



City of Grand Island

Tuesday, December 4, 2012

Council Session

Item G7

#2012-353 - Approving Agreement for Negotiation Services for the US-30 Drainage Improvement Project

Staff Contact: Terry Brown, Interim Public Works Director

Council Agenda Memo

From: Scott Griepentstroh, Project Manager

Meeting: December 4, 2012

Subject: Approving Agreement for Negotiation Services for the US-30 Drainage Improvement Project

Item #'s: G-7

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 costs, which STP funding would then be applied on an 80/20 basis. The actual funding split for construction costs will be 61.6% Federal Aid and 38.4% local funds. FHWA agreed to participate 100% on the costs for Preliminary Engineering, the National Environmental Policy Act (NEPA) clearance process, and costs for acquisition of temporary and permanent easements (80% Federal Aid and 20% Local Funds).

Nineteen temporary easements are required for installation of private water services in accordance with Grand Island City Code, for reconstruction of sidewalks ramps in accordance with the Americans with Disabilities Act and for construction of storm sewer pipe. A permanent easement is required at one location for storm sewer pipe.

The Responsible Charge for this project is qualified to develop appraisal documents and conduct negotiations for most of the easements that are being acquired due to their simplicity and estimated value.

Discussion

The law governing acquisition and relocation on federally assisted projects is Public Law 91-646; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly called the Uniform Act. The procedures to comply with this Act are found in Section 49, Part 24 of the Code of Federal Regulations. On federally funded transportation projects requiring acquisition of right-of-way, Local Public Agencies are required to present to the Nebraska Department of Roads a Right-of-Way Certificate that certifies property was acquired in accordance with the Uniform Act. On September 25, 2012, the City Council approved entering into contract with a qualified Appraisal Firm to prepare "Compensation Estimates" for two tracts of identical ownership.

As per the *Right-of-Way Acquisition Guide for Local Public Agencies*, after formal property valuation documents are prepared and reviewed, property acquisition may begin.

For property acquisition services, the selection of the firm Midwest Right of Way Services, Inc. was made in accordance with the *Right-of-Way Acquisition Guide for Local Public Agencies*. The Negotiation Services Contract must be executed before property acquisition can begin. The basis of the final fee is as follows.

Acquisition Negotiation – 1 Owner at \$1,900.00 Each = \$1,900.00
TOTAL FEE = \$1,900.00

Approval of Environmental Documents was received in July, 2012. Approval of 90% Plans and acquisition of remaining easements are anticipated to be completed in the next two 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 with the Midwest Right of Way Services, Inc. for negotiation services for the US-30 Drainage Improvement project.

Sample Motion

Move to approve the agreement.

ACQUISITION SERVICES SPECIFICATIONS

A. PROJECT DESCRIPTION

The City of Grand Island will receive proposals for Acquisition Services for:

Project: URB-30-4(158)

CN: 40352A

Location: US-30 Drainage Improvement

The work required for this project is to negotiate for the acquisition of property needed by the City of Grand Island to construct this project. This includes meetings with the City of Grand Island, plan review, preparing status reports and submitting the necessary documents to the City of Grand Island for each right of way tract.

The work is also described in detail in this document and as noted in Appendix A and B.

All those providing proposals will record their fee required for each tract and the total fee for the project on Appendix B. In addition, also indicate the date you expect to be able to start and complete the requested services assuming Notice to Proceed is given on November 28, 2012. Further, Appendix B shall be signed and dated in the space provided.

B. CITY OF GRAND ISLAND TO PROVIDE

1. Provide the title searches.
2. Provide the construction plans and cross sections.
3. Provide the right of way plans.
4. Provide the Appraisal Project Report.
5. Provide Individual Tract Appraisals or Valuation Documents.
6. Provide Acquisition Brochures.
7. Provide Right of Way Contract forms.
8. Provide Deed forms.
9. Provide Permanent Easement Instrument forms.
10. Provide Rights Letter.
11. Provide Certificate of Negotiator.
12. Provide Lessee's Contract forms.
13. 1099 Forms.

C. APPLICABLE PUBLICATIONS

The Acquisition Consultant shall follow the criteria of the current applicable publications listed here:

1. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
2. Nebraska Department of Roads Right of Way Manual.

D. INITIAL MEETING AND PLAN REVIEW

The Acquisition Consultant shall meet with the City of Grand Island to review the plans and discuss the scope of work before beginning Acquisition activities.

E. TITLE RESEARCH

1. The Acquisition Consultant shall verify that the title information is correct and current at the appropriate county offices.

2. On total acquisition tracts, the Acquisition consultant will check for unpaid taxes, special assessments, etc.
3. The Acquisition Consultant will check with the owner about the status of the encumbrances shown and tactfully ascertain otherwise undisclosed liens, encumbrances, or other interests.
4. The Acquisition consultant shall provide to the City of Grand Island mortgage release information and copies of Deeds of Trust.

F. ACQUISITION

1. The Acquisition Consultant(s) shall be licensed by the Nebraska Real Estate Commission.
2. The Acquisition Consultant shall make every effort to understand the projects' objective, the valuation documents, and the project's impact on each property before meeting with individual property owners.
3. The Acquisition Consultant shall make every reasonable effort to acquire expeditiously the parcels listed herein.
4. The Acquisition Consultant shall make a prompt offer to acquire each parcel for the full amount which has been established and approved as just compensation for the acquisition.
5. Upon initiation of negotiations, the Acquisition Consultant shall provide the owner of real property to be acquired with a written statement of, and a summary of the basis for, the amount which has been established as just compensation for the proposed acquisition.
6. The Acquisition Consultant shall make all reasonable efforts to personally contact each owner or their designated representative, explain the acquisition, and offer in writing the approved estimate of just compensation. When all efforts to make personal contact have failed or in the event the property owner resides out of state, the owner may be contacted by certified or registered first class mail or other means appropriate to the situation.
7. At the first contact where the offer is discussed, the Acquisition Consultant shall give the owner the State's brochure describing the land acquisition process and the owner's rights, privileges and obligations.
8. A revised offer and summary statement of just compensation shall be provided the owner if the extent of the taking is revised or the approved estimate of just compensation is revised by the Review Appraiser.
9. The Acquisition Consultant shall maintain adequate records to include a certificate of negotiator and a call report for each parcel.
10. The call report shall contain at least the following:
 - the date and place of each contact
 - parties of interest contacted
 - offer made
 - report of the discussion with the owner
 - counter offer or reasons offer was not accepted
 - signature of the Agent and date signed by the Agent.
11. The Acquisition Consultant shall acquire the necessary property rights through amicable negotiations, which is defined as the process by which property is acquired through written or personal contact with the owner with the aim of reaching agreement on the terms of a voluntary transfer of such property.
12. If the Acquisition Consultant's negotiations do not succeed in obtaining the necessary property rights and condemnation is required, the Acquisition Consultant shall deliver the

tract files along with the updated title information, call reports, Basic Information Sheet and completed Certificate of negotiator to the City of Grand Island.

G. REPORTS

The Acquisition Consultant shall submit a weekly status report explaining the status of each tract and including any remarks which may need to be addressed.

H. NEGOTIATIONS

1. For this agreement, the Acquisition Consultant shall assume that approximately two (2) tracts will need to be acquired.
2. All tracts will be acquired by the Acquisition Consultant, including those tracts with owners living out of the State of Nebraska.
3. Tracts with identical ownerships are considered one tract for negotiation and payment purposes.
4. The Acquisition Consultant is required to obtain all necessary signatures to complete the transaction, including tenant releases.
5. All tenants may not have been identified at the start of the assignment. The Acquisition Consultant is required to identify any additional tenants and to obtain their releases without further compensation.
6. Each advertising sign is considered as a separate tract for negotiation purposes.

I. DELIVERABLES

The Acquisition Consultant shall submit the proper documents, as identified earlier, for each tract upon completion of negotiation and acquisition of each tract. These documents are:

1. Properly executed right of way and easement contracts.
2. Deeds.
3. Call Reports.
4. 1099 Forms.
5. Completed Certificate of Negotiator.
6. Buyer's copy of the valuation document.
7. Basic Information Sheet.

J. COMPLETION

The Acquisition Consultant's work under this agreement will be considered done upon the submittal of the last tract documents that the Acquisition Consultant is responsible for and, that the City of Grand Island agrees that all tracts and documents for the project are done or accounted for and that the Acquisition Consultant's work is satisfactory.

APPENDIX "A"

NONDISCRIMINATION CLAUSES

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

Compliance with Regulations: The Acquisition Consultant will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Acquisition Consultant, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the basis of disability race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Acquisition Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A", "B", and "C" of Part 21 of the Regulations.

Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Acquisition Consultant for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Acquisition Consultant of the Acquisition Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.

Information and Reports: The Acquisition Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Grand Island to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an Acquisition Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Acquisition Consultant shall so certify to the City of Grand Island as appropriate, and shall set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of the Acquisition Consultant's noncompliance with the nondiscrimination provisions of this contract, the City of Grand Island shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

- (a) withholding of payments to the Acquisition Consultant under the contract until the Acquisition Consultant complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions: The Acquisition Consultant will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Acquisition Consultant will take such action with respect to any subcontract or procurement as the City of Grand Island may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a Acquisition Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Acquisition Consultant may

request the City of Grand Island to enter into such litigation to protect the interests of the City of Grand Island.

MINORITY BUSINESS ENTERPRISES

Policy

The Acquisition Consultant and City of Grand Island agree to ensure that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the minority business requirements of 49 CFR Part 23 are hereby made a part of and incorporated by this reference into this agreement.

Minority Business Enterprises Obligation

The Acquisition Consultant and City of Grand Island agree to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, the Acquisition Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. The Acquisition Consultant shall not discriminate on the basis of disability; race, color, sex, religion or national origin, in the performance of FHWA assisted contracts.

Failure of the Acquisition Consultant to carry out the requirements set forth above shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by the City of Grand Island or such remedy as the City of Grand Island deems appropriate.

DRUG-FREE WORKPLACE POLICY

The Acquisition Consultant shall have, on file with the City of Grand Island, an acceptable drug-free workplace policy.

APPENDIX B

LIST OF TRACTS TO BE ACQUIRED

TRACT NUMBER	TYPE OF VALUATION DOCUMENT	FEE
19 Perm and Temp Easement	Compensation Estimate	\$ 950.00
20 Temp Easement	Compensation Estimate	\$ 950.00
TOTAL FEE		\$ 1900.00

Full Day County Court Fee	\$1,200.00	Half Day County Court Fee	\$860.00
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Start Date _____

Completion Date: _____

Submitted by: _____

Please Print

Please Sign

Address: _____
Midwest Right of Way Services, Inc.
13425 "A" Street
Omaha, NE 68144

ACQUISITION SERVICES CONTRACT

This agreement, entered into this _____ day of _____, 2012, by the City of Grand Island, (herein called "Local Public Agency") and Midwest Right of Way Services, Inc., (herein called "Acquisition Consultant") agrees:

In return for the total fee of \$1900.00, as itemized in Appendix B, it is agreed that the Acquisition Consultant shall negotiate on behalf of the Local Public Agency with the owners of each tract identified for the acquisition of certain property rights in accordance with the Acquisition Services Specifications, of which a copy is attached and made a part of this contract. The acquisition of these certain property rights will be used in connection with:

Project: URB-30-4(158)
C. N.: 40352A
Location: US-30 Drainage Improvement, Grand Island, NE

An additional fee will be negotiated with the Acquisition Consultant for each additional parcel added to this contract.

The fee for supplemental or revised tracts, which result in new or revised acquisition documents, as a result of changes in the taking caused by the Local Public Agency, will be negotiated with the Acquisition Consultant.

A billing statement for completed negotiations with a tract may be submitted to the Local Public Agency at the time the Acquisition Consultant submits the Deliverables noted in paragraph I of the Acquisition Services Specifications. Payment of eighty percent (80%) of the total fee will be paid at that time. The balance of the total fee will be paid within ninety (90) days, providing the documents are found to be acceptable and in accordance with the contract upon Local Public Agency review. In the event the documents are found unacceptable by reason of noncompliance with the terms of this contract, the final payment shall be withheld until such documents have been revised or supplemented, without additional cost to the Local Public Agency, and found acceptable.

In the event a dispute arises concerning a question or fact in connection with the work not specifically covered or referenced by any other terms of this contract, the Local Public Agency's management will determine the final position. Where no agreement can be reached, this contract shall be terminated.

The contract may also be terminated when, in the opinion of the Local Public Agency, the Acquisition Consultant's services are unsatisfactory, or because of the Acquisition Consultant's failure to prosecute the work with due diligence, or within the time limits specified in this agreement, or because of the Acquisition Consultant's disability or death. The Local Public Agency may terminate the services of the Acquisition Consultant by giving five (5) days written notice. In such an event, the work, which has been completed, when the notice of termination is given by the Local Public Agency, becomes the property of the Local Public Agency. The Local Public Agency's management shall arbitrate settlement for the completed work.

The Acquisition Consultant, as a condition of the above lump fee, agrees to attend necessary meetings and conferences with representatives of the Local Public Agency, the Nebraska Department of Roads and the United States Federal Highway Administration to discuss the various aspects and phases of the work required by this contract. However, it is agreed that additional payment for conferences with Local Public Agency attorneys for testimony in court or witness fees for appearance in court shall be \$860.00 for each half day or portion thereof, or \$1200.00 per day for any part of a day exceeding a half day.

All expenses incurred by the Acquisition Consultant are considered to be their liability and are not to become an expense to the Local Public Agency except as provided for in this agreement.

The Acquisition Consultant agrees to complete the requirements noted in the Acquisition Services Specifications on or before _____. The Local Public Agency assumes no liability for work performed or costs incurred prior to the beginning date or subsequent to the contract completion date. Supplemental or revised acquisition documents caused by the Local Public Agency's actions will be cause to change this to a later date only by mutual written agreement between the parties to this contract. It is further agreed by the Acquisition Consultant that they will furnish the Local Public Agency a written progress report of the work accomplished on the Project as requested.

A penalty of \$1.00 per normal working day will be assessed against and deducted from the agreed-upon Fee, as per this contract, for each normal working day that the completed assignment is overdue. A normal working day is defined as Monday through Friday. Any extension beyond the agreed-upon completion date of _____ will be only by mutual written agreement between the parties of this contract.

The Acquisition Consultant warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Acquisition Consultant, to solicit or secure this contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Acquisition Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Local Public Agency shall have the right to annul this contract without liability.

If the Acquisition Consultant discovers or is informed by the Local Public Agency of the existence of any possible conflict of interest on the part of the Acquisition Consultant, the Acquisition Consultant shall immediately cease all activity in connection with such services, and promptly notify the Local Public Agency, in writing, of all relevant facts and circumstances pertaining to such conflict, so the Local Public Agency may take such action as it deems appropriate, including but not limited to, the exclusion of any tract or tracts involved from this agreement.

The acquisition documents are agreed to be confidential between the parties hereto, and a breach of such confidence shall be considered material breach of this contract unless the disclosure of the contents of the report shall be in response to a subpoena or other lawful court order.

It is the intention of the parties that the valuation documents and services contracted for are the personal services of the Acquisition Consultant as named. Subletting or transferring the work contracted for in this agreement is expressly prohibited and failure to comply shall be deemed a material breach of the contract.

The Acquisition Consultant agrees to abide by the provisions of the Nebraska Fair Employment Practice Act as provided by Nebraska Revised Statute, Section 48-1101 through 48-1126 (Reissue 1988), and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27, the Minority Business Enterprises Policy and the Drug-Free Workplace Policy as set forth in Appendix "A" attached hereto and hereby made a part of this agreement.

Any notice provided for or concerning this agreement shall be in writing and shall be deemed sufficiently given when sent by mail if sent to the respective address of each party.

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.

EXECUTED by the Acquisition Consultant this ____ day of _____, 2012.

Witness

Acquisition Consultant

EXECUTED by ____ day of _____, 2012.

**Local Public Agency
City of Grand Island**

APPROVED:

Authorized Signature

RESOLUTION 2012-353

WHEREAS, the City of Grand Island, in accordance with the Right-of-Way Acquisition Guide for Local Public Agencies, has negotiated property acquisition services with Midwest Right of Way Services, Inc. for the US 30 Drainage Improvement Project; and

WHEREAS, such services include Acquisition Negotiation of \$1,900.00 for one (1) property, with the possibility of half day (\$860) and daily (\$1,200) rates being applied, per contract, should attendance at meetings pertaining to this project become necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the agreement between the City of Grand Island and Midwest Right of Way Services, Inc. for acquisition negotiation services in connection with the US 30 Drainage Improvement 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.

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Adopted by the City Council of the City of Grand Island, Nebraska, December 4, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 30, 2012	☐ City Attorney