

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee  
FROM: Eric Williams, Natural Resources Planner  
SUBJECT: Platte River Trail, Phase 1 (MoPac Trail) Project  
Professional Services Contract Closeout  
DATE: January 4, 2018

Construction of the Platte River Trail, Phase 1 Project was completed in July 2014 with federal funding paying 80% of the total cost of the project. Engineering and construction observation services for the project was provided by Ehrhart Griffin & Associates (EGA) through a contract with the District for a not-to-exceed amount of \$364,358. While working through closeout procedures, EGA documented additional costs they had incurred that were outside the scope of the original contract.

These out of scope items are described in the attached letter from EGA (originally dated October 12, 2014 with final date of May 19, 2017), and the attached Consultant Work Order (CWO), dated May 19, 2017, listing a breakdown of these additional costs amounting to \$65,489.15. The CWO itemized services exceeding those estimated for the project due to worked related to a number of items; construction work completed while the 404 permit was renewed, increase in the number of Working Days allowed for the contractor, NPDES observation, and mileage accounting correction from the original contract.

A significant effort was made by District staff and EGA over a 3-year period to encourage the Nebraska Department of Transportation (NDOT) to approve and pay this CWO. This effort was not successful, and NDOT sent the attached December 8, 2017 letter to the District indicating that the requested out of scope fees were not eligible for federal reimbursement.

Since reimbursement from federal funding was not provided by NDOT, an invoice for the remaining services was sent from EGA to the District. Through a meeting to resolve the final outstanding issues, District staff and EGA have come to what is believed to be a fair and equitable agreement for compensation of the work performed. EGA is willing to absorb approximately 25% of the out of scope costs as their responsibility, leaving the District to pay \$48,797.69 of the costs from the CWO. Accordingly, EGA has provided an updated invoice (see attached) for payment directly from the District to close out the contract.

- **Management recommends that the Subcommittee recommend to the Board of Directors that Ehrhart Griffin & Associates be paid a close out amount of \$48,797.69 for their professional services contract for the Platte River Trail, Phase 1 Project.**



**Ehrhart Griffin & Associates**

3552 Farnam Street  
Omaha, NE 68131

Phone: (402) 551-0631

Fax: (402) 551-6540

**INVOICE**

**Emailed**

**INVOICE NO: B4712**  
**INVOICE DATE: 1/3/2018**  
**PROJECT NO: EGA111264**

**SOLD TO: ERIC WILLIAMS**  
**PAPIO-MISSOURI RIVER NRD**  
**8901 S. 154TH ST**  
**OMAHA, NE 68138**

**PAYMENT IS DUE ON RECEIPT**  
**18% INTEREST WILL BE CHARGED TO ALL PAST DUE INVOICES**

**TOTAL AMOUNT INVOICED: \$48,797.69**

**REFERENCE | DESCRIPTION | AMOUNT**

**PROJECT :** PLATTE RIVER TRAIL CONSTRUCTION SERVICES  
**LOCATION :** SARPY COUNTY, NEBRASKA  
**PURPOSE :** CONSTRUCTION SERVICES

**NOTES:** **NEGOTIATED BALANCE OF PROFESSIONAL SERVICES FOR THE CONSTRUCTION OF THE PLATTE RIVER TRAIL**

**ENGINEERING FEE: \$48,797.69**



**THANK YOU FOR YOUR BUSINESS**

Web Address: [www.ehrhartgriffin.com](http://www.ehrhartgriffin.com)  
Invoice Prepared By:

DAN DOLEZAL

**TOTAL AMOUNT INVOICED: \$48,797.69**



Good Life. Great Journey.

**DEPARTMENT OF TRANSPORTATION**

December 8, 2017

Marlin J. Petermann, P.E.  
Papio-Missouri River Natural Resource District  
8901 S 154th Street  
Omaha, NE 68138-3621

Re: Platte River Trail Phase 1, STPB-77(49), CN 22191

Dear Mr. Petermann:

This letter is in response to your request that the Nebraska Department of Transportation (NDOT) review and reconsider our previous determination on whether some of the consultant fees incurred by Papio-Missouri Natural Resource District, (NRD) for the local federal-aid trail project referenced above would be eligible for federal-aid reimbursement. NDOT has carefully reviewed the documentation associated with this request. As was discussed in a meeting held in Lincoln several months ago and as documented below, NDOT has come to the final conclusion that these fees are not eligible for federal reimbursement.

NDOT has the obligation to verify that the local entity has followed all the federal requirements when federal funds are being utilized for a local project, such as this one. Our final conclusion was based on documentation that showed that the following federal requirements were not met.

The documentation showed that the project was not completed within the established contract working days. Supporting documentation showed that this was primarily due to an additional environmental permit that was not obtained in a timely manner by NRD, and also Ehrhart Griffin improperly charging working days. This caused the project to extend into the next construction season, during which Ehrhart Griffin billed time to the project. However, because of the permit issue and the incorrect enforcement of the working days there is no justification to support these additional billings.

Marlin J. Petermann  
December 8, 2017  
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The documentation also showed that the work by Ehrhart Griffin associated with this extended construction period was not requested or approved in advance of the work actually being completed and was beyond the approved scope of work that was specified for the project. To be eligible for federal funds the work must be requested, justified, negotiated, and approval given by NDOT prior to the work actually occurring.

Because these requirements were not adhered to, the consultant fees are not eligible for federal-aid reimbursement.

Sincerely,

A handwritten signature in black ink, appearing to read 'KS', with a long horizontal flourish extending to the right.

Kyle Schneweis, P.E.  
Director

KS:MS:z

cc: Khalil Jaber, Deputy Director – Engineering, NDOT



October 12, 2014 (Original submittal)  
December 8, 2014 (Resubmitted)  
August 14, 2015 (Resubmitted)  
May 19, 2017 (Resubmitted)



Mr. Eric Williams  
PMRNRD  
8901 South 154<sup>th</sup> Street  
Omaha, Nebraska 68138-3621

RE: Platte River Trail  
CWO for Additional Construction Services (Revised)  
STPB-77(49)  
EGA Project No. 111264

Dear Eric,

Attached please find our revised CWO request form and supporting information (Exhibit "A") for a request of additional services for the above referenced project. Our request is based upon the NDOR response in May, 2016, in which they indicated acceptable amounts (said response is attached as Exhibit "B"). As agreed to earlier, we have completed project closeout before making this final request.

In summary, our CWO consists of:

1. The 404 permit for the project had expired and we were unable to charge working days per the direction of Chris Kuehner, NDOR (please reference attached email copy we received from Chris stating "that since the Contractor can't work in 404 permitted areas do not charge working days" (attached Exhibit B-1). Per Chris' instructions (and later review) days were not charged until the 404 permit was re-issued. The one day in question in the NDOR's response was spent preparing required paperwork and Site Manager reporting. **Our request for this item is in the amount of \$ 22,967.30.**
2. Working days were not charged due to weather related poor site conditions preventing work on the CCO (grading), however, the Contractor did perform work on various items outside of the CCO which required observation services. Per the NDOR's response in May, 2016, 10 days were deemed acceptable. **Our request for this item is in the amount of \$ 10,415.64.**
3. 20 working days were added to the Contractor's contract by Change Order at the conclusion of the construction. The attached spreadsheet indicates days and hours spent per day to calculate this item. **Our request for this item is in the amount of \$ 18,464.78.**

4. Additional NPDES observations and reports were required prior to permit closeout that have not been invoiced yet. **Our request for this item is in the amount of \$ 2,143.68.**
  
5. Mileage was inadvertently miscalculated on the original contract. It is described as "370 trips at 28 miles per trip at \$0.565 per mile, but under quantity "370" was incorrectly inserted instead of the correct figure of "10,360". The 10,360 miles represented one way trips. Per the NDOR's May 2016 response, we are requesting an additional 20350 miles. **Our request for this item is in the amount of \$ 11,497.75..**

I summary, our CWO request, as itemized above, is in the amount of **\$ 65,489.15.**

Our contract status is broken down as follows:

Original contracted amount	\$ 364,358.01
Approved Supplement #1 (Material testing)	\$ 30,490.00
Approved Supplement #2 (Project Closeout)	\$ 11,472.57
Requested fee on this CWO	<u>\$ 65,489.15</u>
Total	\$ 471,809.72

I feel that this CWO accurately reflects the previously referenced NDOR comments of May 2016 and there should not be any basis for further compromise. This CWO then leaves an unresolved balance of **\$5,513.77**, of which I am requesting that the PMRNRD pay directly after the NDOR approves this CWO. This balance represents the additional observation time spent and does not represent the many administrative hours spent in drawing this matter to a close nor represent the amount of time we have spent waiting for a resolve. I might add that we have never asked for rate increases over the life of the contract either.

The PMRNRD has long been considered one of our favorite, most important clients, and I fully believe our performance and standard of care support that premise. I am more than happy to meet with you in person to walk through this request and address any comments or questions you have regarding these issues.

I appreciate your time and consideration in this matter.

Sincerely,

EHRHART GRIFFIN & ASSOCIATES

Daniel J. Dolezal, PE

Attachments

