



City of Grand Island

Tuesday, August 09, 2011

Council Session

Item G15

#2011-199 - Approving Agreement with Kirkham Michael & Associates for Engineering Consulting Services for Inspection, Structural Analysis and Evaluation of the Eddy Street and Sycamore Street Underpasses

Staff Contact: John Collins, Public Works Director

Council Agenda Memo

From: Scott Gripenstroh, Project Manager

Meeting: August 9, 2011

Subject: Approving Agreement with Kirkham Michael & Associates for Engineering Consulting Services for Inspection, Structural Analysis and Evaluation of the Eddy Street and Sycamore Street Underpasses

Item #'s: G-15

Presenter(s): John Collins, Public Works Director

Background

Statements of Qualification were solicited from Consulting Engineering Firms for performing inspection, structural analysis and evaluation of the Eddy Street and Sycamore Street Underpasses.

These services will provide a thorough evaluation of the different structural components of the underpasses, including retaining walls, sidewalk tunnels, bridges carrying rail traffic, bridges carrying vehicular traffic, roadway pavement, and provide an analysis of the drainage systems adequacy, inspection routines and maintenance. A final report with a summary of findings and recommendations for repairs will be prepared.

Discussion

Two (2) statements of qualification were received. On July 8, 2011, a committee comprised of Manager of Engineering Services Terry Brown, Project Manager Scott Gripenstroh, and Engineering Technician Paul Schwaderer evaluated the statements of qualification based on established criteria. Kirkham Michael & Associates, Inc. of Omaha, Nebraska was selected and an agreement was negotiated for the work to be performed at actual costs with a maximum amount of \$42,932.20.

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 agreement.

Sample Motion

Move to approve the agreement with Kirkham Michael & Associates to perform the engineering services.



Jason Eley, Purchasing Agent

*Working Together for a
Better Tomorrow, Today*

**REQUEST FOR STATEMENTS OF QUALIFICATION
FOR
ENGINEERING CONSULTING SERVICES FOR
EDDY & SYCAMORE STREET UNION PACIFIC RAILROAD UNDERPASSES**

RFP DUE DATE: July 7, 2011 at 4:00 p.m.
DEPARTMENT: Public Works
PUBLICATION DATE: June 17, 2011
NO. POTENTIAL BIDDERS: 12

SUMMARY OF PROPOSALS RECEIVED

Olsson & Associates
Grand Island, NE

Kirkham Michael
Omaha, NE

cc: John Collins, Public Works Director
Mary Lou Brown, City Administrator
Jason Eley, Purchasing Agent

Catrina DeLosh, PW Admin. Assist.
Scott Griepenstroh, PW Project Mgr.

P1482

AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2011, by and between **Kirkham, Michael & Associates, Inc.** hereinafter called the Consultant, and the **City of Grand Island, Nebraska**, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused agreement documents to be prepared and an advertisement of a **Request for Statement of Qualifications for Professional Engineering Consulting Services Related to Grand Island Eddy Street and Sycamore Street Union Pacific Railroad Underpasses for the City of Grand Island**, and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined that the aforesaid Consultant submitted the best proposal based on the evaluation criteria listed in the Request For Statement of Qualifications, Exhibit D, a copy thereof being attached to and made a part of this agreement, and has duly awarded to the said Consultant an agreement therefore, for the sum or sums named in the **Grand Island Eddy Street and Sycamore Street Union Pacific Railroad Underpasses Qualification Form** with terms & conditions submitted by the Consultant, Exhibit A, a copy thereof being attached to and made a part of this agreement;

NOW, THEREFORE, in consideration of the compensation to be paid to the Consultant and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Consultant for itself, himself, or themselves, and its, his (hers), or their successors, as follows:

ARTICLE I. That the Consultant shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the agreement documents as listed in the attached **Exhibit B, Scope of Services, for Professional Engineering Consulting Services Related to Grand Island Eddy Street and Sycamore Street Union Pacific Railroad Underpasses for the City of Grand Island** as Submitted by the Consultant; said documents forming the agreement and being as fully a part thereof as if repeated verbatim herein, perform, execute, and complete all work included in and covered by the City's official award of this agreement to the said Consultant, such award being based on the acceptance by the City of the Consultant's proposal;

ARTICLE II. That the City shall pay to the Consultant for the performance of the work embraced in this agreement and the Consultant will accept as full compensation therefore the sum of **Forty Two Thousand, Nine Hundred Thirty Two Dollars (\$42,932.00)** for all services, materials, and work covered by and included in the agreement award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in Exhibit C of this agreement.

ARTICLE III. That the Consultant shall start work as soon as possible after the agreement is signed.

ARTICLE IV. The Consultant agrees to comply with all applicable State fair labor standards in the execution of this agreement as required by Section 73-102, R.R.S. 1943. The Consultant further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this agreement, the Consultant and all Sub Consultants agree not to discriminate in hiring or any other employment practice on the basis of race, color, religion, gender, national

origin, age or disability. The Consultant agrees to comply with all applicable Local, State and Federal rules and regulations.

ARTICLE V. The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

ARTICLE VI. GRATUITIES AND KICKBACKS: City Code states that it is unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or an agreement or sub agreement, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a Sub Consultant under an agreement to the prime Consultant or higher tier Sub Consultant or any person associated therewith, as an inducement for the award of a Sub Consultant to order.

ARTICLE VII. FAIR EMPLOYMENT PRACTICES: Each proposer agrees that they will not discriminate against any employee or applicant for employment because of age, race, color, religious creed, ancestry, handicap, sex or political affiliation.

ARTICLE VIII. LB 403: Every public consultant and his, her or its subconsultants who are awarded an agreement by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CONSULTANT

By _____

Title _____

CITY OF GRAND ISLAND, NEBRASKA,

By _____
Jay Vavricek, Mayor

Attest: _____
RaNae Edwards, City Clerk

The agreement is in due form according to law and is hereby approved.

Jason Eley, Asst. City Attorney

APPENDIX A – TITLE VI NON-DISCRIMINATION -

During the performance of this agreement, the consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

- (1) **Compliance with Regulations:** The consultant shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (2) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the agreement, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap 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, section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subconsultants, 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 leases of 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 grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The consultant shall provide all information and reports required by the Regulations or directives 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 City of Grand Island or the 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 City of Grand Island, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this agreement, the City of Grand Island shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the consultant under the agreement until the consultant complies, and/or
 - (b.) cancellation, termination or suspension of the agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The consultant shall include the provisions of paragraphs (1) through (6) in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The consultant shall take such action with respect to any subagreement or procurement as the City of Grand Island or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the consultant may request the City of Grand Island to enter into such litigation to protect the interests of the City of Grand Island, and, in addition, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit A



General Terms and Conditions

1. AUTHORIZATION TO PROCEED

Signing of the accompanying agreement for engineering and related services shall be authorization by the client for Kirkham Michael & Associates, Inc. (Kirkham Michael) to proceed with the professional services described, unless otherwise stated in the agreement form.

2. DEFINITION

These mutually agreed covenants which include as a minimum the attached written proposal (Proposal) including a Scope of Services and these General Terms and Conditions constitute the "Agreement." This Agreement defines the relationship between the Client as identified in the Proposal and Kirkham Michael for the Project as defined in the Proposal. The professional services of Kirkham Michael shall include services performed by employees of Kirkham Michael, its affiliates, subsidiaries, independent professional associates, consultants and subconsultants.

3. STANDARD OF PRACTICE AND ABSENCE OF WARRANTY

Services performed by Kirkham Michael under this agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in the agreement or in any report, opinion, document, or otherwise. All estimates, recommendations, opinions, and decisions of Kirkham Michael will be made upon the basis of the information available to Kirkham Michael and Kirkham Michael's experience, technical qualifications, and professional judgment. Kirkham Michael makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with Kirkham Michael's services.

Client expressly acknowledges that subsurface conditions may vary at locations other than at a particular location where borings, explorations, surveys and samplings are made, and that the data interpretations and recommendations of Kirkham Michael are based solely upon information available to Kirkham Michael. Client also acknowledges that Kirkham Michael shall not be responsible for interpretations by others of the information developed. All data obtained during investigative phases are subject to confirmation of conditions encountered during subsequent phases of the Project. Client recognizes that the scope of services under this Agreement is limited by Client's available budget and schedule and those additional services may yield more accurate and reliable information regarding conditions at or near the site.

4. PROJECT SITE AND RIGHT OF ENTRY

Client shall furnish or cause to be furnished to Kirkham Michael all documents and information known to CLIENT that relates to the identity, location, quantity, nature or characteristics of any hazardous waste at, on, or under the site. In addition, Client shall furnish and pay for such other reports, aerial photographs, data, studies, drawings, specifications, documents, and other information regarding surface and subsurface site conditions, which will be required by Kirkham Michael for performance of its services. Kirkham Michael shall be entitled to rely upon documents and information provided by Client in performing the services required under this Agreement; however, Kirkham Michael assumes no responsibility or liability for the accuracy or completeness of said documents and information. Client provided documents will remain the property of Client.

Kirkham Michael will not direct, supervise or control the work of contractors or their subcontractors. Kirkham Michael's services do not include a review or evaluation of a contractor's (subcontractor's) safety measures.

Kirkham Michael shall be responsible only for its activities and those of its employees on any site. Neither the professional activities nor the presence of Kirkham Michael, its employees, or its subconsultants on a site shall imply that Kirkham Michael controls the operations of others; nor shall this be construed to be an acceptance by Kirkham Michael of any responsibility for Project site safety.

Client shall provide right of entry for Kirkham Michael personnel, Kirkham Michael subconsultants and all equipment and vehicles necessary to perform services. Kirkham Michael will take reasonable measures to minimize damage to property; however, Client understands that some damage may occur and the cost of repair of such damage will be borne by the Client.

Client understands that Client will be responsible for designating the location of below grade structures, foundations, utilities and other subterranean obstacles. Kirkham Michael will take reasonable effort to avoid damage to these items. In the event these items cannot be located, Kirkham Michael, by Client written authorization, at Client's cost, will deploy feasible locating methods and employ specially "dig up" crews to confirm locations. However, Client agrees to hold Kirkham Michael harmless for damages to or damages caused by any subsurface or subterranean utilities or structures which are not correctly located by Client or which Kirkham Michael could not locate using a reasonable standard of care.

5. INVOICING AND PAYMENT

The Client, recognizing that timely payment is a material part of the consideration of this agreement, shall promptly Kirkham Michael for services performed in accordance with the rates and charges set forth herein. Invoices will be submitted by Kirkham Michael on a monthly basis and shall be due and payable upon receipt. The Client shall pay an additional charge of one and one half percent (1.5%) (or the maximum percentage allowed by law, whichever is lower,) of the invoiced amount per month for any payment received by Kirkham Michael more than thirty (30) calendar days from the invoice date. Payment thereafter shall first be applied to accrued interest and then to principal unpaid amount.

If the Client for any reason fails to pay the undisputed portion of Kirkham Michael's invoices within thirty calendar days from the invoice date, Kirkham Michael may cease work on the project and the Client shall waive any claim against Kirkham Michael and shall defend and indemnify Kirkham Michael from and against any claims for injury or loss stemming from Kirkham Michael's cessation of services. Client shall also pay Kirkham Michael the cost associated with premature project demobilization. In the event the project is remobilized, Client shall also pay the cost of remobilization and shall renegotiate appropriate contract terms and conditions such as those associated with the budget, schedule or scope of services.

Unless the specific provisions of Proposal provide otherwise or the Current Year Schedule of Fees is not incorporated, then payment under this Agreement is based upon cost reimbursement (e.g., hourly rate, time and materials, direct personnel expense or per diem), and the provisions of the following sub-paragraphs shall apply:

a. The minimum time segment for billing field work is four (4) hours. The minimum time segment for billing work performed at an office is one-half (1/2) hour.

b. Project subcontracts (e.g. drilling, trenching, special testing, surveying, etc.) shall be billed at cost plus 15% for handling and administration.

c. Other direct costs, excluding travel and subsistence, are payable at actual documented cost plus 10% for handling and administration. This shall include such items as shipping, communication, printing and reproduction, computer services, supplies and equipment, and equipment items rented from commercial sources. Travel and subsistence expenses of personnel when on business connected with the Project are reimbursable at cost plus 10%. The use of reusable field and support equipment owned by Kirkham Michael will be billed at negotiated rates. In the event that equipment does not have a current rate, a daily rate of 2% of purchase price of equipment will be used.

d. When applicable, rental charges will be applied to cover the cost of pilot-scale facilities or equipment, apparatus, instrumentation, or other technical machinery. When such charges are applicable, Client will be advised at the start of an assignment, task or phase. Analyses performed in Kirkham Michael or Kirkham Michael's subconsultants' laboratories will be billed on a unit-cost-per-analysis basis, unless specified otherwise in the accompanying Proposal (Scope of Services).

Exhibit A



General Terms and Conditions

e. Invoices based upon cost reimbursement will be submitted showing labor (hours worked) and total expense, but not actual documentation. If requested by Client, documentation will be supplied at the cost of providing such documentation, including labor and copying costs.

6. CHANGES OR DELAYS

Unless the accompanying Proposal provides otherwise, the proposed fees constitute Kirkham Michael's estimate to perform the services required to complete the Project as Kirkham Michael understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the Project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. Kirkham Michael will inform CLIENT of such situations so that negotiation and compensation can be accomplished as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made, and the Agreement modified accordingly. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of either party's obligations results from any cause beyond either party's reasonable control and without either party's negligence.

7. LIMITATION OF LIABILITY

Kirkham Michael's liability is limited to amount of Kirkham Michael's compensation or the amount of fifty thousand dollars (\$50,000) whichever is less. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Kirkham Michael and Kirkham Michael's directors, officers, principals, managers, employees, agents and Kirkham Michael's consultants and subconsultants, and any of them, to Client and anyone claiming, by, through, or under Client for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Kirkham Michael or Kirkham Michael's directors, officers, principals, managers, employees, agents and Kirkham Michael's consultants and subconsultants, or any of them, shall not exceed the total compensation received by Kirkham Michael under this Agreement.

8. INSURANCE

Kirkham Michael agrees to purchase, at its own expense, Workers' Compensation Insurance and Comprehensive General Liability Insurance and will upon request, furnish insurance certificates to Client. Kirkham Michael agrees to indemnify Client for the claims covered by Kirkham Michael's insurance subject to the limitation of liability contained in Section 7. Kirkham Michael agrees to purchase additional insurance if requested by Client (presuming such insurance is reasonably available from carriers acceptable to Kirkham Michael), provided the costs for additional insurance are reimbursed by Client.

9. INDEMNIFICATION

Client and Kirkham Michael each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Kirkham Michael, they shall be borne by each party in proportion to its negligence.

10. CONSEQUENTIAL DAMAGES

The Client shall not be liable to Kirkham Michael and Kirkham Michael shall not be liable to the Client for any consequential damages incurred by either party due to the fault of the other, regardless of the nature of

this fault or whether it was committed by the Client or Kirkham Michael, their employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

11. TERMINATION

Either party may terminate the Agreement, in whole or in part, fourteen (14) days after giving written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where method of payment is "lump sum," the final invoice will include all services and expenses associated with the Project up to the effective date of termination. Where method of payment is based upon cost reimbursement, the final invoice will include all services and expenses associated with the Project up to the effective date of termination. In any event, an equitable adjustment shall be made to provide for termination settlement costs Kirkham Michael incurs relating to commitments that had become firm before termination, and for a reasonable profit for services performed.

12. GOVERNING LAW

This Agreement is to be governed by and construed in accordance with the laws of the State of Nebraska, unless mutually agreed in writing by Client and Kirkham Michael to be in accordance with the laws of the state where the Project is located.

13. DISPUTE RESOLUTION

Client and Kirkham Michael agree that as a prerequisite to the filing of a lawsuit or a demand for arbitration, they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this Agreement.

14. HAZARDOUS ENVIRONMENTAL CONDITIONS AND DISPOSAL OF CONTAMINATED MATERIAL

It is understood and agreed that Kirkham Michael is not, and has no responsibility as a handler, generator, treater, or storer, transporter, or disposer of hazardous or toxic substances found or identified at the Project site. It is acknowledged by both parties that Kirkham Michael's scope of services does not include any services related to the presence or discovery at the site of asbestos, PCBs, petroleum, hazardous waste, radioactive materials or any other hazardous material or toxic substance. Client acknowledges that Kirkham Michael is performing professional services for Client and Kirkham Michael is not and shall not be required to become an "arranger," "operator," "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA). CLIENT shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at the Project site.

15. CONFIDENTIALITY

Kirkham Michael shall maintain as confidential and not disclose to others without Client's prior written consent all information obtained from Client that was not otherwise previously known to Kirkham Michael or in the public domain and is expressly designated by Client in writing to be "CONFIDENTIAL." The provisions of this paragraph shall not apply to information in whatever form that (1) is published or comes into the public domain through no fault of Kirkham Michael, (2) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (3) is required to be disclosed by law on order of a court, administrative agency, or other authority with proper jurisdiction.

Client agrees that Kirkham Michael may use and publish Client's name and a general description of Kirkham Michael's services with respect to the Project in describing Kirkham Michael's experience and qualifications to other Clients or potential Clients.

Exhibit A



General Terms and Conditions

16. OWNERSHIP OF DOCUMENTS, RE-USE OF DOCUMENTS AND USE OF ELECTRONIC MEDIA

All documents including drawings and specifications prepared or furnished by Kirkham Michael (and Kirkham Michael's affiliates, subsidiaries, independent professional associates, consultants, and subconsultants) pursuant to this Agreement are instruments of service in respect of the Project, and Kirkham Michael shall retain an ownership and property interest therein, whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for re-use by Client or others as extensions of the Project or on any other project. Any Client re-use without written verification or adaptation by Kirkham Michael for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Kirkham Michael or Kirkham Michael's affiliates, subsidiaries, independent professional associates, consultants, and subconsultants with respect to any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting therefrom. Any such verification or adaptation will entitle Kirkham Michael to further compensation at rates to be agreed upon by Client and Kirkham Michael.

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Kirkham Michael. Files in electronic media format or text, data, graphic or other types that are furnished by Kirkham Michael to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Kirkham Michael makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Kirkham Michael at the time electronic files were furnished to the Client.

17. CONTROLLING AGREEMENT

These General Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document regarding Kirkham Michael's services. If any of these General Terms and Conditions are determined to be invalid or unenforceable in whole or part by a court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that as closely as possible expresses the intention of the stricken provision.

These General Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause. This Agreement between Client and Kirkham Michael shall pertain only to the benefit of the parties hereto, and no third party shall have rights hereunder.

18. OPINIONS OF PROBABLE COST

Opinions of probable cost, cost estimates, and construction cost estimates provided herein are made based upon Kirkham Michael's experience and qualifications as professional engineers. However, since Kirkham Michael has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or other market conditions, any opinions of cost shall be accepted by Client subject to Paragraph 3 of these General Terms and Conditions.

In the event Client desires a level of accuracy of an estimate which establishes cost ceilings or detailed cost component analyses, Kirkham Michael will upon written authorization from Client secure the services of a specialized cost estimating and analyzing firm acceptable to Client. The Client shall agree to the payment of additional compensation as required.

19. CONSTRUCTION PHASE SERVICES

If this Agreement provides for any construction phase services by Kirkham Michael, it is understood that the Contractor, not Kirkham Michael is responsible for the construction of the project, and that Kirkham Michael is not responsible for the acts or omissions of any contractor, subcontractor or material supplier; for safety precautions, programs or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the Contractor.

Kirkham Michael understands that the Client has sole right to decide whether to engage Kirkham Michael for Construction Phase Services. In the event the Client chooses to not include Kirkham Michael in Construction Phase Services, the Client shall be solely responsible for interpreting the Contract Documents and observing the Work of the Contractor to discover, correct or mitigate errors, inconsistencies or omissions. If the Client authorizes deviations, recorded or unrecorded, from the documents prepared by Kirkham Michael, the Client shall not bring any claim against Kirkham Michael and shall indemnify and hold Kirkham Michael, its agents and employees harmless from and against any claims, losses, damages and expenses, including but limited to defense costs and time of Kirkham Michael professionals, to the extent such claim, loss, damage or expense arises out such deviations.

20. PROPRIETARY DATA

The technical and pricing information contained in the accompanying Proposal or this Agreement is to be considered Confidential and Proprietary, and is not to be disclosed or otherwise made available to third parties without the express written consent of Kirkham Michael.

Exhibit B

City of Grand Island, Nebraska Union Pacific Railroad (UPRR) Underpasses Eddy Street and Sycamore Street

Scope of Services

I. Project Understanding

This project consists of retaining wall and pedestrian tunnel inspection, structural analysis, and evaluation, drainage evaluation, pavement evaluation, bridge inspection, and material sampling and testing of the Eddy Street and Sycamore Street UPRR Underpass structures in Grand Island, Nebraska. The project limits of the Eddy Street Underpass are from W. 3rd Street to W. 4th Street and the project limits of the Sycamore Street Underpass are from E. 3rd Street to E. 4th Street, not including the intersections. A final report with a summary of findings and recommendations for repairs will be prepared and presented to the City Council.

II. Inspection of Underpasses

- A. Perform detailed visual inspection of retaining walls, pedestrian tunnels, and handrails, in accordance with Nebraska Department of Roads (NDOR) and National Bridge Inspection Standards (NBIS) requirements.
- B. Document deficiencies, i.e., cracking, spalling, deflections, corrosion, and impact damage, with photos, sketches, and measurements. Estimate depth and surface area of distressed areas.
- C. Prepare a structure condition report for each underpass.

III. Structural Analysis and Evaluation

- A. Review existing plans and condition reports of the underpass structures.
- B. Interview City personnel to obtain historic information regarding repairs, on-going problems, etc.
- C. Determine the structural adequacy of the retaining walls and pedestrian tunnels based on as-built plans provided by the City.

- D. Develop potential repair solutions.
- E. Prepare opinions of probable costs for each solution.
- F. Coordinate with the City to prioritize repairs.
- G. Develop construction schedule for implementation of repairs.

IV. Detailed Inspection and Evaluation Services

A. Bridge Inspection

- 1. Inspect four (4) single span reinforced concrete bridge superstructures in accordance with NDOR and NBIS requirements and update the NDOR PONTIS database.
 - a. Eddy Street
 - 1. N. Front Street Bridge
 - 2. Mill Drive Bridge
 - b. Sycamore Street
 - 1. Industry Overpass
 - 2. S. Front Street Bridge
- 2. Input three (3) bridges into the NDOR PONTIS database system
 - a. Eddy Street
 - 1. N. Front Street Bridge
 - 2. Mill Drive Bridge
 - b. Sycamore Street
 - 1. Industry Overpass
 - 2. S. Front Street Bridge has been added to the NDOR PONTIS database by the City

B. Drainage System Evaluation

- 1. Review City of Grand Island GIS maps and as-built plans of the storm sewer system for the underpasses and interview city personnel to determine existing drainage problems.
- 2. Conduct on-site inspection of the drainage system, including inlets, pumps, and local drainage patterns.
- 3. Determine adequacy of drainage system. Limit analysis to the drainage system in the vicinity of the underpasses. Assumption will be made that

the capacity of the drainage system beyond the underpasses is adequate and no analysis of the system beyond the underpasses will be performed.

4. Evaluate current inspection and maintenance procedures. Interview appropriate city personnel to determine frequency and extent of current inspection procedures. Recommend revisions to the current inspection and maintenance procedures.
5. Identify and develop repair alternatives/improvements to the existing underpass drainage systems.
6. Prepare opinions of probable costs for each repair/improvement.

C. Pavement Evaluation

1. Review existing plans and conduct interviews of appropriate city staff to determine scope and extent of existing pavement repairs.
2. Develop criteria for determining condition of the pavement.
3. Conduct a sub-base drainage survey, measure deflection, and obtain field samples and tests. Evaluate joint faulting through visual inspection.
4. Identify areas of concern.
5. Develop a program for reconstruction, rehabilitation, and maintenance.
6. Prepare opinions of probable costs for each component.

D. Material Sampling and Testing

1. Retaining Walls
 - a. Review as-built plans and visually inspect the retaining walls to determine areas of excessive deflection, settlement and spillage of backfill materials through vertical wall joints.
 - b. Coordinate with structural engineer and identify location of needed cores in retaining walls and in backfill areas.
 - c. Conduct coring of walls, backfill pavement, and soils and obtain material samples.
 - d. Detect voids behind wall using Ground Penetrating Radar.
 - e. Provide recommendations for repairs/mitigation.
2. Pavement
 - a. Core concrete pavement at strategic locations.

- b. Submit cores to lab for compression testing.
- c. Recommend concrete repairs or replacement.

V. Final Report

- A. Prepare Final report that includes the following:
 - 1. Project data
 - 2. Discussion of alternatives for each component.
 - 3. Pedestrian considerations – lighting, ADA
 - 4. Summary of findings
 - 5. Recommendations for repairs/improvements.
 - 6. Summary of project costs
 - 7. Construction schedule
 - 8. Address railroad bridge inspections by UPRR
- B. Submit draft Final report to appropriate City personnel for review and comment.
- C. Present Final Report to the City Council.

VI. Meetings

- A. Attend Project Kick-off Meeting
- B. Attend one Public Information Meeting
- C. Present Final Report to City Council

VII. Not Included in Scope of Services

- A. Traffic Control required for inspection of the retaining walls and vehicular bridges and for obtaining material samples of the retaining wall and pavement.
- B. Inspection of the UPRR overpass structures over Eddy Street and Sycamore Streets.
- C. Environmental Services.

VIII. City to Provide

- A. As-built plans of Eddy Street and Sycamore Street Underpass structures.
- B. Traffic Control required for inspection of the retaining walls and vehicular bridges and for obtaining material samples of the retaining wall and pavement.

Exhibit C

City of Grand Island Union Pacific Railroad Underpasses Eddy Street and Sycamore Street

PROPOSED TASKS AND FEE

RAW LABOR	Classification	Principal/		Clerical	Project Manager	PE Designer	Eng CADD Tech	Inspector	Constr. Observer	Land Surveyor	Survey Crew		Total Hours	Raw Labor Costs
		QA												
	Rate	\$43.27	\$19.50	\$43.27	\$35.00	\$30.00	\$35.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
TASKS														
Inspection of Underpasses		0	0	0	6	0	0	40	0	0	0	0	46	\$1,659.62
Structural Eval. and Analysis		0	0	0	12	40	4	0	0	0	0	0	56	\$2,099.24
Bridge Inspection		0	0	0	0	0	3	22	0	0	0	0	25	\$860.00
Drainage System Analysis		1	0	0	0	32	3	0	0	0	0	0	36	\$1,253.27
Pavement Evaluation		1	0	0	0	32	3	0	0	0	0	0	36	\$1,253.27
Material Sampling & Testing		0	0	0	4	8	0	0	0	0	0	0	12	\$453.08
Final Report		2	8	8	15	9	6	0	0	0	0	0	40	\$1,386.59
Meetings		2	0	0	10	10	0	0	0	0	0	0	22	\$869.24
TOTAL RAW LABOR COST		\$259.62	\$156.00	\$2,033.69	\$4,585.00	\$570.00	\$2,170.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$9,774.31

OTHER DIRECT COSTS & SUBCONSULTANTS	Tasks	Maps, Photos, etc.	Postage & Delivery	Printing	Telephone & FAX	Travel, Meals, & Lodging	Health & Safety Program	Field Equipment	Other	SUB 1		SUB 2	Direct Costs
										Terracon			
Inspection of Underpasses													\$120.00
Structural Eval. and Analysis						\$120.00							\$50.00
Bridge Inspection						\$60.00							\$60.00
Drainage System Analysis						\$120.00							\$120.00
Pavement Evaluation						\$120.00							\$120.00
Material Sampling & Testing						\$0.00					\$10,000.00		\$10,000.00
Final Report						\$50.00							\$50.00
Meetings				\$50.00									\$50.00
TOTAL DIRECT COST		\$0.00	\$0.00	\$50.00	\$0.00	\$520.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10,000.00	\$0.00	\$10,570.00
Total Raw Labor													\$9,774.31
Overhead													1.9562
Total labor + Overhead													\$28,894.82
Profit													12%
Total Direct Expenses													\$3,467.38
Total Cost													\$42,932.19

Exhibit D

ADVERTISEMENT

REQUEST FOR STATEMENT OF QUALIFICATION FOR ENGINEERING CONSULTING SERVICES RELATED TO GRAND ISLAND EDDY STREET AND SYCAMORE STREET UNION PACIFIC RAILROAD UNDERPASSES CITY OF GRAND ISLAND, NEBRASKA

The City of Grand Island Public Works Office is requesting contract specific statements of qualification (RFQ) and performance data for professional engineering services. The City will select one (1) consultant based on committee evaluation to enter into an agreement for engineering services regarding the Union Pacific Railroad Underpasses at Eddy Street and Sycamore Street in Grand Island. The City desires practical applications which best accomplish the objectives of the requested services while incorporating innovative and cost effective methods.

Construction plans of the Eddy Street and Sycamore Street underpasses are available for viewing upon request.

SUBMISSION DATE: July 7, 2011

(Statements of qualification received after 4:00p.m. on this date **WILL NOT** be considered.)

The work to be performed is described in the Draft Scope of Services. If interested, submit four (4) copies of the required information to the City Clerk, City Hall, 100 East First Street, Grand Island, NE 68801 or P.O. Box 1968, Grand Island, NE 68802-1968; Attention: Statement of Qualification, Grand Island Eddy Street and Sycamore Street Union Pacific Railroad Underpasses.

If the firm has any questions regarding this request or the Draft Scope of Service, please contact Mr. Scott Griepentstroh at (308) 385-5444, extension 260, or scottg@grand-island.com.

All work is to be coordinated by the direct supervision of experienced engineers registered in the State of Nebraska.

Statements of qualification and performance data will be evaluated on the following criteria.

- Technical approach
- Project team
- Past performance

The consultant shall comply with the City's insurance requirements, LB 403, Article X, Budget Year, and the Gratuities and Kickbacks policy.

TITLE VI

The City of Grand Island, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notified all bidden that it will affirmatively insure that in any contact entered into pursuant to this

advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin, sex, age and disability/handicap in consideration for an award.

SECTION 504/ADA NOTICE TO THE PUBLIC

The City of Grand Island does not discriminate on the basis of disability in admission of its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of their operations. The City of Grand Island also does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Questions, complaints, or requests for additional information or accommodation regarding the ADA and Section 504 may be forwarded to the designated ADA and Section 504 compliance coordinator.

Mary Lou Brown
308-385-5444, extension 140
100 East First Street, Grand Island, NE 68801
Monday through Friday; 8:00 a.m. to 5:00 p.m.

RaNae Edwards, City Clerk

**CITY OF GRAND ISLAND
REQUEST FOR STATEMENTS OF QUALIFICATION**

**Request for Statements of Qualification
For Consulting Engineering Services
Grand Island Eddy Street and Sycamore Street Union Pacific Railroad Underpasses**

The City of Grand Island Public Works Office is requesting contract specific statements of qualification (RFQ) and performance data for professional engineering services. The City will select one (1) consultant based on committee evaluation to enter into an agreement for engineering services regarding the Union Pacific Railroad Underpasses at Eddy Street and Sycamore Street in Grand Island. The City desires practical applications which best accomplish the objectives of the requested services while incorporating innovative and cost effective methods.

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If the firm has any questions regarding this request or the Draft Scope of Service, please contact Mr. Scott Griepenstroh at (308) 385-5444, extension 260, or scottg@grand-island.com.

The statement of qualification must contain the following information:

(Standard Form 330; Part I; Required, Part II; Not Required)

- 1) Resumes of key technical personnel who will actually be assigned to the project
- 2) A list of similar services completed by the firm and the firm's personnel to be assigned to this project. The list shall include the name of the client/ contact person and a telephone number for each reference project.
- 3) If the firm has more than one office, a list as to the amount of work to be completed in each office, i.e., the primary location/ office for each of the key technical personnel to be assigned to this project; the type of work to be completed in each office and the percentage of the total project work to be completed in each office.
- 4) A list of any sub-consultants that are to be used on this project, indicate the type of work to be completed by each sub-consultant and the percentage of the total project work to be completed by each sub-consultant.

- 5) A statement detailing the firm's approach in undertaking the requested services.
- 6) A statement detailing the firm's approach to anticipated special consulting aspects/issues. The detail of this information should be relative to the complexity of the requested engineering services.
- 7) The fee schedule shall include labor and expense rates for the range of labor categories anticipated for the requested services. The consultant selected may be retained as the City's consultant to provide bidding and construction services if necessary.

All work is to be coordinated by the direct supervision of experienced engineers registered in the State of Nebraska.

Statements of qualification and performance data will be evaluated on the following criteria.

- Technical approach
- Project team
- Past performance

The consultant shall comply with the City's insurance requirements, LB 403, Article X, Budget Year, and the Gratuities and Kickbacks policy.

Payment for the engineering services will be determined by hours worked plus miscellaneous expenses, up to a predetermined "not to exceed" amount. Time estimates for various portions of engineering services, man-hours by classification, and miscellaneous expenses shall be provided to the City at its request.

The City will not pay any costs incurred by the firm in preparing or submitting the contract-specific statement of qualifications. The City reserves the right to modify or cancel, in part or in its entirety, this public announcement. The City reserves the right to reject any or all contract-specific statement of qualifications, to waive defects or informalities, and to offer to contact with any firm in response to any contract-specific statements of qualification. This contract-specific statement of qualification does not constitute any form of offer to contract.

DRAFT SCOPE OF SERVICES

This draft scope of services is being provided so responding consultants may become aware of the potential scope of work involved. The selected consultant will work with the City to develop a detailed scope of work as part of the services to be provided. The selected consultant shall utilize existing plans and perform a preliminary site inspection to develop the detailed scope of work.

Retaining Walls and Sidewalk Tunnel

1. Evaluate and report adequacy of design.
2. Propose and perform inspection and testing method(s) to assess structural integrity.
3. If necessary, propose methods to correct structural deficiencies and develop cost estimates.

4. Evaluate condition of wall joints to determine adequacy to prevent loss of backfill material.
5. If necessary, propose wall joint rehabilitation methods and develop cost estimates.

Backfill Supporting Adjacent Pavement

1. Evaluate and report existence and extent of voids caused by loss of backfill material through retaining wall joints.
2. If necessary, propose corrective measures and develop cost estimates.

Drainage Systems

1. Evaluate and report adequacy of design.
2. Evaluate current inspection methods and maintenance routines and propose improvements if necessary.
3. If necessary, propose drainage system improvements and develop cost estimates.

Concrete Pavement (Street)

1. Propose criteria for determining the structural condition of the existing pavement and sub-base.
2. Conduct sampling and testing methods for determining the structural condition of the existing pavement and sub-base.
3. Propose rehabilitation/reconstruction schedule and develop cost estimates.

The selected consultant shall prepare a report summarizing findings that is accessible and understandable to the general public. The report shall include an appendix containing appropriate supporting technical data.

The City reserves the right to use the selected consultant for any construction services. These services shall include, but not be limited to the following activities:

1. Administration of construction contracts.
2. Continuous monitoring of construction progress.
3. Accurate and detailed records of the projects and submission of reports.
4. Coordination of any affected field changes and processing change orders.
5. Administration of the billing and payment procedures for the contract.
6. Materials testing coordination.
7. Construction surveying and staking.
8. Final project inspection, certification of project completion, and project closeout.
9. Prepare Record Documents.

MINIMUM INSURANCE REQUIREMENTS

1. WORKERS COMPENSATION AND EMPLOYER'S LIABILITY

This insurance shall protect the Bidder against all claims under applicable State workers compensation laws. This insurance shall provide coverage in every state in which work for this project might be conducted. The liability limits shall not be less than the following:

Workers Compensation	Statutory Limits
Employers Liability	\$100,000 each accident
	\$100,000 each employee
	\$500,000 policy limit

2. BUSINESS AUTOMOBILE LIABILITY

This insurance shall be written in comprehensive form and shall protect the Bidder, Bidder's employees, or subcontractors from claims due to the ownership, maintenance, or use of a motor vehicle. The liability limits shall be not less than the following:

Bodily Injury & Property Damage	\$ 500,000 Combined Single Limit
---------------------------------	----------------------------------

3. COMPREHENSIVE GENERAL LIABILITY

The comprehensive general liability coverage shall contain no exclusion relative to explosion, collapse, or underground property. The liability limits shall be not less than the following:

Bodily Injury & Property Damage	\$ 500,000 each occurrence
	\$1,000,000 aggregate

4. UMBRELLA LIABILITY INSURANCE

This insurance shall protect the Bidder against claims in excess of the limits provided under employer's liability, comprehensive automobile liability, and commercial general liability policies. The umbrella policy shall follow the form of the primary insurance, including the application of the primary limits. The liability limits shall not be less than the following:

Bodily Injury & Property Damage	\$1,000,000 each occurrence
	\$1,000,000 general aggregate

5. ADDITIONAL REQUIREMENTS

The City may require insurance covering a Bidder or subcontractor more or less than the standard requirements set forth herein depending upon the character and extent of the work to be performed by such Bidder or subcontractor.

Insurance as herein required shall be maintained in force until the City releases the Bidder of all obligations under the Contract.

The Bidder shall provide and carry any additional insurance as may be required by special provisions of these specifications.

6. CERTIFICATE OF INSURANCE

Satisfactory certificates of insurance shall be filed with the City prior to starting any work on this Agreement. The certificates shall show the City as an additional insured on all coverage except Workers Compensation. The certificate shall state that thirty (30) days written notice shall be given to the City before any policy is cancelled (strike the "endeavor to" wording often shown on

certificate forms). If the bidder cannot have the "endeavor to" language stricken, the bidder may elect to provide a new certificate of insurance every 30 days during the agreement. Bidder shall immediately notify the City if there is any reduction of coverage because of revised limits or claims paid which affect the aggregate of any policy.

TITLE VI: The City of Grand Island, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notified all bidden that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to *this* invitation and will not be discriminated against on the grounds of race, color, or national origin, sex, age and disability /handicap in consideration for an award.

SECTION 504/ADA NOTICE TO THE PUBLIC: The City of Grand Island does not discriminate on the basis of disability in admission of its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of their operations. The City of Grand Island also does not discriminate on the basis of disability in its hiring or employment practices.

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End of Notice of Public Announcement

RESOLUTION 2011-199

WHEREAS, the City of Grand Island invited qualifications for engineering consulting services related to the Grand Island Eddy Street and Sycamore Street Union Pacific Railroad Underpasses, according to Request for Statement of Qualifications on file with the Engineering Division of the Public Works Department; and

WHEREAS, on July 7, 2011 statement of qualifications were received, reviewed, and evaluated in accordance with established criteria; and

WHEREAS, Kirkham, Michael & Associates, Inc. of Omaha, Nebraska submitted a statement of qualifications in accordance with the terms of the Request for Qualifications and all statutory requirements contained therein and the City Procurement Code with the work performed at actual costs with a maximum amount of \$42,932.20.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Statement of Qualifications from Kirkham, Michael & Associates, Inc. of Omaha, Nebraska for engineering consulting services related to the Grand Island Eddy Street and Sycamore Street Union Pacific Railroad Underpasses is hereby approved.

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

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, August 9, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
August 4, 2011	☐ City Attorney