



City of Grand Island

Tuesday, July 25, 2006

Council Session

Item G23

#2006-209 - Approving Agreement with Kirkham Michael & Associates, Inc. for Engineering Consulting Services for Storm Sewer Design Relative to the Wasmer Detention Cell

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: July 25, 2006

Subject: Approving Agreement with Kirkham Michael & Associates, Inc. for Engineering Consulting Services for Storm Sewer Design Relative to the Wasmer Detention Cell

Item #'s: G-23

Presenter(s): Steven P. Riehle, Public Works Director

Background

The City of Grand Island is working with the Nebraska Department of Roads (NDOR) on a project to widen U.S. HWY 30 (2nd Street) from Grant Street to Greenwich Street. The widening project includes replacing a water main, new concrete pavement, storm sewers, roadway illuminating, and sidewalks. The Wasmer Detention Cell is being built to accommodate runoff from the section of 2nd Street from Logan Street thru the Broadwell Avenue intersection to Monroe Street as well as improve drainage at the Broadwell Avenue and 3rd Street intersection. .

The request for proposals was advertised in the Grand Island Independent on June 15, 2006. Two (2) proposals were received on June 30, 2006 from Miller & Associates of Kearney Nebraska and Kirkham Michael of Omaha Nebraska with JEO Consulting Group, Inc. of Grand Island as a sub consultant.

Discussion

The proposals were reviewed by Public Works Staff. It is recommended to hire Kirkham Michael for the consulting services as they are performing the design work for the NDOR project to widen US HWY 30. Hiring Kirkham Michael for the services for the Wasmer Detention cell would reduce duplication and provide for better coordination. An agreement for the services has been negotiated for the work to be performed at actual costs with a maximum dollar amount of \$66,874.44.

Alternatives

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

1. Move to approve a resolution authorizing the Mayor to execute the agreement.
2. Refer the issue to a Committee.
3. Postpone the issue to future date.
4. Take no action on the issue.

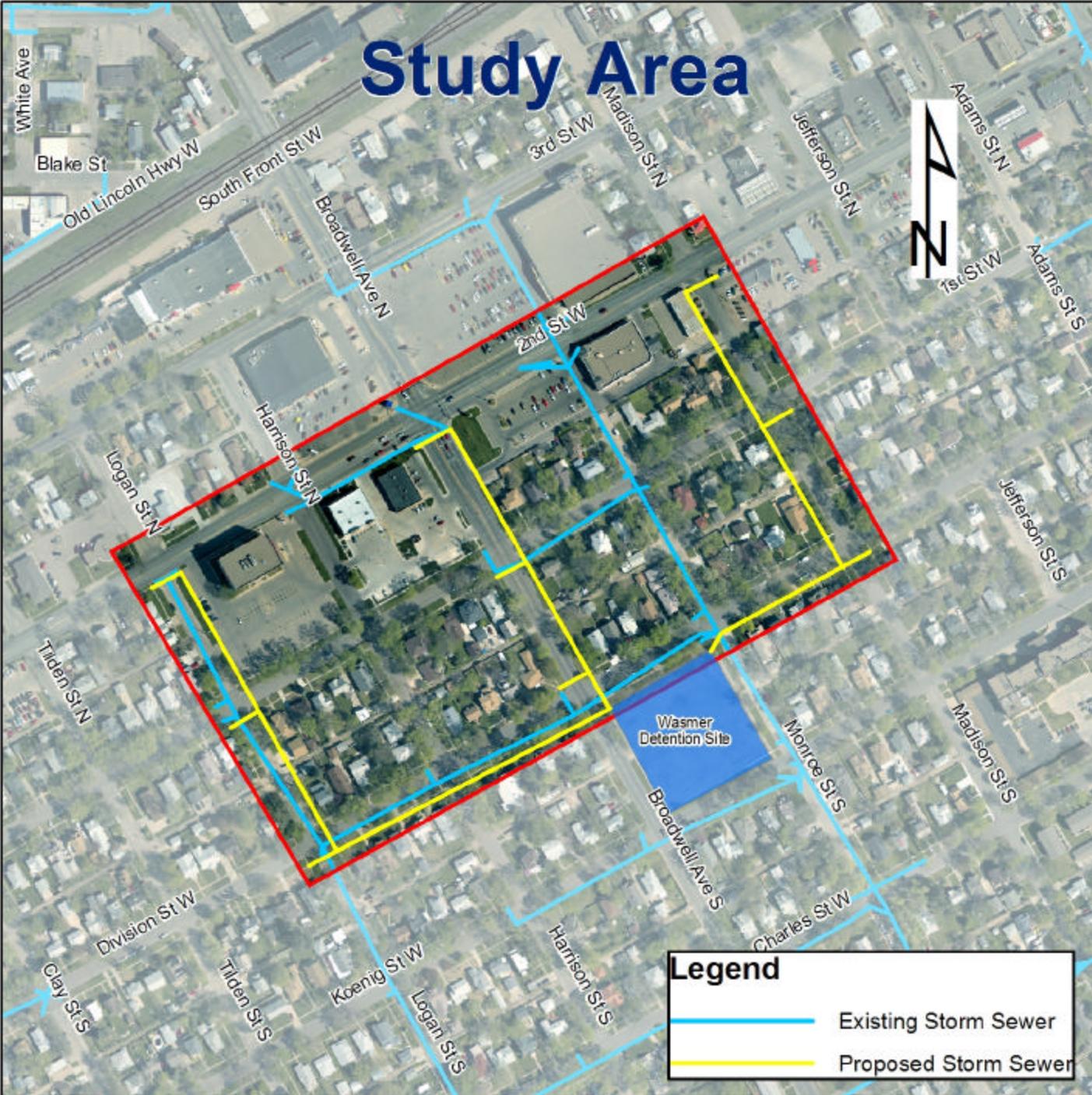
Recommendation

City Administration recommends that the Council approve a Resolution allowing the Mayor to sign the agreement for actual costs with a maximum amount of \$66,874.44.

Sample Motion

Motion to approve the agreement with Kirkham Michael to perform consulting engineering services for storm sewer design relative to the Wasmer Detention Cell.

Study Area



**AGREEMENT FOR ENGINEERING SERVICES
BETWEEN OWNER AND ENGINEER**

**Drainage Design
Grand Island, Nebraska**

THIS AGREEMENT is entered into this ____ day of _____, 2006, between the **City of Grand Island, Nebraska** (the "Owner") and **Kirkham, Michael and Associates, Inc.** (the "Engineer"). The Owner and the Engineer, in consideration of their mutual promises herein set forth, agree as follows:

I. DEFINITIONS

The following words and terms shall have the following meanings in this Agreement:

"Project" shall mean the project for which the Owner desires to engage the Services of the Engineer, which is described as follows:

Design of the drainage improvements identified within the Drainage Study undertaken in 2003, using the old Wasmer School site as a detention area. The area of improvement lies within Grand Island generally bounded by 3rd Street on the north, Logan Street on the west, Madison Street on the east, and Koenig Street on the south (see Attachment A – Proposed Improvements).

"Additional Services" shall mean the additional services of the Engineer described in Paragraph IV below.

"Construction Cost" means the total cost to Owner of those portions of the entire project designed or specified by Engineer. Construction Cost is one of the items comprising Total Project Costs.

"Engineer" shall mean the firm of:

**Kirkham, Michael and Associates, Inc.
12700 West Dodge Road, P.O. Box 542030
Omaha, Nebraska 68154-8030**

"Engineer's opinions of probable Construction Cost" if required under this Agreement represents Engineer's best judgment. 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 cannot and does not guarantee that proposals, bids or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer.

"Owner" shall mean:

**City of Grand Island, Nebraska
P.O. Box 1968
Grand Island, Nebraska 68802-1968**

"Owner's Representative" shall mean the Owner's authorized representative designated as such in writing to act on behalf of the Owner for the purpose of coordinating and administering the work under this Agreement.

"Project Manager" shall mean the principal project manager designated as such in writing assigned to the Project and employed by and working directly under the authority of the Engineer.

"Services" shall mean the services of the Engineer described in Paragraph II below.

II. BASIC SERVICES OF THE ENGINEER

A. The Engineer shall perform the following Basic Services with respect to the Project in accordance with the Scope of Services and General Terms and Conditions set forth in Paragraph V.

III. OWNER'S RESPONSIBILITIES

The Owner shall provide all criteria and full and timely information with respect to the Owner's requirements for the Project to be included in the study, drawings and standard plans, in order to assist the Engineer in the performance of the Services, including placing at the Engineer's disposal all information available to the Owner which is pertinent to the Project.

The Owner will prepare technical specifications for this project to be part of the contract documents.

The Owner shall furnish approvals and permits from all governmental authorities having jurisdiction of the Project and any budgetary constraints.

Owner will promptly review and submit comments to Engineer at the time of each submittal of documents prepared under Paragraphs II and IV and Owner will promptly advise Engineer of other consultants including scope of services, working in connection with the project.

Engineer is entitled to rely on criteria and information furnished by Owner.

The Owner shall designate its Owner's Representative who shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and make decisions with respect to the Project.

IV. ADDITIONAL SERVICES OF ENGINEER

These services are not included as part of this agreement, but may be added by amendment if requested by the Owner following scope and contract negotiations and agreement between the Owner and the Engineer:

- A. Bidding Assistance
- B. Construction Administration, Inspection, Testing and Staking

V. GENERAL TERMS AND CONDITIONS

- A. Time of Beginning and Completion of Design Services

The Services to be performed under this Agreement shall commence immediately upon receipt by the Project Manager of the Owner's written Notice to Proceed. The intent of the Owner and the Engineer is to complete the design phase within 150 days of the Notice to Proceed. It is recognized, however, by both the Owner and the Engineer that the timing of any necessary reviews by the Owner and others may affect the final completion date.

- B. Payment to Engineer

Fees:

The City shall pay the Engineer for engineering services rendered under this Contract an amount based on the Engineer's direct labor cost plus payroll burden and overhead (based on most recent audit factors), plus a fixed fee. Attachment A-2 indicates the man-hour and fee estimates for the project to establish the contract fee maximum.

In addition, the Engineer will provide the City with an itemized list of reimbursable expenses incurred in completing this work. These reimbursable expenses include transportation and subsistence, reproduction, photography and printing for reports and plans, telephone, postage, and miscellaneous costs.

The fee to be paid by the City to the Engineer for the Scope of Services as detailed in Section II - Basic Services of the Engineer shall be a cost plus fixed fee up to a maximum amount of Sixty-Six Thousand Eight Hundred Seventy Four Dollars and Forty Four Cents (\$66,874.44) including reimbursable expenses.

- C. Invoices

Invoices will be submitted by the Engineer approximately on a monthly basis, and are due and payable by the Owner on receipt. The Engineer may, if payment is not received within

60 days of billing date, after giving seven days written notice to the Owner, suspend Services without liability until the Owner has paid in full all amounts due the Engineer.

D. Insurance

The Engineer agrees to purchase at its own expense Worker's Compensation insurance, Professional Liability insurance and Commercial General Liability insurance and will furnish insurance certificates to the Owner. The Engineer agrees to purchase whatever additional insurance is requested by the Owner (presuming such insurance is available), provided the premiums for additional insurance are reimbursed by the Owner.

E. Indemnification

It is understood and agreed that, in providing the Services and Additional Services, if any, the Engineer shall indemnify the Owner for any loss or damage solely caused by its negligent act, error or omissions in performance of the Services (except for Uninsurable Activities).

Uninsurable Activities shall be defined as undertaking uninsurable obligations for the Owner's benefit which may involve the presence or potential presence of hazardous substances, including, but not limited to, activities relating to hazardous waste disposal and cleanup of environmental pollutants ("pollutants" meaning any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor soot, fumes, acids, alkalis, chemicals, waste and waste materials to be recycled, reconditioned or reclaimed); liability relating to asbestos including specification of a product, material or process containing asbestos; failure to detect the existence or proportion of asbestos in a product, material or process; the abatement, replacement or removal of a product, material or process containing asbestos, and activities resulting in the actual, alleged or threatened discharge, dispersal, release or escape of pollutants and any other similar activity for which insurance is reasonably unavailable.

F. Gratuities

The Engineer represents that no gratuities (in the form of the entertainment, gifts or otherwise) were offered or given to any officer, agent, employee or representative of the Owner with a view towards securing a contract or securing favorable treatment with respect to the wording, amending or the making of any determination with respect to the performance of this Agreement.

G. Confidentiality

The Engineer shall maintain as confidential and not disclose to others without Owner's prior written consent, all information obtained from Owner, not otherwise previously known to the Engineer or in the public domain, as owner expressly designates in writing to be "CONFIDENTIAL". The provisions of this paragraph shall not apply to information in

whatever form which is published or comes into the public domain through no fault of the Engineer, is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or is required to be disclosed by law on order of a court, administrative agency or other authority with proper jurisdiction.

Owner agrees that Engineer may use and publish Owner's name and general description of the Engineer's services with respect to the Project in describing the Engineer's experience and qualifications to other clients or potential clients.

H. Use of Documents

All documents, including drawings, specifications, and electronic media prepared or furnished by Engineer (and Engineer's subsidiaries, independent professional associates, consultants and subcontractors) pursuant to this Agreement are instruments of service in respect of the Project and Engineer shall retain an ownership and property interest therein whether or not the Project is completed. Engineer shall furnish one set of Mylar drawings, two sets of blue-line prints and electronic media disc in AutoCadd 2000 Version. Owner may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for use or reuse by owner or others to complete the project or for extensions of the Project or on any other project. Any use or reuse without written verification or adaptation by the Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer or to the Engineer's subsidiaries, independent professional associates, consultants and subcontractors. Owner agrees to defend, indemnify and hold harmless the Engineer from any and all costs, expenses (including reasonable litigation costs), fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of such reuse or alteration by the Owner or acting through the Owner. Any such verification or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by Owner and the Engineer.

I. Termination

The Owner and/or Engineer shall have the right to terminate this contract at any time by giving at least 10 days notice in writing. The notice shall specify the effective date of such termination. Upon cancellation, the Owner will be responsible only for those costs incurred by Engineer to the date of termination.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Engineer under this Contract shall, at the option of the City, become its property and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

J. Governing Law - Miscellaneous

This Agreement is to be governed by and construed in accordance with the law of the State

of Nebraska.

The Agreement expresses the entire Agreement between the parties, and no representations, promises or warranties have been made by either of the parties that are not fully expressed herein.

This Agreement is binding on successors and assigns of either party, and neither party shall assign any rights under or interest in this Agreement without the consent of the other party, except that the Engineer may without such consent employ consultants and others in the performance of the Services.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officials as of the first day and year above written:

ENGINEER: **KIRKHAM, MICHAEL & ASSOCIATES, INC.**

Dale Miller, P.E., L.S.
President, CEO

ATTEST:

Randall J. ElDorado, P.E.
Transportation Department Manager

OWNER: **CITY OF GRAND ISLAND, NEBRASKA**

Jay Vavricek, Mayor
City of Grand Island, Nebraska

ATTEST:

RaNae Edwards, City Clerk
City of Grand Island, Nebraska

APPROVED AS TO FORM:

Dale Shotkoski, Acting City Attorney
City of Grand Island, Nebraska

RESOLUTION 2006-209

WHEREAS, on January 13, 1997, by Resolution 97-16, the City Council for the City of Grand Island approved an agreement with the Nebraska Department of Roads to improve U.S. Highway 30 from Grant Street to Greenwich Street; and

WHEREAS, such work includes replacing a water main, new concrete pavement, storm sewers, street lighting and sidewalks; and

WHEREAS, the Wasmer Detention Cell is being built to accommodate runoff from the section of 2nd Street from Logan Street through the Broadwell Avenue intersection to Monroe Street as well as improve drainage at the Broadwell Avenue and 3rd Street intersection; and

WHEREAS, the Nebraska Department of Roads has requested that the City proceed with the storm sewer piping improvements upstream of Wasmer Detention Cell; and

WHEREAS, on June 30, 2006, proposals were received, opened and reviewed; and

WHEREAS, Kirkham Michael of Omaha, Nebraska, submitted a proposal in accordance with the terms of the advertisement of proposals and specifications and all other statutory requirements contained therein, such proposal being in the amount of \$66,874.44; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of Kirkham Michael of Omaha, Nebraska, in the amount of \$66,874.44 for engineering consulting services for storm sewer design for the Wasmer Detention Cell is hereby approved.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor be, and hereby is, authorized and directed to execute the agreement for Engineering Services between the City of Grand Island and Kirkham Michael of Omaha, Nebraska, to provide engineering consulting services for storm sewer design relative to the Wasmer Detention Cell for an amount not to exceed \$66,874.44.

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Adopted by the City Council of the City of Grand Island, Nebraska on July 25, 2006.

Jay Vavricek, Mayor

Attest:

Approved as to Form	☐ _____
July 21, 2006	☐ City Attorney

RaNae Edwards, City Clerk

Approved as to Form ✕ _____
July 21, 2006 ✕ City Attorney