in the Town of Ross

Dear Rich:

Pursuant to our recent email communication Moe Engineering would like to request an amendment to our Consultant Services Agreement (CSA) dated March 11, 2021 for additional design and construction support services.

The additional services included a green bike lane stripe behind the Ross Post Office connecting to the sidewalk at Lagunitas Road, additional conduits for future EV charging, and additional irrigation conduits for a future irrigation connection across Ross Common from the lawn and landscape area just north of the post office.

The following is a summary of project closeout expenses:

\$ 8,697.80	Over budget at the end of September 2021
\$ 6,284.00	Closeout per original agreement
<u>\$ 1,000.00</u>	Estimated additional CM/closeout through October/November 2021
\$15,981.80	Total Amendment Request

If you have any questions or would like clarification of the CSA amendment request, please feel free to contact me.

Thank you for the opportunity to provide consulting services to the Town of Ross.

Sincerely,

A handwritten signature in cursive script that reads 'John L. Moe'.

John L. Moe, PE
President, Moe Engineering, Inc.