



City of Grand Island

Tuesday, September 23, 2008

Council Session

Item G9

#2008-261 - Approving Agreement with NDEQ to Provide Assistance for Retaining Wall Construction at Sucks Lake

Staff Contact: Steve Paustian

Council Agenda Memo

From: Steve Paustian, Parks and Recreation Director

Meeting: September 23, 2008

Subject: Agreement with NDEQ to Provide Funding Assistance for Retaining Wall Construction at Sucks Lake

Item #'s: G-9

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

Background

The City of Grand Island made several major improvements to the area known as Sucks Lake Park. Improvements included dredging the existing lake, storm drainage improvements, playground equipment installation and the installation of a fishing pier. Much of the funding for these improvements came from grant funding provided by the Nebraska Department of Environmental Quality (NDEQ). Since those initial improvements were made, an erosion issue has developed along the south bank of Sucks Lake.

Discussion

The Park and Recreation Department contacted the NDEQ and requested assistance with the cost associated with the remediation of the erosion problem at Sucks Lake. Funds have been provided to the City by the NDEQ in the amount of \$43,140.00 to assist in the costs associated with the improvements necessary to eliminate the erosion problem. One bid was received to do the work as specified. Greenworks Landscaping & Design of Grand Island provided a bid in the amount of \$68,786.00 to do the required work. The balance of the funds necessary to pay for this improvement, \$25,646.00 will come from existing budgeted funds.

Alternatives

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

1. Move to approve

2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the funding agreement with the NDEQ to assist in the construction of the retaining wall at Sucks Lake.

Sample Motion

Move to enter into an agreement with NDEQ for assistance in funding the construction of a retaining wall construction at Sucks Lake.

INTER-GOVERNMENTAL AGREEMENT
between the
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY
and the
CITY OF GRAND ISLAND, NEBRASKA
Regarding the Implementation of the Section 319 Project Entitled

Sucks Lake Remedial Treatment for Shoreline Erosion

THIS INTER-GOVERNMENTAL AGREEMENT is made and entered into by and between the Nebraska Department of Environmental Quality (NDEQ) and City of Grand Island, Nebraska, (Sponsor) in accordance with the Interlocal Cooperation Act, Nebraska Stat. Sec. 13-801 to 13-807 (Reissue 1987) or Nebr. Rev. Stat. Sec. 81-1504 (Supp. 1997) of the Nebraska Environmental Protection Act, whichever is applicable.

WHEREAS, the Sponsor made a request to the NDEQ for Section 319 grant funds, pursuant to the federal Clean Water Act and the Nebraska Nonpoint Source (NPS) Management Program, which have been made available to NDEQ through the Region VII Office of the U.S. Environmental Protection Agency (EPA); and

WHEREAS, these grant funds in an amount up to \$43,140.00 are to be used to implement this Section 319 NPS Project; and

WHEREAS, the Sponsor agrees to contribute at least \$28,760.00 in nonfederal match as cash and/or services in-kind for implementation of project activities; and

WHEREAS, the Sponsor agrees to comply with all provisions of the federal Clean Water Act as amended by the Water Quality Act of 1987, 33 U.S.C. §1251 *et seq.* and intends to use the funds as set out in this Agreement; and

NOW, THEREFORE, the parties do hereby agree to the terms and conditions of this Agreement as follows:

I. TERM OF AGREEMENT

This Agreement will begin on September 15, 2008 and will remain in effect until all identified tasks are completed for this Section 319 Project, unless terminated under §Q of this inter-governmental agreement, but will not remain in effect past September 30, 2009.

II. CONDITIONS OF AGREEMENT

A. General Conditions

1. The Sponsor agrees to complete a detailed Project Implementation Plan (PIP) outlining the project schedule and specific work items to be undertaken during the course of the project. This PIP must be approved by USEPA and NDEQ prior to any reimbursement request from Section 319 grant funds. A Quality Assurance Project Plan (QAPP) must be approved by NDEQ prior to any collection of environmental data and subsequent reimbursement request from Section 319 grant funds for monitoring activities.

2. The Sponsor agrees to submit semi-annual progress reports to the NDEQ by March 30 and September 30 each year for the duration of the project agreement. These reports shall contain the following components:
 - a. Progress to date
 - b. Significant findings or events
 - c. Corrective actions taken to resolve any problems that are encountered
 - d. Activities planned for the next reporting period
3. The Sponsor agrees that if indirect costs are authorized, as specified in the approved PIP, they will be charged at the approved indirect rate.
4. The Sponsor agrees that any contract, inter-governmental agreement, sub-agreement and/or procurement of equipment under this grant must receive NDEQ approval prior to expenditure of funds associated with those transactions. Copies of all sub-agreements and inter-governmental agreements will be provided to the NDEQ.
5. All equipment purchased with Section 319 grant funds must be approved by the NDEQ. Any such purchased equipment shall be retained by the NDEQ upon completion of the project unless otherwise authorized in writing by the NDEQ.
6. The Sponsor agrees that all water quality data collected under this grant shall be provided to the NDEQ.
7. The Sponsor agrees to recognize the contributions and/or involvement of the federal Nonpoint Source Management Program (authorized by Section 319 of the Clean Water Act and administered by EPA and NDEQ) in project publicity, reports, newsletters, and other materials. The Sponsor shall work with the NDEQ to ensure that all necessary peer review requirements are met prior to publication. A minimum of 6 copies of outreach material (printed or other media) produced under this grant shall be provided to the NDEQ unless otherwise specified.
8. The Sponsor agrees to ensure that persons receiving cost-share assistance from Section 319(h) funds shall, where relevant, practice nutrient and pest management on those portions of their operations that fall in the critical area of the project.
9. The Sponsor agrees to maintain all practices or structural Best Management Practices developed or constructed under Section 319, consistent with the operation and maintenance requirements for structures or practices as described in standard engineering design or as identified in the Natural Resources Conservation Service's Field Office Technical Guides or other appropriate federal/state/local standards.
10. A final project report must be submitted to NDEQ within 90 days after completion of project tasks, but no later than the termination date of this agreement.

B. Grant Conditions

The following grant conditions shall be complied with by all recipients of federal grant funds.

1. The Sponsor agrees to comply with all the following provisions, rules and regulations (can be obtained from NDEQ):
 - a. Office of Management and Budget Circulars A-102, A-133, A-87 and 40 CFR Parts 31, 32, and 35.
 - b. Procurement standards of 40 CFR 31.32(g).
 - c. Prohibitive lobbying 18 U.S.C. Section 1913, Section 607(a) of Public Law 96.74, or Section 319 of Public Law 101-121.
 - d. Federal Register, Vol. 53, No. 102, Debarment and Suspension Under EPA, Assistance Loan and Benefit Programs.

- e. Rules governing "Fair Share" of federal funds to Minority Business Enterprises (MBEs), Women-owned Business Enterprises (WBEs), Small Business Enterprises (SBEs), Small Disadvantaged Businesses (SDBs), and Small Business in Rural Areas (SBRAs). Affirmative steps outlined in 40 CFR 30.44, or 40 CFR 33.240, or 40 CFR 35.6580, or Section 129 of Public Law 100-590, whichever is applicable. ("Fair Share" Percentages: Supplies, 5% MBE, 12% WBE; Equipment, 6% MBE, 11% WBE; Services, 5% MBE, 11% WBE; and Construction, 6% MBE, 8% WBE.) The Sponsor agrees to include in its bid specifications, and require all of its prime contractors to include in their bid specifications for subcontracts, a "Fair Share". The Sponsor agrees to document the official grant files with all efforts taken to achieve the "Fair Share" and to report quarterly to NDEQ all "Fair Share" procurement efforts regardless of the size of the sub-agreement.
- f. Section 204 of the Demonstration Cities and Metropolitan Development Act of 1996 as amended (42 USC Section 3334).
- g. Provisions of the American with Disabilities Act.
- h. Hotel and Motel Fire Safety Act of 1990.
- i. EPA Order 1000.25 regulating the use of recycled paper.

C. Statement of Costs

The Sponsor will submit no more often than once per calendar month a properly documented statement of costs for which reimbursement is sought and nonfederal match is claimed pursuant to the terms of this Agreement and the PIP. This statement of costs shall be signed by the Sponsor's authorized representative. For purposes of this agreement, reimbursable costs and nonfederal match claims shall be related to budget items as described in the approved PIP. Documentation of costs shall consist of paid receipts, signed time records, and/or similar verification of expenditures.

D. Disbursements

- 1. All requests for reimbursement of costs incurred by the Sponsor shall be reviewed within ten (10) working days of their receipt by the NDEQ. If costs are deemed ineligible, the Sponsor shall be notified by the NDEQ within ten (10) working days of the receipt of the request. Within forty-five (45) working days after the receipt of a properly documented reimbursement request, the NDEQ shall transmit payment to the Sponsor, the amount of the eligible cost. The NDEQ shall not be held responsible for delays in payment, due to causes beyond its control.
- 2. Payment will be contingent on required semi-annual progress reports and quarterly MBE/WBE reports being current.
- 3. NDEQ shall withhold 10%, but not less than \$10,000, of grant funds pending receipt and approval of the final project report.
- 4. The total amount of payments under this Agreement shall not exceed forty-three thousand one hundred forty dollars (\$43,140.00).
- 5. The Sponsor agrees to contribute at least twenty-eight thousand seven hundred sixty dollars (\$28,760.00) in nonfederal match as cash and/or services in-kind for implementation of project activities.

E. Work Description and Schedule

This project shall complete objectives and work items as described in the PIP. The PIP is hereby incorporated into this document in its entirety.

F. Amendments

This agreement may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or requirements of the EPA or NDEQ.

G. Forfeiture, Repayment and Delays in Disbursement of Funds

Violation of any of the conditions of this Agreement by the Sponsor or failure of the Sponsor to complete and maintain the project in the manner described in the PIP, including any amendments thereto which have been properly approved, shall result in the forfeiture of any funds not disbursed. In addition, if for any reason the project is not completed as described in the project PIP, including any amendments thereto that have been or are hereafter approved by the NDEQ, the NDEQ may recover from the Sponsor any or all funds disbursed.

H. Remedies Not Exclusive

The use by either the Sponsor or the NDEQ of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party from using such remedy, or limit the application of any other remedy provided by law.

I. Assignment

No assignment or transfer of this agreement or any part hereof, rights hereunder, or interest herein by the Sponsor shall be valid unless and until it is approved by the NDEQ and made subject to such reasonable terms and conditions as the NDEQ may impose.

J. Waiver of Rights

The Sponsor or NDEQ may from time to time waive any of their rights under this Agreement. However, any waiver of rights with respect to a default of any condition of this Agreement shall not be deemed to be a waiver with respect to any other default.

K. Applicable Rules and Regulations

Both parties shall abide by all applicable rules and regulations of the NDEQ, including any that may be adopted subsequent to the effective date of this Agreement, except those that would invalidate or be inconsistent with the provisions of this Agreement.

L. Inspection of Books, Records and Reports

The duly authorized representative of either party shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements and receipts with respect to its activities under this Agreement. A single audit is required if \$500,000 or more is provided by the federal funding in any one year period. Verification of completion of the single audit report shall be sent to NDEQ.

M. Independent Contractor

The Sponsor is and shall perform this Agreement as an independent contractor and as such shall have and maintain exclusive control over all of its employees, agents and operations. Neither the Sponsor nor any person employed by the Sponsor shall act,

propose to act or be deemed the NDEQ's agent, representative or employee. The Sponsor assumes full and exclusive responsibility for the payment of all premiums, contributions, payroll taxes and other taxes now or hereafter required by any law or regulation and agrees to comply with all applicable laws, regulations and orders relating to social security, unemployment compensation, OSHA, affirmative action, equal employment opportunity and other laws, regulations and orders of like nature. For any work hereunder subject to the Veterans Readjustment Assistance Act of 1974, or the Rehabilitation Act of 1973, the parties hereto shall comply with all provisions thereof, together with all applicable rules, regulations and orders of the Department of Labor, and the notices required pursuant to 41 CFR 60-1.4, 60-250.4 and 60-741.4 which are hereby incorporated by reference into this Agreement.

N. Nondiscrimination

The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska and their subcontractors from discriminating against any employee, or applicant for employment in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability or national origin. The Sponsor's signature is a guarantee of compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The Sponsor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

O. Drug Free Workplace

The Sponsor by executing this Agreement, certifies and assures that it operates a drug free workplace as addressed in the State of Nebraska Drug Free Workplace Policy of July 7, 1989.

P. Publication Rights

All parties shall have publication and reproduction rights for all reports and materials, which are produced as a result of this Agreement.

Q. Termination

This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

1. Not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
2. An opportunity for consultation with the terminating party prior to termination.

R. Project Managers

The Project Manager for each party to this agreement shall be as follows. The Project Manager may be changed by any agency upon written notification.

NDEQ Project Manager
Paul Brakhage
Program Specialist
Water Quality Planning Unit
402-471-4224
Paul.Brakhage@nebraska.gov

Sponsor Project Manager
Steve Paustian
Parks and Recreation Director
City of Grand Island
308-385-5444 ext. 290

III. SIGNATORIES TO THE INTER-GOVERNMENTAL AGREEMENT

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Sig: Thomas R. Lamberson Title: Deputy Director
Print: Thomas R. Lamberson

Date: 9-8-2008

CITY OF GRAND ISLAND, NEBRASKA

Sig: _____ Title: _____
Print: _____

Date: _____ Federal Tax ID Number: _____

W

Section 319 Project Implementation Plan

SUCKS LAKE REMEDIAL TREATMENT FOR SHORELINE EROSION

**Project Sponsor
City of Grand Island**

August 2008

Project Implementation Plan

Project Title: Sucks Lake – Remedial Treatment for Shoreline Erosion

**Project Sponsor: City of Grand Island
100 East 1st Street
Grand Island, NE 68801**

**Project Contact: Steve Paustian, Parks & Recreation Director
(308) 385-5444 ext 290**

Section 319 Funding: \$43,140

Nonfederal Match: \$28,760

Total Project Budget: \$71,900

Introduction

Sucks Lake, located in Grand Island, Nebraska, has been part of the City since the late 1960's. The property was originally owned by Augusta A. Suck. In 1966, Sucks Lake and the surrounding property was given to the City of Grand Island. The lake was first used for storm drainage in 1968 when storm water from a local paving project was diverted into the lake. In 1969 Sucks Lake was connected to Brach's Lake, which is located upstream of Sucks Lake, and the two are connected by storm sewer pipe and an open ditch. Sucks Lake originally consisted of two smaller lakes, but these lakes were connected in 1970 as part of the Nebraska Avenue Outfall drainage project to increase storage capacity.

The watershed draining into Brach's Lake and Sucks Lake consists of approximately 296 acres of which 40 acres are grassy undeveloped areas, 24 acres are parking lots or commercial lots, and 232 acres are residential lots. Of this drainage area, approximately 42 acres drains directly into Sucks Lake, the remaining runoff drains into Brach's Lake before entering Sucks Lake. See Figure 1 for drainage areas. Rainfall in this watershed is the only inflow to Lakes. Sediment yield from this drainage area is not a concern due to the type of drainage areas. However, water quality becomes an issue when dealing with commercial and residential drainage areas.

Sucks Lake and the park area has been a great asset to the residents of Grand Island and surrounding areas. The trail that has been constructed around the lake is used for exercising and is connected to the rest of the City's trail system. The park area near the lake is used for picnicking and other family activities. Sucks Lake has been used for fishing in the past, but poor water quality and the lack of fish in the Lake caused fishing use to decrease.

In 2004, a complete restoration of Sucks Lake was completed by the City of Grand Island. Grant funding for the project was provided through the Community Lake Enhancement And Restoration Program. Activities completed include sediment removal, shoreline stabilization, and a complete fish renovation. Part of the lakes shoreline is now suffering from erosion problems. The area experiencing the most erosion is on a steep bank on the south shore. During the restoration project, the CLEAR team recommended trying to control this erosion with vegetation. Due to the steep slopes, it is evident that vegetative controls will not be adequate treatment. This project will address erosion on the south shore through the installation of hard controls including concrete block and bags.

The restoration project expanded the uses of Sucks Lake to include education by providing an outdoor classroom setting, ice skating, and improved fishing. With the help of the University of Nebraska-Lincoln surface water quality extension program, local schools are now able to monitor water quality and sediment content in Sucks Lake. The students will obtain a better understanding of watershed management concepts and the impacts of nutrients and sediments in runoff. These studies may be included as part of

the schools' curriculum. The detention cell that has been constructed on the east end of Sucks Lake has improved water quality in the Lake, and was also used as an ice skating rink this winter. The Nebraska Game and Parks Commission stocked Sucks Lake with various species of fish including bass, bluegill, trout and channel catfish. This has improved the quality of fish in the Lake and has enabled the park to be used for recreational fishing, educational, and youth fishing tournaments. By addressing the remaining shoreline erosion, degradation to the "finished" lake will be minimized.

Project Goal

The goal of this project is to stabilize 800 linear feet of shoreline on the south side of Sucks Lake.

Project Partners

Project implementation will be the responsibility of the Grand Island Parks and Recreation Department. Funding will be provided through USEPA/NDEQ and the City of Grand Island.

Pollutant Source

This project will focus on shoreline erosion from the south shore of the lake.

Load Reduction

Loading reductions from shoreline treatments have been estimated with the Statistical Tool for the Estimation of Pollutant Loads (STEPL) model (Tetra-Tech, 2003). Stabilization efforts are expected to reduce sediment loads from 102 tons per year to 4 tons per year for a 96 percent reduction.

Management Practices

Shoreline erosion will be addressed by constructing a retaining wall consisting of four rows of concrete block with a cap. Two rows of concrete bags will be placed to protect the tow of the bank. Area of disturbance will be graded and re-seeded to grass.

Information/Education

Educational activities initiated under the CLEAR project are continuing.

Schedule

Target Dates

Develop Bid Package: Completed

Develop Project Implementation Plan: September 2, 2008

Develop Contract with NDEQ: September 15, 2008

Develop Contract with Successful Bidder: September 9, or 23 , 2008

Complete Stabilization Activities: December 15, 2008

Draft and Submit Final Report to NDEQ: April 15, 2009

Milestones

Complete all contracts and pre-construction documents: September 9, 2008

Complete Stabilization Activities: December 15, 2008

Overall Project Completion: April 15, 2009

Evaluation Criteria

The success of the stabilization activities will be evaluated from photo documentation and modeled estimates of sediment loss reductions.

Monitoring

While there will be no monitoring associated with this project, the University of Nebraska-Lincoln will continue to monitor the lake to measure overall improvements associated with the lake restoration project.

Resources

Funding for this project will come from EPA/NDEQ Section 319 funds and City of Grand Island. All project costs will pertain to construction, grading, and seeding. The total cost of this project is \$71,900. Of this amount, Section 319 funding will provide \$43,140 and the City of Grand Island will provide \$28,760.

References

Tetra Tech. 2003. Spreadsheet Tool for the Estimation of Pollutant Load (STEPL), Version 2.2.
Tetra Tech, Inc., Fairfax, Virginia.

RESOLUTION 2008-261

WHEREAS, the City of Grand Island developed Sucks Lake; and

WHEREAS, in 2008, a grant funded by the Department of Environmental Quality was received for the construction of a retaining wall; and

WHEREAS, the amount of the grant is \$43,140.00; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island, Nebraska, is hereby authorized to accept the grant for the retaining wall construction from the Nebraska Department of Environmental Quality.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the city of Grand Island, Nebraska.

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Adopted by the City Council of the City of Grand Island, Nebraska, September 23, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk