



City of Grand Island

Tuesday, April 20, 2010
Special Meeting

Item I1

#2010-112 - Approving Agreement for Construction Engineering Consulting Services for the Construction of the Northbound Lanes on South Locust Street North of I-80

Staff Contact: Steve Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: April 20, 2010

Subject: Approving Agreement for Construction Engineering Consulting Services for the Construction of the Northbound Lanes on South Locust Street North of I-80

Item #'s: I-1

Presenter(s): Steven P. Riehle, Public Works Director

Background

The Nebraska Department of Roads (NDOR) and the City of Grand Island entered into a program agreement, which was executed by the City on June 14, 2007 and by the State on June 19, 2007, The agreement provided for the paving of the northbound lanes on South Locust Street from north of Interstate 80 to Grand Island.

The program agreement was amended at the December 1, 2009 council meeting to allow for federal stimulus funds to be used toward the construction phase of the project. The amendment also updated the estimated project cost and moved the bid letting responsibilities to the NDOR. The costs for the construction contract, construction engineering services, Responsible Charge, NDOR construction administration and materials testing are being covered by stimulus funding under the American Recovery and Reinvestment Act (ARRA).

The City Council concurred at the March 23, 2010 meeting in awarding the bid to Upper Plains Contracting, Inc. of Aberdeen, South Dakota. The next step in moving the project forward is the hiring of a consultant to perform Construction Engineering (CE) services for the project.

Discussion

Following the Local Public Agencies (LPA) Manual, the Responsible Charge (RC) can make the determination of the need for a consultant for the Construction Engineering (CE) services on a Federal-Aid project. A consultant must be selected through a Qualification Based Selection (QBS) process in accordance with chapter four of the LPA

Manual and federal regulations administered by the Federal Highway Administration (FHWA). The NDOR performed a QBS process and selected twelve on-call consultants for LPA's to use for CE services. The NDOR executed master agreements with each of these consultants. A copy of the NDOR master agreement is included for reference. The LPA enters into an agreement for CE services with one of these twelve consultants as a task order under the NDOR's master agreement with the consultant. A copy of the task order agreement for this project, which is being prepared by the NDOR, will be provided at tonight's council meeting. Work performed under the task order agreement will be performed at actual costs with a maximum dollar amount provided at tonight's meeting. It's not included with this memo as NDOR is still preparing the agreement and the agreement has not been approved by the Federal Highway Administration.

The consultant selection process could not begin until after bids were opened. The item is being brought to council in an effort to move the project forward as quickly as possible.

The consultant selection procedures to enter into an agreement with one of the on-call CE consultants has three (3) phases.

- - Phase 1 is the development of a Scope Of Services (SOS) and Independent Cost Estimate (ICE).
- - Phase 2 is the consultant selection process.
- - Phase 3 is the process of negotiating the SOS and the fee for the services with the selected and NDOR/FHWA approved consultant.

As Public Works Director/City Engineer and the Responsible Charge individual for federal funded transportation projects, Steve Riehle prepared the SOS & ICE after the construction bids were opened. The NDOR approved the SOS & ICE on April 7th, 2010 allowing the City to move forward with reviewing all twelve consultant proposals. Steve Riehle, Public Works Director; Ron Underwood, Civil Engineering Manager; and Tom Carlson, Engineering Technician Supervisor evaluated and scored each proposal from the twelve consultants using selection procedures established by the NDOR. The NDOR and FHWA reviewed the evaluations and scores and authorized the city to proceed to negotiate with Olsson Associates on the scope of services and fees of a CE agreement on Monday, April 12th, 2010. The negotiated scope and fees were forwarded to the NDOR on Friday, April 16th, 2010.

It is anticipated that the NDOR and FHWA will approve the negotiated scope and fees for CE services on Tuesday, April 20th, 2010. The NDOR will prepare a task agreement for execution by the city and the consultant. The cost for CE services will be 100% paid for with ARRA funds. The contractor is anxious to begin construction on this project and approval of the agreement for CE services will facilitate an early start for the project.

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

Public Works Administration recommends that the Council approve the agreement prepared by the NDOR for CE services with Olsson Associates of Grand Island, Nebraska as a task order under the NDOR's master agreement.

Sample Motion

Move to approve the agreement.

MASTER AGREEMENT

(1)
NEBRASKA DEPARTMENT OF ROADS
ON-CALL CONSTRUCTION ENGINEERING SERVICES – LOCAL PROJECTS

THIS AGREEMENT, entered into by and between the Nebraska Department of Roads, hereinafter referred to as the "State", and (1), hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS, State is authorized by state law to assist Nebraska Local Public Agencies, hereinafter referred to as LPA or LPAs, with obtaining and expending federal funds for local transportation projects, and

WHEREAS, State is presently assisting numerous LPAs in the development of Federal-Aid LPA transportation projects for local streets, roads and facilities, and

WHEREAS, LPAs may require assistance in the form of consultant engineering services to complete the necessary construction engineering services for these LPA Federal-Aid projects (these construction engineering services will hereinafter be referred to as "Services"), and

WHEREAS, the State used a qualification based selection process to select the Consultant to be one of several on-call consultants for a two (2) year time period ending December 31, 2011, to provide Services on LPA Federal-Aid projects, and

WHEREAS, the State will, upon execution of this Master Agreement, place Consultant's name on the list of qualified on-call consultants from which LPAs may select a consultant to perform Services for a project, and

WHEREAS, this contract will result in a minimum of \$20,000 in fees to Consultant for Services provided under Task Order(s); the actual amount of fees will depend on the need, funding availability and other circumstances, and

WHEREAS, an LPA with a need for consultant Services will select, with the assistance of the State, a consultant from the on-call consultant list in accordance with "LPA Consultant Selection Procedure" attached hereto as Exhibit "A", and hereby made a part of this Master Agreement, and

WHEREAS, when Consultant is selected to provide Services under this Master Agreement, a task order agreement (hereinafter referred to as "Task Order") between the LPA and Consultant will be prepared incorporating the provisions of this Master Agreement, and

WHEREAS, the names of the Consultant's employees who will perform the Services and specific pay and reimbursement rates that apply to Services arising out of this contract are set out in Exhibit "B", attached hereto and made a part of this Master Agreement, and

WHEREAS, the parties will provide in this Master Agreement that the labor rates set out herein will apply to any Task Order issued during the first year of this Master Agreement, and will provide for future changes to listed personnel and labor rates, and

WHEREAS, prior to the expiration of this Master Agreement, the State, in its discretion, may extend this Master Agreement two (2) years, 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, the Consultant is required to use Trans*Port Site Manager as the construction record-keeping system for Services under this contract, and

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

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

SECTION 1. DEFINITIONS

Wherever in this Master Agreement the following terms are used, they will have the following meaning:

"CONSULTANT" means (1) and any employees thereof, whose business and mailing address is (2), and

"SUBCONSULTANT/SUBCONTRACTOR" means the firm of _____, whose business and mailing address is _____.

"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, 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 Master 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.

"STATE REPRESENTATIVE" means an employee of the State assigned by the State to observe whether the LPA's project meets the eligibility requirements for federal funding and to provide technical assistance when requested by the LPA, in LPAs efforts to comply with requirements for Federal-aid funded local projects.

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

To "SUSPEND" the Master Agreement means that the State has determined that the conditions or intentions as originally existed have changed and that the Master Agreement as contemplated herein should be stopped on a temporary basis. This cessation will prevail until the State determines to abandon or terminate the Master Agreement or to reinstate it under the conditions as defined in this Master Agreement.

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

A "TASK ORDER" is a separate agreement between an LPA and Consultant for Services on a specific project, incorporating the terms of this Master Agreement.

SECTION 2. PROJECT TASK ORDER

The terms and conditions of this Master Agreement shall apply to each project for which the Consultant is selected by an LPA to provide Services. Each project the Consultant provides Services for an LPA hereunder shall be initiated by a "Task Order." Each properly executed Task Order will result in an agreement between an LPA and Consultant incorporating the terms of this Master Agreement.

SECTION 3. PURPOSE OF THE MASTER AGREEMENT

The purpose of this Master Agreement is to contract with Consultant to provide construction engineering services under Task Orders issued by LPAs.

The construction engineering services include, but are not limited to, project management, construction engineering, pre-construction staking, conducting the preconstruction conference, staking and inspection during project construction, monitoring environmental commitments, preparing as-built plans, progress computations, final computations, and preparing contractor change orders. The required construction engineering services are further defined in each Task Order.

It is expected that the Task Orders will include, but not be limited to, the following or similar scope of work language:

- Consultant shall review and have a working knowledge of the project plans, special provisions, standard specifications, and all other project related contract documents for the construction of LPA's Federal-Aid project. Additionally, Consultant shall review and have a working knowledge of the Nebraska Department of Roads' Construction Manual, Materials Sampling Guide and the LPA Manual. Consultant shall employ a sufficient number of qualified employees on the project to adequately observe, monitor, inspect, measure and report so that the project is constructed by the contractor in compliance with the plans, special provisions, standard specifications, other applicable project contract documents, State and Federal law, as well as the Department of Roads' Construction Manual, the Materials Sampling Guide, and the LPA Manual. Consultant shall fulfill all contract duties of inspection, project management and construction engineering for the project and shall communicate regularly about the progress of the construction with the project owner, through the RC, and, when appropriate for federal funding or eligibility issues, the State representative.
- The Consultant shall visit the project site when appropriate for the state of construction to inspect, observe, monitor, measure and report on the progress of the work or as otherwise specifically agreed to by the LPA.
- The parties understand that the Consultant is not responsible for the Contractor's means and methods of construction. To the extent the construction documents specify sequencing of work, equipment requirements, or other construction methods, the Consultant shall keep the Owner's RC informed about the progress and quality of the portion of the work and shall advise the RC about observed deficiencies in the work.

Over the two year term of this Master Agreement ending December 31, 2011, LPAs will negotiate and issue to the Consultant a minimum of \$20,000 in Task Orders to provide Services. The Consultant understands that the State does not promise any fees in excess of the \$20,000 minimum.

SECTION 4. CHANGES TO LISTED PERSONNEL AND LABOR RATES

The Consultant has furnished a list of personnel, attached hereto as EXHIBIT "B", by work classification and associated hourly pay or labor rates. The personnel and the hourly labor rates listed in EXHIBIT "B" will be used for all Task Orders with LPAs. Personnel who are added to Exhibit "B" as replacements must be persons of comparable training, experience, and labor rate. Personnel added to Exhibit "B" as new personnel and not replacements must be qualified to perform the intended work.

The State has identified key personnel of Consultant on "EXHIBIT "B". Key personnel must be directly involved in the work on Task Orders that arise out of this Master Agreement. Any deviation from or revision of the list of key personnel identified on EXHIBIT "B", must receive prior written approval of the State. Written approval may be by letter or e-mail from the State's Agreements Engineer. Failure on the part of the Consultant to provide acceptable replacement personnel or qualified new personnel as determined by the State will be cause for termination of this Master Agreement, with settlement to be made as provided in the CHANGE OF PLAN, ABANDONMENT, SUSPENSION, AND TERMINATION Section of this Master Agreement.

For each Task Order, the Consultant must identify the primary team members from Exhibit "B", attached to each Task Order as a separate exhibit, who will be directly responsible for carrying out the duties in the Task Order, and will identify the role of each team member for the project. Occasional, temporary changes to the team are allowed. However, any permanent change to the team will require written approval by the LPA and the State.

Changes To Labor Rates

The labor rates set out on Exhibit "B" shall be used in any Task Order executed within one (1) year of the execution of this Master Agreement. At the end of the first year of enforcement of this Master Agreement, the Consultant shall submit to the State in writing any requested changes to the labor rates set out in Exhibit "B" or a document stating that no changes are requested. The State shall review the requested changes and may approve properly justified, reasonable labor rate changes. Failure to reach agreement, in good faith, on labor rate adjustments shall be a basis for State to terminate this Master Agreement, with no

further requirements to provide the Consultant with the minimum costs under this Master Agreement. The agreed labor rates will be set out in a supplemental agreement between the parties.

The labor rates invoiced by the consultant will be verified through the audit process.

SECTION 5. 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.dor.state.ne.us.
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 6: CONFLICT OF INTEREST

The Consultant shall review the conflict of interest provisions of 23 C.F.R 1.33 and any other applicable provisions 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. By signing this Master Agreement, the Consultant certifies that it has no financial or other personal interests in this project or the outcome of this project. For further federal interpretation of these provisions, see “PE/CE Consultant Conflict of Interest Frequently Asked Questions” located on the State’s Local Federal Aid Projects’ Frequently Asked Questions webpage:
<http://www.transportation.nebraska.gov/gov-aff/faq.html>

The State reserves the right to not approve a Task Order if the Consultant or any of the subconsultants:

- Serves as an employee of that LPA
- Is an elected official of that LPA
- Is a designated engineer or administrator of that LPA

The State reserves the right to not approve a Task Order if the Consultant or any of the subconsultants had previously provided any of the following types of services for that project:

- Feasibility Study
- Preliminary Design Services
- Environmental Services, such as wetland delineation
- Preparation of NEPA Documents
- Final Design Services

The Consultant may request to add or substitute a different subconsultant to their team in the event that one of their existing subconsultants is determined to have a conflict of interest situation. These requests will be considered on a case by case basis and must be approved by the State.

SECTION 7. COMPENSATION

The total minimum compensation of all Task Orders authorized under this Master Agreement shall be \$20,000 and may be more than \$20,000 depending upon the need for services, availability of funds and the allocation of work among the selected consultants, except as provided in the CHANGE OF PLAN, ABANDONMENT, SUSPENSION AND TERMINATION Section of this agreement. The parties understand that the amount of work to be assigned to each consultant is unknown. As work becomes necessary for LPAs, as funds are available, and as work is allocated to consultants, the State and Consultant will cooperate in determining the ability of the Consultant to complete service contracts in excess of the minimum.

The following requirements will apply to each Task Order with the LPA:

For performance of Services under the terms of this Master Agreement, the Consultant will be paid actual cost plus a fixed fee as authorized for each specific Task Order, subject to all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31).

- A. The Consultant shall not receive reimbursement for any costs incurred by the Consultant prior to the Notice-to-Proceed date or after the completion deadline date stated in the Task Orders with the LPA.
- B. 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.
- C. 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: The hourly rates to be used in Task Orders that arise out of this Master Agreement, shall be the rates set out in Exhibit "B".
Annual adjustments: The hourly rates and personnel list for this Master Agreement may be reviewed and adjusted annually beginning one (1) year after full execution of this Master Agreement.
Adjustment to the hourly rates and personnel list will be accomplished by a supplemental agreement to this Master Agreement. These adjusted rates and personnel lists shall be used for future Task Orders but shall not be used to amend previously executed Task Orders.
 - (b) Time records: The time charged to the project must be supported by adequate 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, document reproduction and printing costs, computer charges, special equipment and materials required for the project, special insurance premiums if required solely for this Master 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 Master Agreement, the following expenses will be reimbursed at actual costs, not to exceed the rates as shown below.

* The reimbursement for automobile and survey vehicle mileage shall be the prevailing standard rate as established by the Internal Revenue Services through its Revenue Procedures.

* Company Automobile	Currently 50 cents per mile
* Company Survey Vehicle	Currently 52.5 cents per mile (2.5 cents above Company Automobile)
Privately Owned Vehicle	Actual costs, 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
\$70.00 per person daily everywhere but
Omaha and Lincoln
\$90.00 per person daily for Omaha
and Lincoln

Meals Actual cost, not to exceed

	Statewide	Omaha and Lincoln	
Breakfast	\$ 7.00	\$ 9.00	
Lunch	12.00	14.00	
Dinner	<u>20.00</u>	<u>26.00</u>	
Totals	<u>\$39.00</u>	<u>\$49.00</u>	<u>(Includes tax and gratuity)</u>

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, at the State's discretion, may be required to provide the State with meal receipts, and shall note the actual 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 \$39.00 per person statewide and \$49.00 per person in Omaha and Lincoln (includes tax and gratuity).

- (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. 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 years 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.

- D. The Consultant shall submit invoices to the LPA at minimum of monthly intervals and in accordance with the "LPA Procedure for Processing Invoices" located on the State's webpage at: www.transportation.nebraska.gov/gov-aff/downloads.htm. The invoices must present actual direct labor, actual overhead, and 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 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 outlines the work completed for that period and work anticipated for the next pay period. If the Consultant does not submit a monthly invoice, it shall submit its progress report monthly. Monthly invoices must include a completed "Cost Breakdown Form". This form is located on the State's webpage at www.nebraskatransportation.org/rfp.

The State will make every effort to pay the Consultant within 30 days of receipt of the Consultant's invoices. Payment is dependent upon whether the monthly progress reports provide adequate substantiation for the work and whether the LPA and State determine that the work is satisfactory.

The fixed-fee amount on the final invoice should be the difference between 100 percent of the agreed-upon fee and the total amount previously billed. Upon determination that the work was adequately substantiated and satisfactory, the Consultant shall be paid 100% of actual cost and 90% of the fixed fee, with 10% retention held. The final 10% of the fixed fee will be paid upon completion of the work, acceptance by the LPA and State and a final audit of all invoiced amounts has been completed by the State or its authorized representative.

The acceptance by the Consultant of the final payment for each Task Order 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, finished, or relating to the services rendered by or in connection with this Master Agreement or any part thereof. The Consultant agrees to reimburse the State for any overpayments discovered by the State or its authorized representative.

- E. 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 Master Agreement period and for three years from the date of final payment under each Task Order between an LPA and Consultant. Such materials must be available for inspection by the State, LPA, FHWA, or any authorized representative of the federal government, and when requested, the Consultant shall furnish copies.

SECTION 8. PROFESSIONAL PERFORMANCE

The Consultant understands that the State in this Master Agreement and the LPA in any Task Order will rely on the professional training, experience, performance and ability of the Consultant. Examination by the LPA, State, or FHWA, or acceptance or use of, or acquiescence in the Consultant's work product, will not be considered to be a full and comprehensive examination and will not be considered approval of the Consultant's work product which would relieve the Consultant from 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 Master Agreement and any Task Order issued by an LPA. The Consultant further understands that acceptance or approval of any of the work of the Consultant by the LPA or State or of payment, partial or final, will not constitute a waiver of any rights of the LPA or State 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 work product of the Consultant 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 Consultant's work product is necessary, the Consultant shall make such revisions without expense to the LPA or State. The Consultant shall respond to the notice of any errors, omissions or negligence within 24 hours and give immediate attention to necessary corrections. If the Consultant discovers errors in its work, it shall notify the LPA and State of the errors within 24 hours. Failure of the Consultant to notify the LPA or State will constitute a breach of this Master Agreement.

SECTION 9. CHANGE OF PLAN, ABANDONMENT, SUSPENSION, AND TERMINATION

The State has the absolute right to abandon, suspend or terminate the Master Agreement 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 Master Agreement. The State will give the Consultant seven days written notice of such abandonment, suspension, or termination.

If the State abandons, suspends or terminates the Master Agreement, the Consultant will be removed from the list of selected consultants for work under this contract. In the event the Master Agreement is terminated for cause, State is not required to provide the Consultant with the minimum amount of fees under this Master Agreement.

It is expected that the Task Orders will include, but not be limited to, the following or similar language:

- Additions to the scope of services for a Task Order between an LPA and Consultant require the approval of the State and negotiation of a supplemental agreement to the Task Order. For any work requested by the LPA beyond the negotiated scope of services, the Consultant shall document that the requested work is beyond the negotiated scope of services, estimate the cost to complete the work, negotiate the additional fee, and execute a supplemental agreement with the LPA before the Consultant begins the additional work. In the event the additional work is time critical, the LPA may, with the approval of the State, instruct the Consultant in writing to begin the additional work following the negotiations and prior to the full execution of the supplemental agreement. Any work beyond the negotiated scope of services performed by the Consultant prior to written approval of the LPA will be performed at the expense of the Consultant.

The terms of abandonment, suspension or termination of Task Orders with LPAs will be addressed in each Task Order.

SECTION 10. 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 State 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 11. 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 12. GENERAL COMPLIANCE WITH LAWS

The Consultant hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work in effect at the time of the work.

SECTION 13. 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 Director - State Engineer or a duly authorized representative, whose decision in the matter will be final and conclusive on the parties to this agreement.

SECTION 14. RESPONSIBILITY FOR CLAIMS AND LIABILITY (INSURANCE)

The Consultant agrees to save harmless the State from all claims and liability due to the error, omission or negligence 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 15. PROFESSIONAL REGISTRATION

If applicable, 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 16. SUCCESSORS AND ASSIGNS

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

SECTION 17. DRUG-FREE WORKPLACE POLICY

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

SECTION 18. 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 19. 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 20. 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 State or such remedy as the State deems appropriate.

SECTION 21. 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 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 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 State will impose such agreement sanctions as it or the 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 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 State enter into such litigation to protect the interests of the State and, in addition, the Consultant may request that the United States enter into such litigation to protect the interests of the United States.

SECTION 22. 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 State 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 State'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 State may terminate this agreement for cause or default.
- d. The Consultant shall provide immediate written notice to the State 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 State 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 State 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 23. NEBRASKA DEPARTMENT OF ROADS CERTIFICATION

By signing this agreement, I, Jim Wilkinson, 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 24. 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 firm.

EXECUTED by the Consultant this ____ day of _____, 2010.

(1)
(4)

(5)

STATE OF (6))

)ss.

(7) COUNTY)

Subscribed and sworn to before me this _____ day of _____, 2010.

Notary Public

EXECUTED by the State this ____ day of _____, 2010.

NEBRASKA DEPARTMENT OF ROADS
Jim Wilkinson, P.E.

Local Projects Engineer

AGRS

RESOLUTION 2010-112

WHEREAS, the Nebraska Department of Roads (NDOR) performed a Qualification Based Selection (QBS) process and selected twelve on-call Construction Engineering (CE) consultants to provide services for Local Public Agencies (LPA); and

WHEREAS, the LPA may contract CE services with one of these twelve consultants as a task order under the NDOR's master agreement with the consultant; and

WHEREAS, the twelve consultants were evaluated and scored by City Staff; and

WHEREAS, Olsson Associates of Grand Island, Nebraska was selected for such work; and

WHEREAS, a Scope of Services and cost for such work was negotiated with Olsson Associates; and

WHEREAS, work under the agreement will be performed at actual costs with the dollar amount not to exceed \$_____ (amount to be inserted).

WHEREAS, the NDOR and the Federal Highway Administration (FHWA) have concurred with the selection, scope of services and cost estimate; and

WHEREAS, the NDOR has prepared a task order agreement for the CE work to be performed under a master agreement between the NDOR and Olsson Associates; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal of Olsson Associates of Grand Island for CE services for the construction of the northbound lanes on South Locust Street north of I-80 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 on April 20, 2010.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form ☐ _____
April 16, 2010 ☐ City Attorney