



City of Grand Island

Tuesday, December 17, 2013

Council Session

Item I-4

#2013-409 - Consideration of Approving Contract to Provide the City of Grand Island Electric System Master Plan

Staff Contact: Tim Luchsinger, Utilities Director

Council Agenda Memo

From: Tim Luchsinger, Utilities Director
Stacy Nonhof, Assistant City Attorney

Meeting: December 17, 2013

Subject: Electric System Master Plan

Item #'s: I-4

Presenter(s): Tim Luchsinger, Utilities Director

Background

The City of Grand Island electric system requires continual planning and upgrades to adequately and reliably serve its customers and meet increasing load. Most of this planning is performed in-house. It is considered good practice to occasionally get an outside perspective on current system conditions and upgrade plans. The transmission and distribution systems were evaluated approximately seven years ago, however, the last full master plan was completed in 1998. Due to the elapsed time and some relatively recent changes in management, it was decided to obtain a new comprehensive evaluation of the electric system.

Discussion

The Request for Proposals was advertised in accordance with City procurement procedures and eight proposals were received on November 7, 2013, from the following consultants.

Advantage Engineering, Chesterfield, MO
Lutz, Daily & Brain, Overland Park, KS
Leidos Engineering, Denver, CO
Siemens Industry, Schenectady, NY
NEI Electric Power Engineering, Wheat Ridge, CO
Burns & McDonnell, Kansas City, MO
JEO Consulting Group, Wahoo, NE
Black & Veatch, Overland Park, KS

The proposals were evaluated by the Department management staff based on the specified criteria, and the proposals were ranked based on the total score. Based on that

evaluation, it is recommended that the proposal from Black & Veatch be accepted for the Electric System Master Plan. The proposal from Black & Veatch includes a detailed estimated activity pricing breakdown which will be billed at actual cost, for a not-to-exceed total price of \$252,812.00.

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 a future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Electric System Master Plan proposal from Black & Veatch of Overland Park, Kansas, to be billed at actual cost, for a not-to-exceed total price of \$252,812.00.

Sample Motion

Move to approve the Electric System Master Plan proposal from Black & Veatch of Overland Park, Kansas, to be billed at actual cost, for a not-to-exceed total price of \$252,812.00.



Stacy Nonhof, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL
FOR
ELECTRIC SYSTEM ENGINEERING SERVICES**

RFP DUE DATE: November 7, 2013 at 4:00 p.m.

DEPARTMENT: Utilities

PUBLICATION DATE: October 14, 2013

NO. POTENTIAL BIDDERS: 7

SUMMARY OF PROPOSALS RECEIVED

Advantage Engineering, Inc.
Chesterfield, MO

Lutz, Daily & Brain, LLC
Overland Park, KS

Leidos Engineering, LLC
Denver, CO

Siemens Industry, Inc.
Schenectady, NY

NEI Electric Power Engineering
Wheat Ridge, CO

Burns & McDonnell
Kansas City, MO

JEO Consulting Group, Inc.
Wahoo, NE

Black & Veatch
Overland Park, KS

cc: Tim Luchsinger, Utilities Director
Mary Lou Brown, City Administrator
Stacy Nonhof, Purchasing Agent
Travis Burdett, Deputy Utilities Director

Bob Smith, Deputy Utilities Director
Jaye Monter, Finance Director
Pat Gericke, Utilities Admin. Assist.

P1682

CONTRACT AGREEMENT

THIS AGREEMENT made and entered into by and between **BLACK & VEATCH CORPORATION**, hereinafter called the Contractor, and the **CITY OF GRAND ISLAND, NEBRASKA**, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused contract documents to be prepared and an advertisement calling for proposals to be published for **Electric System Engineering Services**; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined the aforesaid Contractor to be the lowest responsive and responsible bidder, and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor's proposal, a copy thereof being attached to and made a part of this contract;

NOW, THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself or themselves, and its, his, or their successors, as follows:

ARTICLE I. That the following documents shall comprise the Contract, and shall together be referred to as the "Agreement" or the "Contract Documents";

1. This Contract Agreement.
2. City of Grand Island's Specification for this project.
3. Black & Veatch proposal signed and dated November 7, 2013.
4. Black & Veatch contract terms and conditions.

In the event of any conflict between the terms of the Contract Documents, the provisions of the document first listed shall prevail.

ARTICLE II. That the contractor shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the contract documents as listed in the attached General Specifications, said documents forming the contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by the City's official award of this contract to the said Contractor, such award being based on the acceptance by the City of the Contractor's bid;

ARTICLE III. That the City shall pay to the contractor for the performance of the work embraced in this contract and the Contractor will accept as full compensation therefore the sum (subject to adjustment as provided by the contract) of Two Hundred Fifty-Two Thousand,

Eight Hundred Twelve (\$252,812.00) for all services, materials, and work covered by and included in the contract award and designated in the foregoing Article 11; payments thereof to be made in cash or its equivalent in the manner provided in the General Specifications.

The total cost of the Contract includes:

| | | |
|------------|----|------------|
| Base Bid: | \$ | 252,812.00 |
| Sales Tax: | \$ | 0.00 |
| Total: | \$ | 252,812.00 |

The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

ARTICLE IV. The Contractor hereby agrees to act as agent for the City in purchasing materials and supplies for the City for this project. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but the Contractor shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to the Contractor. Title to all materials and supplies purchased hereunder shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Contractor shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear the Contractor's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the finished product of the **Electric System Engineering Services**.

ARTICLE V. That the Contractor shall start work as soon as possible after the contract is signed and the required bonds and insurance are approved, and that the Contractor shall deliver the equipment, tools, supplies, and materials F.O.B. Grand Island, Nebraska, and complete the work on or before September 30, 2014.

ARTICLE VI. The Contractor agrees to comply with all applicable State fair labor standards in the execution of this contract as required by Section 73-102, R.R.S. 1943. The Contractor further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this contract, the Contractor and all subcontractors agree not to discriminate in hiring or any other employment practice on the basis, of race, color, religion, sex, national origin, age or disability. The Contractor agrees to comply with all applicable Local, State and Federal rules and regulations. The Contractor agrees to maintain a drug-free workplace policy and will provide a copy of the policy to the City upon request. Every public contractor and his, her or its subcontractors who are awarded a contract by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

GRATUITIES AND KICKBACKS

City Code states that it is unethical for any to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

Contractor **Black & Veatch Corporation**

By _____

Date _____

Title _____

CITY OF GRAND ISLAND, NEBRASKA,

By _____

Date _____

Mayor

Attest: _____

City Clerk

The contract, insurance, and any required bonds are in due form according to law and are hereby approved.

Date _____

Attorney for the City

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT, for the performance of consulting services, is executed and made effective as of December 17, 2013, between **CITY OF GRAND ISLAND NEBRASKA**, ("Client") and **BLACK & VEATCH CORPORATION** ("Consultant").

IN CONSIDERATION of the covenants hereinafter set forth, Client and Consultant agree as follows:

ARTICLE 1 - SCOPE OF WORK

Consultant shall perform the professional services ("Services") as set forth in the attached Exhibit A hereto. Additional or revised contractual terms or conditions may be added only by formal written amendment to this Agreement and not through any scope of work Exhibit. Any such additional or conflicting terms and conditions contained in any scope of work Exhibit shall be of no force or effect.

If additional services beyond the Services are requested of Consultant, Consultant shall review its personnel resources to verify that qualified individuals are available to satisfy Client's request. If mutual agreement is reached, such agreement shall be confirmed in writing and shall be included as a subsequently numbered Exhibit A. Client understands that Consultant will not provide legal or tax advice or opinions, and Client will seek such advice and opinions from its attorneys and tax advisors.

ARTICLE 2 - COMPENSATION AND TERMS OF PAYMENT

Client shall pay and Consultant shall accept in full consideration for the Services, the Compensation described in Exhibit A.

If Client disputes any invoice item or any invoice submitted by Consultant, Client shall give Consultant written notice of such disputed item within ten days after receipt of such invoice and shall pay to Consultant 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 one and one-half percent per month, or the maximum amount allowed by law if less, 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. Notwithstanding any other provision of this agreement, Consultant is under no obligation to submit any deliverable if any invoice is more than 45 days outstanding.

ARTICLE 3 - WARRANTY

3.1 Consultant's Services

Consultant warrants that it will perform the Services in accordance with the standards of care and diligence normally practiced by recognized consulting firms in performing services of a similar nature in existence at the time of performance of the Services.

3.2 Reliance on Data

Consultant shall have no liability for defects in the Services attributable to Consultant's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by Client, third parties retained by Client, or in the public domain. Consultant, unless otherwise provided in Exhibit A, shall not be responsible for the verification of any documents or other information relied upon by Consultant in performing the services.

3.3 Assumptions and Forecast

In performing the services, Consultant may be required to make certain assumptions or forecasts of conditions, events, or circumstances that may occur in the future. Consultant will take reasonable efforts to assure that assumptions and forecasts made are reasonable and the basis upon which they are made follow generally accepted practices for such assumptions or projections under similar circumstances. Client expressly

acknowledges that actual results may differ significantly from those projected as influenced by conditions, events, and circumstances that actually occur.

3.4 Correction of Defective Services

Provided that Client has notified Consultant of Consultant's failure to meet the warranties in this Article 3 within six months of Consultant's completion of the applicable services under the applicable Exhibit A, Consultant shall, at its expense, promptly correct and modify such defective services.

3.5 Limitations

The obligations and representations contained in this Article 3 are Consultant's sole warranty and guarantee obligations and Client's exclusive remedy in respect of quality of the Services. ***EXCEPT AS PROVIDED IN THIS ARTICLE, CONSULTANT MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.*** This Article governs, modifies, and supersedes any other terms in this Agreement which may be construed to address warranties or guarantees or the quality of the Services.

ARTICLE 4 - INDEMNIFICATION

Consultant shall indemnify and defend Client from any and all claims, liabilities, damages, and costs (including reasonable attorney's fees directly related thereto) for bodily injury to or death of any person and for damage to or destruction of third-party property if and to the extent caused by the negligence or willful misconduct of Consultant.

ARTICLE 5 - INSURANCE

5.1 Policies

During the performance of the Services, Consultant shall maintain insurance policies as follows:

- 5.1.1 Workers' Compensation and/or all other social insurance in accordance with the statutory requirements of the state, province, or country having jurisdiction over Consultant's employees who are engaged in the Services, with Employer's Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident and in the aggregate;
- 5.1.2 Commercial General Bodily Injury and Property Damage Liability insurance with limits of \$1,000,000 per occurrence and in the aggregate, and Automobile Liability insurance including owned, non-owned, or hired vehicles, with a combined single limit of \$1,000,000 for bodily injury and property damage liability. Such policies shall include Contractual Liability coverage. Consultant agrees to name Client as Additional Insured on such policies, but only to the extent of Consultant's negligence under this Agreement and only to the extent of the insurance limits specified herein.
- 5.1.3 Professional Liability insurance with limits of \$1,000,000 per occurrence and in the aggregate covering Consultant against all sums which Consultant may become legally obligated to pay on account of any professional liability arising out of the performance of this Agreement.

5.2 Certificates

Consultant agrees to provide Client with certificates of insurance evidencing the above described coverage prior to the start of Services, and annually thereafter, if so requested by Client. Such certificates shall provide that the applicable insurance policies have been endorsed to provide a minimum of thirty days advance notice to Client in the event of cancellation, non-renewal, or reduction in limits by endorsement.

5.3 Waiver

The parties waive all claims for property damage, and shall require their insurers to waive subrogation rights against the other party under any applicable policy of property insurance.

ARTICLE 6 - SCHEDULE

Consultant shall commence performance of the Services under this agreement upon execution of this agreement or as provided in Exhibit A, and will use all reasonable efforts to prosecute the Services continuously and with due diligence according to any schedule contained in Exhibit A.

ARTICLE 7 - TERMINATION AND CANCELLATION

7.1 Termination by Client

Should Consultant become insolvent or bankrupt, or commit a substantial breach of this Agreement, and thereafter fail to commence in good faith to remedy such breach within ten days after receipt of written demand by Client, Client may terminate this Agreement. Upon any such termination, Consultant shall be compensated for all costs incurred and compensation earned for Services then performed in accordance with this agreement.

7.2 Termination by Consultant

Should Client become insolvent or bankrupt, or commit a breach or default of any of the covenants or obligations hereunder, and thereafter (a) fail to remedy the same within ten days after written notice thereof from Consultant if the breach constitutes a failure to pay money or (b) fail to commence to remedy the same within ten days after written notice thereof from Consultant and thereafter fail to proceed diligently in remedying the same if the breach is other than to pay money, then Consultant may terminate this Agreement. Should Consultant so terminate this Agreement, Consultant shall be paid for all costs incurred and compensation earned for Services performed to the date of termination and through demobilization, including any cancellation charges by subcontractors or vendors.

7.3 Cancellation for Convenience

Client reserves the right to cancel, for convenience, the Services upon notice in writing to Consultant. Should the Services be so canceled by Client, Consultant shall be paid for all compensation earned for Services performed to the date of cancellation and through demobilization, including any cancellation charges by vendors and subcontractors.

ARTICLE 8 - GENERAL PROVISIONS

8.1 Independent Contractor

Consultant shall be an independent contractor with respect to the Services to be performed hereunder, except that any contracts and purchase orders for materials, equipment, supplies and related services are issued by Consultant as agent for Client. Except as hereinabove noted, neither Consultant nor its subcontractors or vendors, nor the employees of either, shall be deemed to be the servants, employees, or agents of Client.

8.2 Force Majeure

Any delays in or failure of performance by Client or Consultant, other than payment of money, shall not constitute default hereunder if, and to the extent, such delays or failures of performance are caused by occurrences or circumstances beyond the control of Client or Consultant, as the case may be, including, but not limited to: acts of God or the public enemy; expropriation or confiscation of facilities; compliance with any order or request of any governmental authority; act of war, rebellion, or sabotage or damage resulting therefrom; fires, floods, explosions, accidents; riots or strikes or other concerted acts of workmen, whether direct or indirect; or any other causes, whether or not of the same class or kind as those specifically above named, which are not within the control of Client or Consultant respectively, and which by the exercise of reasonable diligence, Client or Consultant are unable to prevent.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Consultant shall be entitled to an equitable adjustment in schedule and compensation in the event such circumstances occur.

8.3 Rights to Intellectual Work Product

- 8.3.1 Except as otherwise provided herein, sealed original drawings, specifications, reports, and other documents which Consultant prepares and delivers to Client pursuant to this Agreement shall become the property of Client when Consultant has been compensated for Services rendered. Nothing contained in this Section shall be construed as limiting or depriving Consultant of its rights to use its basic knowledge and skills to carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement. Consultant shall have the right to retain and use copies of drawings, documents, and engineering and other data furnished or to be furnished by Consultant and the information contained therein. At all times, each party shall retain all of its rights in its drawing details, designs, specifications, models, databases, computer software, copyrights, trade and service marks, patents, trade secrets, and any other proprietary property.
- 8.3.2 Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Consultant. Consultant hereby grants to Client an irrevocable (except in the event of a breach of this license), nonexclusive, royalty-free license to utilize Consultant's proprietary property provided to Client as part of the Services. Client shall not use in a written prospectus or other investment memorandum any Consultant report constituting or including Consultant's professional opinion, except with Consultant's prior written consent, which shall not be unreasonably withheld. Client shall not acquire any rights to any of Consultant's, its subcontractors' or vendors' proprietary computer software that may be used in connection with the Services except as expressly provided in the Scope of Services or as may be separately agreed.
- 8.3.3 All documents, including drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse on extensions of the Project or any other project. Any such reuse without prior written approval, and verification or adaptation by Consultant for the specific purpose intended will be a breach of the license granted by Consultant, and will be at Client's sole risk and without liability or legal exposure to Consultant. Client shall defend, indemnify, and hold harmless Consultant and its subcontractors, vendors, employees, agents, officers and/or assigns, their respective employees, agents, officers, partners and directors and anyone else acting for or on behalf of them and any of their respective assigns against all claims, losses, damages, injuries, and expenses, including attorneys' fees, arising out of or resulting from such reuse. Any reuse approval, and verification or adaptation of documents will entitle Consultant to additional compensation at rates to be agreed upon by Client and Consultant.
- 8.3.4 Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. Consultant makes no warranty as to the compatibility of these files with any other system or software except as may be specified in Exhibit A. Because of the potential degradation of electronic medium over time, in the event of a conflict between hard copy documents and electronic files, the hard copy documents will govern.
- 8.3.5 In the course of performance, Consultant may use, modify or enhance products, materials, tools, and methodologies that are proprietary to Consultant or third parties (collectively "Proprietary Items"). As between Client and Consultant, Proprietary Items will be deemed Confidential Information of Consultant (as defined below). As used herein, a Deliverable is a document or product of the work developed originally and specifically for the Client hereunder. Client shall

have or obtain no rights in such Proprietary Items (or in any modifications or enhancements to them) other than (i) to use them as authorized by Consultant in writing from time to time solely for purposes as contemplated by the parties under this Agreement, (ii) to the extent the Proprietary Items are incorporated into a Deliverable, to use them as part of the Deliverable for purposes of Client's internal business only, or (iii) pursuant to Client's license to the limited extent stated in Section 8.3.2 above for such Proprietary Items or, in the case of Proprietary Items owned by third parties, pursuant to terms acceptable to the applicable third party. During the term hereof, Consultant may offer upgrades, modifications, or enhancements to the Client, if available, subject to the appropriate costs being negotiated between the parties.

- 8.3.6 If any Deliverable is claimed to infringe upon a valid United States patent, trademark or copyright, Consultant will defend such claim at its expense and will pay any costs or damages that are assessed against Client; unless the claim of infringement is caused by (i) Client's misuse of the Deliverable, (ii) use of the Deliverable in a manner not permitted or contemplated hereunder, (iii) a modification of the Deliverable; (iv) Client's failure to use corrections or enhancements made available by Consultant; (v) Client's use of the Deliverable in combination with a product or information not owned or developed by Consultant; or (vi) designs, specifications or other information provided by, or at the direction of, Client. If any Deliverable is, or in Consultant's opinion is likely to be, held to be infringing, Consultant shall, at its expense and option, either (a) procure the right for Client to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing; or (d) direct the return of the Deliverable and refund to Client the fees paid for such Deliverable less a reasonable amount for Client's use of the Deliverable up to the time of return. The foregoing remedies constitute Client's sole and exclusive remedy and Consultant's entire liability with respect to infringement.

8.4 Confidentiality

- 8.4.1 Client and Consultant covenant and agree that the party in receipt of confidential information will not, except insofar as may be reasonably necessary for the performance of work done hereunder or as required by law, without the prior permission of the party providing use, disclose, or permit to be disclosed, or, in case of documents, reproduce or permit to be reproduced to any person confidential information acquired from or given by the providing party in the course of carrying out Services under this Agreement.
- 8.4.2 For the purpose of this Article 8.4, "confidential information" shall include designs, drawings, plans, calculations, formulae, techniques and/or trade secrets or like information which has not been previously disclosed or reproduced without restriction by the providing party or has not become public knowledge; provided, receiving party shall be under no liability to treat the information received as confidential unless providing party advises receiving party at the time of disclosure that said information is confidential.
- 8.4.3 All confidential information disclosed by the providing party shall remain the property of the providing party and shall be returned on termination of Services to the providing party in written request, and shall be used by the receiving party strictly for the performance of this Agreement and no other purpose.
- 8.4.4 Receiving party's confidentiality obligation hereunder shall not extend to information which: (i) at the time of disclosure, is or becomes a part of the public domain by publication or otherwise through no fault of receiving party; (ii) Receiving party can show was in its possession at the time of disclosure; or (iii) is subsequently disclosed to receiving party by a third-party, which information receiving party reasonably believes has not been wrongfully acquired, directly or indirectly.

- 8.4.5 Receiving party shall not be restricted in any way from releasing information, including confidential information, in response to a subpoena, court order, or other legal process, or as may be legally compelled by any tribunal or governmental or regulatory authority, but in such event, shall notify the providing party of the demand for information before the receiving party responds to such demand.

8.5 Representations and Remedies

Consultant makes no representations, covenants, warranties, or guarantees, express or implied, other than those expressly set forth herein. The parties' rights, liabilities, responsibilities and remedies with respect to the Services shall be exclusively those expressly set forth in this Agreement and are in lieu of any others available at law or otherwise.

8.6 Damages

Having considered the risks and potential liabilities that may arise out of the Services, the benefits of the Services and in specific consideration of the promises contained in this Agreement and other valuable consideration, receipt of which is hereby acknowledged, Client and Consultant allocate and limit such liabilities in accordance with this provision. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law:

- 8.6.1 In no event shall Consultant (or any of Consultant's related companies) be liable to Client for loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power; governmental and regulatory sanctions; and claims of customers for such damages; or for any special, consequential, incidental, indirect, punitive, or exemplary damages in any way arising from or related to the performance of this Agreement.
- 8.6.2 The total cumulative liability of Consultant and any of Consultant's related companies to Client for all claims, losses, damages, and expenses in any way arising from or related to the performance of this Agreement shall not be greater than the compensation received by Consultant under the applicable Exhibit A.
- 8.6.3 Client hereby releases, indemnifies, and agrees to hold Consultant harmless from any liability arising from Client's or Client's assignee's, ownership, use or operation of the Facilities, or any part thereof.
- 8.6.4 Except as provided in any expressed written warranty to the Client provided by Consultant's direct or indirect subcontractors and vendors of any tier, such subcontractors and vendors, and their directors, officers, partners, employees, and agents shall not be liable to the Client for any claim, loss, damage, expense, or injury of any kind (hereafter "Claims"), and Client waives all such Claims.

8.7 Audit and Maintenance of Records

Client shall have the right to audit and inspect Consultant's records and accounts covering direct costs hereunder at all reasonable times during the performance of the Services and for a period of one year after the acceptance thereof; provided, however, that the purpose of any such audit shall be only for verification of such costs. Consultant shall not be required to keep records of or provide access to those of its costs expressed as fixed rates, a lump sum, or of costs which are expressed in terms of percentages of other costs. Consultant's records shall be subject to audit one time.

8.8 Assignment

This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, except that it may be assigned without such consent to the successor of either party, or to a person, firm, or corporation acquiring all or substantially all of the business assets of such party, or to a related entity, an affiliate or wholly owned subsidiary of either party, but such assignment shall not relieve the assigning

party of any of its obligations under this Agreement. No assignment of this Agreement shall be valid until this Agreement shall have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee.

8.9 Subcontracts

Consultant may subcontract any portion of the Services to a subcontractor approved by Client. In no case shall Client's approval of any subcontract relieve Consultant of any of its obligations under this Agreement. Notwithstanding the above, Consultant may have portions of the Services performed by its related and affiliated entities or their employees, in which event Consultant shall be responsible for such Services and Client shall look solely to Consultant as if the Services were performed by Consultant.

8.10 Notices

All notices pertaining to this Agreement shall be in writing and shall be sufficient when sent by registered mail, or by U.S. mail or facsimile (with oral confirmation) to:

Client:
City of Grand Island Nebraska
Attention: Mr. Travis Burdett
700 E. Bischeld
Grand Island, Nebraska 68802

Consultant:
Black & Veatch Corporation
Attention: Mr. John Achenbach
489 Fifth Ave. 14th Floor
New York, NY 10017

8.11 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto and supersedes any oral or written representations, understandings, proposals, or communications heretofore entered into by or on account of the parties and may not be changed, modified, or amended except in writing signed by the parties hereto. In the event of any conflict between this contract document and any of the exhibits hereto, the terms and provisions of this contract document shall control. In the event of any conflict among the exhibits, the exhibit of the latest date shall control.

8.12 Interpretation

- 8.12.1 This Agreement shall be governed by and interpreted in accordance with the laws of Missouri excluding provisions thereof which would apply the laws of another jurisdiction.
- 8.12.2 Headings and titles of Articles, Sections, paragraphs, and other sub-parts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement.
- 8.12.3 To the fullest extent permitted by law, releases, waivers or limitations of liability specifically expressed in this Agreement shall apply notwithstanding the negligence, strict liability, fault, or breach of warranty or contract of the party whose liability is so released or limited. The benefit of such releases, waivers or limitations of liability shall extend to the related companies, and subcontractors of any tier of such party, and the directors, officers, partners, employees, and agents of such parties.
- 8.12.4 In the event any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement which shall affect the intent of the parties as originally set forth in this Agreement.

- 8.12.5 The prevailing party, in whole or in part, shall be entitled to reimbursement for all costs and reasonable attorneys' fees in any legal action brought against the other party based on a breach of this Agreement.
- 8.12.6 If Client uses a purchase order form to administer this Agreement, the use of such form shall be for convenience purposes only and any typed provision in conflict with the terms of this Agreement and all pre-printed terms and conditions contained in or on such forms shall be deemed stricken and null and void.
- 8.12.7 The provisions of this Agreement are intended for the sole benefit of Client and Consultant, and subcontractors, vendors and others to the extent expressly provided in this Agreement. The parties agree there are no third-party beneficiaries to this Agreement other than those subcontractors, vendors and others expressly contemplated, and then only to the extent contemplated, by the terms herein.
- 8.12.8 Since Consultant has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others (including Client) to meet project schedules, Consultant's opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a professional consultant. Consultant does not guarantee that proposals, bids, revenues, costs, or other cash requirements, or actual operating or project costs will not vary from Consultant's estimates or that actual schedules will not vary from Consultant's projected schedules.
- 8.12.9 At all times during the term of this Agreement, and for a period of six months following any termination or expiration hereof, Client agrees that it will not, hire, or solicit any employee of Consultant who performed services hereunder, to become employees or independent contractors of Client or such other person or entity, excluding employees who are responding to a general solicitation for employment advertised by Client. In the event Client does hire a Consultant employee as prohibited herein, Client shall be liable to Consultant for 60% of such employee's first-year salary (including any signing bonuses or reimbursable relocation costs). Client shall be obligated to disclose such amounts to Consultant and Consultant shall immediately invoice Client for such amount to be paid by Client within 10 business days of receipt of Consultant's invoice. Failure to pay such amount when due shall be considered a breach of this Agreement by Client and entitle Consultant to any and all remedies available under this contract, at law or in equity.

IN WITNESS WHEREOF, the parties hereto have executed this contract document as of the date and year first above written.

CITY OF GRAND ISLAND

BLACK & VEATCH CORPORATION

NEBRASKA

By: _____

By: _____

By: _____
(Printed)

By: _____
(Printed)

Title: _____

Title: _____

Date: _____

Date: _____

Legal

Approved _____

Reviewed _____

Date _____

PM

Approved _____

Date _____

December 15, 2008

9

EXHIBIT A

To The CONSULTING SERVICES AGREEMENT

Between

CITY OF GRAND ISLAND NEBRASKA
("Client")

and

BLACK & VEATCH CORPORATION
("Consultant")

Pursuant to the terms and conditions of the Consulting Services Agreement executed and made effective as of the 17th day of December, 2013, between City of Grand Island Nebraska ("Client") and Black & Veatch Corporation ("Consultant"), Client hereby requests Consultant perform and Consultant agrees to perform the following Services:

Effective Date: This Exhibit A will be effective on December 17, 2013.

- A. Scope of Services: Consultant will be responsible for completing the following services:
Scope of Services contained in Section 2.0 of the proposal for Electric System Engineering Services dated November 7, 2013 excluding 2.10 Smart Grid Evaluation, 2.13 EMP, and 2.14 Optional Relay Coordination Study.
- B. Compensation: Invoices are due upon receipt. Client will pay, and Consultant will accept compensation for services provided based on the following fee basis:
Lump sum of \$252,812.
- C. Invoicing: Commencing on or about the first day of the calendar month following execution of this Agreement, and monthly thereafter, Consultant shall furnish Client with an invoice covering the work completed the previous month and any interest due under this Agreement. Invoices may be submitted electronically by email to tburdett@grand-island.com. In such event, the electronic copy of the invoice will be considered the official invoice and will not be followed by a hard copy invoice.
- D. Method of Payment. Payments to be made to Consultant under this Agreement shall be electronically transferred either by ACH, specifically in CCD+ or CTX format, or wire transfer to the bank account and in accordance with the bank instructions identified in Consultant's most recent invoice in immediately available funds no later than the payment due date. Invoice number and project name shall be referenced in the bank wire reference fields or the ACH addenda information.
- E. Schedule : The Consultant's schedule for completion of the services set forth in Section A above is as follows:
The Scope of Services set forth in Section A shall be completed by the end of Fiscal Year 2014 (September 30, 2014).
- F. Client Responsibilities :
Client shall provide data and review comments in a timely manner in order to meet the Schedule in Section E.

IN WITNESS WHEREOF, the parties have executed this Exhibit A.

CITY OF GRAND ISLAND

BLACK & VEATCH CORPORATION

NEBRASKA

By: _____

By: _____

By: _____
(Printed)

By: _____
(Printed)

Title: _____

Title: _____

Legal
Approved _____
Reviewed _____
Date _____

PM
Approved _____
Date _____

RESOLUTION 2013-409

WHEREAS, the City of Grand Island invited Requests for Proposals for Electric System Master Plan, according to plans and specifications on file with the Utilities Department; and

WHEREAS, on November 7, 2013, proposals were received, opened and reviewed, and evaluated; and

WHEREAS, Black & Veatch of Overland Park, Kansas, submitted a proposal in accordance with the terms of the Request for Proposals, and plans and specifications and all other statutory requirements contained therein, such proposal being in an amount not to exceed a total price of \$252,812.00; and

WHEREAS, the proposal of Black & Veatch of Overland Park Kansas, meets all of the requirements for the Utilities Department Electric System Master Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of Black & Veatch of Overland Park, Kansas, in an amount not to exceed \$252,812.00, for the Utilities Department Electric System Master Plan, is hereby approved, and that the Mayor is authorized to sign the Contract on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 17, 2013.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

| | |
|---------------------|-----------------|
| Approved as to Form | ▣ _____ |
| December 13, 2013 | ▣ City Attorney |