



# City of Grand Island

Tuesday, September 27, 2011

Council Session

## Item G25

**#2011-278 - Approving Agreement for Engineering Consulting Services Related to Grand Island Resurfacing – Various Locations**

Staff Contact: John Collins, Public Works Director

# Council Agenda Memo

**From:** Scott Griepenstroh, PW Project Manager

**Meeting:** September 27, 2011

**Subject:** Approving Agreement for Engineering Consulting Services Related to Grand Island Resurfacing – Various Locations

**Item #'s:** G-25

**Presenter(s):** John Collins, Public Works Director

## Background

The City of Grand Island Public Works Department sought STP funds for the Various Locations in Grand Island Resurfacing project. This proposed project consists of removing 2” of existing bituminous surfacing by cold milling and placement of 2” new Asphaltic Concrete in the following locations.

- Blaine Street – Garland Street to Stolley Park Road
- Blaine Street – Stolley Park Road to the Beltline Trail
- First Street – Walnut Street to Sycamore Street
- North Road - 13th Street to State Street
- Independence Avenue – Capital Avenue to Nebraska Highway 2
- Broadwell Avenue - Anna Street to Second Street
- Broadwell Avenue – Second Street to State Street

This project is coordinated with and supplements the Grand Island Streets Division Pavement Preservation Plan. This project will relieve the City of funding these improvements solely with Capital Improvement Program funds.

A Project Programming Request for the “Various Locations in Grand Island” project was prepared by Public Works and approved by the Nebraska Department of Roads (NDOR) April 5, 2011. The estimated total cost of the entire project, including preliminary engineering, environmental clearance and construction oversight is \$2,747,266. The estimated portion the City of Grand Island will be responsible for is \$549,453. Construction is anticipated to be completed in 2013.

City Council approved an agreement between the City and the Nebraska Department of Roads (NDOR) on May 24, 2011 for this project. The Project Program Agreement between the City of Grand Island and Nebraska Department of Roads specifies the various duties and funding responsibilities of this Federal-aid project. The Program Agreement requires that NDOR Standards and Specifications are to be used for design, construction inspection and quality control.

All agreements must be approved by the City Council.

### **Discussion**

Two (2) proposals for preliminary engineering and environmental clearance services were received. Olsson Associates of Omaha, Nebraska was selected as the top engineering firm based on the pre-approved selection criteria.

The Nebraska Department of Roads has approved the selection and prepared the attached agreement. The work is to be performed at actual costs with a maximum amount of \$169,712.83, plus a fixed-fee-for-profit amount of \$21,274.82, for a total agreement amount of \$190,987.65 . The fixed-fee is computed upon the direct labor or wage costs, indirect labor costs, indirect-non-labor costs, and direct payroll additives.

### **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 with Olsson Associates of Omaha, Nebraska.

### **Sample Motion**

Move to approve the resolution.



Jason Eley, Purchasing Agent

*Working Together for a  
Better Tomorrow, Today*

**REQUEST FOR PROPOSAL  
FOR  
ENGINEERING SERVICES FOR PROJECT URB-5409(2) CN 42709  
RESURFACING VARIOUS LOCATIONS**

**RFP DUE DATE:** July 19, 2011 at 4:00 p.m.  
**DEPARTMENT:** Public Works  
**PUBLICATION DATE:** June 28, 2011, July 5, 2011 & July 12, 2011  
**NO. POTENTIAL BIDDERS:** 10

**SUMMARY OF PROPOSALS RECEIVED**

**Olsson Associates**  
Lincoln, NE

**Miller & Associates**  
Kearney, NE

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

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

**P1485**

**LPA – CONSULTANT  
PRELIMINARY ENGINEERING AGREEMENT**

CITY OF GRAND ISLAND  
OLSSON ASSOCIATES, INC.  
PROJECT NO. URB-5409(2)  
CONTROL NO. 42706  
GRAND ISLAND RESURFACING – VARIOUS LOCATIONS  
PRELIMINARY ENGINEERING  
AND NEPA DOCUMENTATION SERVICES

THIS AGREEMENT, made and entered into by and between the City of Grand Island, Nebraska, hereinafter referred to as the Local Public Agency or LPA, and Olsson Associates, Inc., hereinafter referred to as the Consultant.

WITNESSETH

WHEREAS, the LPA desires to engage the Consultant to render professional services for the above named project at the location shown on EXHIBIT "A", which is attached and hereby made a part of this agreement, and

WHEREAS, the Consultant is qualified to do business in Nebraska and has met all requirements of the Nebraska Board of Engineers and Architects to provide consultant engineering services in the State of Nebraska, and

WHEREAS, Consultant is willing to perform the services in accordance with the terms hereinafter provided, is presently in compliance with Nebraska law, and hereby agrees to comply with all federal, state, and local laws and ordinances applicable to this agreement, and

WHEREAS, the Consultant and LPA intend that the services provided by Consultant comply with all applicable federal-aid transportation related program requirements, so that LPA's project will be fully eligible for federal reimbursement, and

WHEREAS, the LPA and Consultant intend that the services under this agreement be completed in accordance with the terms and conditions of the Nebraska LPA Guidelines Manual for Federal Aid Projects; hereinafter referred to as LPA Manual; the LPA Manual is a document approved by the Federal Highway Administration (FHWA) that sets out the requirements for local federal-aid projects to be eligible for federal reimbursement; the LPA Manual can be found in its entirety at the following web address:

<http://www.transportation.nebraska.gov/gov-aff/lpa/lpa-guidelines.pdf>, and

WHEREAS, the Consultants primary contact person for LPA will be the LPA's representative, who has been designated as being in responsible charge of the project, and who is referred to herein as RC or Responsible Charge.

WHEREAS, the parties understand that the State of Nebraska, Department of Roads is involved in this federal-aid project on behalf of the FHWA only for issues related to the eligibility of the project for reimbursement of project costs with federal-aid funds.

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

#### SECTION 1. DEFINITIONS

Wherever in this agreement the following terms are used, they will have the meaning here given:

"CONSULTANT" means Olsson Associates, Inc. and any employees thereof, whose business and mailing address is 1111 Lincoln Mall, Suite 111, Lincoln, NE 68508, and

"LPA" means a Local Public Agency. Local Public Agencies include, but are not necessarily limited to; Nebraska Cities, Villages, Counties, Political Subdivisions, Native American Tribes, and other entities or organizations found to be eligible sub recipients of federal funds for transportation projects, and

"LPA MANUAL" shall mean the Nebraska Department of Roads' LPA Guidelines Manual for Federal-Aid Projects. The LPA Manual can be found in its entirety at the following web address: <http://www.transportation.nebraska.gov/gov-aff/lpa/lpa-guidelines.pdf>, and

"RESPONSIBLE CHARGE" or "RC" shall mean LPA's representative for the project whose duties and responsibilities are identified in federal law and in the LPA Manual, and

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, its Director, or authorized representative. The State represents the United States Department of Transportation on federally funded transportation projects sponsored by a sub recipient of federal funds and any reference to the "State" in this agreement shall mean the State on behalf of the United States Department of Transportation.

"FHWA" means the Federal Highway Administration, United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

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

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

To "SUSPEND" the work means that the LPA has determined that progress is not sufficient, or that the conditions or intentions as originally existed have changed, or the work completed or submitted is unsatisfactory, and that the work as contemplated herein should be

stopped on a temporary basis. This cessation will prevail until the LPA determines to abandon or terminate the work or to reinstate it under the conditions as defined in this agreement.

To "TERMINATE" or the "TERMINATION" of this agreement is the cessation or quitting of this agreement based upon action or failure of action on the part of the Consultant as defined herein and as determined by the LPA.

#### SECTION 2. SCOPE OF SERVICES

The Consultant shall provide preliminary engineering and NEPA documentation services for Project No. URB-5409(2), Control No. 42706, in Hall County, Nebraska. The scope shall be developed in accordance with the LPA manual and attached hereto as Exhibit "B".

#### SECTION 3. PERSONNEL

The Consultant has furnished a personnel chart or list in EXHIBIT "D". Personnel who are added to Exhibit "D" as replacements must be persons of comparable training and experience. Personnel added to Exhibit "D" as new personnel and not replacements must be qualified to perform the intended work. The Consultant shall notify the LPA of any personnel changes. The LPA reserves the right to accept or reject the personnel change. Failure on the part of the Consultant to provide acceptable replacement personnel or qualified new personnel as determined by the LPA will be cause for termination of this agreement, with settlement to be made as provided in the CHANGE OF PLAN, ABANDONMENT, SUSPENSION, OR TERMINATION section of this agreement.

#### SECTION 4. NEW EMPLOYEE WORK ELIGIBILITY STATUS

The Consultant agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. The Consultant hereby agrees to contractually require any subconsultants to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

The undersigned duly authorized representative of the Consultant, by signing this agreement, hereby attests to the truth of the following certifications, and agrees as follows:

**Neb.Rev.Stat. § 4-114.** I certify compliance with the provisions of Section 4-114 and, hereby certify that this Consultant 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. I agree to require all subconsultants, by contractual agreement, to require the same registration and verification process.

If the Consultant is an individual or sole proprietorship, the following applies:

1. The Consultant must complete the United States Citizenship Attestation form, available on the Department of Roads website at [www.transportation.nebraska.gov/proidev/#save](http://www.transportation.nebraska.gov/proidev/#save).
2. If the Consultant indicates on such Attestation form that he or she is a qualified alien, the Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify the Consultant lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Consultant understands and agrees that lawful presence in the United States is required and the Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

#### SECTION 5. STANDARD PRACTICES AND REQUIREMENTS

It is mutually agreed that at the request of the LPA, the Consultant shall provide the LPA a detailed report of the product and progress of the work and allow inspection of the existing work product. From time to time, additions, deletions, changes, elaborations, or modifications of the services performed under the terms of this agreement may be determined by the LPA to be desirable or preferable. These changes will be made by supplement agreement.

#### SECTION 6. NOTICE TO PROCEED AND COMPLETION

The LPA will issue the Consultant a written Notice-to-Proceed when LPA determines that federal funding approval has been obtained for the project, upon full execution of the agreement and upon State concurrence that the form of this agreement is acceptable for federal funding eligibility. Any work or services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed is not eligible for reimbursement.

The Consultant shall do all the work according to the schedule in attached EXHIBIT "B" and shall complete all work required under this agreement in a satisfactory manner by March 2012.



Any costs incurred by Consultant after the completion deadline are not eligible for federal funding reimbursement unless the Consultant has received an extension of time in writing from LPA and the LPA has federal funding approval for the extension of time.

The completion time will not be extended because of any avoidable delay attributed to the Consultant, but delays attributable to the LPA may constitute a basis for an extension of time.

LPA authorized changes in the scope of work, which increase or decrease work-hours or services required of the Consultant, will provide the basis for a change of time and/or changes to the Consultant's fee.

#### SECTION 7. FEES AND PAYMENTS

- A. For performance of the services as described in this agreement, the Consultant will be paid a fixed-fee-for-profit of \$21,274.82, as defined in paragraph D of this section, and up to a maximum amount of \$169,712.83 for actual costs as defined in paragraph E of this section, that are allowable subject to the terms of this agreement and to all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31). The total agreement amount is \$190,987.65.
- B. Occasionally, the conditions of this agreement may change. This may be due to a change in scope which may require an adjustment of costs. In order to justify the need to modify this contract, the LPA must first determine that the situation meets the following criteria:
- That the additional work is beyond the scope of services initially negotiated with Consultant; and
  - That the proposed Services are within the scope of the Request for Proposal under which Consultant was selected and contract entered into; and
  - That it is in the best interest of the LPA that the services be performed under this agreement.

Once the need for a modification has been established, a supplemental agreement will be prepared.

If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the LPA shall use the Consultant Work Order Form (DR Form 250) to describe and provide necessary justification for the modification of the scope of services, the deliverables, the schedule, and to document the

estimated total additional fee. DR Form 250 is available on the State's webpage at: [www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html#forms4](http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html#forms4). The Consultant Work Order must be executed to provide authorization for the additional work and to specify when that work may begin. This agreement will be supplemented after one or more Consultant Work Orders have been authorized and approved for federal funding.

- C. The LPA is not responsible for costs incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in the NOTICE TO PROCEED AND COMPLETION Section of this agreement or as provided in a written time extension notification.
- D. The fixed-fee is computed upon the direct labor or wage costs, indirect labor costs, indirect non-labor costs, and direct payroll additives. The fixed-fee is not allowable upon direct non-labor costs. The fee for profit is calculated by multiplying the sum of the wages and overhead costs billed by the negotiated fee for profit rate of "12.90%".
- E. Actual costs include direct labor costs, direct non-labor costs, and overhead costs.
  - (1) Direct Labor Costs are the earnings that individuals receive for the time they are working directly on the project.
    - (a) Hourly Rates: For hourly employees, the hourly earnings rate shall be the employee's straight time hourly rate for the pay period in which the work was performed. For salaried employees, the hourly earnings rate shall be their normal hourly rate as established by the company's compensation plan,
    - (b) Time records: The hours charged to the project must be supported by adequate time distribution records. The records must clearly indicate the distribution of hours to all activities on a daily basis for the entire

pay period, and there must be a system in place to ensure that time charged to each activity is accurate.

- (2) Direct Non-Labor Costs charges in this category include actual allowable expenses for personnel away from their base of permanent assignment, communication costs, reproduction and printing costs, computer charges, special equipment and materials required for the project, special insurance premiums if required solely for this agreement, and such other similar items. A non-labor cost cannot be charged as a direct cost and also be included in the Consultant's overhead rate. If for reasons of practicality, the consultant is treating a direct non-labor cost category, in its entirety, as an overhead cost, then costs from that category are not eligible to be billed to this project as a direct expense.

Payment for eligible direct non-salary costs must be made on receipted invoices whenever possible, or on certified billings of the Consultant. For purposes of standardization on this agreement, the following expenses will be reimbursed at actual costs, not to exceed the rates as shown below.

Company Automobile/Pick-up truck - The reimbursement for automobile/pick-up truck mileage shall be the prevailing standard rate as established by the Internal Revenue Services through its Revenue Procedures - currently 55.5 cents per mile.

Company Survey Vehicle - Currently 58 cents per mile (2.5 cents above Company Automobile/Pick-up truck)

Privately Owned Vehicle - Actual reimbursement to employee, not to exceed rates shown for company vehicles outlined above

Automobile Rental - Actual reasonable cost

Air fare - Actual reasonable cost giving the State all discounts

Lodging - Actual cost – excluding taxes and fees: Not to exceed the federal lodging reimbursement guidelines, as periodically determined by the U.S. General Services Administration – currently at the following rates:

Not to exceed \*\$70.00 per person daily

\*Omaha/Douglas County, not to exceed

\$101.00 per person daily

Meals - **Actual cost – including tax and gratuity:** Not to exceed the federal per meal reimbursement guidelines, as periodically determined by the U.S. General Services Administration – currently at the following rates:

	<b>Statewide</b>	<b>Omaha/Douglas County</b>
Breakfast	\$ 7.00	\$ 10.00
Lunch	11.00	15.00
Dinner	<u>23.00</u>	<u>31.00</u>
Totals	<u>\$41.00</u>	<u>\$56.00</u> (Includes tax and gratuity)

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

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

Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.

The Consultant shall note the actual lodging and meal costs in a daily diary, expense report, or on the individual's time report along with the time of departure to the project and time of return to the headquarters town. The total daily meal costs must not exceed \$41.00 per person, with the exception of Omaha/Douglas County, which must not exceed \$56.00 per person (includes tax and gratuity). When requested by LPA or State, the Consultant will provide a copy of the meal receipts.

(3) Overhead Costs include indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with 48 CFR 31. Overhead costs are to be allocated to the project as a percentage of direct labor costs. The Consultant will be allowed to charge the project using its actual allowable overhead rate. Overhead rate increases which occur during the project period will not be cause for an increase in the maximum amount established in paragraph A of this section. When an audit is performed by the State at the completion of the work, the actual allowable overhead rate for the year the project labor was incurred will be applied to the direct labor costs for that year. If a particular year's actual overhead has not yet been computed or approved by the State, the most recent year's accepted rate will be applied. The audit may result in additional funds due the Consultant or a cost due from the Consultant to the State.

F. The Consultant shall submit invoices to the LPA at a minimum of monthly intervals and in accordance with the "LPA Reimbursement Procedure" located on the State's webpage at: [www.transportation.nebraska.gov/qov-aff/lpa-guide-man.html#policies](http://www.transportation.nebraska.gov/qov-aff/lpa-guide-man.html#policies).

The invoices must present actual direct labor, actual overhead, actual direct non-labor costs, as well as the fixed-fee based upon the actual direct labor and overhead costs billed for that period. The invoices must identify each employee by name and classification, the hours worked, and each individual's actual labor cost. Direct non-labor expenses must be itemized and provide a complete description of each item billed.

Each monthly invoice must be substantiated by a progress report which is to include/address, as a minimum:

1. A description of the work completed for that period
2. A description of the work anticipated for the next pay period
3. Information needed from LPA
4. Percent of work completed to date
5. A completed "Cost Breakdown Form" which is located on the State's webpage at

[www.transportation.nebraska.gov/qov-aff/lpa-guide-man.html#forms4](http://www.transportation.nebraska.gov/qov-aff/lpa-guide-man.html#forms4).

If the Consultant does not submit a monthly invoice, it shall submit its progress report monthly.

- G. The State, on behalf of LPA, will make every effort to pay the Consultant within 30 days of receipt of the Consultant's invoices. Payments are dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the LPA and State determines that the work submitted is satisfactory. Upon determination that the work was adequately substantiated and satisfactory, payment will be made in the amount of 100 percent of the billed actual costs and fixed fee upon acceptance by the LPA and State, a final audit of all invoiced amounts will be completed by the State or its authorized representative. The Consultant agrees to reimburse the State for any overpayments discovered by the State or its authorized representative.
- The acceptance by the Consultant of the final payment will constitute and operate as a release to the LPA and State for all claims and liability to the Consultant, its representatives, and assigns, for any and all things done, furnished, or relating to the services rendered by or in connection with this agreement or any part thereof.
- H. The Consultant shall maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three years from the date of final cost settlement under this agreement. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, the Consultant shall furnish copies at the expense of the requestor.

#### SECTION 8. PROFESSIONAL PERFORMANCE

The Consultant understands that the LPA will rely on the professional performance and ability of the Consultant. Any examination by the LPA, State or the FHWA, or any acceptance or use of the work product of the Consultant, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of the Consultant which would relieve the Consultant from any liability or expense that would be connected with the Consultant's sole responsibility for the propriety and integrity of the professional work to be accomplished by the Consultant pursuant to this agreement. That further, acceptance or approval of any of the work of the Consultant by the LPA or of payment, partial or final, will not constitute a waiver of any rights of the LPA to recover from the Consultant, damages that are caused by the Consultant due to error, omission, or negligence of the Consultant in its work. That further, if due to error, omission, or negligence of the

Consultant, the plans, specifications, and estimates are found to be in error or there are omissions therein revealed during the construction of the project and revision or reworking of the plans is necessary, the Consultant shall make such revisions without expense to the LPA. The Consultant shall respond to the LPA's or State's notice of any errors or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to the construction contractor. This may involve visits by the Consultant to the project site, if directed by the LPA. If the Consultant discovers errors in its work, it shall notify the LPA and State of the errors within seven days. Failure of the Consultant to notify the LPA will constitute a breach of this agreement. The Consultant's legal liability for all damages incurred by the LPA caused by error, omission, or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the LPA.

#### SECTION 9. CHANGE OF PLAN, ABANDONMENT, SUSPENSION, OR TERMINATION

Additions to the schedule of services, if approved in writing, will require negotiation of a supplemental agreement. For any work beyond the schedule of services, the Consultant shall document the additional work, estimate the cost to complete the work, and receive written approval from the LPA before the Consultant begins the work. Any such work performed by the Consultant prior to written approval of the LPA will be done at the expense of the Consultant.

The LPA has the absolute right to abandon the project or to change the general scope of work at any time and such action on its part will in no event be deemed a breach of agreement. The LPA can suspend or terminate this agreement at any time. Such suspension or termination may be affected by the LPA giving the Consultant seven days written notice.

If the LPA abandons or subtracts from the work, or suspends or terminates the agreement as presently outlined, the Consultant will be compensated in accordance with the provisions of 48 CFR 31, provided however, that in case of suspension, abandonment, or termination for breach of this agreement or for tender of improper work, the LPA can suspend payments, pending the Consultant's compliance with the provisions of this agreement. In determining the percentage of work completed, the LPA will consider the work performed by the Consultant prior to abandonment or termination to the total amount of work contemplated by this agreement. The ownership of all project plans and supporting documents completed or partially completed at the time of such termination or abandonment will be retained by the LPA and the Consultant shall immediately deliver all project plans and supporting documents to the LPA.

#### SECTION 10. OWNERSHIP OF DOCUMENTS

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

LPA acknowledges that such data may not be appropriate for use on an extension of the work covered by this agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at the LPA's sole risk and without legal exposure or liability to Consultant.

#### SECTION 11. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION

Certain information provided by the LPA or State to the Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §409. "Confidential information" means any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §409. "Privileged document" means any document pertaining to any file or project maintained by the LPA or State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between an LPA or State employee and Legal Counsel. This confidential and privileged information is vital and essential to the Consultant in order that the Consultant adequately design the project at hand on behalf of the LPA or State.

The Consultant agrees it will only use any information or documentation that is considered to be privileged or confidential for the purposes of executing the services by which it has agreed to render for the LPA or State for the project at hand only. The Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. The LPA agrees that any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked with the following information:

**"CONFIDENTIAL INFORMATION:** Federal Law, 23 U.S.C §409, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The LPA has not waived any privilege it may assert as provided by



that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient.”

The Consultant agrees to obtain the written approval of the Consultant Coordinator prior to the dissemination of any privileged or confidential information or documentation if it is unclear to the Consultant whether such information or documentation is in fact privileged or confidential.

The Consultant and the LPA agree that any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant will create liability on the part of the Consultant to the LPA for any damages that may occur as a result of the unauthorized dissemination. The Consultant agrees to hold harmless, indemnify, and release the LPA for any liability that may ensue on the part of the LPA for any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant.

#### **SECTION 12. FORBIDDING USE OF OUTSIDE AGENTS**

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the LPA has the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **SECTION 13. NON-RAIDING CLAUSE**

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

#### **SECTION 14. GENERAL COMPLIANCE WITH LAWS**

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

#### **SECTION 15. DISPUTES**

Any dispute concerning a question of fact in connection with the work covered under this agreement will be addressed in accordance with LPA Manual Section 4.4.3.5 DISPUTE RESOLUTION.

#### SECTION 16. RESPONSIBILITY FOR CLAIMS AND LIABILITY

The Consultant agrees to save harmless the LPA from all claims and liability due to the activities of the Consultant or those of the Consultant's agents or employees in the performance of work under this agreement. In this connection, the Consultant shall for the life of this agreement, carry insurance as outlined in Exhibit "C" and attached hereto, and hereby made a part of this agreement.

#### SECTION 17. PROFESSIONAL REGISTRATION

The Consultant shall affix the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all plans, documents, and specifications prepared under this agreement as required by the Nebraska Engineers and Architects Regulations Act, Neb.Rev.Stat §81-3401 et. seq.

#### SECTION 18. SUCCESSORS AND ASSIGNS

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

#### SECTION 19. DRUG-FREE WORKPLACE POLICY

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

#### SECTION 20. FAIR EMPLOYMENT PRACTICES ACT

The Consultant agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb.Rev.Stat. 48-1101 through 48-1126, which is hereby made a part of and included in this agreement by reference.

#### SECTION 21. DISABILITIES ACT

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

#### SECTION 22. DISADVANTAGED BUSINESS ENTERPRISES

The Consultant shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part of and included in this agreement by reference.

The Consultant shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of FHWA-assisted contracts. Failure of the Consultant to carry out the requirements set forth above will constitute a breach of this agreement and, after the

notification of the FHWA, may result in termination of this agreement by the LPA or such remedy as the LPA deems appropriate.

SECTION 23. NONDISCRIMINATION

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

- E. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this agreement, the LPA will impose such agreement sanctions as it or the State and FHWA may determine to be appropriate, including but not limited to withholding of payments to the Consultant under this agreement until the Consultant complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.
- F. Incorporation of Provisions: The Consultant shall include the provisions of paragraphs A through E of this section in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Consultant shall take such action with respect to any subagreement or procurement as the LPA, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a Subconsultant/ Subcontractor as a result of such direction, the Consultant may request that the LPA enter into such litigation to protect the interests of the LPA and, in addition, the Consultant may request that the State and United States enter into such litigation to protect the interests of the State and United States.

#### SECTION 24. SUBLETTING, ASSIGNMENT, OR TRANSFER

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

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

#### SECTION 25. CONFLICT OF INTEREST

The Consultant shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions in order for the project to remain fully eligible for State or Federal funding. Consultant should review, understand and follow the instructions provided in the NDOR CONFLICT OF INTEREST

#### GUIDANCE DOCUMENT for CONSULTANTS for LOCAL FEDERAL-AID

TRANSPORTATION PROJECTS located on the State website at the following location:

<http://www.dor.state.ne.us/gov-aff/lpa/chapter-forms/coi/coi-guidance-doc-consultant.pdf>

Consultant must also complete and sign the **CONFLICT OF INTEREST DISCLOSURE FORM FOR CONSULTANTS for Local Federal-aid Transportation Projects**, for each project. This form is located on the State website at the following location:

<http://www.dor.state.ne.us/gov-aff/lpa/chapter-forms/coi/coi-disclosure-doc-consultant.pdf>

Consultants and sub-consultants providing services for LPA's, or submitting proposals for services, shall have the duty to notify the LPA and the NDOR LPD PC and submit a revised Conflict of Interest Disclosure Form for Consultants for any changes in circumstances, or discovery of any additional facts, that could result in someone employed by, or who has an ownership, personal, or other interest with Consultant or sub-consultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

#### **SECTION 26. CONSULTANT CERTIFICATIONS**

The undersigned duly authorized representatives of the Consultant, by signing this agreement, hereby swears, under the penalty of law, the truth of the following certifications, and agrees as follows:

- A. **Neb.Rev.Stat. § 81-1715(1)**. I certify compliance with the provisions of Section 81-1715 and, to the extent that this contract is a lump sum or actual cost-plus-a-fixed fee professional service contract, I hereby certify that wage rates and other factual unit costs supporting the fees in this agreement are accurate, complete, and current as of the date of this agreement. I agree that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the LPA determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. Neb.Rev.Stat. §§ 81-1701 through 81-1721.
- B. Neb. Rev. Stat. §§ 81-1717 and 1718. I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:
  1. Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona

fide employee working solely for me or the above Consultant) to solicit or secure this agreement, or

2. Has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
3. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).

**C. Certification Regarding Debarment, Suspension, and Other Responsibility**

**Matters-Primary Covered Transactions.** Section C1 below contains 10 instructions that consultant agrees to follow in making the certifications contained in C2.

**1. Instructions for Certification**

- a. By signing this agreement, the Consultant is providing the certification set out below.
- b. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. The Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the LPA's determination whether to enter into this agreement. However, failure of the Consultant to furnish a certification or an explanation will disqualify the Consultant from participation in this agreement.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the State determined to enter into this agreement. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the LPA may terminate this agreement for cause or default.
- d. The Consultant shall provide immediate written notice to the LPA if at any time the Consultant learns that its certification was erroneous

when submitted or has become erroneous by reason of changed circumstances.

- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- f. The Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the LPA before entering into this agreement.
- g. The Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the State without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. The Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.
- i. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if the Consultant in a covered transaction knowingly

enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the LPA may terminate this agreement for cause or default.

**2. Certification Regarding Debarment, Suspension, and Other**

**Responsibility Matters - Primary Covered Transactions**

- a. By signing this agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - ii. Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph A.(ii) of this certification; and
  - iv. Have not within a three-year period preceding this agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
- b. Where the Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this agreement. I acknowledge that this certification is to be furnished to the State and the FHWA in connection with this agreement involving participation of federal-aid highway funds and is subject to applicable, state and federal laws, both criminal and civil.



SECTION 27. LPA CERTIFICATION

By signing this agreement, I, Jay Vavricek, do hereby certify that, to the best of my knowledge, the Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this certification is to be furnished to the FHWA, upon their request, in connection with this agreement involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

SECTION 28. ALL ENCOMPASSED

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

After being duly sworn on oath, I do hereby acknowledge the foregoing certification and state that I am authorized to sign this agreement.

EXECUTED by the Consultant this \_\_\_\_ day of \_\_\_\_\_, 2011.

OLSSON ASSOCIATES, INC.  
Randall J. Kaster, PE

\_\_\_\_\_  
Principal

STATE OF NEBRASKA )  
                                  )ss.  
LANCASTER COUNTY )

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

EXECUTED by the LPA this \_\_\_\_ day of \_\_\_\_\_, 2011 .

CITY OF GRAND ISLAND  
Jay Vavricek

\_\_\_\_\_  
Mayor

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Clerk

STATE OF NEBRASKA  
DEPARTMENT OF ROADS  
Form of Agreement Approved for  
Federal Funding Eligibility:

\_\_\_\_\_  
Date

RESOLUTION 2011-278

WHEREAS, by Resolution 2011-125 Grand Island City Council approved entering into an agreement with the Nebraska Department of Roads for the Grand Island Resurfacing – Various Locations Project; and

WHEREAS, the City of Grand Island solicited proposals for engineering consulting services for such project; and

WHEREAS, the City of Grand Island and Olsson Associates of Omaha, Nebraska wish to enter into an Engineering Services Agreement to provide engineering consulting services for such project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Engineering Services Agreement between the City of Grand Island and Olsson Associates of Omaha, Nebraska for engineering consulting services related to the Grand Island Resurfacing – Various Locations Project 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, September 27, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk