



City of Grand Island

Tuesday, April 11, 2017

Council Session

Item I-2

#2017-118 - Consideration of Approving Bid Award for Sports Facility Expansion Design Services at Veteran's Athletic Field Complex

Staff Contact: Todd McCoy

Council Agenda Memo

From: Todd McCoy, Parks and Recreation Director

Meeting: April 11, 2017

Subject: Approve RFQ for Design Services for the Expansion of Veterans Athletic Field Complex

Presenter(s): Todd McCoy, Parks and Recreation Director

Background

In May of 2016 Grand Island voters approved the extension of the Food and Beverage Occupation Tax.

The City Finance Department has estimated that the tax will generate \$2.0 million per year. City Administration has recommended utilizing F & B revenue for Nebraska State Fair Support, Grow Grand Island, and City of Grand Island quality of life projects.

One of the major projects discussed regarding the Food and Beverage funds is the expansion of the Veterans Athletic Field Complex. The Veterans Athletic Field Complex was built as a result of the Nebraska State Fair relocation at Fonner Park. Currently, the Veterans Complex consists of twelve acres of soccer and four large softball/baseball fields. The fields are used mainly by adult leagues during the summer and fall months. Area youth baseball and softball organizations rent the fields for tournaments and games on weekends and week nights as available. The soccer fields are utilized by the Heartland Soccer Club and local Grand Island high school programs.

Expanding the Veterans Athletic Field Complex will alleviate scheduling conflicts with local leagues and provide facilities to keep pace with the growing demand of area competitive sports teams. With the improvements, the complex will be a desirable location for state and regional tournaments. It is estimated that the annual expense to operate the additional fields is approximately \$150,000 for staffing, fuel, fertilizer, electricity, weed control, equipment, etc.

Since the Food and Beverage Tax was passed, City staff has closely reviewed needs, gathered feedback from the newly formed sports commission, and completed master planning for the site. City Administration recommends building six youth multipurpose baseball/softball fields, concessions, restrooms, additional parking, connecting Eagle Scout Park from the north, and adding a splash pad. The total estimated cost for the project including design, contingency, and construction is \$6,490,682.00.



Discussion

Four RFQ's were received to design the expansion project.

Olsson Associates, Grand Island, NE
DLR Group, Omaha, NE
Confluence, Des Moines, IA
Big Muddy Workshop, Omaha, NE

Staff recommends contracting Olsson and Associates to provide design services, prepare construction documents, and oversee expansion for the project. Olsson was selected based on the criteria of approach, experience, resume of staff, schedule, and price. The contact amount is \$375,000. This project will be paid with Food and Beverage funds.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve

2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the City Council accept the proposal from Olsson Associates of Grand Island, Nebraska for Design Services to expand Veterans Athletic Field Complex.

Sample Motion

Move to approve the proposal from Olsson Associates for Design Services to expand Veterans Athletic Field Complex in the amount of \$375,000.00.



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR QUALIFICATIONS
FOR
SPORTS FACILITY EXPANSION DESIGN SERVICES
VETERAN'S ATHLETIC FIELD COMPLEX**

RFP DUE DATE: November 29, 2016 at 4:00 p.m.
DEPARTMENT: Parks and Recreation
PUBLICATION DATE: November 6, 2016
NO. POTENTIAL BIDDERS: 3

SUMMARY OF PROPOSALS RECEIVED

Olsson Associates
Grand Island, NE

DLR Group
Omaha, NE

Confluence
Kansas City, MO

Big Muddy Workshop, Inc.
Omaha, NE

cc: Todd McCoy, Parks & Recreation Director
Marlan Ferguson, City Administrator
Stacy Nonhof, Purchasing Agent

Patti Buettner, Parks Admin. Assist.
Renae Griffiths, Finance Director

P1919



LETTER AGREEMENT FOR PROFESSIONAL SERVICES

March 21, 2017

Todd McCoy
Park and Recreation
City of Grand Island
PO box 1968
100 East First Street
Grand Island, NE 68801

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**
Grand Island Sports Complex Civil Site Development (the "Project")
Grand Island, Nebraska

Dear Todd:

It is our understanding that the City of Grand Island, Nebraska ("Client") requests Olsson Associates, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project: as more specifically described in "Scope of Services" attached hereto. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: March 29th, 2017
Anticipated Completion Date: May 1st, 2018

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services, the actual time of personnel performing such services, and all actual reimbursable expenses in accordance with the Labor Billing Rate Schedule(s) and the Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

If applicable: Olsson's Scope of Services will be provided on a time and expense basis not to exceed \$375,000.00

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Todd McCoy.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON ASSOCIATES, INC.

By 
Matt Rief, PE

By 
Jeff Palik, PE

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

CITY OF GRAND ISLAND, NEBRASKA

By _____
Signature

Print Name _____

Title _____

Dated _____

Attachments

- General Provisions
- Scope of Services
- Exhibit "B" – Phase 1 Project Boundary
- Standard Labor Rate Schedule
- Reimbursable Expense Schedule

EXHIBIT "A" – SCOPE OF SERVICES CIVIL SITE DEVELOPMENT

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated March 21, 2017 between the City of Grand Island Parks and Recreation Department ("Client") and Olsson Associates ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is indicated below.

PROJECT DESCRIPTION AND LOCATION

Project will be located at: West side of Broadwell Avenue south of Highway 281, Grand Island, Nebraska

Project Description: The continuation of the development of the Grand Island Sports Complex south of Eagle Scout Lake, on the north side of Grand Island, also known as the Veterans Sports Complex. Our fees and scope are based on the conceptual master plan layout shown on Exhibit "B".

SCOPE OF SERVICES

Phase 100 – Topographic Survey

1. Conduct a field survey to determine the existing topographic conditions of the property. This will include sufficient vertical data to allow contours of the site to be derived.
2. Incorporate the information obtained during the field survey to create a master base survey. The utility locations will be determined by surveying the visible features and using record information from the utility owners. Nebraska One-Call will be notified

Phase 200 – Site Design Phase Services

General Site Design and project services coordination. Final Plan sets, including specifications, will be prepared for the site. Plans will be provided for Building Permit and Bidding purposes. The construction plans will include the entire site. Any redesign of the site following final plan design shall be classed as an additional service and billed on a time and expense basis.

1. Cover Sheet shall include vicinity map, general project information, and sheet index.
2. Existing Conditions shall be included as reference documents.
3. Prepare construction grading plan, including an Erosion and Sediment Control (SWPPP), site grading plan, and site cut/fill plan (if necessary).
 - a. SWPPP Design: Site exceeds 1 acre in size and therefore a NPDES Notice of Intent (NOI) will be required.
 - Submit SWPPP plans and permit applications to the NDEQ and local governmental agencies for the NPDES Permit.
 - This involves filling out the NOI.
 - This does NOT involve providing a 404 Permit, Endangered and Threatened

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Species and Critical Habitat Survey, contacting the Corps of Engineers, or any other supporting documentation.

- This does NOT include SWPPP inspections. Olsson can provide these services if requested.
4. Site Plan (Horizontal Control Plan) shall follow the requirements set by the Client. Plan shall locate buildings and associated site features to meet the City of Grand Island Code requirements.
 5. Storm Water Plan shall include location and relocation of storm pipe and basins to collect on-site storm water and discharge off-site.
 6. Paving Plan shall include horizontal design information necessary for construction, identifying spot grades to indicate surface drainage patterns, grade breaks, sidewalks, and ramp locations. ADA accessibility design will be incorporated into plans.
 7. Water Service Plans shall include water main to be connected on to the water system constructed in Phase 1 and extended to the proposed expansion areas. This will include getting approval from the City of Grand Island Utility Department and Grand Island Fire Department.
 8. Sanitary Sewer Service Plans shall include sanitary sewer for proposed restroom and concession area in proposed softball complex area. This will include additional pumping stations and force main to tie to existing low pressure system that was constructed in Phase 1. This will include getting approval from the City of Grand Island Public Works Department as well as Nebraska DEQ.
 9. Construction Details shall include miscellaneous construction details required to construct the Project.
 10. Construction Specifications shall be provided to supplement City of Grand Island Specifications.
 11. Coordinate all site utilities to avoid conflicts as well as provide for future expansion.
 12. Provide Design and bidding documents for new irrigation supply well on site.
 13. General Coordination between all consultants.
 14. Coordination of Splashpad. We are assuming splash pad used water can be open discharged into lake or on site.
 15. Attend various project meetings with the Client, Architect, governing agencies and contractor during design phases.
 16. At the request of the Client, attend project meetings with Client, their representatives, and their consultants.
 17. Meet with utility companies and agencies.

Phase 205 – Overall Design Guidance, Sports Field Design, Landscape Design Phase Services

General Site Design and project services coordination. Final Plan sets, including specifications, will be prepared for the site. Plans will be provided for Building Permit and Bidding purposes. The construction plans will include the entire site. Any redesign of the site following final plan design shall be classed as an additional service and billed on a time and expense basis.

1. Establishing and maintaining the site plan base and overall design intent.
2. 6 new youth fields - Design of the field layout, fine grading, planting soil (native material), irrigation, fencing/gates, backstops, bullpen, dugouts, warning track, infield skin, foul poles, sodding, scoreboard and specifications. Bleacher and Benches to be owner supplied or specified by owner. Assumed no shade structures at this time.
3. Warning Track at Existing Fields - Design of the warning track, notes for adjusting ex. irrigation, and specifications.
4. Sitework / Utilities - assistance and design intent guidance in the selection of pedestrian and parking lot light fixtures.
5. Splash Park - Design, paving drawings, product selection, overall design guidance, landscape and ramada. Assumed estimated Cost of Splash Area- \$100,000 (Owner suggested allowance).
6. Landscaping - Design and specifications for seeding disturbed areas and minimal landscape design. Irrigation design outside of field areas is included.

Phase 300 – Architect Design Phase Services

New Public Restrooms and Concessions Building (Approx. 1,600 SF CMU Building with Wood Framed Roof). **This project will include structural engineering design for new public restrooms and concessions building in Grand Island, Nebraska.**

CMBA Architects shall provide the following services to Client:

Schematic Design:

1. Meet with Owner to determine specific requirements for facility. Owner to provide survey of utilities and topography, as well as soil test information.

Design Development:

1. Finalize design with input from Owner.
2. Review design for compliance with applicable codes.

Contract Document Phase:

1. Prepare final drawings and specifications.
2. Coordinate construction documents with Civil/M/E consultants.

Bidding:

1. Assist the Owner in obtaining and evaluating bids to complete the project.

Contract Administration Phase:

1. Make periodic visits to the job site to ensure that work is progressing according to bid documents.
2. Attend monthly building construction meetings.
3. Approve monthly pay request submitted by contractor.
4. Prepare written Change Orders for approval.
5. Respond to contractor questions and RFI's.
6. Review shop drawings for completeness and accuracy.
7. Prepare punch list of items needing attention for completion.

Phase 400 – Structural Design Phase Services

New Public Restrooms and Concessions Building (Approx. 1,600 SF CMU Building with Wood Framed Roof). **This project will include structural engineering design for new public restrooms and concessions building in Grand Island, Nebraska.**

1. Coordinate with all teams involved with the Project, including the Client, the architect, contractor, subcontractors, civil engineer, geotechnical engineer, mechanical engineer, electrical engineer and other parties hired by the Client.
2. Coordinate with the Client for the building layout and project specifics.
3. Provide structural plans including a foundation plan, roof framing plan, miscellaneous sections and details, and sheet specifications.
4. Technical specifications.
5. Attend two design meetings.
6. Shop drawing review of structural components.
7. Answer questions and provide additional instructions that may arise to interpret the approved plans.
8. Attend two site visits during construction.
9. Deliverables include electronic ACAD files.

Phase 500 – Mechanical / Electrical Building Design Phase Services

New Public Restrooms and Concessions Building (Approx. 1,600 SF CMU Building with Wood Framed Roof). **This project will include Mechanical/Electrical engineering design for new public restrooms and concessions building in Grand Island, Nebraska.**

Electrical engineering:

1. Power Distribution
2. Lighting Design includes fixture selection, foot-candle calculations, lighting control, and compliance with locally adopted energy code.
3. Branch power design
4. Conduit and box rough-in for low voltage systems. Low voltage system designed by others include: Telecommunications, CATV, Security (access control, CCTV, and intrusion detection)

Mechanical engineering:

1. Heating and ventilation design
2. Plumbing plans including domestic water, sanitary sewer, storm drain, and natural gas piping.
3. Domestic water, sanitary sewer, storm sewer, and fire water will be extended 5 feet outside the building or connected to existing utilities inside the building.
4. Energy Calculations: Design will comply with the locally adopted energy code.

Deliverables:

1. Deliverables will be provided in the form of full size (22x34) stamped drawings.
2. Technical Specifications to support services described above on the sheets
3. Electronic drawing files, as requested.
4. Olsson will attend one design

Construction Administration Services:

Olsson shall perform the following construction administration services:

1. Receive, log and review contractor submittals (i.e. shop drawings, cut sheets).
2. Answer contractors' questions and interpret construction documents. Questions and interpretations will be answered with a written Request for Information (RFI) or similar process.

3. Olsson will conduct a final walkthrough of the project. A "punch list" of deficiencies will be prepared and distributed.

Phase 600 – Site Electrical Design Phase Services

Addition to existing ballpark as shown on Exhibit "B". **This project will include Electrical engineering design for site power construction and lighting for fields, parking, and pedestrian walkways in Grand Island, Nebraska.**

Site Electrical Infrastructure and Lighting Design. Olsson will prepare complete plans for bid for lighting the project area. These plans will include three stages of completion (50%, 90%, and 100%).

Olsson will complete design and construction documents for the complex's parking lot in accordance with the IESNA Recommended Lighting for Walkways and Class 1 Bikeway, DG-5-94 and the Recommended Practice for Lighting Exterior Environments, RP-33-99.

Olsson scope of design includes construction documents for the following elements of site electrical infrastructure:

1. Coordination with electric utility company regarding service to the site, primary distribution on the site, pad mount transformer locations, available fault current, metering requirements, service entrance section (SES) locations and access and ancillary issues.
2. Electric service to each sports field and electric distribution for each field's sports lighting system and scoreboards on stand-alone fields.
3. SES and distribution switchboard design.
4. Electric distribution for parking lot lighting, signage, site lighting, and support facilities.
5. Electrical service/distribution infrastructure for any future facilities as required.
6. One line diagram for the site including sports fields, concession/restroom facilities and maintenance buildings.
7. Sports lighting, site electrical infrastructure and SES/Control details.

Sports Lighting Design. Sports field lighting designs and Contract Documents will be completed based on MUSCO Light System Green. Lighting performance requirements will be the same as shown below:

1. Youth Softball Fields. The lighting design for this facility shall meet the requirements of the IESNA Recommended Practice for Sports and Recreational Area Lighting, IESNA RP-6-01 for a Class IV softball facility (30 FC infield and 20 FC outfield, CV infield = 0.21 or less, CV outfield = 0.25 or less, min to max infield = 2.5:1 or less, min to max outfield = 3:1 or less).
2. Sports Lighting Controls. The design for lighted soccer sports field shall include control systems for each individual field; system performance

monitoring and internet based scheduling capabilities. The systems shall be MUSCO Light Structure Green Control/Monitoring with the MUSCO Control-Link Website scheduling.

Phase 700 – Bid Phase Services

1. Olsson will develop an Engineers estimate of the planned work for the client.
2. Olsson will supply plan drawings and special provisions to Client so they can advertise for bidders.
3. Olsson will coordinate answering questions raised by bidders. The Client will be informed on a regular basis of project changes resulting from bidders' questions.
4. Bids will be reviewed and evaluated with client.

Phase 800 – Construction Administration Phase Services

1. Distribute electronic files to contractors, as requested.
2. Conduct a preconstruction meeting in Grand Island.
3. Answer RFI's as requested by the Contractor.
4. Act as liaison between the contractors and the Owner to facilitate smooth completion of the project.
5. Provide interpretation/clarification to the contractor on day-to-day questions during construction.
6. City and Utility coordination.
7. Review shop drawings and submittals for conformance to construction documents.
8. Complete construction staking for ball fields, paving, storm sewer, water and sanitary sewer utilities.
9. Construction testing as required by City of Grand Island to include:
 - density testing for the grading, trench backfill, and pavement subgrade
 - random concrete testing for the pavement.
10. Provide part time construction observation and field construction testing at an average of 24 hours per week for 20 weeks.
11. Complete a daily log and weekly progress reports.
12. Attend a Final Walk Thru meeting on site. Prepare final record drawing and testing package as required for the City to accept the project.

General Exclusions

1. Department of the army section 404 clean water act permitting.
2. Design of any off-site infrastructure or improvements.

3. Design of private Utilities (cable, telephone, etc.)
4. Off-site surveys or as-built drawings/certifications.
5. Geotechnical investigation
6. Floodplain permitting
7. Easement legal descriptions and exhibits, other than those noted.
8. Signage design and details.
9. SWPPP inspections.
10. Permit, registration, platting or rezoning fees.
11. Obtaining building permits.
12. Platting.
13. Project-related permitting outside of the scope of the proposal and fees.
14. Any items, design plans or specifications not specifically listed above.
15. Design or specification of landscape features, such as elevated signage, retaining walls, utility structures, shade structures, etc.
16. Submissions to Building Code officials or Fire Marshall.
17. Evaluations, studies, or additional services requested by the owner.
18. Fire Protection survey and design.
19. Fire Alarm, Telecommunication, CATV and/or Security Design Services
20. Distributed Antenna (cell phone) design
21. Geothermal heating and cooling design

COMPENSATION

Phase	Description	Fee
100	Topographic Survey	\$5,000
200	Site Design Phase Services	\$66,500
205	Overall Design Guidance, Sports Field Design, Landscape Design Phase Services	\$118,000
300	Architect Design Phase Services	\$30,000
400	Structural Design Phase Services	\$5,800
500	Mechanical / Electrical Building Design Phase Services	\$12,000
600	Site Electrical Design Phase Services	\$64,000
700	Bid Phase Services	\$3,700
800	Construction Administration	\$70,000
Total Proposed Fees:		\$ 375,000

* Fees are Time and Material – Not to Exceed Number shown in table above.

Additional Services: The following items, in addition to any items not specifically listed above, are not included in the proposal but can be provided under a supplemental agreement:

- A. Phase 1 Environmental
- B. Flood Study
- C. Environmental Studies
- D. As-Built Drawings and surveys other than those listed above
- E. Off Site public utility improvement design.
- F. Public street improvements.
- G. Easement exhibits
- H. Platting
- I. Geotechnical borings and report.
- J. Traffic counts/analysis.

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client’s prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

OLSSON ASSOCIATES, INC.

By 
Matt Rief, PE


Jeff Palik, PE

If you accept this Scope of Services, please sign:

CITY OF GRAND ISLAND "CLIENT"

By _____
Name

Dated: _____

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GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated March 21, 2017 between City of Grand Island Parks and Recreation Department ("Client") and Olsson Associates, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

SECTION 1—OLSSON'S SCOPE OF SERVICES

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

SECTION 2—ADDITIONAL SERVICES

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or

utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in

the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

3.11 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

SECTION 4—MEANING OF TERMS

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any

laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Construction Cost Estimate": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract

documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of

the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in

connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Construction Cost Estimate

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the

contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Construction Cost Estimate provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Construction Cost Estimate. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Construction Cost Estimate was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Construction Cost Estimate was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Construction Cost Estimate, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Construction Cost Estimate.

7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

7.6 Standard of Care

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required

for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

7.8 Equal Employment Opportunity

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

7.9 Confidentiality

In performing this Agreement, the parties may disclose to each other written or oral non-public, confidential or proprietary information, including but not limited to, information of a business, planning, marketing or technical nature and models, tools, hardware and software, and any documents, reports, memoranda, notes, files or analyses that contain, summarize or are based upon any proprietary or confidential information (hereafter referred to as the "Information").

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 The existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.6 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.7 The obligations of confidentiality set forth herein shall survive termination of this Agreement, but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or

hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

7.11 Controlling Law and Venue

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further

agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

7.12 Subconsultants

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.13 Assignment

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.12.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.14 Indemnity

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

7.15 Limitation on Damages

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

7.16 Entire Agreement

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

RESOLUTION 2017-118

WHEREAS, the City of Grand Island is in the process of expanding the Veterans Athletic Field Complex; and

WHEREAS, such project will require a consultant to provide design services, prepare construction documents and oversee expansion of the Veterans Athletic Field Complex that will include adding four (4) new baseball/softball fields, restroom/concession stand building and parking; and

WHEREAS, such project will be funded through the Food and Beverage Tax; and

WHEREAS, the City of Grand Island issued a Request for Qualifications (RFQ) for Sports Facility Expansion Design Services for such project; and

WHEREAS, four (4) request for qualifications were received and the proposal from Olsson Associates ranked the highest; and

WHEREAS, Olsson Associates from Grand Island, Nebraska, submitted a proposal for such project in accordance with the Request for Qualifications; and

WHEREAS, a contract amount of \$375,000.00 has been negotiated; and

WHEREAS, a Letter of Agreement for Professional Services with Olsson Associates to provide design services, prepare construction documents and oversee expansion for such project has been reviewed and approved by the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Letter of Agreement for Professional Services with Olsson Associates from Grand Island, Nebraska to provide design services, prepare construction documents and oversee expansion of the Veterans Athletic Field Complex is hereby approved at a cost of \$375,000.00.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island

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Adopted by the City Council of the City of Grand Island, Nebraska, April 11, 2017.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
April 7, 2017	☐ City Attorney