



City of Grand Island

Tuesday, October 27, 2015

Council Session

Item G-10

**#2015-290 - Approving Compliance Consulting Agreement with
Volkmann Consulting**

Staff Contact: Tim Luchsinger, Stacy Nonhof

Council Agenda Memo

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

Meeting: October 27, 2015

Subject: Compliance Consulting Agreement with Volkmann Consulting

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Following the northeast blackout of 2003, the federal government began the process of implementing reliability standards for electric utilities. Each utility was evaluated and given various designations based upon size and function. Beginning in 2007, compliance with all applicable standards was required. This process is governed by the North American Electric Reliability Corporation (NERC).

The number of standards and requirements has significantly increased over the years as the process has evolved. Most larger utilities have several full time employees dedicated to NERC compliance. Grand Island Utilities has been able to stay compliant utilizing one employee as a primary point of contact on a part time basis with several Subject Matter Experts (SME) handling different aspects.

Discussion

As the compliance world continues to evolve, staying abreast of an ever changing industry requires a time commitment that current employee levels can't sustain. The risk of significant penalties is always present in the event that compliance is not maintained. In order to reduce those risks, Utilities personnel decided to issue a Request for Proposal (RFP) for NERC Compliance Consulting Services. The RFP called for an initial gap analysis to determine the current state of compliance and provide recommendations to correct any discovered deficiencies. In addition, the RFP asked for pricing to include on-going monthly services to monitor the compliance industry, alert Grand Island Utilities of potential changes and provide recommendations and guidance.

The RFP was sent to six companies that had expressed interest. Proposals were due back by September 15, 2015. Two proposals were received, Volkmann Consulting and Proven Compliance Solutions. Utilities personnel evaluated both proposals and found Volkmann

Consulting as the best proposal received. Grand Island Utilities has used Volkmann Consulting in the past to perform a gap analysis in preparation for a March 2012 NERC audit. Their recommendations helped Grand Island successfully complete the audit. In addition, they have a vast amount of experience with Midwest Reliability Organization (MRO), the regional entity that enforces NERC compliance in this area. They also have lower hourly rates than Proven Compliance Solutions.

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 Compliance Consulting Agreement with Volkmann Consulting.

Sample Motion

Move to approve the Compliance Consulting Agreement with Volkmann Consulting.

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (“Agreement”), dated and effective on the 15th day of October, 2015 (“Effective Date”), is entered into by and between The City of Grand Island , a Nebraska Municipal corporation, located at 100 E. 1st St., Grand Island, Nebraska 68801 (“Client”), and VOLKMANN CONSULTING, INC, a Minnesota corporation, located at 14240 55th St NE, Saint Michael, Minnesota 55376 (“Consultant”) (Client and Consultant may be collectively referred to as “Parties” or singly as “Party”).

In consideration of the mutual agreements, covenants, and undertakings of the Parties herein contained, the Parties hereby agree as follows:

ARTICLE 1. RECITALS

Section 1.1 Consultant represents and warrants that it has training, professional expertise and experience in preparing for NERC CIP audits that will be valuable in assisting Client conduct and operate its utility business and Consultant desires to provide Client with such audit preparation review services and/or work products as defined herein.

Section 1.2 Subject to and in accordance with the terms, provisions, and conditions of this Agreement, Client agrees to hire Consultant to provide Client with such services and/or work products.

ARTICLE 2. SCOPE OF SERVICES

Section 2.1 Statement of Work. Consultant shall perform for Client services (“Services”) and provide to Client deliverables and other materials (“Work Products”) according to Exhibit A, Statement of Work (“Statement of Work”) agreed to and signed by an authorized representative of Client and Consultant. Work Products shall include deliverables and other materials (including without limitation reports, documents, designs, drafts, abstracts, and summaries) that are originated and prepared for Client by Consultant (either independently or in concert with Client) during the course of Consultant’s performance under this Agreement. The Statement of Work will also specify and describe the Services, Work Products, schedule, price, expense limit, technical and functional specifications, milestones, training, and task managers.

Section 2.2 Change Orders. Changes to Statements of Work shall be made only in a writing executed by authorized representatives of each Party.

Section 2.3 Reporting. Consultant will submit to Client, from time-to-time (as reasonably required by Client or as otherwise specified in the Statement of Work) during the performance of the Services, written reports regarding the progress of the Services performed, and detailing all required tasks and milestones completed with respect to such Services and any Work Products. Reports may be submitted via confidential e-mail to jeffm@grand-island.com unless Consultant is otherwise instructed to submit them formally in writing.

Section 2.4 Incorporation. The terms and conditions of the mutually signed Statement of Work shall be attached hereto and incorporated herein.

Section 2.5 Scope. The terms of this Agreement apply to all Services and Work Products that Consultant may provide to Client.

ARTICLE 3. PAYMENT

Section 3.1 Fees. Consultant shall be compensated for Services on a time and materials basis at the hourly rate that is specified in the Statement of Work, which is not subject to increase. No additional amounts shall be chargeable to Client because of taxes or excises, presently or hereafter levied on Consultant. If Consultant's quoted rates for the Services are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone) before acceptance by Client, Consultant agrees that the rate to Client for such Services will be reduced accordingly, and that Client will be billed at such reduced rates. Consultant shall be responsible for payment of compensation to its employees and shall withhold and pay to the appropriate authorities all taxes, FICA, workers' compensation premiums and any similar taxes and assessments associated with or arising from Consultant's employment relationship with its employees.

Section 3.2 Expenses. Subject to the expense limit in the Statement of Work, Client shall reimburse Consultant for all reasonable and necessary out-of-pocket expenses that Consultant may incur in providing the Services under this Agreement, provided prior written approval has been provided in the SOW and Consultant has complied with Company's corporate travel and reimbursement policy. Consultant shall adhere to strict travel reimbursement standards. Consultant must provide all receipts in support of requested expense reimbursements. Consultant's requests for reimbursement of travel-related expenses must be made monthly. Consultant agrees to use Client-approved hotels for lodging and to use coach airfare. Client will reimburse expenses for meals (not including non-business meals) at the lesser of actual costs, or an amount limitation as specified in the Statement of Work, per day per person. Expenses will be billed as actually incurred and included on monthly invoices. Consultant shall cooperate with Client in an effort to minimize the amount of out-of-pocket expenses incurred by Consultant in connection with this Agreement.

Section 3.3 Invoices. Client shall pay amounts accepted by Client payable to Consultant under this Agreement within thirty (30) days of receipt of invoices submitted by Consultant. In the event of a good faith dispute regarding any portion of an invoice, Client may withhold such disputed portion pending final resolution of the disputed amount. In the event that any invoiced items are disputed, the undisputed items shall be paid within the thirty-day period and the disputed items shall be paid within thirty (30) days after resolution of the dispute.

Section 3.4 Records, Access, and Audits. Consultant agrees to maintain accurate records to substantiate the fees and expenses invoiced hereunder and shall retain those records for seven (7) years from the dates of the respective invoices. Consultant shall provide copies of such records to Client upon request.

Client may, after reasonable written notice and in the presence of an employee of Consultant, visit Consultant's premises where the Services are being performed so long as such visit does not unreasonably interfere with the activities of Consultant. Consultant shall provide

Client its written safety rules and procedures prior to such visits, and Client shall comply with Consultant's written safety rules and procedures.

Upon not less than ten (10) days prior written notice, Client may request that Consultant provide to Client or its auditors access to Consultant's payroll and expense records to the extent necessary for Client to audit Consultant's invoices hereunder. In the event an audit results in a determination that Consultant has overcharged Client, Consultant shall promptly refund each overpayment with interest at prime plus 1%, as published in the New York Times on the date that payment is made. Client shall bear the costs of any such audits; provided, however, that in the event an audit results in a determination that Consultant has overcharged Client in an amount equal to or exceeding two percent (2%) of the total charges for the period audited, Consultant shall reimburse Client for the costs of such audit.

ARTICLE 4. CONSULTANT'S PERFORMANCE OBLIGATIONS

Section 4.1 Schedule. Consultant shall provide the Services and complete the development, delivery, installation, and testing of Work Products in strict compliance with the schedule set forth in the Statement of Work.

Section 4.2 Compliance with Law. Consultant shall comply with applicable requirements of all federal, state, and local laws, ordinances, codes, and regulations, including, but not limited to, those related to employment matters, in performing its obligations under this Agreement. If Consultant performs any of its obligations under this Agreement contrary to such laws, ordinances, codes, and regulations, Consultant shall bear any expense, cost or penalty arising therefrom.

Section 4.3 Standard of Performance. Consultant shall provide the Services under this Agreement (a) in a competent and diligent manner, and (b) in accordance with the provisions of this Agreement, the applicable Statement of Work, and within accepted industry practice.

Section 4.4 Safety. Consultant shall be responsible for the safety of its employees, agents, and subcontractors at all times and shall provide all instruction, training, and equipment necessary to insure their safety while performing the Services under this Agreement.

Section 4.5 Security and Access. Consultant will observe Client's business hours, security rules, policies, procedures, and holiday schedule while working on Client's premises, as directed by Client. If Consultant is given access, whether on-site or through remote facilities, to any of Client's computer or electronic data storage systems, Consultant will limit such access to its personnel involved with the Services and will use such access solely to perform the Services. Consultant will not knowingly access or attempt to access any computer system, electronic file, software or other electronic services other than those specifically required to fulfill Consultant's obligations under this Agreement. All user identification numbers and passwords disclosed to Consultant and any non-public or proprietary information which Consultant may obtain as a result of Consultant's access to and use of Client's computer and electronic storage systems will be deemed to be, and will be treated as, Client's Confidential Information under Article 10.

Section 4.6 Personnel. Consultant's personnel consists of the sole owner of the business and shall not substitute or assign the responsibilities to any other parties without the

prior written consent of Client after submission of the resumes of any such individuals.

Section 4.7 Accommodations. Client shall supply Consultant personnel with suitable workspace and other normal office equipment and support reasonably necessary for Consultant to perform the Services. Client shall supply its own computer. No interest or obligation shall be conferred upon Consultant regarding Client's property beyond the limited right to use such property in connection with performance of the Services.

Section 4.8 Employee Cooperation. Upon the request of Client, Consultant shall cause its personnel providing the Services under this Agreement to execute any covenants or agreements required by Client consistent with Consultant's obligations set forth in this Agreement.

Section 4.9 Background Checks. Upon Client's request, Consultant agrees to certify in writing prior to the date that the Services under an applicable Statement of Work are to begin that the Consultant and its employees who is working on Client's premises or that has access to Client's computer systems, continues to have a clean criminal background. The Consultant agrees to on-going drug screening of its employees comparable to the drug screenings required by Client of its employees. Failure to certify the Consultant's background and/or submit to drug testing in this manner will prohibit the Consultant from providing Services under this Agreement.

ARTICLE 5. TERM AND TERMINATION

Section 5.1 Term. Consultant will begin the Services on the date the Parties designate through agreed-to Statement(s) of Work and will continue until terminated pursuant to this Agreement. This Agreement will be effective upon execution by both Parties and will continue until terminated by either Party upon giving the other at least thirty (30) days prior written notice of termination; provided, however, that any Services being provided at the time of termination will continue under the terms of this Agreement and applicable Statement(s) of Work until completed, subject to Client's right to terminate any such Services in whole or in part upon at least (30) days prior written notice.

Section 5.2 Termination for Convenience. Client shall have the right to terminate, with or without cause and without any fees, charges, or penalties, this Agreement, in whole or part, by giving Consultant one days prior written or e-mail notice.

Section 5.3 Right of Termination. Upon any Default (as defined in Section 11.1), Client shall have the right, in its sole and absolute discretion, to terminate this Agreement in whole or in part by giving written or e-mail notice thereof to Consultant.

Section 5.4 No Waiver. Termination by either Party of this Agreement or the Statement of Work hereunder does not waive any other rights or remedies such Party may have under this Agreement.

Section 5.5 Transition of Services. If requested by Client, Consultant will cooperate with Client to ensure an orderly transition of the Services to Client or a third party designated by Client.

Section 5.6 Obligations of Consultant Upon Termination. Upon notice of termination by Client of this Agreement or the Statement of Work, Consultant shall, at its own expense, be obligated to do some or all of the following upon specific notice identifying the obligation(s) from, and at the election of, Client:

- a. Immediately discontinue the Services and developing Work Products (except as required under Section 5.5) at such time and to the extent specified in the notice;
- b. Place no further orders or subcontracts for materials, services, or other matters relating to the Services and Work Products;
- c. Promptly make every reasonable effort to obtain cancellation, upon terms satisfactory to Client, of all orders, subcontracts, and agreements to the extent that they relate to the terminated Services and Work Products;
- d. Perform thereafter only such tasks as may be necessary to preserve and protect the terminated portion of the Services and Work Products in progress;
- e. Continue to fulfill Consultant's obligations with regard to the Services and Work Products not terminated;
- f. Assist Client in making an accounting as to outstanding matters relating to terminated Services and Work Products, including the status of subcontracts and delivery schedules; and/or
- g. Transfer to Client possession and title, or license if applicable, of all equipment, parts, and components relating to the Services and Work Products that have not been completed and delivered prior to the termination.

ARTICLE 6. COVENANTS, WARRANTIES, REPRESENTATIONS, AND OBLIGATIONS OF CLIENT

Section 6.1 As an inducement for Consultant to enter into this Agreement and to consummate the transactions contemplated hereunder, Client hereby covenants, agrees, warrants, and represents that:

- a. Client has the full right, power, capacity, and authority to enter into this Agreement, to consummate the transactions contemplated hereunder, and to comply with the terms, conditions, and provisions hereof.
- b. Client is a corporation duly organized and validly existing under the laws of the state of Nebraska and has all requisite corporate power and authority to carry on its business as it is presently being conducted and to enter into this Agreement and to carry out and perform the terms and provisions of this Agreement.

c. Where Client's approval is required according to the Statement of Work, such approval shall be granted in a timely fashion and shall not be unreasonably withheld.

ARTICLE 7. COVENANTS, WARRANTIES AND REPRESENTATIONS BY CONSULTANT

Section 7.1 As an inducement for Client to enter into this Agreement and to consummate the transactions contemplated hereunder, Consultant hereby covenants, agrees, warrants, and represents that:

a. Consultant has the full right, power, capacity, and authority to enter into this Agreement, to consummate the transactions contemplated hereunder, and to comply with the terms, conditions, and provisions hereof and has the full, complete, and unrestricted right and authority to sell, install, transfer, and deliver the Work Products and provide the Services.

b. Consultant is a corporation duly organized and validly existing under the laws of Minnesota and has all requisite corporate power and authority to carry on its business as it is presently being conducted and to enter into this Agreement and to carry out and perform the terms and provisions of this Agreement.

c. Consultant is not in violation of any term or provision of any charter, bylaw, or mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule, or regulation that could adversely affect the sale, installation, transfer, and delivery of the Work Products or provision of the Services.

d. There are no legal actions, lawsuits, or other administrative or governmental proceedings pending, or to Consultant's knowledge threatened, against Consultant or its business before any federal, state, municipal, or other governmental agency, which actions or proceedings may adversely affect Consultant's ability to perform the obligations under this Agreement, nor is Consultant aware of any facts that might result in any such action, suit, or proceeding against Consultant.

e. Consultant is not in default of any court decree or order or the order of any governmental agency.

ARTICLE 8. STANDARD OF CARE, INDEMNIFICATIONS, AND INSURANCE

Section 8.1 Covenants. Consultant covenants that Consultant's Services and Work Products will substantially conform in all material respects to the technical and functional specifications set forth in the Statement of Work; will be performed in a timely, competent, and diligent manner and consistent with generally accepted industry standards applicable to consultants experienced in performing similar services and developing products of a similar scope, type and complexity; and will be performed in accordance with all applicable statutes, regulations, codes, and ordinances.

Consultant agrees to reperform at no additional cost to Client any Services and Work Products not in compliance with this warranty or with the applicable specifications associated with the Statement of Work. Consultant will complete any reperformance of Services and Work Products at no additional cost to Client. If Consultant is unable to correct such a defect after a reasonable period of time, Consultant shall refund the amount paid by Client to Consultant for the Services and Work Products that Consultant is unable to correct.

Section 8.2 General Indemnification. Each Party shall be liable for its own acts to the extent provided by law and hereby agrees to indemnify, hold harmless and defend the other Party, its subsidiaries and affiliated companies, employees, officers, directors, principals (owners, partners, shareholders or holders of an ownership interest, as the case may be) agents, representatives, consultants, and subcontractors against any and all liability, loss, costs, damages, expenses, claims or actions, arising out of or by reason of any property damage, bodily injury, sexual harassment claims, claims where Client is deemed or considered to be the employer of any personnel or contractor that Consultant uses or engages to perform the Services, or pollution, contamination or adverse effects on the environment, as a result of actions of the Party, its employees, agents, representatives or subcontractors, or arising out of or by reason of any act or omission of the Party, its employees, agents, representatives or subcontractors, in the execution, performance, or failure to adequately perform its obligations under this Agreement. For purposes of this Section, to “indemnify” means to defend and pay all expenses (including reasonable attorneys’ fees) and satisfy all judgments (including costs and reasonable attorneys’ fees) that may be incurred or rendered against such Party.

Section 8.3 Intellectual Property Indemnity. Consultant agrees to indemnify, hold harmless and defend, at Consultant’s expense, any claim against Client, its subsidiaries and affiliated companies, employees, officers, directors, principals (owners, partners, shareholders or holders of an ownership interest, as the case may be) agents, representatives, consultants, and subcontractors which alleges that Consultant’s Work Products infringe any patent, copyright, trade secret, publicity right, right of privacy, or other proprietary right or personal right of a third party. For purposes of this Section, to “indemnify” means to defend and pay all expenses (including reasonable attorneys’ fees) and satisfy all judgments (including costs and reasonable attorneys’ fees) that may be incurred or rendered against Client in connection with such claim. However, with respect to any such claim, Consultant will first have the right, at its option, to: (i) obtain for Client the right to continue using the Work Products alleged to be infringing, including any non-infringing portion; (ii) replace the infringing portion of the Work Products with non-infringing software. If neither is technically feasible, Consultant will consult with Client and, at a minimum, refund to Client all amounts paid for Work affected by such infringing portion of the Work Products.

Section 8.4 Notice of Indemnity Obligation. If either Party seeks to be indemnified, reimbursed and/or held harmless under any of the defense and indemnification provisions of this Agreement, such Party shall (i) provide the other Party with prompt written notice of the claim giving rise to such demand, summarizing the allegations giving rise to the claim; (ii) grant the Party to provide the defense and indemnity with reasonable authority and control over the defense and/or settlement of such claim; and (iii) reasonably cooperate with the Party to provide the defense and indemnity and its agents in defending and/or settling such claim at the indemnifying Party’s expense. Any Party to whom indemnity is owed shall have the right to

participate in the defense and/or settlement of any covered claim by using attorneys of its own choosing at its own expense.

Section 8.5 Set Off Rights of Client. The Parties hereby expressly agree and acknowledge that for the purpose of protecting Client from and against any claims, liabilities, or damages resulting from any breach of the covenants, obligations, representations, or warranties made by Consultant hereunder that Client shall have the right to deduct from payment to Consultant the amount of any such obligations owing to Client from Consultant.

Section 8.6 Insurance. Consultant shall provide and maintain Liability and Property Damage Insurance so as to provide protection and indemnification against claims or suits in connection with the Services and Work Products which are the subject of this Agreement. Consultant shall furnish to Client certificates of insurance showing policies carried and the limits of coverage as follows:

- a. Workers Compensation Insurance to the extent of statutory limits and Employer's Liability Insurance for not less than \$500,000.
- b. Commercial General Liability Insurance with limits not less than \$1,000,000 per occurrence.
- c. Errors and Omissions Insurance with limits not less than \$1,000,000 each claim.

ARTICLE 9. OWNERSHIP AND ACCEPTANCE

Section 9.1 Work Products. Work Products shall be completed by and delivered as defined and described in the specifications, documentation, and descriptions contained in each applicable Statement of Work.

Section 9.2 Ownership of Work Products. Client shall own all right, title, and interest in all Work Products. Consultant expressly acknowledges and agrees that such Work Products constitute "works made for hire" under federal copyright laws (17 U.S.C. Sec. 101 et seq.) owned exclusively by Client, and, alternatively, Consultant hereby irrevocably assigns to Client all of Consultant's rights in such Work Products. Consultant will cooperate and assist Client as may be reasonably necessary to document, secure, or register Client's ownership in the Work Products.

If ownership of any Work Products does not result by operation of law as provided in this Section, Consultant assigns, and shall cause its employees, agents, and Consultants to assign, without further consideration, the ownership thereof, including all associated intellectual property rights inherent therein or related thereto, as necessary. Consultant agrees to perform, upon the reasonable request of Client, such further acts as may be necessary or desirable to transfer ownership of, and to perfect and defend, the Work Products. Consultant shall keep written agreements sufficient to give effect to the terms of this Section with its employees, agents, and consultants who render Services under this Agreement.

Section 9.3 Acceptance. Any acceptance criteria and/or performance standards (including, but not limited to, acceptance periods) applicable to Services and/or Work Products (“Acceptance”) shall be set forth in the applicable Statements of Work. Unless otherwise specified in the applicable Statements of Work, the Services and/or Work Products shall be deemed to have been Accepted by Client in accordance with the following procedures:

a. Client, with the full cooperation and assistance of Consultant shall review the Services and/or Work Products for a period not to exceed twenty (20) business days from the completion and/or delivery thereof to determine whether the Services and/or Work Products conform to the terms and conditions of the applicable Statement of Work.

b. Client will (i) notify Consultant in writing within five (5) business days of the completion of the review period set forth in this Section 9.3, that, in its opinion, the Services and/or Work Products are not in conformance with the applicable Statement of Work or that Consultant otherwise breached its warranties under this Agreement, and (ii) provide a written description of any such nonconformities or breach.

c. Upon receipt of a notice under this Section 9.3, Consultant shall correct such defective or nonconforming Services or Work Products at no additional cost to Client. If Consultant is unable to correct a defective or nonconforming Services or Work Products after a reasonable period of time, Consultant shall refund the amount paid by Client to Consultant for the Services or Work Products that Consultant is unable to correct.

ARTICLE 10. CONFIDENTIAL INFORMATION

Section 10.1 To the extent a separate agreement between the Parties regarding nondisclosure of Confidential Information does not already apply, the Parties expressly agree that this Section shall survive the termination or expiration of this Agreement and agree as follows:

a. Client and Consultant acknowledge that in the performance of this Agreement, it may be necessary for either Party to disclose certain confidential or proprietary information to the other. Each Party agrees that the Recipient (“Recipient”) will use at least the same means it uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of (i) written or electronic information received from the other Party (“Provider”) that is marked or identified as confidential or proprietary, (ii) oral or visual information received from the Provider identified as proprietary, confidential, or private at the time of disclosure, (iii) information received from the Provider that is identified as Critical Energy Infrastructure Information or CEII, and (iv) nonpublic information received from the Provider which under the circumstances surrounding disclosure a reasonable person would conclude should be treated as confidential (“Confidential Information”).

b. Confidential Information will not include information that belongs to the Recipient or (i) is or was already known by the Recipient at the time of disclosure and

which was not acquired directly or indirectly from the Provider; (ii) publicly known or becomes publicly known through no unauthorized act of the Recipient; (iii) rightfully received from a third party without an obligation of confidentiality; or (iv) independently developed by the Recipient without use of the Provider's Confidential Information.

c. Each Recipient may use Confidential Information received from the Provider only in connection with this Agreement, and may disseminate such Confidential Information only to persons having a need for access to such Confidential Information in connection with their performance of the Services, and with respect to whom the Recipient takes steps, no less rigorous than those it takes to protect its own proprietary information, but in any event not less than reasonable means, to prevent such persons from acting in a manner inconsistent with the terms of this Section.

d. All Confidential Information transmitted or disclosed hereunder will be and remain the property of the Provider, and the Recipient shall (at the Provider's election) promptly destroy or return to the Provider any and all copies thereof upon termination or expiration of this Agreement and/or upon the written request of the Provider. Upon the request of the Provider, the Recipient shall certify any such destruction in writing.

e. Each Party acknowledges that the other may suffer irreparable damage in the event of any material breach of the provisions of this Section. Accordingly, in such event, an aggrieved Party may seek preliminary and final injunctive relief, as well as any other applicable remedies at law or in equity against the Party who has breached or threatened to breach this Section.

f. Nothing in this Agreement shall be construed to limit or prohibit the Recipient from independently creating or developing (or having created or developed for it), or from acquiring from third parties, any information, products, concepts, systems, or techniques that are similar to or compete with the information products, concepts, systems, or techniques contemplated by or embodied in the Provider's Confidential Information, provided that (in connection with such creation, development, or acquisition) the Recipient does not violate any of its obligations under this Agreement. Notwithstanding the foregoing, the Recipient shall not, nor assist others to, disassemble, decompile, reverse engineer, or otherwise attempt to recreate, the Provider's Confidential Information.

g. Deliverables submitted by Consultant will not be marked as Consultant's Confidential Information, but will be marked as "Alliant Energy Confidential Information."

h. This Agreement is not intended to and does not place a restriction on any disclosure of Confidential Information by Recipient that Recipient is legally required to make. In the event that Recipient is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil or criminal investigative demand or other similar process) to disclose any of the Confidential Information, Recipient shall provide Provider with prompt written notice of

any such request or requirement so that Provider may seek a protective order or other appropriate remedy. If, in the absence of a protective order or other appropriate remedy, Recipient is nonetheless legally compelled to disclose Confidential Information, Recipient may, without liability hereunder, disclose that portion of the Confidential Information which is legally required to be disclosed, provided that Recipient exercises reasonable efforts to preserve the confidentiality of the Confidential Information, including cooperating with Provider to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

i. Notwithstanding the limitations described herein, Client shall have the right without advance notice to disclose any Confidential Information of Consultant that Client deems necessary in its sole, reasonable discretion to comply with (i) any state or federal securities laws, regulations, orders or decrees, or (ii) any regulatory requirement, law, regulation, document request, order or decree imposed by any commission, board or governmental entity exercising jurisdiction over Client or any of its affiliates.

j. After receipt of written waiver from Provider specifically authorizing release of Confidential Information, or a portion thereof, Recipient may disclose such Confidential Information, subject to compliance with the restrictions as to scope, timing and manner contained in Provider's waiver

Section 10.2 Release of Information. Consultant agrees to submit to Client any proposed press release, advertisement or other promotion relating to the existence of this Agreement, the relationship of the Parties, or the Services called for by this Agreement, and Consultant will offer the Client the opportunity to review any such materials prior to release or publication. No such materials shall be published without the prior written or e-mail approval of Client's Corporate Communications director or manager. Unless Client's Corporate Communications director or manager otherwise agrees in writing, Consultant shall not list Client's name on Consultant's published client lists, on Consultant's website, or in other materials promoting Consultant's services. Under no circumstances will Consultant be entitled to use of Client's marks, except as expressly allowed by this Agreement.

ARTICLE 11. DEFAULT AND REMEDIES

Section 11.1 Event of Default. The term "Default" and "Event of Default" wherever used in this Agreement shall mean one or more of the following events:

a. The failure by Consultant to complete any of the required performance milestones within the time periods as set forth in a Statement of Work and failure by Consultant to cure within ten (10) days from the performance due date of the milestone, with written notice or demand;

b. The continued failure by Consultant to perform any other obligation imposed upon it by this Agreement within a period of ten (10) days after demand and notice by Client to Consultant specifying the specific obligation allegedly in default or not being performed;

- c. Violation of the other Party's trademarks or intellectual property rights;
- d. The breach of any covenant, provision, representation, or warranty by Consultant set forth in this Agreement upon notice by Client to Consultant of such alleged breach and Consultant's failure to correct such breach within ten (10) days after such notice;
- e. An order for relief is entered by a court of competent jurisdiction or an order is made approving a petition or answer filed seeking reorganization or readjustment of Consultant under the federal bankruptcy laws or other laws or statutes of the United States of America, or any state thereof, or by order of a court, a trustee or receiver is appointed of all or any part of Consultant's assets and properties;
- f. The filing by Consultant of a petition in voluntary bankruptcy, the making by Consultant of an assignment for the benefit of creditors, the consent of Consultant to the appointment of a receiver or trustee of any or all parts of the property of Consultant, the filing by Consultant of a petition to take advantage of any debtor's act, or the admission by Consultant, in writing, of Consultant's inability to pay debts and obligations generally as they become due;
- g. The failure in any material respect to perform Services and prosecute any portion of the development and installation of a Work Product with promptness, diligence, or in accordance with all of the provisions set in this Agreement and the applicable Statements of Work.

Section 11.2 Legal and Equitable Remedies. Upon any Default and/or termination of this Agreement, Client shall be entitled to any and all remedies to which it may be entitled at law or in equity. Consultant hereby acknowledges, stipulates, and agrees (a) that any breach or violation of this Agreement would cause material and irreparable harm to Client, (b) that certain damages for such harm would be difficult or impossible to ascertain because of the unique nature and critical importance of the Services and Work Products to the operation of the Business, and be incapable of precise measurements, and (c) that, accordingly, Client may not have an adequate remedy at law to redress the harm caused by such breach or violation. Therefore, Consultant agrees that, in addition to any other available remedies at law or in equity, Client shall be entitled to immediate preliminary and final equitable relief to order Consultant to complete the development of the Work Products and to the reimbursement of all legal fees and other costs incurred by Client in connection with, or as the result of, any such breach or violation hereof and in connection with the enforcement of Client's rights hereunder.

Section 11.3 Remedies are Cumulative. No remedy herein conferred upon or reserved to Client is intended to be or shall be exclusive of any other remedy, but every remedy herein provided shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity, or by statute. Every such right and remedy may be exercised from time to time and as often as may be deemed expedient. No delay or omission by Client to exercise any such right or remedy shall be construed to be a waiver thereof or of any such Default or an acquiescence therein.

Section 11.4 Force Majeure. Neither Party is liable for non-performance under this Agreement to the extent to which the non-performance is caused by events or conditions beyond that Party's reasonable control, and the Party makes all reasonable efforts to perform, and any applicable deadlines for performance shall be extended for a number of days equal to the duration of such events or conditions. A Party claiming such an event or occurrence shall notify the other Party immediately in writing and not later than one (1) week after the event or occurrence. The following shall not constitute a force majeure event or condition: a negligent act or omission, intentional wrongdoing, or lack of credit or economic hardship. If the period of nonperformance exceeds 30 days from issuance of the notice of the force majeure event, Client may, by giving written notice to Consultant, terminate this Agreement without charge or penalty.

Section 11.5 Limitation of Liability. Except with respect to the duties of defense and indemnity expressly provided in this Agreement, either Party's aggregate liability to the other Party on all claims of any kind for all losses or damages arising out of or relating to a particular Statement of Work will in no case exceed the greater of \$100,000.00 or the amounts paid by Client to Consultant in the previous twelve (12) months. Except with respect to the duties of defense and indemnity against third party claims expressly provided in this Agreement or as otherwise expressly agreed in an Statement of Work or addendum to this Agreement, in no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise, will either Client or Consultant, or any of their respective subcontractors, directors, officers, employees or agents, be liable to the other Party for any of the following, irrespective of whether the possibility of such damages has been disclosed to the other Party in advance or could have reasonably been foreseen by the other Party:

- a. Special, incidental, consequential, reliance, or indirect damages, including without limitation lost sales, profits, savings or revenue, increased cost of operations, or claims of either Party's third party customers for such damages (some States do not allow the exclusion or limitation of incidental or consequential damages, so such limitation or exclusion may not apply);
- b. Punitive or exemplary damages;
- c. Any statement or representation made by either Party's employees regarding a third party vendor;
- d. Unauthorized access to, theft, alteration, or destruction of applications, content, data, programs, information, network or systems belonging to Client or any third party, except to the extent caused directly by Consultant's negligence or willful misconduct.

The limitations of liability under this Section are an essential part of the bargain under this Agreement.

ARTICLE 12. GENERAL AND MISCELLANEOUS PROVISIONS

Section 12.1 Jurisdiction, Venue, and Dispute Resolution. This Agreement will be governed by the laws of the State of Nebraska and the United States of America, without regard to conflicts of laws principles. Each Party hereby submits itself for the sole purpose of this

Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in Hall County, Nebraska and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, or forum not convenient or otherwise) to the exercise of such jurisdiction over it by any such courts.

Any controversy, dispute, argument, or claim arising out of or in connection with or relating to this Agreement, or any alleged breach hereof shall be identified in writing to the other Party. Consultant and Client agree to use first informal mechanisms to resolve such disputes. In the event a resolution cannot be reached by employees assigned to a particular Statement of Work, the dispute shall be reported to their respective supervisors or other senior management personnel within each organization who shall take good faith actions to resolve the dispute. The provisions for informal mechanisms shall not apply to instances or situations where a Party is threatened with immediate and irreparable harm. In the event a resolution to the dispute cannot be reached within thirty (30) days, then any controversy, dispute, argument, claim, and other matters in question arising out of or in connection with or relating to this Agreement or any alleged breach hereof shall be referred to mediation before a neutral party to be conducted in accordance with the procedures established by the Commercial Mediation Rules of the American Arbitration Association, and as a condition precedent to the initiation of any adjudicative action or proceeding. The mediation shall be attended by representatives of each Party having authority to settle the dispute. Company and Contractor shall share equally the compensation and expenses of the mediator as well as all fees and expenses imposed associated with transcripts, hearing room rentals, filing fees and administrative costs. Company and Contractor shall be responsible for their own costs and legal fees, if any. Should mediation not resolve the matter between the Parties within thirty (30) calendar days of submission to mediation, either Party may litigate the controversy in the appropriate court. Contractor's obligation to perform under this Agreement shall remain in effect during the resolution of disputes.

Section 12.2 . Entire Agreement. This Agreement and all attachments executed hereafter, constitutes the entire agreement between the Parties regarding the subject matter hereof and (i) supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter; and (ii) prevails over any conflicting or additional terms of any quote, order, acknowledgement or similar communication between the Parties before or during the term of this Agreement. No modifications to this Agreement will be binding unless in writing and signed by a duly authorized representative of each Party.

Section 12.3 No Exclusivity. This Agreement is not exclusive. Either Consultant or Client may buy or sell products or services that are the same or similar to the products or services covered under this Agreement, as long as neither Party violates its contractual obligations to the other Party and provided that Consultant shall not engage in any activity or take any position that shall in the commercially reasonable judgment of Client be detrimental or adverse to Client and its interests.

Section 12.4 Amendments. No supplement, modification or amendment to this Agreement will be binding unless executed in writing by authorized representatives of the Parties hereto.

Section 12.5 Severability of Provisions. Should any clause, portion or paragraph of this Agreement be unenforceable or invalid for any reason, such unenforceability or invalidity will not affect the enforceability or validity of the remainder of this Agreement, and any court having jurisdiction is specifically authorized and encouraged by the Parties to hold inviolate all portions of this Agreement that are valid and enforceable without consideration of any invalid or unenforceable portions hereof.

Section 12.6 Waiver. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver. The failure of either Party in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.

Section 12.7 Construction of Agreement. This Agreement constitutes a negotiated agreement between the Parties and the fact that one Party or its counsel or the other shall have drafted this Agreement or a particular provision hereof shall not be considered in the construction or interpretation of this Agreement or any provision hereof.

Section 12.8 Execution and Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same document.

Section 12.9 Headings. The headings of the sections in this Agreement are for the purposes of convenient reference only and are not intended to be part of this Agreement, or to limit or affect the meaning or interpretation of any of the terms hereof.

Section 12.10 Survival. Neither termination nor expiration of this Agreement for any reason shall release either Party from liabilities or obligations set forth in this Agreement which (i) the Parties have expressly agreed will survive such termination or expiration or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration, including, but not limited to, Articles 7, 8 and 10.

Section 12.11 No Third Party Rights. This Agreement shall not be construed to create any legal, equitable or beneficial interest in any third party or to vest in any third party any interest with respect to the enforcement of this Agreement, except for Client's affiliates, Interstate Power and Light Company and Wisconsin Power and Light Company.

Section 12.12 Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns, and neither Party shall assign this Agreement without the written consent of the other Party, which consent may be unreasonably withheld, except that Client may assign this Agreement to an entity acquiring all or substantially all of Client's business assets or which by reason of a reorganization under a new name (other than a reorganization under U.S. Bankruptcy Law), merger, acquisition or otherwise assumes the legal position of Client and acquires all of the business interests of Client.

Section 12.13 Relationship of the Parties. In providing Services and Work Products under this Agreement, Consultant will be acting as Client's independent contractor. Consultant will not be Client's agent, employee, partner or representative. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the Parties for any purposes. Neither Party will have the right or authority to assume, create, or incur any third-party liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other Party except as expressly set forth in this Agreement. Although Consultant's personnel may perform Services and provide Work Products pursuant to Client's general instructions, such personnel will at all times and for all purposes be deemed Consultant's employees or agents and not Client's employees or agents, just as Client's personnel will at all times and for all purposes be deemed Client's employees or agents and not Consultant's employees or agents. Consultant will be responsible for all contractual and other obligations that Consultant may have with its agents, for the payment of all wages and salaries payable to its employees, and for the cost of providing Consultant's employees with any fringe benefits to which they are entitled by reason of being employed by Consultant. Consultant will also be responsible for withholding payroll taxes from the wages and salaries paid to its employees and for paying all payroll taxes relating to their employment to government agencies.

Section 12.14 Subcontractor. Consultant may not use independent contractors to perform the Services, without the prior written or e-mail consent of Client, after review of such contractor's resume or CV. Consultant retains responsibility to Client for any Services performed by such subcontractors under this Agreement to the same extent as if such Services were performed directly by Consultant's employees.

Section 12.15 Notices. Any notice, request or other communication to be given by either Party hereunder shall be in writing and shall be either delivered in person or sent by (a) registered or certified mail, postage prepaid, with return receipt requested, (b) an overnight courier guaranteeing overnight delivery or (c) an electronic mail ("e-mail") transmission, if receipt is confirmed, to the address of the Party set forth at the beginning of this Agreement to the attention of its president or to such other address as any of the Parties may designate from time to time by notice to the other Parties. Notice shall be delivered on confirmation of receipt. In the case of Client, notices shall be sent to the attention of Travis Burdett, Assistant Utilities Director - Transmission, 1116 W North Front St, Grand Island, Nebraska 68801.

Section 12.16 Electronic Signatures. Each of the Parties may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity. [Comment: The title of this section isn't consistent with the body so we are unsure what you are trying to say. We are willing to exchange PDF's of signature pages, with hard copy to follow, if timing requires it, but we typically do not use coding in routine correspondence. I've indicated where e-mail is going to be acceptable and where formal written notice will be required so I would suggest just deleting it, unless you want to discuss PDF signature to precede hard copies in which case I would modify 12.8 above re: counterparts to include this concept.]

Section 12.17 Additional Documents and Actions. The Parties agree to execute and deliver such other documents, certificates, agreements, and other writings and to take such other

actions as may be necessary or desirable in order to consummate and expeditiously implement the transactions contemplated by this Agreement.

Section 12.18 Recitals. The above recitals are hereby incorporated and made a part of this Agreement as if fully set forth herein.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its authorized representative as of the date written below.

Grand Island, Utilities

VOLKMANN CONSULTING, INC.

By: _____

By:  _____

Name: _____

Name: Terry L. Volkmann _____

Title: _____

Title: President _____

Date: _____

Date: October 20, 2015 _____

Exhibit A
Statement of Work

This Statement of Work ("SOW") is entered into as of this ____ day of _____, 2010, by and between VOLKMANN CONSULTING, INC. and ALLIANT ENERGY CORPORATE SERVICES, INC. as agent for Interstate Power and Light Company and Wisconsin Power and Light Company.

1. Relationship to Agreement

This SOW is subject to all the terms and conditions of the Consulting Services Agreement between Consultant and Company dated _____, 2010, and designated as AECS Contract No. ____ ("Agreement").

2. Services

Consultant shall perform the following Services:

[insert description including deliverables expected and deadlines and any specifications, e.g., for reports, font, size, margins, footer such as "Alliant Energy Confidential" on each page, format of cover page, etc.]

3. Fees, Expenses and Payment

For the Services rendered under this SOW, Consultant shall be paid as follows:

[insert job titles or names and rates]

Reimbursement for expenses is limited to the following amount: \$_____

Reimbursement for daily per diem expenses is limited to the following:

While in Madison, WI: \$

While in Cedar Rapids, IA: \$

4. Personnel

The personnel assigned to provide the services specified in this SOW follows:

[insert names and titles]

5. Other Provisions

[insert any additional terms]

This Statement of Work is executed by the Parties as of the date written above.

**ALLIANT ENERGY CORPORATE
SERVICES, INC. as agent for
Interstate Power and Light Company
and Wisconsin Power and Light
Company**

VOLKMANN CONSULTING, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATEMENT OF WORK NO. 01

This Statement of Work No. 01 (“SOW”) is submitted pursuant to the Consulting Services Agreement between Grand Island Utilities (“Client”) and Volkmann Consulting, INC. (“Consultant”), effective as of October 27, 2015 (the “Agreement”), which is incorporated herein by reference. Any capitalized term used herein but not defined herein shall have the meaning assigned to such term in the Agreement. In the event of a conflict or ambiguity between any term of this SOW and the Agreement, the terms of the Agreement shall prevail.

Description of Services and Approach:

Task 1

Determine current applicable NERC standards and requirements by evaluating new BES definition as it applies to GRIS and evaluating CIP Version 5 applicability.

Task 2

Evaluate current compliance and identify gaps and deficiencies.

Task 3-4

Assist GRIS with procedures and documentation to solidify compliance.

Stay abreast of standards and compliance developments as they relate to GRIS

Task 5

Assist GRIS in compliance with new standards and requirements.

Task 6

Assist GRIS in Self Certifications, Spot Checks, and other requests.

Task 7

Assist GRIS with mitigation of any non-compliance findings.

Task 8

Assist GRIS when dealing with regulatory agencies.

Activity	Hours	Cost	Trip	Cost
Task 1	3.00	\$450		
Task 2	56.00	\$8,400		
Task 3-4	29.00	\$4,350		
Task 5	36.00	\$5,400	2.00	\$3,600
Summary Report	12.00	1800.00		
Project management	8.00	1200.00		
Subtotal Hours	144.00	\$21,600		\$3,600
Subtotal Cost	\$25,200			

Months	Hours	Cost	Trip	Cost
Month 3-on-going	40.00	\$5,000	1.00	\$1,800
Month 4-on-going	40.00	\$5,000	1.00	\$1,800
Month 5-on-going	40.00	\$5,000	1.00	\$1,800
Month 6-on-going	40.00	\$5,000	1.00	\$1,800
Month 7-on-going	40.00	\$5,000	1.00	\$1,800
Month 8-on-going	40.00	\$5,000	1.00	\$1,800
Month 9-on-going	40.00	\$5,000	1.00	\$1,800
Month 10-on-going	40.00	\$5,000	1.00	\$1,800
Month 11-on-going	40.00	\$5,000	1.00	\$1,800
Month 12-on-going	40.00	\$5,000	1.00	\$1,800
Grand Total Hours	544.00	\$71,600		\$21,600
Grand Total Cost	\$93,200			

Period of Performance: From October 15, 2015 to until cancelled per either party under the term of the Agreement.

Consultant shall not be authorized to perform any work prior to or after the dates specified in this section and Client shall not be responsible for payment of any work performed prior to or after such dates, unless such dates are specifically mended by mutual written agreement between the parties.

Key Employees: Terry Volkmann and Peg Abbadini

Pre-Existing Materials: None

Expected Deliverables:

Task 1: Part of Task 2 report

Task 2: Risk Assessment Report

Task 3-4: Recommended documentation changes for identified standards

Task 5: Implementation Plans for identified future standards

Task 6-8: As determined by Client and Consultant

Technical and Functional Specifications: Current and future FERC approved NERC Reliability Standards for Registered Entities.

Training, Support, and Costs: As determined by the Client.

Maintenance: None

Acceptance Standards: None

Licenses: None

Additional Services: As agreed to by Consultant and Client and only through addendum to the contract.

Total Dollar Value and Expenditure Limit: These costs are not to exceed costs and the GRIS will be billed for only the time spent at a rate of \$150 per hour for Task 1 through 5 and \$125 per hour for all on-going work. Expenses will be a flat \$1800 per person per trip to Grand Island.

Type of Contract and Payment Terms: Consultant will invoice Client on a Monthly basis. Payment by Client will be due within one month of receiving invoice.

Approved Incidental Travel Costs: Unless otherwise set forth in this SOW, Client will reimburse Consultant for expenses at a flat rate of \$1800 per person per trip to Grand Island. For the on-going work, it is expected that only one of the Consultant will be on-site each month.

Accepted and agreed to:

Grand Island Utilities

By: _____

Name: _____

Title: _____

Date: _____

Accepted and agreed to:

Volkman Consulting, Inc.

By:  _____

Name: __Terry L. Volkman__

Title: __President__

Date: __10-27-2015__

RESOLUTION 2015-290

WHEREAS, after the northeast blackout of 2003, the federal government began the process of implementing reliability standards for electric utilities, and each utility was evaluated and given various designations based upon size and function; and

WHEREAS, beginning in 2007, the North American Electric Reliability Corporation (NERC) began governing compliance with all applicable standards; and

WHEREAS, the number of standards and requirements has significantly increased over the years; and

WHEREAS, staying abreast of the ever changing electric industry requires a time commitment that current employee levels can't sustain and the risk of significant penalties is always present in the event that compliance is not maintained; and

WHEREAS, in order to reduce those risks a Request for Proposal for NERC Compliance Consulting Services was issued; and

WHEREAS, two proposals were received by the September 15, 2015 deadline; and

WHEREAS, Utilities personnel evaluated both proposals and found Volkmann Consulting as the best proposal received; and

WHEREAS, the Legal Department has reviewed the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Agreement for Compliance Consulting with Volkmann Consulting is approved, and the Mayor is hereby authorized to sign the agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 27, 2015.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	<input type="checkbox"/>	_____
October 23, 2015	<input type="checkbox"/>	City Attorney