



City of Grand Island

Tuesday, July 23, 2013

Council Session

Item G-20

#2013-245 - Approving Agreement for Engineering Consulting Services Related to Westgate Road Paving District No. 1261; North Road to Copper Road

Staff Contact: John Collins, P.E. - Public Works Director

Council Agenda Memo

From: Terry Brown PE, Manager of Engineering Services

Meeting: July 23, 2013

Subject: Approving Agreement for Engineering Consulting Services Related to Westgate Road Paving District No. 1261; North Road to Copper Road

Item #'s: G-20

Presenter(s): John Collins PE, Public Works Director

Background

Street Improvement District No. 1261 was created by the City Council on April 23, 2013. Legal notice of the creation of the District was published in the Grand Island Independent on April 29, 2013. A notification letter of the district creation was also mailed to all affected property owners.

The District will consist of Westgate Road extending east from North Road to the existing hard surface portion of Westgate Road. This area was platted in November 1987. The project would consist of paving, as well as connecting the initial phase of the Moores Creek Drainway to this area and eliminating the ditch section. This project is currently estimated at \$500,000.00 and would be assessed to adjacent property owners. All property owners in this proposed district signed the district creation petition form.

On May 28, 2013, by Resolution No. 2013-156 City Council approved the continuation of such street improvement district.

On June 17, 2013 the Engineering Division of the Public Works Department advertised for Engineering Services for Westgate Road Paving District No. 1261, with five (5) potential respondents.

Discussion

Two (2) engineering firms submitted qualifications for the engineering services for Westgate Road Paving District No. 1261. Olsson Associates of Omaha, Nebraska was selected as the top engineering firm based on the pre-approved selection criteria.

- Firm experience and qualifications on similar work (50%)
- Proposed project schedule (30%)
- Past experience working with the City of Grand Island Public Works Department (20%)

Compensation for Olsson Associates' services will be provided on a fixed fee basis for \$71,870.00, which consists of the following services.

- Westgate Road Paving Design Phase Services - \$32,250.00
- Westgate Road Construction Phase Services - \$35,300.00
- North Road Culvert Design Phase Services - \$4,320.00

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 Olsson Associates of Grand Island, Nebraska, in the amount of \$71,870.00.

Sample Motion

Move to approve the resolution.



LETTER AGREEMENT FOR
PROFESSIONAL SERVICES

July 23, 2013

City of Grand Island, NE
Attn: Mary Lou Brown
100 East First Street
Grand Island, NE 68801

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**
Westgate Road Paving District No. 1261, North Road to Copper Road for the City of
Grand Island, NE "Project"
Grand Island, Nebraska

Dear Ms. Brown:

It is our understanding that the City of Grand Island, NE ("Client") requests Olsson Associates ("Olsson") to perform the following services pursuant to the terms of this Letter Agreement for Professional Services, any signed Master Agreement, Olsson's General Provisions and any exhibits attached thereto (hereinafter "the Agreement") for the Project.

1. 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 thereto), 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, any Master Agreement and/or the General Provisions regarding the services to be performed by Olsson, the requirements of this Letter Agreement shall take precedence.
2. Olsson shall provide Client all Basic Services for the Project as more specifically described in Exhibit A hereto. Should Client request work not described and included in the above Description of Basic Services, such as Additional Services, Olsson shall invoice Client for such services on the basis of Salary Costs times a factor of 2.5 for services rendered by our principals and employees engaged directly on the Project plus Reimbursable Expenses, unless otherwise agreed to by both parties. Olsson shall not commence work on Additional Services without Client's prior approval in writing.

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

3. Unless otherwise agreed, Olsson would expect to begin performing its services under the Agreement promptly upon your signing.

Anticipated Start Date: Within 10 Days of Notice to Proceed

Anticipated Design Completion Date: 60 days after Start Date

Anticipated Construction Completion Date: Contingent on Contractor Bid Results

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 readjust 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.

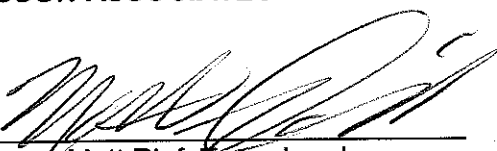
COMPENSATION

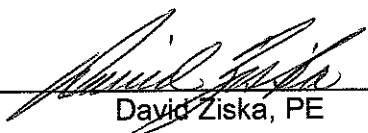
4. Compensation for Olsson's Services will be provided on a fixed fee basis for **Seventy One Thousand, Eight Hundred Seventy Dollars (\$71,870.00)**. Olsson shall submit invoices on a monthly basis, are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date. Olsson's reimbursable expenses for this project are included in the fixed fee set forth above.

TERMS AND CONDITIONS OF SERVICE

5. We have discussed with you the risks, rewards and benefits of the Project and our fees for 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.
6. If this proposal satisfactorily sets forth your understanding of our agreement, please sign in the space provided below (indicating Client's designated Project representative if different from the party signing). Retain a copy 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.
7. By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement.

OLSSON ASSOCIATES

By 
Matt Rief, Team Leader

By 
David Ziska, PE

If you accept the preceding proposal and the Agreement,
please sign:

CITY OF GRAND ISLAND, NE "Client"

By _____
Jay Vavricek

Title _____
Mayor

Dated: _____

Attest:

RaNae Edwards, City Clerk

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**EXHIBIT "A" to GENERAL PROVISIONS ATTACHED TO
LETTER AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN CLIENT AND OLSSON, DATED July 23, 2013**

DESCRIPTION OF BASIC PROFESSIONAL SERVICES AND RELATED MATTERS

This is an exhibit attached to and made a part of the General Provisions attached to the Proposed Letter Agreement for Professional Services dated July 23, 2013, between the City of Grand Island, Nebraska ("Client") and Olsson Associates ("Olsson") providing for professional services. The Basic Services of Olsson are as indicated below.

GENERAL

Olsson shall perform for Client professional services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as Client's professional representative for the Project, providing professional consultation and advice and furnishing customary services incidental thereto.

Olsson understands that this project will include design of Westgate Road north of the former Greenline site in Grand Island, Nebraska. The project is to include design of a new 41' wide concrete street for Westgate Road extending from North Road to approximately 1,040' east, preparation of legal descriptions/tract drawings for acquisition of right of way for proposed ditch construction, sanitary sewer design in Westgate Road, design of culvert extension under North Road with associated water main relocation, and construction phase services. It is understood that the City of Grand Island will perform bid phase services.

1.0 Westgate Road Paving Design Phase Services - \$32,250.00

- A. Site topographic survey of the existing site to include R.O.W. lines and property pins within survey boundary area. Section lines shall also be shown on survey. Control points shall be set along corridor every 1/8 mile as well as along drainage route. Survey shall be supplied in AutoCAD Civil 3D 2010 format and reference City of Grand Island coordinate system and benchmarks.
- B. Prepare Site Layout and Dimensional Plan.
- C. Prepare Sanitary Sewer main Plan/Profile Plan.
- D. Prepare Stormwater Pollution Prevention Plan (SWPPP), Erosion Control Plan and Permit. Contractor shall be responsible for maintenance, monitoring, and reporting requirements of the SWPPP during construction.
- E. Prepare plan and profile construction documents to pave Westgate Road from North Road across the north side of the proposed site and tie into an existing paved road approximately 1,035' east of North Road. Construction documents to include paving plans, details, consideration of drainage, grading, proposed drainage improvements, and specifications in sufficient detail for client to solicit construction bids. This task does not include bid phase services or paving assessment services.
- F. Prepare design of drainage improvements north of Westgate Road previously outlined in Westgate Industrial Park Subdivision Preliminary Plat, July 2007, Little B's Corporation extending northward from Westgate Road thence westward to North Road, thence northward to Old Potash Highway.

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- G. Includes two (2) site visits with Client.
- H. Provide legal descriptions and tract drawings in sufficient detail for the Client to acquire necessary easements & rights of way for proposed drainage improvements. Land acquisition services and appraisal services are not included in this agreement.
- I. Deliverables include ten (10) sets of construction drawings with specifications, electronic AutoCAD Civil 3D files and full sized prints on mylar.

2.0 Westgate Road Construction Phase Services - \$35,300.00

- A. Provide project management services during construction to include shop drawing review, pay request review, project coordination, and coordination with the client during construction.
- B. Construction staking of site civil elements described in this agreement. This proposal anticipates three (3) site visits for staking.
- C. Normal construction testing to verify trench moisture & density (compaction) for utility work. Test results are required for City of Grand Island post-construction documentation.
- D. Provide approximately 6 weeks of full time construction observation (270 hours) during paving & grading construction to include normal moisture/density and concrete cylinder testing as well. This is an anticipated construction duration. Should contractor's schedule extend beyond this timeframe, Olsson reserves the right to negotiate additional fees.
- E. Provide construction staking for paving and drainage improvements associated with proposed construction to limits stated above.
- F. Gather and submit to the City of Grand Island post-construction documentation including certification letter, construction testing results, final costs, record drawings, project dedication form.

3.0 North Road Culvert Design Phase Services - \$4,320.00

- A. Prepare Site Plan/Profile sheets for installation of new drainage culverts under North Road with associated water main relocation (if necessary).

Not included as part of this agreement, but can be added as additional services under separate agreement or amendment:

- a. Geotechnical Soil Borings/Soils Evaluations
- b. Environmental Permitting or Studies.
- c. Bidding Phase Services.
- d. Landscape Plan or Irrigation Design.
- e. Street Lighting Designs.

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GENERAL PROVISIONS

These General Provisions are attached to and made a part of a LETTER AGREEMENT, dated July 23, 2013 between the City of Grand Island, NE ("Client") and Olsson Associates ("Olsson") for professional services in connection with Westgate Road Paving District No. 1261; North Road to Copper Road for the City of Grand Island, (hereinafter called the "Project").

SECTION 1—OLSSON'S BASIC SERVICES

See Exhibit "A", attached.

SECTION 2—ADDITIONAL SERVICES OF OLSSON

2.1 Unless otherwise expressly included, Olsson's normal and customary engineering services described here or in the LETTER AGREEMENT do not include the following categories of work which shall be referred to as Additional Services.

2.2. If Client and Olsson mutually agree to perform any of the following Additional Services, Client will provide written approval of the agreed upon scope of services, and Olsson shall perform or obtain from others such services and will be paid therefore as provided in the LETTER AGREEMENT. EITHER CLIENT or Olsson may elect not to perform all or any of the following Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project in addition to those required under Basic Services; 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 significant changes in the general scope, extent or character of the Project or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Providing renderings or models.

2.2.5 Preparing documents for alternate bids requested by Client for work which is not executed or for out-of-sequence work.

2.2.6 Detailed consideration of operations, maintenance and overhead expenses; value engineering and the preparation of rate schedules, earnings and expense statements, cash flow and economic evaluations, feasibility studies, appraisals and valuations.

2.2.7 Furnishing the services of independent professional associates or consultants for work other than Basic Services.

2.2.8 If Olsson's compensation for Basic Services is not on the basis of Direct Labor or Salary Costs, Additional Services shall include services necessary due to the Client's

award of more than one prime contract for the Project, 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 and those services necessary to administer Client's contract(s).

2.2.9 Services in connection with staking out the work of Contractor(s).

2.2.10 Services during out-of-town travel other than visits to the site.

2.2.11 Preparation of operating and maintenance manuals to supplement Basic Services.

2.2.12 Services to redesign some or all of the Project.

2.2.13 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding except where required as part of Basic Services.

2.3 When required by the Agreement or Contract Documents in circumstances beyond Olsson's control, Olsson shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instructions from Client, and Olsson will be paid therefore as provided in the Letter Agreement:

2.3.1 Services in connection with work directive changes and change orders to reflect the changes requested by Client if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

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; and evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

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 damage by fire or other causes during construction, (2) a significant amount of defective, inefficient or neglected work by any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, (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; designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project; 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 service.

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 Master 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 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.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless 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 borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning and 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.

3.4.3 Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of Contractor(s)' applications for payment, and 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.

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

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 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.

3.7 Contemporaneously with the execution of the LETTER AGREEMENT, Client shall designate in writing an individual to act as its duly authorized Project representative.

SECTION 4—MEANING OF TERMS

4.1 As used herein, the term "this Agreement" refers to these General Provisions, the LETTER AGREEMENT to which these General Provisions refer, and any other exhibits or attachments made a part thereof as if they were part of one and the same document.

4.2 The "construction cost" of the entire Project (herein referred to as "Construction Cost") means the total cost to Client of those portions of the entire Project 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 or the cost of other services to be provided by others to Client pursuant to Section 3.

4.3 The "Salary Costs": Used as a basis for payment mean salaries and wages (basic and incentive) paid to all Olsson's personnel engaged directly on the Project, 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.

4.4 "Reimbursable Expenses: The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project, and shall be included in periodic billing as applicable as follows:

<u>Classification</u>	<u>Costs</u>
Automobiles	\$0.555/mile*
Suburbans and Pick-Ups	\$0.68/mile*
Duplication	
In-house	Actual Cost
Outside	Actual Cost+10%

<u>Classification</u>	<u>Costs</u>
Meals	Actual Cost
Postage & Shipping	
Charges for Project	
Related Materials	Actual Cost
Film and Photo	
Developing	Actual Cost+10%
Telephone and	
Fax Transmissions	Actual Cost+10%
Miscellaneous Materials	
& Supplies Applicable	
only to this Project	Actual Cost+10%
Subconsultants	Actual Cost+10%

* IRS Standard Mileage Rate (Subject to Change)

4.5 "Certify" or "a Certification": A statement of Olsson's opinion, based on its observation of conditions, to the best of Olsson's professional knowledge, information and belief. Such statement of opinion does not constitute a warranty, either express or implied. It is understood that Olsson's certification 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.

4.6 "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 will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

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

4.8 "Inspect" or "Inspection": The visual observation of the Contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the inspected work, generally conforms to the Contract Documents. 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. In making such visual observations, Olsson makes no guarantees for, and shall have no authority or control over, the Contractor's performance or the Contractor's failure to perform any work in accordance with the Contract Documents. 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.

4.9 "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 made during construction. Because Record Documents are prepared based on unverified information provided by others,

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Olsson makes no warranty of the accuracy or completeness of the drawings.

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 by either party to any other entity without the prior written consent of the other party;

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

5.1.4 Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination 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.

5.3 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 Basic or Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of not less than 10% of Olsson's actual costs 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, 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 or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes, arising out of this Agreement or related to the services provided under this Agreement 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, provided that if arbitration or litigation is commenced prior to the completion of the Project, 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 the County and State of the project location, or in the State of Olsson's home office, Nebraska.

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.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including Drawings and Specifications prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement, are instruments of service in respect of the Project and Olsson shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the Project by Client and others; however,

such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse 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 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 drawing, report or 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 Opinions of Cost

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 opinions of probable Total Project Costs and Construction Cost provided for herein are to be 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; but Olsson cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost

prepared by Olsson. If prior to the Bidding or Negotiating Phase Client wishes greater assurance as to Total Project or Construction Costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. Olsson's services to modify the Contract Documents to bring the Construction Cost within any limitation established by Client will be considered Additional Services and paid for as such by Client.

7.4 Controlling Law and Venue

7.4.1 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 or the State of the project locale. 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 or the project State locale.

7.5 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.

7.6 Assignment

7.6.1 Client and Olsson each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.6.2 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.

7.6.2. 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.

7.6.3 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.

7.7 Indemnity

Olsson and the 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 personal injury or 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.

7.8 Limitation on Damages

7.8.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the 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 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 negligence, strict liability, breach of contract and 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 this Project.

7.8.2 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 total amount of Olsson's fees earned under this Agreement**. Client acknowledges that such causes include, but are not limited to, Olsson's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

7.9 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.

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RESOLUTION 2013-245

WHEREAS, by Resolution 2013-156 Grand Island City Council approved continuation of Westgate Road Paving District No. 1261; North Road to Copper Road; and

WHEREAS, the City of Grand Island solicited proposals for engineering consulting services for such project; and

WHEREAS, the City of Grand Island and Olsson Associates of Grand Island, Nebraska wish to enter into an Engineering Services Agreement to provide engineering consulting services for such project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Engineering Services Agreement between the City of Grand Island and Olsson Associates of Grand Island, Nebraska for engineering consulting services related to the Westgate Road Paving District No. 1261; North Road to Copper Road, in the amount of \$71,870.00, 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, July 23, 2013.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	▣ _____
July 22, 2013	▣ City Attorney