



City of Grand Island

Tuesday, March 28, 2006

Council Session

Item G17

**#2006-100 - Approving Agreement for Air Emissions Monitoring
with HDR Engineering - Utilities Department**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Doug Walker, City Attorney

Meeting: March 28, 2006

Subject: Approving Agreement for Air Emissions Monitoring
with HDR Engineering

Item #'s: G-17

Presenter(s): Gary R. Mader, Utilities Director

Background

On March 14, 2006, Utilities Department staff attended an informational meeting called by the Nebraska Department of Environmental Quality regarding the EPA Regional Haze Rule. This rule was created to determine air emissions by sources that cause visible haze in environmentally classified (Class I) areas. The closest Class I areas to Grand Island are the Badlands and Wind Cave National Parks in South Dakota. The NDEQ advised that potential sources in the state are required to provide computer based modeling to determine the extent to which they may contribute to haze in these Class I designated areas.

The Rule requires power plant units placed in service between 1962 and 1977 to be modeled for emissions. Based on the operation date rules criteria, Burdick Station Power Plant boilers #2 and #3 are included. If modeling indicates contribution above a certain level, these units would be required to reduce emissions, either by a reduction in operation, or by adding control equipment. Protocol for the modeling must be provided to the NDEQ by April 15, 2006, with final modeling results submitted by July 15, 2006. Participants in the meeting were advised that the estimate of the actual computer run time for this complex modeling is two weeks.

Discussion

The required computer modeling is beyond the resources of the Electric Department. Therefore, Department staff contacted several consultants that have previously developed complex models in accordance with EPA criteria. Sargent & Lundy and Black & Veatch, two firms that have performed several large plant projects, indicated that they cannot

perform this modeling and would need to find a subcontractor. Trinity Consultants, an environmental consultant, estimated a cost of \$50,000 to perform this modeling. HDR, a consultant that assisted in the environmental permitting for the Burdick Station Combustion Turbine Project, also estimated a cost of \$50,000 to perform the modeling, but advised that they were currently providing modeling services to a consortium of OPPD, NPPD, and the Fremont Utilities Department. HDR proposed to add Grand Island to this consortium, at an incremental cost, with the fee to be divided five to six ways, depending on the final amount of facilities needing the modeling results. The proposed cost to Grand Island will be based on actual costs, not to exceed \$20,000. A copy of a proposed agreement with HDR is attached.

The options are then: 1) to initiate modeling independently for only the Grand Island units at a cost estimated at \$50,000 by two consultants capable of doing the project; or 2) join the consortium of Nebraska utilities currently developing the EPA required modeling at a not to exceed cost of \$20,000.

Alternatives

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

1. Move to participate in the group air modeling with HDR for a not to exceed amount of \$20,000
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 authorize the proposal from HDR Engineering, Inc., of Omaha to participate in the group regional haze rule modeling for an amount not to exceed \$20,000.

Sample Motion

Motion to approve the proposal from HDR Engineering, Inc., of Minneapolis, MN to participate in the group regional haze rule modeling for an amount not to exceed \$20,000.

March 23, 2006

Tim Luchsinger
Assistant Utilities Director
City of Grand Island
Utilities Department
1035 West Wildwood Drive
Grand Island, NE 68802

RE: Proposal for Regional Haze Rule Assistance (Revised)

Dear Mr. Luchsinger:

As you have requested, HDR is proposing to assist the City of Grand Island, Utilities Department, in meeting certain requirements of federal Regional Haze rules (40 CFR 51, Appendix Y). The need for such assistance is rather urgent based on a schedule of submittals specified by the Nebraska Department of Environmental Quality (NDEQ) on March 14, 2006.

HDR's assistance to Grand Island would be to help determine whether Units #2 and #3 at Burdick Station must be further evaluated for possible application of Best Available Retrofit Technology (BART) emissions controls. HDR's assistance would include helping to interpret and apply rules and dispersion modeling guidance to conduct a dispersion modeling assessment. HDR would subcontract the actual dispersion modeling, to be conducted with the CAMx model, to ENVIRON International, Corporation, in accordance with specifications in the attached Request for Proposal (RFP) issued by HDR to ENVIRON on March 21, 2006. The roles and responsibilities of HDR and its subcontractor, ENVIRON, for this effort are spelled out in the attached RFP.

The exact cost of the modeling effort is unknown at this point, and depends somewhat on how many Nebraska utilities elect to utilize the single, initial CAMx model run to make their initial determinations on whether they will be subject to BART. The cost ENVIRON's assistance in running the CAMx model and providing documentation of model results will be split evenly among the number of separate facilities needing these results. If as expected, six facilities (2 OPPD, 2 NPPD, one Fremont, one Grand Island) need or elect to use the CAMx results, then the cost would be split six ways. If only five facilities elect to use the CAMx approach, then the cost would be split five ways. However, based on approximate/expected subcontractor costs at this point, and assuming at least four utility plants participate in the CAMx modeling, the total costs to Grand Island for this proposal will not exceed \$20,000, and will likely be significantly less. Should subcontractor costs or utility participation change and cause Grand Island

Utilities' costs to exceed \$20,000, Grand Island Utilities shall be notified immediately and shall have the right to cancel this agreement.

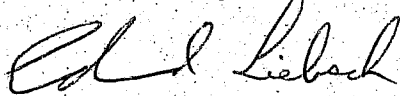
This initial modeling effort may determine that the Grand Island facility will not be subject to further BART review. If that is the case, HDR, together with ENVIRON's assistance, would document that modeling demonstration and prepare a package for Grand Island submittal to NDEQ by the deadline of July 1, 2006. If the initial CAMx modeling does not show that Burdick Station Units 2 & 3 impacts are below the de minimis impact threshold, then Grand Island would need further assistance to evaluate potential BART emissions controls and/or administrative controls to limit emissions. If that is needed, HDR would provide a separate proposal for that effort.

HDR would perform its services for Grand Island in accordance with the attached "HDR Engineering, Inc., Terms and Conditions for Professional Services." For purposes of compensation, HDR would apply a total multiplier of 3.105 times base salary rate for each individual used on the project, where base salary excludes any benefits multipliers. Also attached is a rate sheet giving labor and expense rates for staff that are either expected to be used on this project, or might be used. Expenses and subcontracting costs would be subject to a 10% mark-up by HDR to cover accounting, insurance, and management costs. If this proposed work agreement is acceptable, you may have the attached acceptance page completed by the appropriate official, and return a signed copy to me.

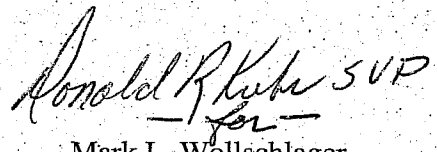
We look forward to assisting Grand Island in dealing with the Regional Haze rule requirements. If you have any questions regarding this proposed agreement, please feel free to contact me at 763-591-5452 or via e-mail at Ed.Liebsch@hdrinc.com.

Sincerely,

HDR Engineering, Inc



Edward Liebsch, V.P.
Senior Air Quality Scientist



Mark L. Wollschlager
Senior Vice President

Attachments:

- HDR General Terms & Conditions
- HDR Staff Full Labor Rates (2006)
- Request for Proposal to ENVIRON for CAMx Modeling Assistance

Please proceed according to the above-stated terms.

Date

Client

Authorizer's Name (*Printed*)

Authorizer's Signature

Title

HDR Engineering, Inc.

Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. Upon request, OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for the claims covered by ENGINEER's insurance.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER 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, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS AND ASSIGNS

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the Terms & Conditions for Professional Services 2 (10/2001) parties. One or more waivers by either party of any provision, term

or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make prompt payments in response to ENGINEER's invoices.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within forty-five (45) days from the date of the invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity, and other employment, statutes and regulations.

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it

has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. LIMITATION OF LIABILITY

ENGINEER's and its employees' total liability to OWNER for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services or any other cause, including ENGINEER's and its employees' professional negligent acts, errors, or omissions, shall not exceed the greater of \$50,000 or the total compensation received by ENGINEER hereunder, except as otherwise provided under this Agreement, and OWNER hereby releases and holds harmless ENGINEER and its employees from any liability above such amount.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

RESOLUTION 2006-100

WHEREAS, the City of Grand Island was recently notified by the Nebraska Department of Environmental Quality (NDEQ) that they must comply with the Environmental Protection Agency (EPA) Regional Haze Rule; and

WHEREAS, the regional haze rule was created to determine air emissions by sources that cause visible haze in environmentally classified (Class I) areas; and

WHEREAS, potential sources of visible haze in the state are required to provide computer based modeling to determine the extent to which they may contribute to haze in these Class I designated areas; and

WHEREAS, based on the operation date rules criteria, Burdick Station Power Plant boilers #2 and #3 are included; and

WHEREAS, if modeling indicates contribution above a certain level, the City would be required to reduce emissions, either by a reduction in operation, or by adding control equipment; and

WHEREAS, protocol for the modeling must be provided to the NDEQ by April 15, 2006, with final modeling results submitted by July 15, 2006; and

WHEREAS, the required computer modeling is beyond the resources of the Electric Department, therefore several consultants were contacted that have previously developed complex models in accordance with EPA criteria; and

WHEREAS, HDR Engineering, Inc. of Omaha, Nebraska, is currently providing modeling services to a consortium of OPPD, NPPD, and the Fremont Utilities Department, and has offered to add Grand Island to this consortium for actual costs, not to exceed \$20,000; and

WHEREAS, this option will allow the city to comply with the NDEQ rules in a cost effective manner; and

WHEREAS, the proposed agreement with HDR Engineering, Inc. has been reviewed and approved by the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal from HDR Engineering, Inc. of Omaha, Nebraska to participate in the group regional haze rule modeling for an amount not to exceed \$20,000 is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute an agreement with HDR Engineering, Inc. for such project on behalf of the City of Grand Island.

Approved as to Form	☐ _____
March 23, 2006	☐ City Attorney

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, March 28, 2006.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk