



# City of Grand Island

Tuesday, November 13, 2012

Council Session

## Item G18

**#2012-331 - Approving Agreement for Utility Relocation Services to be Performed by the City Utility Department for the US-30 Drainage Improvement Project**

Staff Contact: Terry Brown, Interim Public Works Director

# Council Agenda Memo

**From:** Scott Griepenstroh, Project Manager

**Meeting:** November 13, 2012

**Subject:** Approving Agreement for Utility Relocation Services to be performed by the City Utility Department for the US-30 Drainage Improvement Project

**Item #'s:** G-18

**Presenter(s):** Terry Brown, Interim Public Works Director

## Background

All agreements must be approved by the City Council.

The purpose of the US-30 Drainage Improvement project is to construct storm sewer to the detention cell at the former location of the Wasmer Elementary School from connections on Second Street at Logan Street, Broadwell Avenue, and Madison Street. The improvements will significantly reduce the likelihood of flooding during storm events on Second Street. The project includes constructing drainage inlets on First Street and Division Street between Logan Street and Madison Street, which will provide drainage relief in those areas as well.

This project will receive Federal Funding through the Surface Transportation Program (STP). The Federal Highway Administration (FHWA) has agreed to participate on 77% of the construction and utility relocation costs, which STP funding would then be applied on an 80/20 basis. The actual funding split for construction and utility relocation costs will be 61.6% Federal Aid and 38.4% local funds.

On Logan Street between Second Street and First Street, storm sewer will be constructed on the public right-of-way on the east side of the pavement. This location was selected in order to avoid conflicts with an existing 20" water main under the pavement on Logan Street. The storm sewer will conflict with underground power infrastructure located near the utility easement between Second Street and First Street.

## **Discussion**

The City of Grand Island Utility Department prepared plans and a cost estimate to relocate the underground power infrastructure into the utility easement east of the conflict with the planned storm sewer. Relocation work includes removal and replacement of asphalt pavement, installation of a new sectionalizing cabinet, and replacement of underground power cable. The estimated cost for relocation of the underground power infrastructure is \$29,660.00.

The Nebraska Department of Roads Local Projects Division determined that since the work will be performed by City forces, an agreement between the City of Grand Island and the Nebraska Department of Roads was appropriate. The City will be reimbursed 61.6% of the actual costs. The Capital Improvement Program will fund the City's share of 38.4%.

Approval of Environmental Documents was received in July. Approval of 90% Plans and acquisition of easements are anticipated to be completed in the next three months. Construction of this project is anticipated to begin in 2013.

## **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 for Utility Relocation Services to be performed by the City Utility Department for the US-30 Drainage Improvement Project.

## **Sample Motion**

Move to approve the agreement.

PROFESSIONAL SERVICES, LPA STAFF  
UTILITY SERVICES

NEBRASKA DEPARTMENT OF ROADS  
CITY OF GRAND ISLAND, NEBRASKA  
PROJECT NO. URB-30-4(158)  
CONTROL NO. 40352A  
US-30 DRAINAGE IMPROVEMENT

THIS AGREEMENT, made and entered into by and between the Nebraska Department of Roads, hereinafter referred to as the "State", and the City of Grand Island, Nebraska, hereinafter referred to as the Local Public Agency (LPA)".

WITNESSETH

WHEREAS, the LPA and State have entered into a Program Agreement for the above named project executed on April 21, 2011, and identified as Agreement No. BL1190, and

WHEREAS, the approximate location of LPA's project is shown on Exhibit "A", which is attached and hereby made a part of this agreement, and

WHEREAS, the project will be the sole responsibility of the LPA; no State funds will be used for this project, and the State's involvement in this project is expressly limited to acting as the representative of the FHWA for eligibility of the project for federal funding;

WHEREAS, the LPA desires to perform underground power line relocation services for this project using LPA's own staff, and

WHEREAS, the LPA staff is properly qualified and meets all requirements to provide professional services for this project, and

WHEREAS, the LPA desires to be reimbursed for this work from Federal funds made available for this project, and

WHEREAS, LPA is willing to perform the services in accordance with the terms hereinafter provided, agrees to comply with all federal, state, and local laws and ordinances applicable to this agreement, and agrees to comply with all applicable federal-aid transportation related program requirements, so that LPA's project will be eligible for federal reimbursement and

WHEREAS, the State is willing to reimburse LPA for its work under this Agreement with federal funds so long as the LPA's services remain eligible for federal funding.

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 shall have the following meaning:

"LPA" stands for Local Public Agency, and in this agreement means the City of Grand Island, Nebraska, unless the context otherwise requires. LPA may also be used to refer generally to other Local Public Agencies. 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.

"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.

"PHASE OF WORK" means the distinct work phases established for federal aid transportation projects and are the following;

1. Preliminary Engineering/NEPA (*PE*)
2. Final Design
3. Right-of-Way (*ROW*)
4. Utilities
5. Construction Engineering (*CE*)
6. Construction

Each new work phase requires FHWA to: 1) approve obligation of funds, 2) authorize work in that phase to begin, and 3) NDOR to issue a notice-to-proceed to the LPA.

To "ABANDON" this agreement means that the State has determined that conditions or intentions as originally existed have changed and that the agreement 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 State 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 State determines to terminate the work or to reinstate it under the conditions as defined in this agreement.

To "TERMINATE" is to end this agreement before the time set out in the TERM OF THE AGREEMENT section.

SECTION 2. THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

SECTION 3. PROGRAM AGREEMENT

All terms of the project Program Agreement will remain in full force and effect. This agreement provides more specific terms related to the preliminary engineering phase of LPA's project. The terms of the Program Agreement govern over contrary or inconsistent terms of this agreement, unless a provision of this agreement specifically supersedes a provision of the Program Agreement.

SECTION 4. TERM OF THE AGREEMENT

This agreement becomes effective on the date it is signed by the State and will end upon: (1) the waiver of an audit review or (2) the final completion of an audit review by the State or its authorized representative, and the resolution of all issues identified in the audit report.

SECTION 5. SCOPE OF SERVICES (LPA provided PE)

The LPA shall provide underground power line relocation services for Project URB-30-4(158), Control No. 40352A, in Hall County, Nebraska.

Upon receiving a written notice to proceed from the State, the LPA shall complete the services required under this agreement as set out in Section 13 of the project Program Agreement and as set out in Exhibit "B", Scope of Services, and the State approved LPA cost estimate, both of which are attached and hereby made a part of this agreement.

The LPA is solely responsible for completing all necessary tasks related to the preliminary engineering for this project. LPA shall comply with all applicable federal, state and local laws and the LPA Manual concerning the preliminary engineering of the project. The plans and specifications must be completed and approved by the State before LPA's work on this phase is considered complete.

State authorized changes in the scope of services, which increase or decrease work-hours or services required of the LPA, may provide the basis for changes to the total costs of the services and, when necessary, to the completion date set out in the NOTICE TO PROCEED AND COMPLETION DATE section of this agreement.

## SECTION 6. LPA STAFF

The LPA will complete the professional services for this project with its own staff. LPA's staff shall be properly qualified by education, training, credentials, and experience to complete the work under this agreement.

## SECTION 7. NEW EMPLOYEE WORK ELIGIBILITY STATUS (This version is for LPA provided professional services agreements only.)

The LPA 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 under this agreement. The LPA hereby agrees to contractually require any Consultants or 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 LPA, 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 Local Public Agency 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.

## SECTION 8. NOTICE TO PROCEED AND COMPLETION DATE

The State will issue the LPA a written Notice-to-Proceed (NTP) upon full execution of this agreement and upon verification that Federal funding approval has been obtained for the services under this agreement. Any work or services performed by LPA on the project prior to the date specified in the written Notice-to-Proceed is not eligible for reimbursement. LPA agrees to prosecute this work promptly to completion, or the LPA will be subject to the provisions of the SUSPENSION OR TERMINATION section of this agreement.

## SECTION 9. REIMBURSEMENT AND INVOICING

For performance of the services described in this agreement, the LPA will be reimbursed for direct costs and indirect costs as defined below in this section, that are allowable subject to

Project No. URB-30-4(158)  
Control No. 40352A  
US-30 Drainage Improvement  
Template Revised 5-31-12

- 4 -

the terms of this agreement and to all requirements and limitations of the State policies and the federal cost principles contained in 2 CFR 225 – Cost Principles for State, Local and Tribal Governments and the Federal Acquisition Regulation (48 CFR 31). The total agreement amount is \$29,660, of which \$18,271 is the Federal share and \$11,389 is the LPA share.

A. **Direct costs** must be incurred specifically for the services performed under this agreement, and include:

1. Direct Labor Costs –

(a) Hourly Rates: For time devoted and identified specifically for work under this agreement and based upon actual hours as documented by time reports that account for all hours compensated during the pay period and billed at actual labor rates.

(b) Time Reports: The hours charged to the project must be supported by adequate time distribution records that clearly indicate the distribution of hours to all projects/activities on a daily basis for the entire pay period. Time reports must provide a clear identifying link to the projects: such as project description, project number, pertinent work phase, dates of service, and the individual's name and position (*as required by LPA Manual Chapter 13, paragraph. 13.4.7*). There must be an adequate system of internal controls in place to ensure that time charges are correct and have the appropriate supervisory approval.

2. Labor Fringe Benefits – provided they are:

- a) reasonable,
- b) required either by law, labor agreements or an established policy of the LPA,
- c) are equitably allocated to all activities,
- d) the accounting basis (cash or accrual) is consistently followed by the LPA,
- e) are eligible in accordance with 2 CFR part 225 (OMB Circular A-87), and
- f) the allocation rate has been reviewed and approved by NDOR and/or FHWA for the work under this agreement. Fringe benefit costs include:

- Paid Leaves (holiday, vacation, sick, court, military, etc.)
- Employer contributions or expenses for:
  - a. Social Security and Medicare
  - b. Employee life and life insurance
  - c. Unemployment insurance
  - d. Worker's compensation insurance



e. Retirement/Pension plan costs

f. Other similar benefits

3. Direct Non-labor costs – These costs include all necessary, actual, and allowable costs related to completing the work under the agreement, subject to limitations and restrictions described below and in the Program Agreement, including but not limited to: meals, lodging, mileage, subject to the limitations outlined below; communication costs; reproduction and printing costs; special equipment and materials required for the project; approved equipment purchases or other capital expenditures necessary for the project; and such other allowable items. The State will reimburse the LPA for all necessary, allowable, eligible and properly documented direct non-labor costs related to the work under this agreement provided that costs of this nature are not also included in an indirect cost rate.

The following expenses will be reimbursed as outlined in this agreement based on actual costs, not to exceed the rates as shown below.

- (a) The reimbursement for mileage associated with the use of LPA owned vehicles shall be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately owned vehicle (POV), is limited to the lesser of:

- 1) The mileage rate which the consultant reimbursed to the person who submitted the claim for POV use, or
- 2) The prevailing standard rate as established by the IRS.

- (b) Automobile Rentals and Air Fares will be actual reasonable cost and if discounts are applicable the Consultant shall give the State the benefit of all discounts.

- (c) The reimbursement for meal and lodging rates shall be limited to the prevailing standard rate as indicated in the current website address for U.S. General Services Administration's (GSA) rates which is indicated below:

<http://www.gsa.gov/portal/category/100120>

- 1) For the LPA 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 LPA 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 the GSA rates set out above.

B. **Indirect Cost Rates** are incurred for common purposes and provide a benefit to the entire organizational entity. These costs are recovered through an indirect cost rate applied as a percentage to direct labor. LPA's indirect costs will only be allowed under the following conditions:

- 1) The LPA has an indirect cost rate that is supported by an Indirect Cost Allocation Plan (ICAP) which has been developed in accordance with 2 CFR 225 – Cost Principles for State, Local and Tribal Governments [OMB Circular A-87], and
- 2) The indirect cost allocation rate has been approved in advance by NDOR. *(If the LPA has already in place an ICAP which has been reviewed and approved by the LPA's cognizant Federal agency, the ICAP will be considered for acceptance by FHWA and NDOR.)*

C. **Invoices and Progress Reports.** The LPA shall submit invoices to the State no more frequently than at monthly intervals. The invoices must present actual direct and indirect costs, as described above, 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 the State
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/rfp](http://www.transportation.nebraska.gov/rfp).

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

- D. **Progress Payments.** Payments will not be made unless the monthly progress reports provide adequate substantiation for the work and whether the State determines that the work has been properly completed. The State will make a reasonable effort to pay the LPA within 30 days of receipt of the LPA invoices.
- E. **Final Invoice.** Upon completion of the work under this agreement, the LPA shall submit their final invoice identifying it as the final invoice.
- F. **Final Payment.** Upon determination that the work was adequately substantiated and satisfactory, reimbursement will be made in the amount of 80 percent of the billed eligible actual costs. The acceptance by the LPA of the final payment will constitute and operate as a release to the State for all claims and liability to the LPA, 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.
- G. **Audit and Final Cost Adjustment.** When the work is completed, the State will complete an audit review of the payments made under this agreement. The LPA agrees to reimburse the State for any overpayments identified in the audit review, and the State agrees to reimburse the LPA for any identified underpayments. The LPA agrees to pay the State within thirty days after receipt of a billing from the State.
- H. **LPA Cost Record Retention.** The LPA 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 by FHWA under this agreement and project closeout by the State. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, the LPA shall furnish copies.

## SECTION 10. PROFESSIONAL PERFORMANCE (LPA provided)

The LPA understands that it is solely responsible for the quality of the professional services it is providing for this project. LPA believes that LPA employees have the necessary professional training, experience and ability to properly complete the work under this agreement. Examination by the State, or FHWA, or any acceptance or use of, or acquiescence in the LPA's work product, will not be considered to be a full and comprehensive examination and will not be considered approval of the LPA's work product which would relieve the LPA from liability or expense that would be connected with the LPA's sole responsibility for the propriety and integrity of the professional work to be accomplished by the LPA pursuant to this agreement.

The LPA further understands that acceptance or approval of any of the work of the LPA by the State or FHWA, or of payment, partial or final, will not constitute a waiver of any rights of the State, or in any way relieve the LPA from any liability or expenses due to error, omission, or negligence of the LPA in its work. That further, if due to error, omission, or negligence of the LPA, the work product of the LPA is found to be in error or there are omissions therein revealed during or after the construction of the project and revision, reconsideration or reworking of the LPA's work product is necessary, the LPA shall make such revisions without expense to the State. The LPA shall respond to the notice of any errors, omissions or negligence within 24 hours and give immediate attention to necessary corrections. If the LPA discovers errors, omissions, or negligence in its work, it shall notify the State of such within 24 hours. Failure of the LPA to notify the State will constitute a breach of this agreement. The LPA's legal liability for any or all damages incurred by the State or by others caused by error, omission, or negligent acts of the LPA will be borne by the LPA without liability or expense to the State and will not be considered eligible for reimbursement with federal funds.

## SECTION 11. SUSPENSION OR TERMINATION

### **Suspension.**

The State, in its sole discretion, reserves the right to suspend both (1) NDOR's work under this agreement and (2) LPA's right to incur any additional reimbursable costs under this agreements when the State determines that there are project performance, LPA's lack of responsiveness, quality or eligibility issues that must be corrected by LPA. The State shall provide LPA with notice of the suspension including a description of the reason(s) for the suspension, a timeframe for LPA to correct the deficiencies, and when applicable, a description of the actions that must be taken for the State to revoke the suspension.

Project No. URB-30-4(158)  
Control No. 40352A  
US-30 Drainage Improvement  
Template Revised 5-31-12

- 9 -

A suspension may also be imposed by the State for any of the reasons listed in the Termination subsection below, or for any significant change in the scope of the project that has not been previously approved by the State or FHWA. (PE ONLY)

Failure to correct the deficiencies identified in a suspension will be grounds for the loss of eligibility for federal funding for the project and for termination of this agreement.

**Termination.** This agreement may be terminated for the following reasons:

1. The State and the LPA, by mutual written agreement, may terminate this agreement at any time.
2. The State may terminate this agreement for the following reasons:
  - (a) A decrease or shift in available federal-aid funding that will, in the sole discretion of the State, make it unlikely or impossible for this project to be prioritized to receive federal-aid funding.
  - (b) When LPA's project has not been properly advanced as evidenced by the occurrence of any of the following events:
    - (i) LPA has not sought reimbursement from State for any RC or other eligible project costs for a period of one year.
    - (ii) LPA has not advanced the project to Right of Way acquisition or construction within the time periods set out in 23 USC Section 102(b) and 23 CFR part 630.112(c)(2) (10 years), and 23 USC Section 108 (a)(2) and 23 CFR Part 630.112(c)(2) (20 years). (See also the FHWA Federal-Aid Policy Order number 5020.1, dated April 26, 2011.)
    - (iii) LPA's designated RC has not met all RC qualification requirements for the project by the time specified by the State.
    - (iv) LPA has failed to replace the RC with an RC approved by the State within 30 days during the design stage or 10 days during the project letting or construction stages, from when the RC leaves, or is removed from the project for any reason.
    - (v) LPA either (1) informs the State that it is unwilling to use condemnation to acquire any of the property interests needed to construct the project, or (2) fails to complete the right of way acquisition process by deed or condemnation action within the time necessary to allow the project to have construction funds authorized within the programmed year of the Surface Transportation Improvement Program (STIP).

- (vi) LPA has failed to cause the project to be ready for the targeted letting date by obtaining construction funds authorization within the programmed year of the STIP.
  - (c) LPA's failure to meet the requirements for Federal-aid local projects found in federal, state, or local law or policy, or the requirements of the LPA Guidelines Manual.
  - (d) A notice or declaration of FHWA or the State that any part of the project is or has become ineligible for federal funding.
  - (e) LPA's failure to sign any State drafted or approved project agreement including supplemental agreements.
  - (f) LPA's breach of a provision of this agreement.
  - (g) LPA's failure to cause the project to be constructed according to the approved project plans and specifications. CE agreements only.
3. The LPA may terminate the agreement upon sixty (60) days written notice of termination to the State, subject to the LPA meeting the conditions of paragraph 5 below.
  4. Prior to the State terminating this agreement, the State shall provide written notice to the LPA of the basis for termination and, when applicable, provide the LPA sixty (60) days to properly resolve all issues identified by the State.
  5. Whenever the agreement is terminated for any reason, LPA shall (a) repay State all Federal-aid funds that have been expended under this agreement and (b) pay State for all of State's costs under this agreement have not been reimbursed under 5.(a). Further, the LPA will thereafter be solely responsible for all costs under this agreement.

**SECTION 12. DOCUMENT RETENTION (LPA provided):**

The LPA shall retain all applicable documents listed in Section 14.8 of the LPA Manual for the periods of time specified therein.

**SECTION 13. CONFLICT OF INTEREST**

The LPA 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. LPA should review, understand and follow the instructions provided in the **NDOR CONFLICT OF INTEREST GUIDANCE**

**DOCUMENT for LPA OFFICIALS, EMPLOYEES & AGENTS 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-lpa.pdf>

In the event a consultant is used by the LPA on this project, the 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 Subconsultants 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 Subconsultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

#### **SECTION 14. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION**

Certain information provided by the State or maintained by the LPA 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 LPA in order that the LPA adequately design the project at hand.

The LPA 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 this project only. The LPA agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. The State or the LPA agrees that any information or documentation that is considered to be privileged or confidential that is provided to LPA will be marked with the following information (Approved 11/4/11):  
"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 State of Nebraska [or LPA] has not waived any privilege it may assert as provided by that law

Project No. URB-30-4(158)  
Control No. 40352A  
US-30 Drainage Improvement  
Template Revised 5-31-12

- 12 -

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

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

SECTION 15. THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

SECTION 16. THIS SECTION HAS INTENTIONALLY BEEN LEFT BLANK

SECTION 17. APPLICABLE LEGAL AND PROGRAM REQUIREMENTS

By requesting reimbursement with Federal-aid funds for its project, LPA agrees to be bound by the applicable provisions of federal, state and local laws concerning transportation projects of this type.

**Title 23 U.S.C., 23 CFR, and 49 CFR** - Title 23, Chapter I, of the United States Code contains most of the federal laws governing this Federal-aid transportation project. Title 23 of the Code of Federal Regulations is a codification of the rules and regulations including provisions governing Federal-aid highway projects administered by the Federal Highway Administration, Department of Transportation. Title 49 of the Code of Federal Regulations, Parts 1-99, also includes regulations applicable to LPA's Federal-aid highway project. The Federal-aid highway program provisions of 49 CFR are found primarily in Parts 18, 19, 24, 26-29, 32, 37 and 38.

LPA also agrees to develop its project in strict compliance with the provisions of the LPA Guidelines Manual for Federal Aid Projects (the Manual), which is hereby incorporated herein by this reference. The Manual is a document drafted in part, and formally approved, by the FHWA as a document setting out requirements for projects funded with Federal-aid funds. A current version of the Manual can be found in its entirety at the following internet address:

<http://www.transportation.nebraska.gov/gov-aff/lpa-guide-man.html>.

Project No. URB-30-4(158)  
Control No. 40352A  
US-30 Drainage Improvement  
Template Revised 5-31-12

- 13 -



SECTION 18. DISPUTES

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

SECTION 19. HOLD HARMLESS PROVISION

The LPA agrees to save harmless the State from all claims and liability due to the error, omission, or negligence of the LPA or those of the LPA's agents or employees in the performance of work under this agreement.

SECTION 20. PROFESSIONAL REGISTRATION

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

SECTION 21. SUCCESSORS AND ASSIGNS

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

SECTION 22. DRUG FREE WORKPLACE POLICY See Program Agreement

SECTION 23. FAIR EMPLOYMENT PRACTICES ACT See Program Agreement

SECTION 24. DISADVANTAGED BUSINESS ENTERPRISES See Program Agreement

SECTION 25. NONDISCRIMINATION See Program Agreement

SECTION 26. SUBLETTING, ASSIGNMENT, OR TRANSFER

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

SECTION 27. ALL ENCOMPASSED

This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements 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 for the Local Public Agency.

EXECUTED by the LPA this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

WITNESS:  
RaNae Edwards

CITY OF GRAND ISLAND  
Jay Vavricek

\_\_\_\_\_  
LPA Clerk

\_\_\_\_\_  
Mayor

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

NEBRASKA DEPARTMENT OF ROADS  
Anthony Dirks, P.E.

\_\_\_\_\_  
Urban Section Engineer

Project No. URB-30-4(158)  
Control No. 40352A  
US-30 Drainage Improvement  
Template Revised 5-31-12

- 15 -

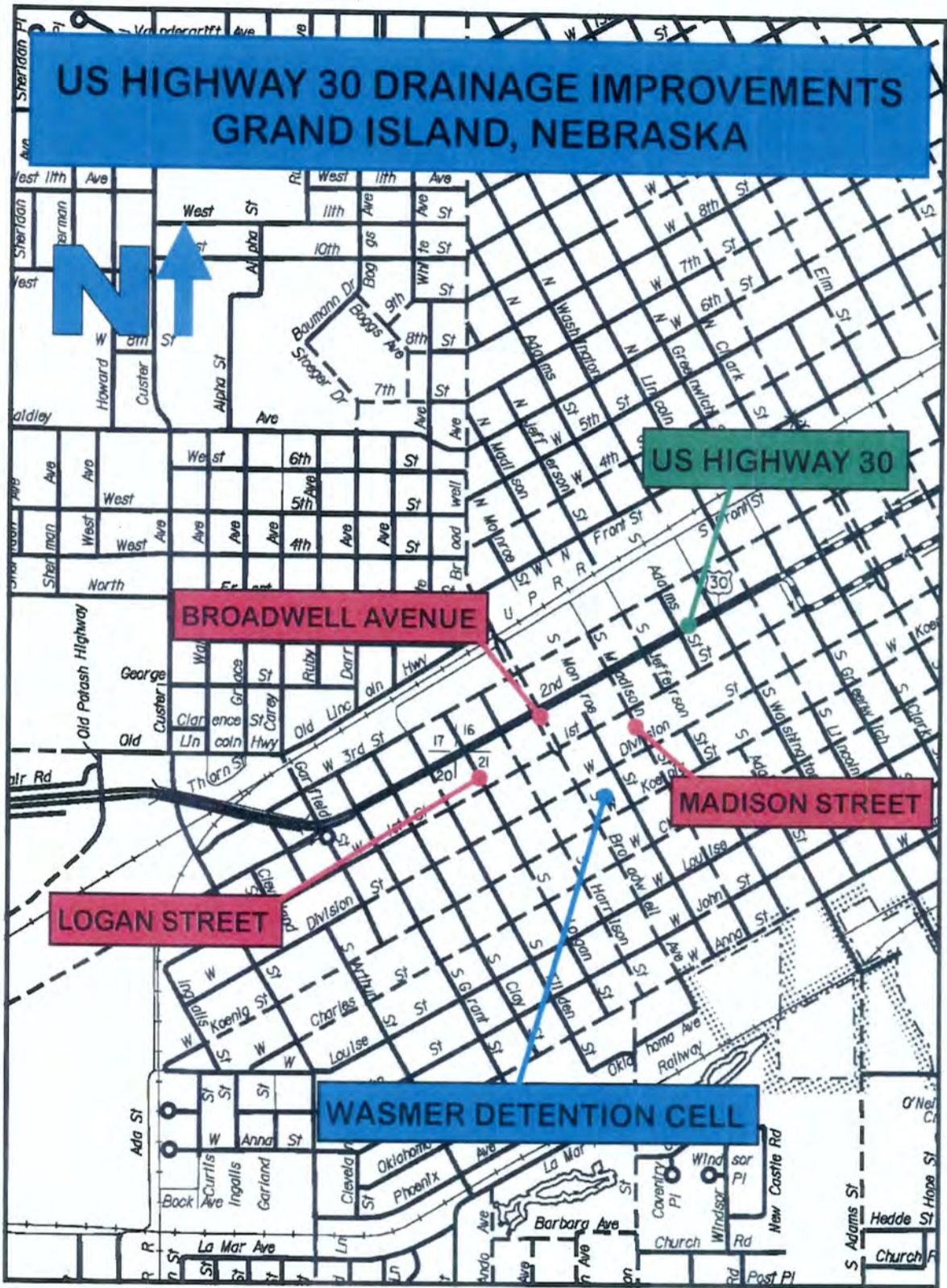


Exhibit "A"  
Page 1 of 1

Estimate for relocation of underground H.V. power  
 Logan Street between 1st Street and 2nd Street

9/12/2012

Great Western Center  
 1811 W 2nd Street  
 O'Conner Residential, LLC

**MATERIALS**

Description	Quantity Est.	Unit \$	Total \$
1/0 15Kv Power Cable	2,100.0 lf	\$4.00	\$8,400.00
1/0 Bare cu	700.0 lf	\$2.00	\$1,400.00
Cable Terminations	18.0 ea	\$100.00	\$1,800.00
ND 350 Sectionalizing Cabinet	1.0 ea	\$1,100.00	\$1,100.00
Protective Posts	4.0 ea	\$200.00	\$800.00
Saw Cut	80.0 lf	\$5.00	\$400.00
Asph. Removal & Replacement	19.5 sy	\$80.00	\$1,560.00
Misc. Conduit & Fittings	Complete	\$1,000.00	\$1,000.00
Total Material Estimate			<b>\$16,460.00</b>

**LABOR**

Description	Quantity Est.	Unit \$	Total \$
4 Person Crew	4.0 days	\$1,600.00	\$6,400.00
Total Labor Estimate			<b>\$6,400.00</b>

**TRUCKS & EQUIPMENT**

Description	Quantity Est.	Unit \$	Total \$
Crane	2.0 days	\$1,100.00	\$2,200.00
Pickup	4.0 days	\$100.00	\$400.00
Pickup	4.0 days	\$100.00	\$400.00
Bucket Truck	1.0 days	\$500.00	\$500.00
Backhoe	1.0 days	\$600.00	\$600.00
Total Equipment Estimate			<b>\$4,100.00</b>

**ENGINEERING**

**\$2,700.00**

**TOTAL PROJECT ESTIMATE**

**\$29,660.00**

Exhibit "B"  
 Page 1 of 1

RESOLUTION 2012-331

WHEREAS, the City of Grand Island Utility Department has prepared plans and a cost estimate to relocate the underground power infrastructure into the utility easement east of the 20" water main conflict in connection with the planned storm sewer for the US-30 Drainage Improvement Project; and

WHEREAS, relocation work includes removal and replacement of asphalt pavement, installation of a new sectionalizing cabinet, and replacement of underground power cable; and

WHEREAS, the estimated cost for relocation of the underground power infrastructure is \$29,660.00, and

WHEREAS, the Nebraska Department of Roads Local Projects Division determined that since the work will be performed by City forces, an agreement between the City of Grand Island and the Nebraska Department of Roads was appropriate; and

WHEREAS, the City will be reimbursed 61.6% of the actual costs, with the Capital Improvement Program funding the City's share of 38.4%.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Utility Relocation Services Agreement between the City of Grand Island and the Nebraska Department of Roads for such services to be performed by the Grand Island Utility Department 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.

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Adopted by the City Council of the City of Grand Island, Nebraska, November 13, 2012.

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

Attest:

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

Approved as to Form	☐ _____
November 9, 2012	☐ City Attorney