



City of Grand Island

Tuesday, September 11, 2007

Council Session

Item G10

**#2007-219 - Approving Contract with Olsson Associates for
Engineering Services for Construction of the River-Way Hike/Bike
Trail**

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian, Park and Recreation Director

Meeting: September 11, 2007

Subject: Construction Engineering Services for Riverway
Hike/Bike Trail

Item #'s: G-10

Presenter(s): Steve Paustian, Parks and Recreation Director

Background

The Parks and Recreation Department submitted a grant request to the Nebraska Department of Roads to assist in the design and construction cost of the Riverway Hike/Bike Trail. The trail will extend from Hall County Park to South Locust Street along the Wood River diversion channel. The City was awarded the grant.

Discussion

Following the protocol required for the grant, engineering proposals were solicited. The City received five proposals. The proposal deemed most satisfactory as ranked by the selection committee was provided by Olsson Associates of Grand Island and Lincoln, NE. The State has agreed with the engineering firm selected and has drafted a contract. The engineering contract calls for a set fee of \$29,957.00 for construction engineering. The grant will pay 80% of all costs associated with the contract.

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 award a construction engineering contract to Olsson Associates for the design of the Riverway Trail.

Sample Motion

Motion to approve the contract to Olsson Associates for construction engineering services for the Riverway Hike/Bike Trail.

CONSULTANT AGREEMENT

PROJECT NO. STPB-40(53), CONTROL NO. 42428
CITY OF Grand Island
Olsson Associates, Inc.
CONSTRUCTION ENGINEERING SERVICES
Grand Island River Way Trail

THIS AGREEMENT, entered into by and between the firm of Olsson Associates, Inc. hereinafter referred to as the "Consultant", and the City of Grand Island, Nebraska, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, the City is planning to construct a 1.8 mile, 10-foot wide concrete trail. The project begins at the northeast corner of Hall County Park and extends eastward on top of a recently completed levee that is part of the Wood River flood diversion project. The trail intersects with Locust Street, crosses at grade, and then turns north where it will connect to a ¼ mile long trail being developed as part of a Wal-Mart retail outlet, and

WHEREAS, the work will be done under the project designation of Project No. STPB-40(53), and

WHEREAS, Federal regulations provide that the State shall have the responsibility for the construction of all Federal-aid projects, and will be responsible for insuring that such projects receive the same degree of supervision and inspection as projects constructed under a contract let and directly supervised by the State and that the project is completed in conformity with approved plans and specifications, and

WHEREAS, the City and State do not have sufficient personnel available for such supervision and inspection, and

WHEREAS, the City may employ a consultant to provide construction engineering services, and

WHEREAS, the City agrees to provide a City employee or Consultant to be in responsible charge and direct control of the project at all times, and

WHEREAS, it is the desire of the City that the Consultant furnish project management, construction staking, inspection and field testing engineering services for this project, and

WHEREAS, the Consultant is willing to perform such work according to the terms hereinafter provided, and the Consultant does represent that it is in compliance with the Nebraska Statutes relating to the registration of professional engineers, and hereby agrees to comply with all Federal, State, and local laws and

NOW THEREFORE, in consideration of these facts, the parties agree as follows:

SECTION 1. DEFINITIONS:

WHEREVER in this agreement the following terms are used, they will mean:

"CITY" means the City of Grand Island of the State of Nebraska, the Mayor or an authorized representative.

"STATE" means the Nebraska Department of Roads of the State of Nebraska, Lincoln, Nebraska, the Director of the Department, or an authorized representative of the Director.

The State is representing the United States Department of Transportation on this project and any reference to the "State" in this agreement means the State on behalf of the United States Department of Transportation.

"CONSULTANT" means the firm of Olsson Associates, Inc., whose business and mailing address is 201 East 2nd Street, PO Box 1072, Grand Island, Nebraska, 68002-1072.

"FHWA" means the Federal Highway Administration, Department of Transportation, Washington, DC 20590, acting through its authorized representatives.

"DOT" means the United States Department of Transportation, Washington, DC 20590, acting through its authorized representatives.

"PROJECT MANAGER" means that person appointed by the City to oversee the project construction and to ensure that the project is built in compliance with all the terms of this agreement and requirements for Federal funding.

"STATE REPRESENTATIVE" means an employee of the State designated by the State to review the project and to assist the City in complying with requirements for Federal funds.

"ENHANCEMENT PROGRAM CONSULTANT" means Sinclair Hille Architects whose business and mailing address is 700 Q Street, Lincoln, NE 68508, Attention: Andrea Bopp.

To "ABANDON" the work means that the City has determined that conditions or intentions as originally existed have changed and that the work as contemplated herein is to be renounced and deserted for as long in the future as can be foreseen.

To "SUSPEND" the work means the City has determined the progress is not sufficient or the conditions or intentions as originally existed have changed or the work completed or submitted is unsatisfactory and the work as contemplated in this agreement should be stopped on a temporary basis. This cessation will prevail until the City determines to abandon or terminate the work or to reinstate under the conditions as defined in this agreement.

To "TERMINATE" or the "TERMINATION" of this agreement will be the cessation or quitting of this agreement based upon action or failure of action on the part of the Consultant as defined in this agreement and as determined by the City.

SECTION 2. GENERAL DESCRIPTION OF SCOPE AND CONTROL OF THE WORK:

The Consultant shall, upon receipt of Notice to Proceed, perform all the project management, construction staking, inspecting and field testing services required under this agreement for Project STPB-40(53), Grand Island River Way Trail, in Hall County, Nebraska, as outlined in the attached EXHIBIT "A" Scope of Inspection and EXHIBIT "B," Consultant's Proposal, attached and made a part of this agreement.

The services in order to remain eligible for Federal funding must be performed to the satisfaction of the City and State and in accordance with State and Federal applicable publications and regulations.

The Consultant has furnished a personnel chart or list in EXHIBIT "B". Any major deviation from or revision in the classifications or personnel shown in the chart or list must receive the prior approval of the City. All personnel replacements must be made with persons of equal ability or experience and failure to provide capable replacements to keep the work on schedule will be cause for termination of this agreement, with settlement to be made as provided for in this agreement.

The Consultant's services include, but are not limited to project management, advance staking, conducting the preconstruction conference, staking and inspection during project construction, preparing As-Built plans, progress computations, final computations, and preparing contractor change orders.

The Consultant, its Subcontractors or their employees shall not perform any work on the project that is the responsibility of the construction contractor.

A Consultant who provides both project engineering services for the contracting agency and engineering services for the project construction contractor is operating under an arrangement that gives the appearance of a possible conflict of interest and is unacceptable for Federal-aid work.

SECTION 3. TIME OF BEGINNING AND COMPLETION:

The City will issue the Consultant a written Notice-to-Proceed. Any work or services performed on the project prior to the Notice-to-Proceed date is not eligible for reimbursement.

The Consultant shall complete all work required under this agreement in a satisfactory manner within 45 calendar days after acceptance of the project by the City and State. Any costs incurred after the completion deadline are not eligible for reimbursement unless the City has approved an extension of time.

SECTION 4. IT IS MUTUALLY AGREED THAT:

- A. The City and State retain the right to perform any services on this project with their own staff.
- B. The State's District Engineer will assign a state employee from the District to be the State Representative for the project. The State Representative will assist the City in complying with the construction contract, design plans, scope of work or services, federal and state regulations, statutes, etc. in order that federal funds can be expended on this project. The Representative will review the project for compliance for federal funds, and will notify the city that project is acceptable or unacceptable. If the representative determines the project is unacceptable, the Representative will notify the City in writing, stating why the work is not in compliance with the requirements, etc., and that federal funds for the project are considered in jeopardy.
- C. The Consultant shall advise the State's Highway Disadvantaged Business Coordinator when it appears any Disadvantaged Business Enterprise (DBE) is in need of assistance. The Consultant shall make every effort to assist the Contractor or any Subcontractor in interpreting Plans and Specifications.
- D. Prior to the start of construction, the Consultant shall respond and be on the project with no more than 24 hours written notice by the City. The Consultant, in cooperation with the City, shall closely coordinate the number of people the Consultant will provide for the required staking, inspection, and field testing operations.
- E. The performance of all work under this agreement will be subject to the inspection and approval of the City and State and must be in accordance with the Construction Contractor's working schedule.
- F. The Consultant shall comply with all Federal, State and local laws and ordinances applicable to the work contemplated in this agreement.
- G. The completion time will not be extended because of any avoidable delay attributed to the Consultant but delays attributed to the Contractor, City or State will constitute a basis for an equivalent extension of time.
- H. Whenever possible, the sampling and testing frequency and methods of construction must be done according to the current State of Nebraska Materials and Sampling Guide, and the State Standard Methods of Tests (www.dor.state.ne.us), the special provisions of the construction contract, or as may be directed by the State Representative. If the Guide does not apply or cannot be followed for some good reason, then the Consultant shall follow the direction of the State Representative in regards to what needs to be done to provide a satisfactory result for the project.

SECTION 5. FEES AND PAYMENTS:

- A. For performance of the work as outlined in this agreement, the consultant will be paid a fixed-fee-for-profit of \$2,460.00, as defined in paragraph D of this section, and up to a maximum amount of \$27,497.00 for actual costs as defined in paragraph E of this section, that are allowable subject to the terms of this agreement and the federal cost principles contained in the Federal Acquisition Regulation (48CFR31). The total agreement amount is \$29,957.00.
- B. The Consultant is responsible for determining if its actual costs will exceed the maximum amount stated above. If at any time during this project, the Consultant determines that its costs will exceed, or have exceeded, the maximum amount stated above, the consultant must immediately notify the City in writing and describe which costs are causing the overrun and the reason. The Consultant must also estimate the additional costs needed to complete the work. The City will then determine if the maximum amount is to be increased, and request the Enhancement Program Consultant prepare a supplemental agreement. The City will not be obligated for costs in excess of the maximum amount not approved in advance.
- C. The City is not responsible for costs incurred prior to the Notice-to-Proceed date or after the completion deadline date as stated in this agreement.
- D. The fixed fee is computed upon the direct salary or wage costs, indirect salary costs, indirect non-salary costs, and direct payroll additives. The fixed fee is not allowable upon direct non-salary costs.
- E. Actual costs include direct labor costs, direct non-labor costs, and overhead costs.

1. Direct Labor Costs

Direct labor costs are the wages paid to employees for the time they are working directly on the project. For hourly employees, the Consultant shall bill the project at the employee's straight time hourly rate for regular hours worked and at 150% of the employee's straight time hourly rate for overtime hours paid to the employee in accordance with the Consultant's overtime policy. Regular hours must be defined as forty hours of work per calendar week performed on this project. Any hours performed by hourly employees over forty hours on this project per calendar week, will be eligible for overtime wages at 150% of the employee's straight time hourly rate. When overtime is included in the Consultant's overhead rate calculation, the Consultant shall not bill overtime as a direct labor cost. For salaried employees, the Consultant shall determine the hourly earnings rate by dividing the employee's fixed annual compensation by the number of hours normally expected to be worked that year. In those pay periods when the salaried employee works more hours than normally expected and does not receive additional compensation at least equal to the normally expected hourly rate, the rate for the pay period will be determined by dividing the actual compensation by the actual hours reported.

The rates shown herein for direct labor are rates estimated to be in force at the mid-point of the contract for the purpose of estimating the hourly cost of the work. The hours charged to the project must be supported by adequate time distribution records. The records must clearly indicate the distribution of hours to all activities on a daily basis for the entire pay period, and there must be a system in place to ensure that time charged to each activity is accurate.

2. Direct Non-Labor Costs

Charges in this category include per diem expenses for personnel away from their base of permanent assignment, communication costs, reproduction and printing costs, computer charges, special equipment and materials required for the project, special insurance premiums if required solely for this contract and other similar items. Payment for these items must be made on receipted invoices, whenever possible, or on certified billings of the Consultant. For purposes of standardization of this agreement, the following expenses will be reimbursed at the rates indicated:

Automobile	- \$0.485 per mile
Survey Vehicle	- \$0.51 per mile
Lodging	- Actual cost, not to exceed \$45.00 per person daily

Meals - Actual cost not to exceed:

Breakfast	\$ 6.00
*Lunch	\$ 8.00
Dinner	<u>\$16.00</u>
	<u>\$30.00</u> (Includes tax and gratuity)

For the Consultant and its employees to be eligible for the meal allowance, the following criteria must be met.

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|------------|-----|---|
| Breakfast: | (a) | Employee is required to depart at or before 6:30 a.m., or |
| | (b) | Employee is on overnight travel. |
| Lunch: | (a) | Employee <u>must</u> be on overnight travel. No reimbursement for same day of travel. |
| | (b) | Employee is required to leave for overnight travel at or before 11:00 a.m. or |
| | (c) | Employee returns from overnight travel at or after 2:00 p.m. |
| Dinner: | (a) | Employee returns from overnight travel or work location at or after 7:00 p.m. or |
| | (b) | Employee is on overnight travel. |

Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee. The Consultant is not required to provide the City with meal receipts, but shall note the actual costs in a daily diary, expense report, or on the individual's time report along with the time of departure to the project and time of return to the headquarters town.

3. Overhead Costs

Overhead costs include indirect salary costs, indirect non-salary costs, and direct salary additives that are allowable in accordance with 48 CFR 31. Overhead costs are to be allocated to the project as a percentage of direct labor costs. The Consultant will be allowed to charge the project using its actual allowable overhead rate. Overhead rate increases which occur during the project period will not be cause for an increase in the maximum amount established in paragraph A of this section.

4. Payments and Retention

The Consultant should submit a copy of invoices to the City at monthly intervals. The invoices must present actual direct labor with regular hours and overtime hours itemized, actual overhead, and actual direct non-labor costs, as well as a prorated amount of the fixed fee based upon the actual direct labor and overhead costs billed for that period relative to the Consultant's estimated total direct labor and indirect overhead costs, until 100 percent of the fixed fee has been billed. The fixed fee amount on the final invoice should be the difference between 100 percent of the agreed-upon fee and the total amount previously billed. The invoices must identify the hours worked and each individual's actual labor cost. The Consultant shall itemize direct non-labor expenses and provide a complete description of each item billed.

Monthly invoices must include a progress report which indicates the percent of work completed during the period, until the work is complete.

The Consultant will be paid 100% of actual cost and 100% of the fixed fee until 90% of the fixed fee has been paid. The final 10% of the fixed fee will be retained until completion of the work, acceptance by the City and State and a final audit, if determined necessary by the State, of all invoiced amounts has been completed by the State or its authorized representative.

The City will make every effort to pay the Consultant within 30 days of receipt of the Consultant's invoices. Payment is dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the City determines that the work is satisfactory.

The acceptance by the Consultant of the final payment will constitute and operate as a release to the City for all claims and liability to the Consultant, its representatives and assigns, for any and all things done, finished, or relating to the services rendered by or in connection with this agreement or any part thereof. The Consultant agrees to reimburse the City for any overpayments discovered by the City or its authorized representative. The Consultant shall maintain, and also require that any Subconsultants/Subcontractors maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of final payment under this agreement. Such materials must be available for inspection by the City, State, FHWA, or any authorized representative of the State and federal government, and the Consultant shall furnish copies to those mentioned in this section, when requested.

SECTION 6. CHANGE OF PLAN, ABANDONMENT, SUSPENSION AND TERMINATION:

In the event the Construction Contractor does not complete the work within the contract time allowance of 277 working days, the total contract amount may be adjusted by a supplemental agreement to establish the compensation to be made for services performed after expiration of the time allowance as adjusted or extended in accordance with the Specifications.

City authorized changes in the scope of services, which increase the work hours or services required of the Consultant, will provide the basis for an extension of time.

Additions to the scope of services, if approved by the City, will require negotiation of a supplemental agreement. For any work beyond the scope of services, the Consultant will be required to document the additional work, estimate the cost to complete the work and receive approval from the City before beginning the work. Any of the work performed prior to approval will be done at the expense of the Consultant.

The City can abandon the project or change the general scope of work at any time and such action on its part will in no event be deemed a breach of contract.

The City can suspend or terminate work under this agreement at any time. The City will give the Consultant seven days written notice of the suspension or termination. If the City abandons the work, or subtracts from the work, suspends the work or terminates the work as presently outlined, the Consultant will be compensated in accordance with the provisions of 48 CFR 31, provided however, that in case of suspension, abandonment, or termination for breach of this agreement or for tender of improper work, the City can suspend payments, pending the Consultant's compliance with the provisions of this agreement. In determining the percentage of work completed, the City will consider the work performed by the consultant prior to abandonment or termination to the total amount of work contemplated by this agreement.

The ownership of all engineering documents completed or partially completed at the time of such termination or abandonment, will be the property of the City and the Consultant shall immediately deliver all documents to the City. All reports, records, results and working papers arising from the work of the Consultant will be the property of the City. The Consultant shall not release or make use of same for any purpose whatever without the specific written permission of the City.

The Consultant will be compensated for any leased or rented equipment required on the project for the remaining time of a lease or rental contract up to a maximum time of thirty days from the date of written suspension or termination, less any credit the Consultant receives from the lessor, provided that the Consultant cannot utilize the equipment on another project.

SECTION 7. PROFESSIONAL CARE:

The Consultant understands that the City will rely on the professional performance and ability of the Consultant. Any examination by the City or the State, or any acceptance or use of the work product of the Consultant, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of the Consultant that would relieve the Consultant from any liability or expense that would be connected with the Consultant's sole responsibility for the propriety and integrity of the professional work to be accomplished by the Consultant pursuant to this agreement. That further acceptance or approval of any of the plans or work of the Consultant by the City and State or of payment, partial or final, will not constitute a waiver of any rights of the City to recover from the Consultant damages that are caused by the Consultant due to error, omission or negligence of the Consultant in its work. If the Consultant discovers errors in its work, the Consultant shall notify the City within seven days. Failure of the Consultant to notify the City will constitute a breach of this agreement. The Consultant's legal liability for all damages incurred by the City caused by error, omission or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the City.

SECTION 8. CITY TO FURNISH

- A. Project Manager or City contact person to assist the Consultant as required by the State.
- B. Two sets of project construction plans.

SECTION 9. CONSULTANT TO FURNISH OR PERFORM:

The Consultant shall furnish and do the following items and services:

- A. Safety equipment as required by OSHA and other safety regulatory agencies. Projects associated along railroad areas may restrict the use of hard hats, ball caps, vests or shirts of certain colors. The Consultant shall coordinate with the State Representative and the railroad company as to specific project requirements for that railroad area.
- B. All sampling and testing as required in the current State Materials Sampling Guide and the State Standard Methods of Tests (www.dor.state.ne.us) or applicable AASHTO or ASTM procedures.
- C. All portable surveying signs, consultant to install and remove.

- D. Submit copies of the field tests and reports as outlined in EXHIBIT "A" monthly to the City's Project Manager.
- E. Prepare contractor change orders.
- F. Construction stakes, nails and flagging material for survey party.
- G. Plant inspection of concrete materials for project.
- H. Calibrate and check testing and sampling equipment prior to commencing work.
- I. Project signing plan.
- J. Signs, and check reflectivity of barricades.
- K. Holiday detector.
- L. The Consultant shall perform all required services under the direct supervision of a registered Professional Engineer licensed to practice in the State of Nebraska.
- M. Prepare and keep: detailed notes, computations and measurements, records of quantities of pay items used in the work, records of those materials entering the work site, the tests or basis of acceptance of these materials, and a daily record of the contractor's operation and project work. Also included will be Wage Interview Reports (if necessary), working day reports, contractor progress estimates, contractor payrolls and statements of compliance and evaluation reports of the contractor (if necessary). If the wage interview report is deemed necessary for the project, it needs to be completed every six months.
- N. Provide copies of the reports, estimates, statement, and evaluations to the City and the State Representative as per their desired schedule.
- O. Project staking including, but not limited to staking the centerline, bench levels, control point tie out, and construction reference points, and final measurements.
- P. Upon completion of the work, the Consultant shall prepare As-Built plans in black ink on full size plan sheets and a summary of the final quantities of all contract items, which together with all original notes, computations, measurements, and records outlined in this agreement for submittal to the City. The Consultant shall certify in writing as to the completeness of the reports, verifications and analyses, and shall affix to the summary sheets the signature of a Professional Engineer employed by the Consultant licensed to practice in the State of Nebraska. The Consultant shall deliver the completed As-Built plans and the final quantities, related documents to the City no later than forty-five calendar days after the City and State accept the construction of this project.

If the delivered As-Built plans and the final quantities are not complete or accurate to the satisfaction of the City and State, the City will return them to the Consultant for correction and completion. The Consultant shall make the corrections without expense to the City and return them to the City within ten working days from the date of receipt. Additional work required to complete previous incomplete submittals will be paid for according to the FEES AND PAYMENTS section in this agreement. The time used by the City to review the As-Built plans and the final quantities or any delays not attributable to the Consultant will not be counted in determining the calendar days the Consultant used in completing the As-Built plans and the final quantities.

If the Consultant fails to deliver the acceptable completed As-Built plans and the final quantities to the City within the time frame described in this agreement, liquidated damages in the amount of 100 dollars will be charged for each additional calendar day that the work remains uncompleted.

SECTION 10. OWNERSHIP OF DOCUMENTS

All surveys, tracings, plans, specifications, maps, computations, sketches, charts, and other data prepared and obtained under the terms of this agreement are the City's property and the Consultant shall deliver them to the City without restriction or limitation as to further use.

SECTION 11. FORBIDDING USE OF OUTSIDE AGENTS:

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit to secure this agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other

consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the City can annul this agreement without liability, or in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

SECTION 12. NON-RAIDING CLAUSE:

The Consultant shall not engage the services of any person or persons presently in the employ of the City or State for work covered by this agreement without the prior written consent of the employer of such persons.

SECTION 13. GENERAL COMPLIANCE WITH LAWS:

The Consultant hereby agrees to comply with all Federal, State and local laws and ordinances applicable to the work.

SECTION 14. DISPUTES:

Any dispute concerning a question of fact in connection with the work not disposed of by this agreement, which will affect federal funding, must be referred for determination to the Director of the State or a duly authorized representative, whose decision in the matter will be final and conclusive on the parties to this agreement.

SECTION 15. RESPONSIBILITY FOR CLAIMS AND LIABILITY:

The Consultant agrees to save harmless the City from all claims and liability due to the negligent activities of the Consultant or those of the Consultants, subconsultants, agents, or its employees. In this connection, the Consultant shall for the life of this agreement, carry insurance of the following types in at least the following amounts:

1. Bodily Injury and Property
Damage with a combined
single unit of liability of \$500,000 each occurrence
or Bodily Injury
General and Automobile \$250,000 each person
General and Automobile \$500,000 each occurrence
Property Damage
General and Automobile \$250,000 each occurrence
General \$500,000 aggregate
2. Workmen's Compensation – Statutory

The insurance referred to in Number 1 above must be written under Comprehensive General and Comprehensive Automobile Liability Policy Forms, including coverage for all owned, hired, and non-owned automobiles. The Consultant may at its option provide the limits of liability as set out above by a combination of the above described policy forms and excess liability policies. The Consultant shall furnish proof of insurance coverage to the City.

SECTION 16. SUCCESSORS AND ASSIGNS:

This agreement is binding on successors and assigns of either party.

SECTION 17. DRUG-FREE WORKPLACE POLICY:

The Consultant shall have on file with the State an acceptable drug-free workplace policy.

SECTION 18. FAIR EMPLOYMENT PRACTICES ACT:

The Consultant agrees to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Sections 48-1101 through 48-1126, Nebraska Revised Statutes (Reissue 1998), which is hereby made a part of and included in this agreement by reference.

SECTION 19. DISABILITIES ACT

The Consultant agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

SECTION 20. DISADVANTAGED BUSINESS ENTERPRISES:

A. Policy

The Consultant agrees to ensure that disadvantaged business enterprises as defined in 49 CFR 26 will have the maximum opportunity to participate in the performance of subcontracts financed in whole or in part with Federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part of and incorporated by this reference into this agreement.

B. Disadvantaged Business Enterprise Obligation

The Consultant agrees to ensure that disadvantaged business enterprises as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, the Consultant shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure the disadvantaged business enterprises have the maximum opportunity to compete for and perform subcontracts. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

Failure of the Consultant to carry out the requirements set forth above shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by the City and State.

The SUBLETTING ASSIGNMENT OR TRANSFER section of this agreement further explains the Consultant's responsibility in ensuring that disadvantaged business enterprises have the maximum opportunity to compete for subcontracts.

SECTION 21. NONDISCRIMINATION:

- A. Compliance with Regulations: During the performance of this agreement, the Consultant, for itself and its assignees and successors in interest, agrees to comply with the regulations of the DOT relative to nondiscrimination in federally-assisted programs of the DOT (49 CFR 21 and 27, hereinafter referred to as the Regulations), which are hereby made a part of and included in this agreement by reference.
- B. Nondiscrimination: The Consultant, with regard to the work performed by it after award and prior to completion of this agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the agreement covers a program set forth in Appendixes A, B, and C of 49 CFR 21.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subagreement, including procurements of materials or equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, or national origin.
- D. Information and Reports: The Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State or FHWA, as appropriate, and set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this agreement, the State will impose such agreement sanctions

as it or the FHWA may determine to be appropriate, including but not limited to withholding of payments to the Consultant under this agreement until the Consultant complies, and/or cancellation, termination or suspension of this agreement, in whole or in part.

- F. Incorporation of Provisions: The Consultant shall include the provisions of paragraph A through E of this section in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Consultant shall take such action with respect to any subagreement or procurement as the State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a Consultant becomes involved in, or is threatened with litigation with a Subconsultant/Subcontractor as a result of such direction, the Consultant may request that the State enter into such litigation to protect the interests of the State, and in addition, the Consultant may request that the United States enter into such litigation to protect the interests of the United States.

SECTION 22. SUBLETTING ASSIGNMENT OR TRANSFER:

Any subletting, assignment or transfer of any services to be performed by the Consultant is hereby prohibited unless prior written consent of the City and State is obtained.

If the Consultant chooses to utilize any Subconsultant for work covered under this agreement, the Consultant shall enter into an agreement with the Subconsultant. All Subconsultant agreements for work covered under this agreement in excess of \$10,000.00 shall contain all required provisions of this agreement. No right of action against the City shall accrue to any Consultant by reason of this agreement.

As outlined in the DISADVANTAGED BUSINESS ENTERPRISES section of this agreement, the Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subcontracts. Any written request to sublet any other work must include documentation of efforts to employ a minority business enterprise.

SECTION 23. FINANCIAL INTEREST LIMITATIONS: NOT USED

SECTION 24. CONFLICT OF INTEREST

By signing this agreement, the Consultant certifies that it has no financial or other interests in the outcome of this project.

SECTION 25. CONSULTANT CERTIFICATION:

The Consultant hereby certifies that wage rates and other factual unit costs supporting the fees in this agreement are accurate, complete, current, and subject to adjustment, if required, as provided by Sections 81-1701 through 81-1721, Nebraska Revised Statutes (Reissue 1994).

After being duly sworn on oath, I do hereby certify that except as noted below, neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:

- A. Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this agreement, or
- B. Has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
- C. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).

Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions
Instructions for Certification

- A. By signing this Agreement, the Consultant is providing the certification set out below.

- B. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. The Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this agreement. However, failure of the Consultant to furnish a certification or an explanation will disqualify the Consultant from participation in this agreement.
- C. The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this agreement. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City may terminate this agreement for cause of default.
- D. The Consultant shall provide immediate written notice to the City if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- E. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- F. The Consultant agrees that, should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the City before entering into this agreement.
- G. The Consultant further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the City or State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- H. The Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.
- I. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- J. Except for transactions authorized under paragraph 6 of these instructions, if the Consultant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the City may terminate this agreement for cause or default.

Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

- A. The Consultant certifies to the best of its knowledge and belief, that it and its principals:
 - 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - 2. Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (A)42428 of this certification; and
 4. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
- B. Where the Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this Agreement. I acknowledge that this certification is to be furnished to the State and the FHWA in connection with this agreement involving participation of Federal-aid highway funds, and is subject to applicable, State and Federal laws, both criminal and civil.

SECTION 26. CERTIFICATION OF CITY:

After being duly sworn on oath, I Mayor Margaret Hornady, (print the full name) has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:

- A. employ or retain, or agree to employ or retain, any firm or person, or
- B. pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this certification is to be furnished to the State and FHWA in connection with this agreement involving participation of Federal-aid highway funds, and is subject to applicable, State and Federal laws, both criminal and civil.

SECTION 27. ALL ENCOMPASSED:

This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements, either oral or written hereto.

STATE OF _____)
)ss.
_____ COUNTY)

EXECUTED by the Consultant this _____ day of _____, 20____.

Title _____

Notary Public

STATE OF _____)
)ss.
_____ COUNTY)

EXECUTED by the City this _____ day of _____, 20____.

THE CITY OF Grand Island, NEBRASKA

Mayor

SCOPE OF INSPECTION
Grand Island River Way Trail
NDOR Project No.: STPB-40(53); Control No. 42428

Group A		
1	6" Concrete Bike Trail	Field inspection, slump and air tests, concrete tickets, form inspection, placement, concrete cylinders, etc., notebook record.
2	Install Bollard	Field inspection, field measurement, notebook record.
3	Remove and Relocate Light Pole	Field inspection, field measurement, verification of removal and resetting, notebook record.
4	Build Pull Box	Field inspection, verification of work performed, notebook record.
5	Remove and Salvage Gate	Field inspection, field measurement, verification of removal and salvage, notebook record.
6	Remove and Reset End Post	Field inspection, field measurement, verification of removal and resetting, notebook record.
7	Remove Barbed Wire Fence	Field inspection, field measurement, verification of removal, notebook record.
8	Grind Curb	Field inspection, inspection report, notebook record.
9	Remove Concrete Median	Field inspection, field measurement, verification of removal, notebook record.
10	Remove Right of Way Marker	Field inspection, field measurement, verification of removal, notebook record.
11	Build Silt Fence	Field inspection, notebook record.
13	Earthwork	Field inspection, quantity computations, moisture density tests, notebook record.
Group B – Locust St. Undercrossing and North Levee		
1	6" Concrete Bike Trail	Field inspection, slump and air tests, concrete tickets, form inspection, placement, concrete cylinders, etc., notebook record.
2	Remove and Salvage Gate	Field inspection, field measurement, verification of removal and salvage, notebook record.
3	Earthwork	Field inspection, quantity computations, moisture density tests, notebook record.
4	Seeding	Field inspection, measurement, verification of work performed and quantities used, daily report, notebook record.
5	Erosion Control Type A	Field inspection, measurement, notebook record.
6	Overexcavation	

The following is applicable to all work covered under this agreement
The Consultant will perform all tests, which relate to control of construction.

The sampling and testing frequency and methods shall be in accordance with Volume II, State of Nebraska Materials Sampling Guide and any supplements to the Guide.

The project staking shall include, but not be limited to staking the centerline, control point tie out, and construction reference points, and final measurements.

GENERAL: Each inspector will record a weekly record of project work. This record should be included in one of the other project notebooks or in a separate notebook.

The Consultant shall be responsible for the following:

- (A) Wage Interview Reports.
- (B) Furnishing the detailed information and quantities to the State's Representative if requested for the following:
 - (1) Working Day Reports.
 - (2) Weekly Progress Measurements.
 - (3) Contractor Progress Estimates.
- (C) Contractor Payrolls and Statements of Compliance.
- (D) Contractor EEO Reports and Contractor EEO Compliance Record if required

Personnel Hours Matrix Construction Engineering
Riverway Trail
Grand Island, Nebraska
NDOR Project No. STPB-40(53)
NDOR Control Number 42428
August 14, 2007

Olsson Associates
201 East 2nd Street
PO Box 1072
Grand Island, NE 68002-1072

	Project Engineer	Design Technician	Construction Observer	Senior Surveyor	Survey Technician	Survey Technician		Clerical
1. Preliminary Survey								
A. Verify & Set Additional Horizontal & Vertical Control			2.0	1.0	2.0			
B. Survey Stakeouts		4.0	2.0					
C. Grade Stakes for Undercrossings			4.0	1.0	4.0			
D. Pavement Hubs (500)				4.0	36.0	36.0		
E. Miscellaneous Staking			4.0		4.0			
2. Construction Observation								
A. Conduct Pre-Construction Meeting	4.0		4.0					1.0
B. Shop Drawing Review	2.0		2.0					
C. Coordination with Utilities	2.0		2.0					1.0
D. Construction Observation (8 weeks)	16.0	8.0	240.0					
E. Coordination with NDOR	4.0		2.0					
F. Coordination with Corps	8.0		2.0					
G. Bridge Undercrossing Additional Testing	2.0		6.0					
3. Miscellaneous Office Work								
A. Assume 2 Change Orders	2.0		4.0					1.0
B. Daily Diary & Weekly Reports	5.0		18.0					
C. Measurement of Quantities & Pay Estimates	2.0		8.0					
D. Final Walk Thru w/ Corps & City	4.0		4.0					
E. As-built Package	4.0		12.0					1.0
Subtotal (Hours)	55.0	12.0	316.0	6.0	46.0	36.0	0.0	4.0
	Hours	\$/Hour	Cost					
Project Engineer (Matt Rief)	55.0	\$34.62	\$1,904					
Design Technician (Zack Loomis)	12.0	\$18.50	\$222					
Construction Observer (Noah Seim)	316.0	\$18.50	\$5,846					
Senior Surveyor (Jia Andrist)	6.0	\$22.16	\$133					
Senior Technician (Rod Zulkoski)	46.0	\$17.05	\$784					
Survey Technician (David Ciancio)	36.0	\$14.25	\$513					
Clerical (Enid Cederlind)	4.0	\$14.60	\$58					
			Direct Labor Subtotal:	\$9,461				
			Overhead @ 160.0%:	15,137				
			Subtotal	\$24,598				
			Profit (10%):	2,460				
			Total Labor:			\$27,058		
Direct Costs	Amount	Unit Cost	Cost					
Mileage (\$0.49/mile)	600	\$0.49	\$294					
GPS Equipment (\$25/hour)	20	\$25.00	\$500					
Phone			\$200					
Postage			\$40					
Duplication			\$100					
Subtotal:				\$1,134				
Testing	Quantity	Unit Price	Amount					
Densities	30	\$20	\$600					
Proctors	2	\$150	\$300					
Concrete Cylinders, Slump & Air	6	\$20	\$120					
Cylinder Breaks	18	\$12	\$216					
Subtotal:				\$1,236				
Survey Materials	Quantity	Unit Price	Amount					
Flags (Bundles)	2	\$20	\$40					
Nails (Lbs.)	2	\$7	\$14					
Hubs (Bundles)	20	\$10	\$200					
Guards, Slope stakes, Etc...Stakes (bundles)	5	\$15	\$75					
Lathe (bundles)	20	\$10	\$200					
Subtotal:				\$529				
			Total Direct Costs:			\$2,899		
Total Estimated Fees:						\$29,957		

RESOLUTION 2007-219

WHEREAS, the City of Grand Island received grant approval to assist with the cost of the design and construction of the Riverway Hike/Bike Trail which will extend from Hall County Park to South Locust Street along the Wood River diversion channel; and

WHEREAS, the City of Grand Island issued a Request for Proposals for engineering services for such project; and

WHEREAS, Olsson Associates of Grand Island, Nebraska, submitted a proposal for such project in accordance with the Request for Proposals in the amount of \$29,957.00; and

WHEREAS, the State of Nebraska Department of Roads has agreed with selection of Olsson Associates for such project; and

WHEREAS, the City is responsible for 20% of the project costs; and

WHEREAS, a Consultant Agreement with Olsson Associates to perform engineering work for such project 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 Consultant Agreement with Olsson Associates of Grand Island and Lincoln, Nebraska for engineering consulting work for the design and construction of the Riverway Hike/Bike Trail, is hereby approved at a cost of \$29,957.00.

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, September 11, 2007.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
September 7, 2007	☐ City Attorney