



City of Grand Island

Tuesday, January 8, 2013

Council Session

Item G11

#2013-9 - Approving Agreement for Negotiation Services for the State Street and Capital Avenue Connector Trail Project

Staff Contact: Terry Brown, Interim Public Works Director

Council Agenda Memo

From: Scott Griepenstroh, Project Manager

Meeting: January 8, 2013

Subject: Approving Agreement for Negotiation Services for the State Street and Capital Avenue Connector Trail Project

Item #'s: G-11

Presenter(s): Terry Brown, Interim Public Works Director

Background

All agreements must be approved by the City Council.

The Federal-aid Transportation Enhancement (TE) Program provides funding to construct and restore transportation infrastructure that are not eligible to be funded through other programs. TE activities offer funding opportunities to help expand transportation choices and enhance the transportation experience. Project types eligible for this funding are hike/bike trails, historic preservation, and scenic or historic byways.

The State Street and Capital Avenue Connector Trail Project will construct a 0.5 mile, 10' wide concrete recreational trail for bicycle and pedestrian use in northwest Grand Island. This project will begin on the State Street Trail 0.25 mile west of US Highway 281, extend north within City right-of-way along the west side of the Moores Creek Drainway, and end at the west end of the concrete trail that was recently completed along Capital Avenue under project STPAA-5436 for the Eagle Scout Trail.

Additional 12' wide easements will be acquired on the west side of the City right-of-way for construction of a small ditch and area inlets.

Discussion

The law governing acquisition and relocation on federally assisted projects is Public Law 91-646; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly called the Uniform Act. The procedures to comply with this Act are found in Section 49, Part 24 of the Code of Federal Regulations. On federally funded transportation projects requiring acquisition of right-of-way, Local Public Agencies are

required to present to the Nebraska Department of Roads a Right-of-Way Certificate that certifies property was acquired in accordance with the Uniform Act.

As per the *Right-of-Way Acquisition Guide for Local Public Agencies*, after formal property valuation documents are prepared and reviewed, property acquisition may begin. On the State Street and Capital Avenue Connector Trail Project, "Compensation Estimates" were prepared for four tracts where permanent 12' wide trail easement will be acquired. Two tracts have identical ownership.

Selection of the firm Midwest Right Of Way Services, Inc. was made in accordance with the *Right-of-Way Acquisition Guide for Local Public Agencies*. The Negotiation Services Contract must be executed before property acquisition can begin. The basis of the final fee is as follows.

Acquisition Negotiation – 4 Owners at \$1,425.00 Each = \$5,700.00

TOTAL FEE = \$5,700.00

Approval of Environmental Documents was received in January, 2012. Acquisition of permanent easements are anticipated to be completed in the next three months. Construction of this project is anticipated to begin in fall of 2013.

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 Council approve the agreement with Midwest Right Of Way Services, Inc. for negotiation services for the State Street and Capital Avenue Connector Trail.

Sample Motion

Move to approve the agreement.

ACQUISITION SERVICES CONTRACT

This agreement, entered into this day of , 20 , by the City of Grand Island, (herein called "Local Public Agency") and Midwest Right of Way Services, Inc., (herein called "Acquisition Consultant") agrees:

In return for the total fee of \$5,700.00, as itemized in Appendix B, it is agreed that the Acquisition Consultant shall negotiate on behalf of the Local Public Agency with the owners of each tract identified for the acquisition of certain property rights in accordance with the Acquisition Services Specifications, of which a copy is attached and made a part of this contract. The acquisition of these certain property rights will be used in connection with:

Project: ENH-40(59)

C. N.: 42650

Location: State Street and Capital Avenue Connector Trail

An additional fee will be negotiated with the Acquisition Consultant for each additional parcel added to this contract.

The fee for supplemental or revised tracts, which result in new or revised acquisition documents, as a result of changes in the taking caused by the Local Public Agency, will be negotiated with the Acquisition Consultant.

A billing statement for completed negotiations with a tract may be submitted to the Local Public Agency at the time the Acquisition Consultant submits the Deliverables noted in paragraph I of the Acquisition Services Specifications. Payment of eighty percent (80%) of the total fee will be paid at that time. The balance of the total fee will be paid within ninety (90) days, providing the documents are found to be acceptable and in accordance with the contract upon Local Public Agency review. In the event the documents are found unacceptable by reason of noncompliance with the terms of this contract, the final payment shall be withheld until such documents have been revised or supplemented, without additional cost to the Local Public Agency, and found acceptable.

In the event a dispute arises concerning a question or fact in connection with the work not specifically covered or referenced by any other terms of this contract, the Local Public Agency's management will determine the final position. Where no agreement can be reached, this contract shall be terminated.

The contract may also be terminated when, in the opinion of the Local Public Agency, the Acquisition Consultant's services are unsatisfactory, or because of the Acquisition Consultant's failure to prosecute the work with due diligence, or within the time limits specified in this agreement, or because of the Acquisition Consultant's disability or death. The Local Public Agency may terminate the services of the Acquisition Consultant by giving five (5) days written notice. In such an event, the work, which has been completed, when the notice of termination is given by the Local Public Agency, becomes the property of the Local Public Agency. The Local Public Agency's management shall arbitrate settlement for the completed work.

The Acquisition Consultant, as a condition of the above lump fee, agrees to attend necessary meetings and conferences with representatives of the Local Public Agency, the Nebraska Department of Roads and the United States Federal Highway Administration to discuss the various aspects and phases of the work required by this contract. However, it is agreed that additional payment for conferences with Local Public Agency attorneys for testimony in court or witness fees for appearance in court shall be \$350.00 for each half day or portion thereof, or \$700.00 per day for any part of a day exceeding a half day.

All expenses incurred by the Acquisition Consultant are considered to be their liability and are not to become an expense to the Local Public Agency except as provided for in this agreement.

The Acquisition Consultant agrees to complete the requirements noted in the Acquisition Services Specifications on or before April 15, 2013. The Local Public Agency assumes no liability for work performed or costs incurred prior to the beginning date or subsequent to the contract completion date. Supplemental or revised acquisition documents caused by the Local Public Agency's actions will be cause to change this to a later date only by mutual written agreement between the parties to this contract. It is further agreed by the Acquisition Consultant that they will furnish the Local Public Agency a written progress report of the work accomplished on the Project as requested.

A penalty of \$75.00 per normal working day will be assessed against and deducted from the agreed-upon Fee, as per this contract, for each normal working day that the completed assignment is overdue. A normal working day is defined as Monday through Friday. Any extension beyond the agreed-upon completion date of April 15, 2013 will be only by mutual written agreement between the parties of this contract.

The Acquisition Consultant warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Acquisition Consultant, to solicit or secure this contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Acquisition Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Local Public Agency shall have the right to annul this contract without liability.

If the Acquisition Consultant discovers or is informed by the Local Public Agency of the existence of any possible conflict of interest on the part of the Acquisition Consultant, the Acquisition Consultant shall immediately cease all activity in connection with such services, and promptly notify the Local Public Agency, in writing, of all relevant facts and circumstances pertaining to such conflict, so the Local Public Agency may take such action as it deems appropriate, including but not limited to, the exclusion of any tract or tracts involved from this agreement.

The acquisition documents are agreed to be confidential between the parties hereto, and a breach of such confidence shall be considered material breach of this contract unless the disclosure of the contents of the report shall be in response to a subpoena or other lawful court order.

It is the intention of the parties that the valuation documents and services contracted for are the personal services of the Acquisition Consultant as named. Subletting or transferring the work contracted for in this agreement is expressly prohibited and failure to comply shall be deemed a material breach of the contract.

The Acquisition Consultant agrees to abide by the provisions of the Nebraska Fair Employment Practice Act as provided by Nebraska Revised Statute, Section 48-1101 through 48-1126 (Reissue 1988), and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27, the Minority Business Enterprises Policy and the Drug-Free Workplace Policy as set forth in Appendix "A" attached hereto and hereby made a part of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the Acquisition Consultant this *31st* day of *December*, 20 *12*.



Witness



Acquisition Consultant

EXECUTED by this day of , 20 .

Local Public Agency

APPROVED:

Authorized Signature

APPENDIX B

LIST OF TRACTS TO BE ACQUIRED

TRACT NUMBER	TYPE OF VALUATION DOCUMENT	FEE
1 Permanent Easement	Compensation Estimate	\$ 1,425.00
2 Permanent Easement	Compensation Estimate	\$ 1,425.00
3 Permanent Easement	Compensation Estimate	\$ 1,425.00
4 Permanent Easement	Compensation Estimate	\$ 1,425.00
TOTAL FEE		\$ 5,700.00

Full Day County Court Fee	\$ 700.00	Half Day County Court Fee	\$ 350.00
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Start Date January 9, 2013

Completion Date: April 15, 2013

Submitted by: Jack M. Borgmeyer
Please Print

Jack M. Borgmeyer
Please Sign

Address: MIDWEST RIGHT OF WAY SERVICES, INC.
13925 A Street
Omaha, NE 68144

RESOLUTION 2013-9

WHEREAS, the City of Grand Island, in accordance with the Right-of-Way Acquisition Guide for Local Public Agencies, has negotiated property acquisition services with Midwest Right of Way Services, Inc. for the State Street and Capital Avenue Connector Trail Project; and

WHEREAS, such services include Acquisition Negotiation of \$5,700.00 for four (4) properties, with the possibility of half day (\$350) and daily (\$700) rates being applied, per contract, should attendance at meetings pertaining to this project become necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement between the City of Grand Island and Midwest Right of Way Services, Inc. for acquisition negotiation services in connection with the State Street and Capital Avenue Connector Trail Project is hereby approved.

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, January 8, 2013.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	by _____
January 4, 2013	City Attorney