

CITY OF BATAVIA

DATE: March 6, 2019
TO: Committee of the Whole – March 12, 2019
FROM: Timothy Grimm, P.E. Senior Civil Engineer
SUBJECT: Resolution 19-28-R Authorize a Master Services Agreement with BLA, Inc. and to provide Construction Engineering Services

Summary: Last year, the City Council approved a Construction Engineering Services Shortlist for anticipated construction projects for FY2018 through FY2020. Six firms were selected using the Federal Qualified Based Selection (QBS) procedures. BLA, Inc was one of these firms selected for the shortlist.

Since we anticipate future work with the shortlisted consultants, a Master Service Agreement (MSA) is used to establish the contract terms and conditions of performing consulting services.

Background: The City anticipates several large construction projects to take place over the next several years and will be requiring Phase III construction engineering services to be completed for some of those projects. The projects will include storm sewer, watermain, and street reconstruction work in various locations throughout the City.

In March 2018, the City Council approved a shortlist of six construction engineering consultants in order to streamline the process of selection. Currently, the City has executed MSA with 4 out of 6 consultants as most of those consultants previously worked for the City. BLA was selected as one of the shortlisted consultants for Construction Engineering Services based on their significant project experience similar in nature to the City's upcoming projects. However, BLA did not work for the City previously hence a MSA needs to be executed to streamline the efforts of contract execution with this shortlisted consultant.

The Master Services Agreement with BLA includes minor revisions to the language used in our standard professional services agreements. These changes have been reviewed and approved by staff.

Staff is recommending that a Master Services Agreement be entered into with BLA, Inc. for future projects.

Staff recommendations:

- Recommend Committee of the Whole and City Council approve Resolution 19-28-R to authorize a Master Services Agreement with BLA, Inc. to provide Construction Engineering Services.

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 19-28-R**

**APPROVING MASTER SERVICES AGREEMENT WITH
BLA, INC.**

WHEREAS, the City of Batavia desires to enter into a Master Services Agreement with BLA, Inc. provide civil engineering services related to infrastructure maintenance and capital improvement projects.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute a Master Services Agreement with BLA, Inc. attached hereto as Exhibit I.

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 18th day of March, 2019.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 18th day of March, 2019.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Salvati				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Malay					Stark				
5	Uher					Theelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

Ellen Posdleni, City Clerk

EXHIBIT "A"

SCHEDULE OF RATES
FOR
BLA, INC.

Director of Construction Engineering.....	\$175.00/hour
Director of Structural Engineering.....	\$175.00/hour
Director of Environmental Services.....	\$135.23/hour
Resident Engineer II.....	\$128.00/hour
Construction Engineer II.....	\$84.21/hour
Construction Engineer I.....	\$73.65/hour

NOTES:

1. THE RATES LISTED ABOVE ARE VALID UNTIL DECEMBER 31ST, 2019.
2. THE RATES FOR REIMBURSABLES SUCH AS POSTAGE, DOCUMENT FEES AND IN-HOUSE PRINTINGS/DISCS ARE APPLIED BASED ON THE NORMAL ON-GOING CHARGES.
3. THE ABOVE RATES DO NOT INCLUDE THE SERVICES OF OTHER PROFESSIONALS OR COMPANIES REQUIRED TO PERFORM WORK TO ASSIST BLA, INC. GROUP IN THE PERFORMANCE OF A TASK ORDER.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT entered into 18th day of February, 2019 by the CITY OF BATAVIA, 100 North Island Ave, Batavia, IL 60510, hereinafter called the CITY, and BLA, Inc., 333 Pierce Road, Suite 200, Itasca, IL 60143, hereinafter called the CONSULTANT.

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

1. ENGAGEMENT OF CONSULTANT: The CITY, acting pursuant to its vested authority, does hereby hire the CONSULTANT and the CONSULTANT agrees to perform professional engineering, surveying, environmental science and management services as requested by the CITY as more fully described and on the terms provided herein below. Rahat Bari or designated representative, will act as the liaison for the CITY and Kerry Field, or designated representative, will act as liaison for the CONSULTANT for administration of this Agreement. This Agreement for Professional services can only be amended or revised by a written agreement signed by both parties.

The relationship of the CONSULTANT to the CITY shall be that of an independent CONSULTANT rendering professional services. The CONSULTANT shall have no authority to execute contracts or to make commitments on behalf of the CITY and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the CITY and the CONSULTANT.

2. CHARACTER AND EXTENT OF SERVICES: The CONSULTANT shall perform certain professional engineering, surveying, environmental science and management services as requested. Such services to include, but not limited to, the following types of work:
 - Engineering and surveying tasks for various municipal infrastructure projects
 - Development of studies, plans and reports
 - Design plans and specifications and contract documents
 - Resident engineering services during construction
 - Assistance with matters related to streams and wetlands
 - Reviews of various engineering plans on behalf of the city for both public and private improvements.

The CONSULTANT shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, and local governments, which may in any manner affect the preparation of proposals or the performance of the

Agreement. The CONSULTANT shall obtain, at its own expense, all permits and licenses, if any, that may be required to operate the business of the CONSULTANT by federal, state, and local regulations and laws.

3. TASK ORDERS/SPECIFIC HOURLY RATE BASIS: Prior to commencement of any service to be performed through a task order, the CITY and CONSULTANT shall mutually agree upon and execute a task order for the specified service utilizing the general form of task order attached hereto as Exhibit "B" and by this reference incorporated herein. The task order shall describe the services to be provided, the time for performance of the service, the fee provisions for the services, and any provisions additional to this agreement. Execution by the CITY and CONSULTANT of subsequent task orders shall incorporate such subsequent task orders into this agreement.

Services to be performed on a specific hourly rate basis shall not require a task order, but shall only be performed upon authorization from the City Administrator or designated Department Head.

4. ITEMS TO BE FURNISHED AND RESPONSIBILITY OF CITY: The CITY will provide or perform the following:

- a. Provide full information as to CITY requirements of the Project.
- b. Assist the CONSULTANT by placing at his disposal all available information pertinent to the site of the Project including previous reports, calculations, drawings, plats, reports, surveys, utility records, and any other data relative to design and construction of the Project.
- c. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.
- d. Advertise for hearings and proposals for bidders, open the proposals at the appointed time and place, and pay for all costs incidental thereto.
- e. Obtain approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

5. COMPLETION TIMES: The services called for under the various phases of Section 2 of this Agreement shall be completed as follows:

Services required for these tasks shall be completed within the times mutually determined by the CITY and the CONSULTANT as outlined in the applicable Task Order.

EXHIBIT "B"

TASK ORDER NO. _____

REGARDING GENERAL AGREEMENT BETWEEN CITY OF BATAVIA

AND

BLA, INC.

Project Description:

Scope of Services:

Time of Performance:

Estimated Fee for Services:

Proposed: _____

Date

Approved:

City of Batavia
Rahat Bari

Date

6. PROFESSIONAL FEES: For the services furnished by the CONSULTANT as described under Section 2 and Section 3 of this Agreement, the CITY agrees to pay the CONSULTANT the fees as set forth herein:

According to Exhibit A - Schedule of Hourly Rates on a time spent basis plus reimbursement for direct non-salary expenses such as laboratory testing, soil reports, reproduction expenses, out of town travel costs, long distance telephone calls, and outside consultants. Outside subconsultant's billings shall be marked up by a factor of 1.0 times the subconsultant billing.

7. PAYMENT: Monthly payments, payable according to Section 8 of this Agreement, based on the documented amount due.

8. CITY PAYMENT SCHEDULE: The CITY will process for payment all statements received by the 10th day of each month for work done from the 1st day of the prior month.

9. FACILITIES TO BE FURNISHED BY THE CONSULTANT: The CONSULTANT shall furnish and maintain a central office, drafting space, and equipment suitable and adequate for the prosecution of the work that is normal to the functioning of an established consulting engineering and surveying practice.

10. TERMINATION: The CITY or CONSULTANT may terminate this Agreement by giving thirty (30) days written notice to the other party. In such event, the CITY shall forthwith pay the CONSULTANT in full for all work previously authorized and performed prior to notice of termination. In the event of termination, the CONSULTANT agrees to cooperate reasonably with any consulting engineer thereafter retained by the CITY in making available information developed as the result of work previously performed by the CONSULTANT. If no notice of termination is given, relationships and obligations created by this Agreement, unless otherwise expressly provided, shall be terminated upon completion of all applicable requirements of the Agreement.

The City may, at any time by written order, require the CONSULTANT to stop all or part of the services required by this Agreement. Upon receipt of such an order the CONSULTANT shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. The City will pay for costs associated with suspension provided, they are deemed reasonable by the City.

The City reserves the right to terminate the whole or any part of this Agreement, upon ten (10) calendar day's written notice to the CONSULTANT if the City is dissatisfied with the services of the CONSULTANT, provided that the City has previously notified the CONSULTANT of its dissatisfaction in writing stating the reasons therefor and allowing the CONSULTANT a minimum of thirty (30) days

to adjust and meet the City's expectations. The City further reserves the right to cancel the whole or part of the Agreement immediately for cause, if the CONSULTANT fails to perform any of the provisions in the Agreement or fails to make delivery within the time stated, provided that notice is given in writing to the CONSULTANT of the default, and the CONSULTANT is given ten (10) days to cure the default or to begin curing the default and diligently continues to cure the default, if the default is of the nature that cannot be cured in such time. The CONSULTANT will not be liable to perform if situations arise by reason of acts of God or public enemy, acts of City, fires, or floods.

Should any of the key personnel become unavailable to work on the project, and no permanent substitute personnel reasonably satisfactory to the City is provided by the CONSULTANT within thirty (30) days, and/or no temporary replacement personnel is provided by the CONSULTANT immediately following the commencement of the subject Key Personnel's unavailability, the City may, at its election, declare such contract terminated and at an end, reserve the right to maintain and action to recover damages arising due to breach of contract

The City reserves the right to terminate in whole or any part of this Agreement, upon written notice to the CONSULTANT, in the event of default by the CONSULTANT. Default is defined as failure of the CONSULTANT to perform any of the provisions of this contract or failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event of default and termination, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated.

The CONSULTANT shall be liable to the City for all excess costs for such similar supplies or service unless evidence is submitted to the City that in the sole opinion of the City clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the CONSULTANT.

Upon termination, the CONSULTANT shall cause to be delivered to the City all surveys, reports, permits, agreements, calculations, drawings, specifications, partially and completed estimates, and data, as well as products of computer aided drafting, design, and writing that have been paid for by the City. Cost of termination incurred by the CONSULTANT before the termination date will be reimbursed by the City only, if prior to the effective termination date, the City receives from the CONSULTANT a list of actions necessary to accomplish termination and the City agrees in writing that those actions be taken. Upon receipt of the termination notice, the CONSULTANT shall stop all work until said Agreement is reached.

11. ARBITRATION: All claims, disputes, and other matters in question arising out of, or related to, this Agreement or the breach thereof, shall be decided by

arbitration in accordance with the Rules of the American Arbitration Association. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration shall be filed in writing with the other party of this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after institution of legal or equitable proceedings based upon such claim, dispute, or other matter in question would be barred by applicable statute of limitations.

The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction.

In the event of a claim, jurisdiction and venue shall be in KANE County, ILLINOIS.

12. INDEMNIFICATION: The CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by the negligent act, omission, or failure of the CONSULTANT, its officers, agents and employees, in performing the work required by this Agreement.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Comprehensive General Liability including Products Liability/Completed Operations insurance naming the City as an additional insured written on an occurrence basis with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 policy limit, including Broad Form Contractual Liability insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 policy limit subject to the terms and conditions of the policy.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Automobile Liability insurance in an amount not less than \$1,000,000 combined single limit. Said insurance is to be extended to cover hired and non-owned vehicles.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Umbrella or Excess Liability coverage of \$2,000,000.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Workers' Compensation insurance, as required by statute, by an insurance company licensed to write worker's compensation in the State of Illinois. Employer's Liability, in an amount not less than \$500,000 each accident, \$500,000 disease-policy limit and \$500,000 disease-each employee.

The insurance provided by CONSULTANT shall be primary, and not contributory to any insurance purchased by the City. All insurance policies required by this contract shall be underwritten by insurance companies with a minimum A.M. Best rating of A. The certificate of insurance shall provide that it will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

The CONSULTANT shall not commence work under this contract until they have obtained all insurance required and such insurance has been approved by the City, nor shall the CONSULTANT allow any subcontractors (hereafter Subs) to commence work on their subcontract until the same insurance has been obtained by the Sub. The CONSULTANT and their Subs shall maintain all insurance for not less than one (1) year after completion of this contract.

If the CONSULTANT is providing architectural, engineering, or surveying services, CONSULTANT shall also file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage.

In the event the CITY requires contractors or subcontractors working on CITY projects to acquire and provide proof of insurance covering public liability, death, and property damage naming the CITY as an insured, the CITY shall require said contractors or subcontractors to name the CONSULTANT as an additional insured.

13. ASSIGNMENT: The CONSULTANT shall not assign this Agreement, or any of the work or services covered by this Agreement, without the express written consent of the CITY.
14. STANDARD FOR PERFORMANCE: The CONSULTANT shall perform its services in accordance with generally accepted engineering and consultant standards and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this Agreement. The CONSULTANT warrants that it is technically qualified and entirely conversant with the requirements of the work to be provided pursuant to this Agreement; and that it has sufficient properly trained, organized, and experienced personnel and/or subcontractors to perform the services enumerated herein.
15. OPINIONS OF COST: The CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or other competitive bidding or market conditions, and its opinions of probable project or construction costs are to be made on the basis of its experience and qualifications and represents its judgment as an experienced and qualified professional, familiar with the construction industry. However, the CONSULTANT cannot and does not guarantee that proposals, bids,

or actual project or construction costs will not vary from the opinions of probable costs prepared by it.

16. CONSTRUCTION AND SAFETY: The CONSULTANT shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors or the safety precautions and programs incidental to work of contractors. It is the intent that the construction contractors will be held responsible for means and methods of construction and all safety issues.
17. SUBMITTAL REVIEW: Review of proposed contractor substitutions of materials and equipment by CONSULTANT is only for general conformance with the design concept of the Project and general compliance with the information given in the Contract Documents. The review does not affect the contractor's responsibility to perform all contract requirements.
18. OWNERSHIP AND REUSE OF DOCUMENTS: The originals of all documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement shall remain the property of CONSULTANT and are instruments of service in respect of the Project. The CONSULTANT shall provide the CITY with reproducible copies of all documents, drawings, specifications, and other work products that shall be the property of the CITY. Such documents, drawings, and specifications are not intended nor represented by the CONSULTANT to be suitable for reuse by the CITY or others on extensions of the services provided for the intended project or on any other project. The basic survey notes and sketches, charts, computations, and other data prepared or obtained by the CONSULTANT pursuant to the Agreement will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports shall be available to the City upon request.

Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the CONSULTANT, and the CITY shall indemnify and hold harmless the CONSULTANT from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The above provisions also apply to electronic media files. The CONSULTANT shall provide the CITY with "AutoCAD drawing (dwg)" and "pdf" files of work performed for and paid for by the CITY at the request of the CITY, with the following provisions:

- a. The documents are protected by the rules and regulations of U.S. Copyright Laws.
- b. The use or reuse of original or altered electronic files by the CITY or others the CITY has released these files to, except for the City's purposes stated herein, will be at the CITY's own risk and liability.

c. The CONSULTANT shall be indemnified and held harmless by the CITY to the fullest extent of the law from any and all claims, suit, liability, demands, or costs arising out of the use or release of the information contained on the files except for the City's purposes stated herein.

d. The CONSULTANTS shall perform its services in accordance with generally accepted engineering and consultant standards within the consulting engineering industry and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this agreement.

19. CITY-PROVIDED INFORMATION: CONSULTANT is entitled to rely on all information furnished or to be furnished by CITY. CITY agrees to hold harmless and indemnify CONSULTANT, its officers, agents, and employees from any and all claims of any kind arising out of or relating to any claims caused by an error or omissions in information provided by the CITY which were the cause of the claim for damages and provided, further, that the CONSULTANT's reliance on such information was reasonable under the circumstances. All information, worksheets, reports, design calculations, plans, and specifications as provided by the City shall be the sole property of the City unless otherwise specified in this agreement.

20. THIRD-PARTY BENEFICIARIES: It is recognized that the services performed by CONSULTANT are for the benefit of the CITY and no other party. There are no third party beneficiaries to this Agreement.

21. ACCESS TO RECORDS CLAUSE: The CITY and other authorized representatives of the state and federal governments shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examination, excerpt, and transcriptions.

All such records and all other records pertinent to this Agreement and work undertaken under this Agreement shall be retained by the CONSULTANT for a period of three years after the completion of the CITY's project, unless a longer period is required to resolve audit findings or litigation. In such cases, the CITY shall request a longer period for record retention.

22. PROHIBITED INTERESTS: No member of the governing body of the CITY and no other elected or appointed officer, employee, or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the CONSULTANT shall take appropriate steps to assure compliance.

23. INTEREST OF CONSULTANT AND EMPLOYEES: The CONSULTANT covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed.

24. NOTICE: Any notice relating to claims for damages or relating to allegations of default shall be in writing and shall be made by certified or registered mail, postage prepaid, return receipt requested, or reliable overnight courier, to the parties as follows:

If to CONSULTANT: BLA, Inc.
 Attention: Kerry Field
 333 Pierce Road, Suite 200
 Itasca, IL 60143

If to the CITY: City of Batavia
 Attention: Rahat Bari
 100 N. Island Avenue
 Batavia, IL 60510

with copy to: City Attorney
 Attention: Kevin G. Drendel
 111 Flinn Street
 Batavia, IL 60510

25. NON-DISCRIMINATION: The CONSULTANT shall not discriminate on the basis of handicapped status in the admission of, access to, or treatment of employment in its programs and activities.

26. ENTIRE AGREEMENT: This Agreement contains the entire agreement between the parties. No other writing, discussion or any other communication about possible terms is to be construed as forming part of the agreement between the parties. Any terms and conditions submitted by the CONSULTANT as part of its proposal are specifically disavowed and such terms and conditions shall not supersede this Agreement

27. BINDING EFFECT: This Agreement shall be binding upon the partners, heirs, successors, executors, administrators, and assigns of all the parties hereto.

28. LAW AND VENUE: This Agreement shall be construed in accordance with the laws of the State of Illinois. Venue for any litigation arising from this Agreement shall be limited to the Courts of the Sixteenth Judicial Circuit, Kane County, Illinois.

29. ILLINOIS PREVAILING WAGES: To the extent the proposed contract calls for the construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”), Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12, to the extent they are applicable, including, without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. The contractor is advised that failure to timely submit such reports shall be cause for the withholding of payments otherwise due the contractor until compliance with the reporting requirements is achieved. The current Illinois Department of Labor Prevailing Wage Rates for the County of Kane are available at their website <http://www.state.il.us/agency/idol/>. Prevailing wage rates are subject to revision monthly. Copies of the current prevailing wage rates are also available at the Kane County Purchasing Department, 719 Batavia Avenue, Geneva, Illinois.

Any bond furnished under this contract shall include such provisions as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

The Contractor and each of his Sub-Contractors shall pay each of his employees engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.

If a contractor or subcontractor deems the work is not subject to the Act, the contractor or subcontractor shall then submit to the City, a letter indicating receipt of this notice and their determination that the Act does not apply. If the contractor or subcontractor believes the work is not subject to the Prevailing Wage Act, and it is later determined by the Illinois Department of Labor or a court of competent jurisdiction that prevailing wages should have been paid, the contractor shall indemnify and hold the City harmless therein for all costs and penalties incurred by the City related to the violation, including reasonable attorneys fees incurred by the City to defend such an action.

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

CITY OF BATAVIA

ATTEST:

(SEAL)

BLA, Inc.



ATTEST:



(SEAL) 1/28/19

