

Agenda Item: 8.

Memo to: Programs, Projects, and Operations Subcommittee
Subject: MoPac Trail (Hwy. 50 to Lied Bridge) Engineering Fees – Contract with Ehrhart Griffin and Associates
Date: February 3, 2012
From: Gerry Bowen

In December, 2003, the District entered into a professional services contract with Ehrhart Griffin and Associates (EGA) for the Mopac Trail (Hwy. 50 to the Lied Bridge) project. The original contract amount was \$238,046.45. In June, 2008, the Board approved an increase in the “not-to-exceed” amount to \$323,906.68 due to changes in the project design to accommodate landowner requests for drainage improvements that remained after the NDOR paved Highway 31 (memo attached). This allowed the District to acquire the right-of-way for the project without the use of eminent domain.

The entire project was then delayed due to changes in procedures by NDOR and FHWA for use of federal transportation funds. The engineering on the project then resumed in 2010 and was required to follow the revised NDOR rules and regulations under guidance from FHWA. The new procedures required additional fees to be incurred to meet the new requirements.

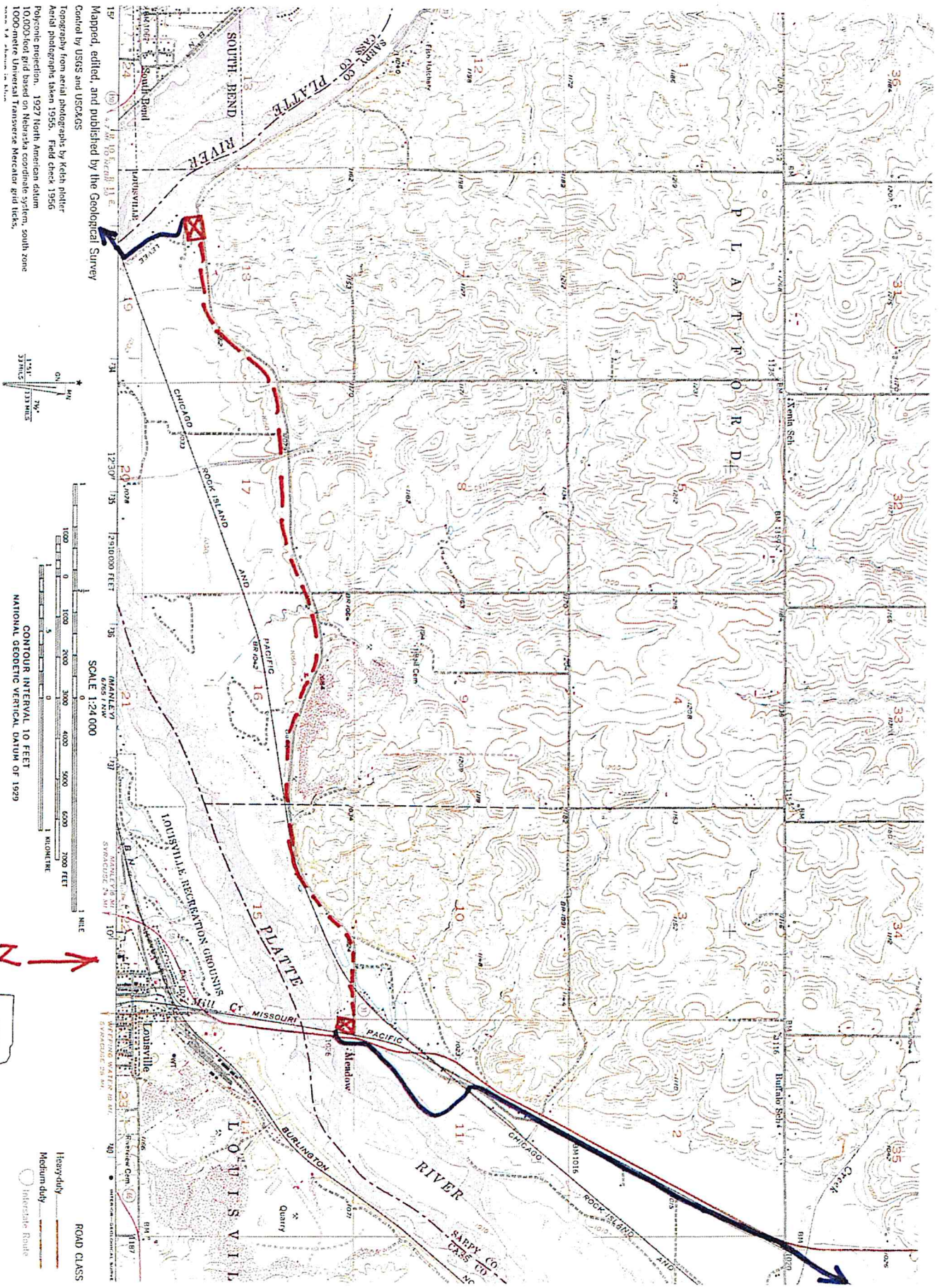
The Board was notified in December, 2010 (EGA’s letter included in the General Manager’s Report and attached) that additional fees would be needed to get the project completed. The 2010 letter noted that the increase in fees amounted to \$95,000 at that time. This increase was not brought to the Board for action since it was believed that there would still be additional work necessary.

The District received the attached letter from EGA on January 27, 2012. The additional fees and services are outlined in the letter. The additional services are itemized in the letter under the following categories:

ROW Assessment Documents	\$3,800.00
FHWA Oversight	\$197,358.00
NEPA Process	\$34,500.00
Project Completion	\$15,000.00
Construction Administration (credit)	(\$106,149.98)
Total Additional Fees Requested	\$144,508.02

The construction administration credit resulted because it was included in the original scope of services. The District was not allowed to utilize EGA as the construction administration contractor unless a separate request for proposal was sent to all qualified consultants. The District followed the guidelines, interviewed consultants and ultimately selected EGA as the firm for construction administration. These services will be covered in a separate agreement that will be prepared by NDOR within the next several months. This agreement will be brought to the Board for action at that time.

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute proposed amendment No. 2 of the professional services contract with Ehrhart Griffin and Associates for the Mopac Trail Project (Hwy. 50 to Lied Bridge) increasing the not to exceed amount from \$323,903.68 to \$468,414.70.**



Maped, edited, and published by the Geological Survey

Control by USGS and USCGS

Topography from aerial photographs by Keith plater

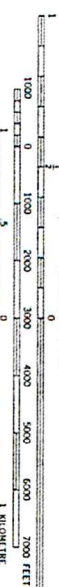
Aerial photographs taken 1955. Field check 1956

Polyconic projection. 1927 North American datum

10,000-foot grid based on Nebraska coordinate system, south zone

1000 metre Universal Transverse Mercator grid ticks.

SCALE 1:24,000



CONTOUR INTERVAL 10 FEET

NATIONAL GEODETIC VERTICAL DATUM OF 1929

ROAD CLASS

Heavy-duty

Medium-duty

Indefinite Route

January 26, 2012



Mr. John Winkler, General Manager
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
8901 South 154th Street
Omaha, Nebraska 68138-3621

RE: Platte River Trail
EGA Project No. 031340

Dear Mr. Winkler:

Please accept this letter as our request for additional services for the above referenced project.

To begin, as you are fully aware, the Federal Highway Administration (FHA) has placed the Nebraska Department of Roads (NDOR) into what is referred to as an oversight category due to some substandard practices and procedures on past highway projects that received federal funding. This oversight process generally involves FHA scrutiny on every facet of federally funded projects and has led to new procedures and policies at almost every level. The policies and procedures are continually evolving, and FHA policy is that every project must meet current standards and procedures, meaning that often times the design team will redo certain aspects of a project just to conform to updated procedures. In addition to the oversight, FHA has also determined that every federally aided project **MUST** be bid through the Nebraska Department of Roads (local bidding is no longer allowed), and the design engineering team cannot perform any construction services on a project that they designed unless their services are obtained through a separate RFP process. (This process has been completed and EGA was selected to perform the construction administration services for this project). These past procedures presented, in the FHA's viewpoint, a possibility for a conflict of interest for the project.

Unfortunately for the P-MRNRD, this oversight has led to FHA protracted delays and increased soft costs to the projects. Time delays were encountered when the oversight first began and as FHA was determining policy direction. It is my understanding that there were no trail projects reviewed or approved for bidding for a 3-year period that ended earlier last year, including this project.

Another significant issue that has arisen is the implications of the National Environmental Protection Act (NEPA) upon our design team. This involvement and meaning to the P-MRNRD is detailing more fully later in the body of this letter.

Due to the current review climate of the NDOR, it should be noted that this project underwent more than 10 reviews by multiple departments of the NDOR, including 8 reviews in 2011 alone. Comments were received in February, April, May (twice), June, July, August and November. On December 13, 2011, we received word from Sinclair Hille, the NDOR's Enhancement Program coordinator, that the NDOR had signed off on the design review and there would be no further design comments from the NDOR. The project is currently undergoing a final ROW review process, before going to the Federal Highway Administration for their approval.

As you can imagine, we have encountered numerous out of scope services as a result of the issues mentioned above. We are requesting additional services for the items described below and that have already been completed. Typically, we would identify additional services prior to their execution, but, frankly speaking, we felt that due in part to the uncertainty of what we were to expect from the NDOR process, the fact that we had a contract in place with total dollars committed to the project, and a desire to

avoid having to come to the Board numerous times for additional fees, we were forced to wait until we had finished the process.

The additional service request is more defined as:

- *Right of way assessment documents - \$3,800.00*

The right of way acquisition process is very involved and the procedural requirements are very specific. To describe the process briefly:

1. After the project is designed, the design team prepares ROW acquisition documents which are used to develop land acquisition assessments.
2. The assessment is reviewed by the NDOR and, if all is in order, approved and returned to the ROW acquisition agent so that they may begin acquisition negotiations.
3. Negotiations are completed; legal documents of title transfer are prepared.
4. ROW acquisition documents are presented to NDOR for certification and approval.

Due to intense negotiations with the residents and their discord with past NDOR highway widening, acquisition became slightly different from the original assessment. Later, when NDOR/FHA reviewed and compared the evaluations to the acquisitions, we were required to go back to the assessment documents and modify them so that they read identically to the ultimate acquisition documents. This cost reflects only the effort required to change the assessment documents.

- *FHA Oversight - \$197,358.00*

Due to the aforementioned FHA oversight, in particular the mandate that no projects can be locally let, a significant amount of extraordinary detailing must be performed to get the plans and specifications to meet the new bidding requirements. A sampling of some of the examples of this detailing are:

1. The project contains over 50-field entrance (drives used only by farm equipment into cropland). Instead of a single standard detail with a note to adjust to field conditions, every driveway must now be detailed individually.
2. The project contains a shallow ditch on the uphill side of the trail. Typically, contours and cross sections will identify elevations of the swale. The NDOR requires a separate profile of every swale.
3. In the past, we have successfully used pipe and drainage structure tables to illustrate pertinent construction information (an acceptable engineering practice). The NDOR requires separate plan and profiles for every pipe run.
4. The plans and specifications cannot call out less than FOUR products that are approved by NDOR when specifying a specific product (i.e. pedestrian bridge, safety railings, fences, etc.)

The NDOR review process involves many facets and individuals, with not all parties working in concert or with a full set of project documents. As a result, we found ourselves addressing comments from several directions, having to provide clarification as to what the intent of the

design meant, or supply detailing on sheets that the reviewer did not receive for his review (plans were distributed internally by the NDOR). Also, due to the time lapse during the initiation of the FHA oversight process, many design decisions were revisited through NDOR comments and had to be revised or substantiated through phone calls and face to face meetings. Review comments were generally received at random intervals from different NDOR departments/reviewers.

By local "let" standards, we consider the set of plans that was originally submitted to be bid ready under normal circumstances. .

- *NEPA process - \$34,500.00*

The National Environmental Protection Act (NEPA) is required for any project receiving any federal funding. This process was outside of our scope of services and in the past was performed by the NDOR. The FHA oversight has shifted this responsibility to the design team. By current policy, the NEPA consultant that will write the NEPA must be certified by the NDOR. (In an interesting twist, we wrote the original NEPA for this project and had submitted it before the certification was mandatory. EGA was not selected as a certified NEPA author during last year's NEPA certification selection on June 1st, but yet the NEPA for this project was approved at the end of June.) The oversight program has created procedures for the procurement of each of the various agency approvals required for the NEPA document. All of these procedures have undergone at least one revision, and in the eyes of the FHA, the approval is not acceptable unless obtained through current procedures. Approvals over or near 3-years old are also considered too old for acceptance and must be re-obtained. For this project, we procured the following approvals:

1. Permit to Occupy State ROW
2. State Historical Society (3 times)
3. Nebraska Games and Parks
4. US Fish and Wildlife (3 times)
5. Biological Evaluation (this form supplanted items 3 and 4 after they were obtained)
6. Nebraska DEQ – determination of illegal landfill
7. Farmland impact per Farmland Protection Policy Act
8. Floodplain permit
9. LWC fund determination
10. Wellhead Protection
11. Corp of Engineers – Jurisdictional determination (2 year duration before determination was made)
12. Wetland determination (3 times)
13. Threatened and Endangered species

The fee listed above represents the time spent in calls, letters submittals, reviews and comments needed to obtain the approvals, write the NEPA and obtain its final approval.

- *Project completion - \$15,000.00*

Quite honestly, we are unsure of what to expect next. We realize that the project is undergoing a ROW review process as we speak, and that the entire project will undergo a Federal Highway Administration (FHA) review process before being returned to the NDOR for bidding. We have been told by Sinclair Hille and the NDOR that the FHA process generally accepts the recommendation of the NDOR for their review and that they are mainly checking the process to ensure that the project review met their criteria. We do know that the NDOR will request final signed plans and specifications when the remaining review processes are completed. Since this is

an hourly not to exceed contract, this proposed fee is intended to satisfy only the final tasks needed to address the final procedures of turning the project out for bid.

- ***Construction Services – Credit \$ 106,149.98***

Construction services were originally included in our original contract in 2003. Per current FHA and NDOR guidelines, construction administration must be contracted separately, therefore we will not use this amount in our contract.

Our contract breakdown will be as follows:

Original contract	\$ 238,046.45
Amendment Approved on 5-26-08	\$ 85,860.23
Requested additional services this letter:	
ROW Assessment documents	\$ 3,800.00
FHA Oversight	\$ 197,358.00
NEPA process	\$ 34,500.00
Project completion	\$ 15,000.00
Construction Administration credit	<u>\$-106,149.98</u>
Total contract (including this letter)	\$ 468,414.70

Thank you for your consideration in this matter. Our design team shares in the frustration and strain of the issues that are beyond the limits of this project and want to assure the Board that we are eager and ready to move forward in our contract. We will attend any and all meetings that you request to offer any further explanation that may be deemed necessary.

The P-MRNRD has been one of our most valued clients over the history of our organization, and we have great pride in the quality and execution of our past contracts with the Board. We always welcome your input and look forward to working together in the future!

Sincerely,

EHRHART GRIFFIN & ASSOCIATES

A large, stylized handwritten signature in black ink, appearing to read 'Dan Dolezal', is written over the company name.

Daniel J. Dolezal, P.E.

November 5, 2010



Mr. John Winkler, General Manager

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

8901 South 154th Street

Omaha, Nebraska 68138-3621

RE: Platte River Trail
EGA Project No. 031340

Dear Mr. Winkler:

Please share the following update and contract modification request on the above referenced project with the Board members at the November 9th meeting. I am also planning to attend to answer any questions if necessary.

To begin, as you are fully aware, the Federal Highway Administration (FHWA) has placed the Nebraska Department of Roads (NDOR) into what is referred to as an oversight category due to some substandard practices and procedures on past highway projects that received federal funding. This oversight process generally involves FHWA scrutiny on every facet of federally funded projects and has led to new procedures and policies at almost every level. The policies and procedures are continually evolving, and FHWA policy is that every project must meet current standards and procedures, meaning that often times the design team will redo certain aspects of a project just to conform to updated procedures. In addition to the oversight, FHWA has also determined that every federally aided project MUST be bid through the Nebraska Department of Roads (local bidding is no longer allowed), and the design engineering team cannot perform any construction services on a project that they designed. In both instances, FHWA has determined that there are conflicts of interest between the local project administrator (LPA), design engineer and the contracting community.

Unfortunately for the P-MRNRD, this oversight has led to FHWA protracted delays and increased soft costs to the projects. Time delays were encountered when the oversight first began and as FHWA was determining policy direction. It is my understanding that there were no trail projects reviewed or approved for bidding for a 3-year period that ended earlier this year, including this project.

Another significant issue that has arisen is the implications of the National Environmental Protection Act (NEPA) upon our design team. This involvement and meaning to the P-MRNRD is detailing more fully later in the body of this letter.

Currently, we are finishing the remainder of the review comments we received from the NDOR review team and are planning to resubmit the revised documents on November 19th. At that point, the NDOR will review the new submittal and either approve it or return with additional comments. ROW acquisition is complete and has been approved by NDPR previously, but Gerry Bowen has received word that the ROW will undergo a new review process. The NEPA

has been approved and accepted by FHWA. Depending on the remaining review, I feel that we are very close to letting the project out for bid.

In view of the previously listed history of the FHWA oversight and NEPA process, we are respectfully requesting that the Board consider the following items and associated additional fees as an extension to our design contract:

- *Right of way assessment documents - \$3,800.00*

The right of way acquisition process is very involved and the procedural requirements are very specific. To describe the process briefly:

1. After the project is designed, the design team prepares ROW acquisition documents which are used to develop land acquisition assessments.
2. The assessment is reviewed by the NDOR and, if all is in order, approved and returned to the ROW acquisition agent so that they may begin acquisition negotiations.
3. Negotiations are completed; legal documents of title transfer are prepared.
4. ROW acquisition documents are presented to NDOR for certification and approval.

Due to intense negotiations with the residents and their discord with past NDOR highway widening, acquisition became slightly different from the original assessment. Later, when NDOR/FHWA reviewed and compared the evaluations to the acquisitions, we were required to go back to the assessment documents and modify them so that they read identically to the ultimate acquisition documents. This cost reflects only the effort required to change the assessment documents.

- *FHWA Oversight - \$34,700.00*

Due to the aforementioned FHWA oversight, in particular the mandate that no projects can be locally let, a significant amount of extraordinary detailing must be performed to get the plans and specifications to meet the new bidding requirements. A sampling of some of the examples of this detailing are:

1. The project contains over 50-field entrance (drives used only by farm equipment into cropland). Instead of a single standard detail with a note to adjust to field conditions, every driveway must now be detailed individually.
2. The project contains a shallow ditch on the uphill side of the trail. Typically, contours and cross sections will identify elevations of the swale. The NDOR requires a separate profile of every swale.

3. In the past, we have successfully used pipe and drainage structure tables to illustrate pertinent construction information (an acceptable engineering practice). The NDOR requires separate plan and profiles for every pipe run.
4. The plans and specifications cannot call out less than FOUR products that are approved by NDOR when specifying a specific product (i.e. pedestrian bridge, safety railings, fences, etc.)

By local "let" standards, the set of plans that was submitted was bid ready under normal circumstances. The amount shown represents our effort to date to address the review comments that were received in July, 2010.

• *NEPA process - \$34,500.00*

The National Environmental Protection Act (NEPA) is required for any project receiving any federal funding. This process was outside of our scope of services and in the past was performed by the NDOR. The FHWA oversight has shifted this responsibility to the design team. The NEPA consultant that will write the NEPA must be certified by the NDOR. (In an interesting twist, we wrote the original NEPA for this project and had submitted it before the certification was mandatory. EGA was not selected as a certified NEPA author during last year's NEPA certification selection on June 1st, but yet the NEPA for this project was approved at the end of June.) The oversight program has created procedures for the procurement of each of the various agency approvals required for the NEPA document. All of these procedures have undergone at least one revision, and in the eyes of the FHWA, the approval is not acceptable unless obtained through current procedures. Approvals over or near 3-years old are also considered too old for acceptance and must be re-obtained. For this project, we procured the following approvals:

1. Permit to Occupy State ROW
2. State Historical Society (3 times)
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8. Floodplain permit
9. LWC fund determination
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11. Corp of Engineers - Jurisdictional determination (2 year duration before determination was made)
12. Wetland determination (3 times)
13. Threatened and Endangered species

The fee listed above represents the time spent in calls, letters submittals, reviews and comments needed to obtain the approvals, write the NEPA and obtain its final approval.

- *Project completion - \$22,000.00*

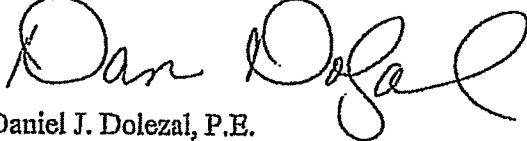
Quite honestly, we are unsure of what to expect next. Our next submittal will be made on or before November 19th, 2010, and we are confident that we have either addressed the NDOR comments with plan/specification revisions or reasonable explanations of why our design detail is what it is. The fee listed will finish our revision effort and provide a contingency that is hoped to cover any future requirements/comments/submittals that may arise.

The total requested additional sum is \$95,000.00.

Thank you for your consideration in this matter. Our design team shares in the frustration and strain of the issues that are beyond the limits of this project and want to assure the Board that we are eager and ready to move forward in our contract. The P-MRNRD has been one of our most valued clients over the history of our organization, and we have great pride in the quality and execution of our past contracts with the Board. We always welcome your input and look forward to working together in the future!

Sincerely,

EHRHART GRIFFIN & ASSOCIATES

A handwritten signature in black ink, appearing to read "Dan Dolezal", written over the printed name.

Daniel J. Dolezal, P.E.

Memo to: Programs, Projects, and Operations Subcommittees

Subject: MoPac Trail (Hwy. 50 to Lied Bridge) Engineering Fees – Contract with Ehrhart Griffin and Associates

Date: May 29, 2008

From: Gerry Bowen

We have received a request from Ehrhart Griffin and Associates for an increase in engineering fees for the Mopac Trail (Hwy. 50 to Lied Bridge). The request letter is attached. The original contract amount was \$238,046.45. The total amount of the fee increase is \$85,860.23, resulting in a new not-to-exceed contract amount of \$323,906.68.

The additional fees resulted when significant design changes were necessary to accommodate landowner concerns about drainage issues remaining after the Nebraska Department of Roads paved Highway 31. After initial discussions with landowners, it became apparent that these design changes would be necessary to avoid acrimonious and lengthy land acquisition negotiations on the project. It was decided that accommodating the desires of the landowners was a worthwhile gesture. In some cases, the design required changes in the right-of-way necessary for the project. Revision of some of the legal descriptions was also an additional service.

The design changes noted above did not occur all at once, but as negotiations with each landowner occurred. The end result was the cumulative situation described above. Design changes affected six of the thirteen landowners.

As a result, all of the parcels were obtained through negotiation, without the use of eminent domain. (Note: The right-of-way on parcels owned by the Bureau of Education Lands and Funds were obtained by eminent domain as required by state law.)

Since the project is now under final review by NDOR, the only remaining engineering expense will be bidding and construction observation for the project.

It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to amend the professional services contract with Ehrhart Griffin and Associates to increase the “not-to-exceed” amount from \$238,046.45 to \$323,906.68.