

Agenda Item: 8.

Memo to: Programs, Projects and Operations Subcommittee

Subject: Western Douglas County Trails Project – Environmental Services Agreement
With Felsburg, Holt & Ulevig

By: Gerry Bowen

Date: December 1, 2011

The Western Douglas County Trails Project was initiated by the District, Douglas County, and the Cities of Valley, Omaha, and the Village of Waterloo to construct a series of trails in Western Douglas County in 2005. Congressman Lee Terry obtained a federal earmark of \$4.8 million to assist with this effort.

Consequently, the District hired Ehrhart Griffin & Associates (EGA) to provide professional engineering services on the project. They were proceeding with the design of the first two phases of the project (Phase 1 = Valley to the Twin Rivers YMCA; Phase 2 = Valley to Waterloo) when the Department of Roads (NDOR) and the Federal Highway Administration (FHWA) decided that a change in procedures was needed and the project went on hiatus until the new procedures could be implemented. This delay occurred in 2008. The federal ARRA (Stimulus) projects added further delays to the project.

With the new NDOR/FHWA procedures, the project must follow NEPA (National Environmental Policy Act) procedures and before final designs can be completed. NDOR determined that EGA was not qualified to conduct the necessary studies and evaluations needed to prepare the “NEPA document”. Therefore, to help facilitate the selection of a qualified NEPA consultant, NDOR pre-selected and qualified six firms that local project sponsors could utilize.

Management reviewed the six firms, ranked them, and ultimately selected Felsburg Holt and Ulevig (FHU) as the most qualified for this particular project. Management was authorized to follow a similar process for selecting a consultant for construction engineering services on the Missouri River and Platte River Trail Projects.

Upon concurrence from the NDOR and FHWA, Management negotiated a scope of services and fee proposal with FHU to prepare the “NEPA document” on this project (see attached). The proposed fee for these services is \$11,398.70, of which \$9,118.96 will be reimbursed from federal funds mentioned above. The District’s share will be \$2,279.74.

The new procedures require the District to utilize a contract (attached) prepared by NDOR for these environmental services. The contract/agreement requires a Board resolution authorizing the General Manager to sign the contract (attached).

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute a professional services agreement with Felsburg, Holt and Ulevig for environmental services for Phase 1 and 2 of the Western Douglas County Trail project.**

PROFESSIONAL SERVICES, CONSULTANT
LPA PROJECTS
NEPA Services

PAPIO MISSOURI RIVER NATURAL RESOURCES DISTRICT
FELSBURG HOLT & ULLEVIG
PROJECT NO. DPU-28(87) and DPU-28(102)
CONTROL NO. 22227 and 22227A
ON-CALL NATIONAL ENVIRONMENTAL POLICY ACT SERVICES
WEST DOUGLAS COUNTY TRAIL PHASE 1 & 2
YMCA TO VALLEY – VALLEY TO WATERLOO

THIS AGREEMENT, made and entered into by and between the Papio Missouri River Natural Resources District in Nebraska, hereinafter referred to as the Local Public Agency or LPA, and Felsburg Holt & Ullevig, hereinafter referred to as the "Consultant

WITNESSETH:

WHEREAS, LPA's federal-aid projects are designated as Project No. DPU-28(87) and DPU-28(102), and

WHEREAS, LPA has selected Consultant from a pool of on-call consultants to complete National Environmental Policy Act (NEPA) services, hereinafter referred to as "Services", identified in this agreement, and

WHEREAS, solely for convenience, consistency and in an attempt to obtain federal funding for the consultant services, the parties intend that this Task Order Agreement, herein after referred to as Task Order, include some of the provisions of a July 2009 Master Agreement for on-call NEPA Services for LPA projects between Consultant and the State of Nebraska, Department of Roads, hereinafter referred to as the "State" and

WHEREAS, LPA and Consultant wish to enter into this Task Order to specify the duties and obligations of the parties for the Services described herein, and

WHEREAS, the Consultant and LPA intend that the Services provided by Consultant comply with all applicable federal-aid transportation related program requirements, so that LPA's project will be fully eligible for federal reimbursement, and

WHEREAS, the LPA and Consultant intend that this Task Order be completed in accordance with the terms and conditions of the Nebraska LPA Guidelines Manual for Federal Aid Projects; hereinafter referred to as LPA Manual; the LPA Manual is a document approved by the Federal Highway Administration (FHWA) that sets out the requirements for local federal-aid projects to be eligible for federal reimbursement; the LPA Manual can be found in its entirety at the following web address: <http://www.dor.state.ne.us/gov-aff/lpa/lpa-guidelines.pdf>, and

WHEREAS, Consultants primary contact person for LPA will be LPA's representative, who has been designated as being in responsible charge of the project, and who is referred to herein as RC or Responsible Charge.

WHEREAS, the parties understand that the State is involved in this federal-aid project on behalf of the FHWA only for issues related to the eligibility of the project for reimbursement of project costs with federal-aid funds.

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

SECTION 1. TASK ORDER SCOPE OF SERVICES

LPA and Consultant understand that the Services provided by Consultant must be completed in accordance with all federal-aid reimbursement requirements and conditions. LPA and Consultant agree that the Scope of Services for this Task Order will be in two parts. Part one of the Scope of Services is contained within the General Statement set out below. Part two of the Scope of Services is set out on the document attached hereto as EXHIBIT "A", entitled Scope of Services and Fee Proposal, which is hereby fully incorporated herein and made a part hereof by this reference. EXHIBIT "A" is the result of the following process: (1) LPA provided Consultant with a document describing the proposed Scope of Services for this project, (2) Consultant made necessary and appropriate proposed additions, deletions, and revisions to LPA's Scope of Services document, and (3) LPA and Consultant together reviewed the proposed Scope of Services, the proposed revisions and negotiated the final Scope of Services and Fee Proposal document, which is attached as EXHIBIT "A". Consultant and LPA have agreed that EXHIBIT "A" sets out the Services reasonably necessary and the costs reasonably estimated for Consultant Services necessary for this project to be properly constructed. The Consultant agrees to provide the services listed on EXHIBIT "A" for Project Nos. DPU-28(87) and DPU-28(102), Control Nos. 22227 and 22227A in Douglas County, Nebraska.

General Scope of Services one or more of the following items:

1. Preparation of NEPA Determination Forms, including obtaining all permits and concurrences for the NEPA Document Package and preparation of a Green Sheet
2. Preparations of Categorical Exclusion Documents, including obtaining all permits and concurrences for the NEPA Document Package and preparation of a Green Sheet

3. Preparation of a De minimis 4(f) Determination, a 4(f) Exemption Document, or a 4(f) Programmatic Agreement
4. Re-evaluation of or Supplement to existing Categorical Exclusions, Environmental Assessment, or Environmental Impact Statement NEPA Documents
5. Perform a Wetland Delineation, a Preliminary Wetland Determination (in-the-field by NDOR guidance) or a Desktop Wetland Determination as appropriate

This agreement is not intended to include the preparation of an entire Environmental Assessment or Environmental Impact Statement.

For any services beyond what is shown in EXHIBIT "A", the Consultant shall describe the proposed services, provide justification for the proposed work, estimate the cost to complete the services, and receive written approval from the LPA before the Consultant begins the work. Any such work performed by the Consultant prior to written approval of the LPA will be done at the expense of the Consultant.

SECTION 2. CHANGES TO PERSONNEL

The Consultant has furnished a document entitled Staffing Plan in EXHIBIT "D" attached hereto and hereby made a part of this Task Order. Personnel who are added to the Staffing Plan as replacements must be persons of comparable training and experience. Personnel added to the Staffing Plan as new personnel and not replacements must be qualified to perform the intended services. Failure on the part of the Consultant to provide acceptable replacement personnel or qualified new personnel to keep the services on schedule will be cause for termination of this Task Order, with settlement to be made as provided in the SUSPENSION, ABANDONMENT, OR TERMINATION Section of this Task Order.

SECTION 3. 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 and attach it to this agreement. This form is available on the Department of Roads website at www.transportation.nebraska.gov/projdev/#save.
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 4. NOTICE TO PROCEED AND COMPLETION

The LPA will issue Consultant a written Notice-to-Proceed when LPA determines that the form of this Task Order is acceptable for federal funding eligibility. Any services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed is not eligible for reimbursement.

Any costs incurred by Consultant after April 1, 2012 are not eligible for federal funding reimbursement unless the Consultant has received an extension of time in writing from LPA and the LPA has federal funding approval for the extension of time. The completion time set out in each Task Order will not be extended because of any avoidable delay attributed to the Consultant, but delays attributable to the LPA may constitute a basis for an extension of time.

SECTION 5. FEES AND PAYMENTS

The general provisions concerning payment under this Task Order are set out on the attached Exhibit "B". The following provisions also apply:

- A. For performance of the professional services under the terms of this Task Order, the Consultant will be a fixed-fee-for-profit of \$1,257.19, as defined in paragraph D of the attached EXHIBIT "B," and up to a maximum amount of \$10,141.51 for actual costs as defined in paragraph "E" of the attached EXHIBIT "B". The total Task Order amount is \$11,398.70. Progress and final payments will be based on receipted invoices or certified billings and compensation will be in accordance with all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31).
- B. Occasionally, the conditions of this Task Order may change. This may be due to a change in scope which may require an adjustment of costs. For any services beyond what are shown in the scope of services of this Task Order, the Consultant shall describe the proposed services, provide justification for the proposed services, estimate the cost to complete the services, and receive written approval from the LPA before the Consultant begins the proposed services. Before written approval will be given by the LPA, the LPA must first determine that the situation meets the following criteria:
 - That the additional services is beyond the scope of services initially negotiated with Consultant; and
 - That the proposed services are within the scope of the Request for Proposal under which Consultant was selected and contract entered into; and
 - That it is in the best interest of the LPA that the services be performed under this Task Order.

Once the need for a modification has been established, a supplemental agreement will be prepared. If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the LPA shall use the process set out below:

- The Consultant Work Order (CWO) – DR Form 250 shall be used to describe and provide necessary justification for the additional scope of

services, effort, the deliverables, modification of schedule, and to document the total cost. The CWO form is available on the Department of Roads website at <http://www.nebraskatransportation.org/gov-aff/lpa-guide-man.html>. The CWO must be executed to provide authorization for the additional work and to specify when that work may begin. This Task Order will be supplemented after one or more CWOs have been authorized and approved for funding.

- C. 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.

SECTION 6. PROFESSIONAL PERFORMANCE

The Consultant understands that the LPA 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 Task Order. The Consultant further understands that acceptance or approval of any of the work of the Consultant by the LPA or concurrence by the State/FHWA or of payment, partial or final, will not constitute a waiver of any rights of the LPA 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 plans, specifications, and estimates are found to be in error or there are omissions therein revealed during or after the construction of the project and revision or reworking of the plans is necessary, the Consultant shall make such revisions without expense to the LPA. The Consultant shall respond to the LPA's notice of any errors or omissions within 24 hours and give immediate attention to necessary corrections to minimize any delays to the project. This may involve visits by the Consultant to the project site, if directed by the LPA. If the Consultant discovers errors in its work, it shall notify the LPA of the errors within seven days. Failure of the Consultant to notify the LPA will constitute a breach of this Task Order. The Consultant's legal liability for all

damages incurred by the LPA caused by error, omission, or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the LPA.

SECTION 7. SUSPENSION, ABANDONMENT OR TERMINATION

The LPA has the absolute right to suspend, abandon or terminate this Task Order at any time and such action on its part will in no event be deemed a breach of this Task Order. The LPA will give the Consultant seven days written notice of such change of plan, abandonment, suspension, or termination.

If the LPA suspends or abandons the work, or terminates the Task Order as presently outlined, the Consultant shall be compensated in accordance with the provisions of 48 CFR 31, provided however, that in the case of suspension, abandonment, or termination for breach of this Task Order, the LPA will have the power to suspend payments, pending the Consultant's compliance with the provisions of this Task Order. Payment to Consultant will be prorated based on the percentage of work completed by the Consultant prior to abandonment or termination compared to the total amount of work contemplated by this Task Order.

SECTION 8: CONFLICT OF INTEREST

The Consultant shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) for any Task Order and agrees to comply with all the Conflict of Interest provisions in order for the LPA's project to remain fully eligible for Federal funding. By signing this Task Order, the Consultant certifies that that Consultant is not aware of any financial or other interest the Consultant has that would violate the terms of these federal provisions.

SECTION 9. SECTIONS INCORPORATED BY REFERENCE:

For the convenience of the parties, for consistency for funding review, and in an effort to reduce the length of this agreement, LPA and Consultant agree to be bound by and hereby incorporate by this reference as if fully set forth herein, Sections 1, 9 through 13 and 15 through 21 of the Master Agreement for on-call environmental services for LPA projects between the Nebraska Department of Roads and Consultant, dated July, 2010, with one recurring change: The name of LPA should be substituted in for any reference in that agreement to State, State of Nebraska, Director or the Nebraska Department of Roads, unless the context would otherwise require. The LPA and Consultant agree to meet the requirements of all incorporated provisions and represent that by signing this Task Order, they expressly certify to any required certifications contained in those provisions. Although some of the provisions of the Master Agreement are incorporated herein by reference, it is understood that the Nebraska Department

of Roads is not a party to this Task Order and shall have no obligations or duties under this agreement.

SECTION 10. RESPONSIBILITY FOR CLAIMS AND LIABILITY (INSURANCE)

The Consultant agrees to save harmless the LPA or the State from all claims and liability due to the activities of the Consultant or those of the Consultant's agents or employees in the performance of work under this Task Order. In this connection, the Consultant shall for the life of this Task Order, carry insurance as outlined in Exhibit "C" to this Task Order, the requirements of which are hereby made a part of this Task Order.

SECTION 11. SUBLETTING, ASSIGNMENT, OR TRANSFER

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

As outlined in the DISADVANTAGED BUSINESS ENTERPRISES Section of this agreement, the Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other work must include documentation of efforts to employ a disadvantaged business enterprise.

SECTION 12. 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 12. LPA CERTIFICATION

By signing this agreement, I, John Winkler, 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 13. 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 between LPA and Consultant, either oral or written hereto.

STATE OF NEBRASKA)
)ss.
DOUGLAS COUNTY)

Project Nos. DPU-28(87) and DPU-28(102) - 13 -
Control Nos. 22227 and 22227A
West Douglas County Trail Phase 1 and 2
YMCA to Valley – Valley to Waterloo
On-Call National Environmental Policy Act Services

**Exhibit A
SCOPE OF SERVICES**

**NEPA Services for On-Call Environmental Documents
Papio-Missouri River Natural Resources District
Western Douglas County Trail – Valley to Waterloo Connection, Phases 1 and 2
Douglas County, Nebraska**

**Project Number(s): DPU-28 (87); DPU-28(87))
Control Number(s): 22227; 22227A**

A. PROJECT DESCRIPTION

This schedule provides for environmental services related to compliance with the National Environmental Policy Act (NEPA) for Papio-Missouri River Natural Resources District's (PMRNRD) Western Douglas County Trail – Valley to Waterloo Connection, in Douglas County, Nebraska.

Phase 1 of the project extends about 3.5 miles from the Western Douglas County High School in the City of Valley to the Western Douglas County Middle School in the City of Waterloo. This segment begins on the northeast corner of the High School property and continues south between the athletic fields and the 270th Street right-of-way. The trail continues south to the Mallard Lakes development where it curves to the southeast, around the former sandpit lakes, until it reaches 264th Street. The alignment follows the sandpit berm/outlot on the west side of 264th Street south to Old Maple Road. The project includes trails along both sides of the Old Maple Road right-of-way for the remaining 2.0 mile segment east into Waterloo. The trail will curve southeast on Front Street, ending at the Middle School where it will tie into the Waterloo Trail System. A surface crossing is proposed at the UPRR tracks in Waterloo.

Phase 2 of the project begins at the end of the Valley to YMCA Trail segment, and extends about 1.5 mile from the Valley YMCA to the Valley Memorial City Park. The segment follows the YMCA north and east property boundaries to the UPRR railroad right-of-way, ramps over the tracks just north of the 3M plant in Valley, and then turns north on 270th Street. From this point the route turns east at the alley south of Gardner Street, turns north on East Street, turns west on Gardner Street (with a shared street and trail right-of-way), and ends at the park.

The proposed project is included in the Western Douglas County Master Plan (RDG, 2004). A Public Hearing for the project was conducted on 8 May 2008. Appraisals have been conducted, but right-of-way has not been purchased.

Felsburg Holt & Ullevig (FHU) (Consultant) shall serve as the agent for PMRNRD representing PMRNRD in all matters related to environmental services for this project with the exception of:

1. Submittal of floodplain permits
2. Submittal of NPDES permits. Storm Water Plan, SWPPP, NOI to be completed by PMRNRD.
3. Railroad Coordination
4. Preparation of Wetland Delineation
5. Conducting the Public Information Meeting

To the extent possible, the Consultant will utilize environmental work prepared previously by Ehrhart Griffen Associates. It is anticipated that the project will require the following major tasks:

1. Prepare new version of the NDOR Categorical Exclusion Form NEPA Document. Update, where needed, supporting documentation of concurrence and compliance with applicable environmental regulations. Prepare Green Sheets.
2. Prepare 4(f) Exemption or De Minimis Determination or Exception
3. Wetland and Stream Permitting Services
4. Project management and QC
6. Site visits
7. Project Meetings

B. APPLICABLE PUBLICATIONS:

Work shall be done in accordance with the most current version of the following materials:

1. Project description guidance. NDOR, May 2010.
2. Guidance on usage of the Programmatic Agreements. NDOR, July 2010.
3. Guidelines for Completing the PCE Form. NDOR, December 2011.
4. Guidelines for Completing the CE Documentation Form. NDOR, November 2008.
5. Guidelines for completing the Project Description Section of NEPA Determination and CE Forms. NDOR, May 2009.
6. Instructions to Complete Section 106 Concurrence Request Form. NDOR, December 2009.
7. Wetland Review Requirements. NDOR, October 2010.
8. Qualifications and Documentation Requirements for LPA Project Wetlands Review. NDOR, November 2009.
9. Certified NEPA consulting firms and requirements. NDOR, March 2011.
10. Instructions for Completing the Wetland Determination Checklist. November 2009.
11. NDOR Wetland Determination Checklist
12. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1. Environmental Laboratory, Department of the Army Waterways Experiment Station, US Army Corps of Engineers, Vicksburg, Mississippi. 1987.
13. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region, ERDC/EL TR-08-27. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi. 2008.
14. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region, ERDC/EL TR-08-12. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi. 2008.
15. Regulatory Guidance Letter No. 05-05: Ordinary High Water Mark Identification. US Army Corps of Engineers. 2005.
16. Cowardin et al. Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS 79/31. Biological Services Program, Fish and Wildlife Service, US Department of the Interior. 1979.
17. Nebraska Wetland Subclasses (Attachment K, Wetland Mitigation Banking, Standard Operating Procedures in Nebraska)
18. Instructions for Completing Biological Evaluation Form for Local Federal Aid Projects. NDOR, October 2009.
19. Guidelines for Completing Green Sheets for the NDOR Local Project Section. NDOR, September 2009.

C. PMRNRD SHALL PROVIDE:

1. Previous environmental documentation prepared by Ehrhart Griffen Associates, including project description, location information, purpose and need information, T&E activity checklist and scope, general project location map.
2. Electronic files of current aerial photographs with project alignment, preliminary design, existing and new rights-of way (ROW) and easements, topographic survey, utilities data, and LOC, if available.

D. CONSULTANT SHALL PROVIDE:

1. Categorical Exclusion Documentation Form and Resource Reviews. The Consultant will update the NDOR Categorical Exclusion (CE) Documentation Form using the current revision of the form. To the extent possible, the Consultant will utilize environmental work prepared previously by Ehrhardt Griffen Associates. The Project Description and Purpose and Need will be updated per revised guidance, additional information will be added on project phasing, Phase 2 bridge/ramp, and coordination with the Phase 2 landowners. Where needed, Consultant will obtain updated agency concurrences and supplemental information to attach to the CE. Figures and resource maps will also be required to be attached to the CE Form and produced or obtained by Consultant. The CE Form and attachments shall be sent to PMRNRD for review and approval prior to submittal to NDOR. Consultant will address NDOR and FHWA comments, prepare revisions to the CE Form, and produce the Green Sheets.

- 1.1 Resource Review. Using the appropriate NEPA Form and guidelines, the Consultant will review relevant resources. Resource materials to be prepared or updated materials are anticipated to include the SHPO letter; Hazardous Materials Memorandum; 4(f) Exemption or De Minimis Form. If Section 6(f) documentation is required, that work would be considered out of scope. Noise and air studies are not required.
- 1.2 SHPO Letter. A letter will be prepared for NDOR submittal to the State Historic Preservation Office (SHPO) for Section 106 cultural resource compliance.
- 1.3 Hazardous Materials Review (HMR). Consultant will complete a HMR within the Environmental Study Area to identify conditions that indicate an existing release, a past release, or a material threat of a release, of any hazardous substances or petroleum products into structures, on the property or into the soils, groundwater, or surface water.

The HMR will include a regulatory file review (local, state and federal agencies). The purpose of this review will be to identify sites within the Environmental Study Area (at a minimum, one quarter mile on either side of the project's centerline). Any sites identified during the file review will be assessed for their potential impact on the project, and discussed in the NEPA document.

The HMR will cover (1) conducting a study of the Environmental Study Area for local, state and federal environmental database records; (2) conducting a windshield site reconnaissance survey, and (3) preparing a written technical memorandum of the findings. The report will be included as an appendix to the NEPA document, with the findings summarized in the main body of the NEPA document.

- 1.4 4(f) Exemption or De Minimis Determination / 6(f) Evaluation. Consultant will determine if adjacent 4(f) properties such as public parks, recreation areas, and wildlife/waterfowl refuges, or historic sites of local, state or national significance are present, as part of the Resource Review (above in 1.1). If a Section 4(f) property is identified within the project area, the project or undertaking must determine a 'use' of land from that property within the meaning of Section 4(f). If it is determined that there is a 'use' of the land then coordination with NDOR must occur. Consultant will research and document 4(f) resources present. This scope includes preparation of exemption or *de minimis* documentation.

Consultant will research and document whether 6(f) resources are present. If resources are present and additional Section 6(f) documentation is required, this service would be considered out-of-scope.

- 1.5 Documentation and Revisions. Consultant will complete the CE Documentation Form and other supplemental information. These materials shall be sent to PMRNRD for review and approval prior to submittal to NDOR. Following any revisions, Consultant will submit the CE Documentation Form and attachments to NDOR for review and approval. Consultant will address NDOR and FHWA comments and prepare revisions to the CE Documentation Form.

- 1.6 Other. If there is any farmland located in the Project Environmental Study Area and its use may be converted to other purposes as part of the Project, Consultant will prepare an NRCS Farmland Conversion Form AD-1006 and perform coordination with NRCS.

2. Wetland and Stream Permitting Services. A Wetland Delineation was prepared for the project in May 2009. A Preliminary Jurisdictional Determination for the project was obtained in October 2009 and is considered valid for five years. Based on correspondence with the US Army Corps of Engineers, the project is anticipated to be permitted under Nationwide 23 for Approved Categorical Exclusions.

- 2.1 404 Permit Application. The Consultant will prepare materials for submittal of an application to the Corps of Engineers for a 404 permit, and to the Nebraska Department of Environmental Quality (NDEQ) for Section 401 Water Quality Certification or Title 117 compliance. This will involve incorporating delineation materials provided by PMNRD. It is anticipated this project will be authorized under a Nationwide Permit 23.

Consultant will prepare a 1st Draft of the 404 Permit Application Package consisting of 404 Permit Application, Wetland Delineation data and mitigation proposal, if needed. A complete application will include Threatened and Endangered Species and Section 106 Concurrences, a discussion of compensatory mitigation, and a discussion of compliance with floodplain regulations, as appropriate. An approved Categorical Exclusion document must be attached if the permit is a Nationwide 23 and wetland impacts are greater than 0.5 acre. A hard copy and electronic files of the documents will be submitted to NDOR for review. Consultant will revise materials per NDOR comments, and resubmit to NDOR for review and approval. If mitigation is required, PMNRD may request a proposal for additional services to develop a mitigation plan.

- 2.2 Agency Coordination. Consultant will also handle coordination activities with the Corps and other regulatory and resource agencies, as needed, such as a pre-application meeting, submittal of the 404 permit application package to the Corps and NDEQ, and if needed, an on-site post-application meeting.

If needed, Consultant will coordinate with NDEQ and obtain a letter of 401 Water Quality Certification. If wetlands are non-jurisdictional, Consultant will obtain a letter of opinion from NDEQ stating compliance with the non-degradation clause of Title 117 Nebraska Surface Water Quality Standards.

Consultant will coordinate with the agencies, whether in writing or personal contact, and be available to provide additional information, answer questions, respond to public comments, and attend meetings, if necessary.

3. Project Management and QC.

- 3.1 Project Management. This task includes activities to initiate and monitor project schedules, workload assignments and internal cost controls throughout the project. Also included are efforts to prepare and process invoices, prepare project correspondence with the NDOR; and maintain project records. Monthly Progress Reports shall be prepared and submitted according to the schedule provided by NDOR, which may or may not coincide with Consultant's invoicing schedule.
- 3.2 Quality Assurance/Quality Control. The Consultant will perform QA/QC checks at various stages of the study including prior to any official submittal.
- 3.3 Final Deliverables. Consultant will prepare final deliverables and submit to NDOR the electronic files and hard copies of all materials.
- 3.4 Other. (Additional project specific tasks may be added here).

4. Site Visits.

- 4.1 Site Visits. Consultant will conduct one site visit to the project area to become familiar with the project, check for the presence of environmental resources, and assess project impacts.
- 4.2 Other. (Additional project specific tasks may be added here).

5. Project Meetings.

- 5.1 Progress Meetings. Project staff will meet with PMNRD and NDOR for one progress meeting, and prepare minutes of the meeting.

Project Name: Western Douglas County Trail – Valley to Waterloo Connection – Phases 1 and 2

Project Number(s): DPU-28(87); DPU-28(102)

Control Number(s): 22227; 22227A

NEPA Services for On-Call Environmental Documents

Exhibit A
Sheet 4 of 5

E. DELIVERABLES:

1. Monthly Invoices and Progress Reports
2. Meeting Minutes (if meetings are held)
3. The Appropriate NEPA Document (CE) and supporting documentation
3. SHPO request for concurrence letter
5. Hazardous Materials Report (HMR)
6. 4(f) Exemption or De Minimus Determination Letter
7. Agency concurrence letters
8. Hard copies of all materials and final electronic files.

F. SCHEDULE

1. Estimated Notice to Proceed: 11 / 1 / 2011 or earlier
2. Estimated Completion Date for Draft NEPA Document: 4 / 1 / 2012 or earlier
3. PS&E Turn in date:
4. Project Letting:
5. Contract End Date:

NEPA SERVICES

Project Cost

Project Name: **CE for Western Douglas Co Trail-Valley to Waterloo**
 Project Number: **DPU-28 (87); DPU-23 (102)**
 Control Number: **22227; 22227A**
 Location (City, County): **Valley to Waterloo, Douglas County**
 Consultant Project Manager: **Amy Zlotsky**
 Phone/Email: **402-438-75300 / amy.zlotsky@fhueng.com**
 LPA Responsible Charge: **Gerry Bowen**
 Phone/Email: **402-444-6222 / gbowen@papiord.org**
 NDOR Project Coordinator: **Deana McKinstry, Sinclair Hille Associates**
 Phone/Email: **402-476-7331 / dmckinstry@sinclairhille.com**
 Date: **August 22, 2011**

LPA:

Douglas County

Labor Costs:	Hours	Rate	Amount
Personnel Classification			
Principal	2	\$64.90	\$129.80
Senior Environmental Scientist	24	\$46.98	\$1,127.52
Environmental Scientist	80	\$25.82	\$2,065.60
Senior Engineer			
Engineer			
Senior Designer/Technician			
Designer/Technician	12	\$27.17	\$326.04
Administrative			
TOTAL	118		\$3,648.96

Direct Expenses:	Amount
Subconsultants	\$650.00
Printing and Reproduction Costs	\$14.00
Mileage/Travel	\$140.00
Lodging/ Meals	
Other Miscellaneous Costs	\$25.00
TOTAL	\$829.00

Total Project Costs:	Amount
Direct Labor Costs	\$3,648.96
Overhead @ 155.21%	\$5,663.55
Total Labor Costs	\$9,312.51
Fixed Fee @ 13.50%	\$1,257.19
Direct Expenses	\$829.00
PROJECT COST	\$11,398.70

Signature of Responsible Charge

Date

RESOLUTION

SIGNING OF AN ENGINEERING SERVICES AGREEMENT

Papio Missouri River Natural Resources District

Whereas: Papio-Missouri River Natural Resources District is developing two transportation projects for which it intends to obtain Federal funds;

Whereas: Papio-Missouri River Natural Resources District as a sub-recipient of Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project;

Whereas: Papio-Missouri River Natural Resources District and Felsburg Holt & Ullevig wish to enter into an Engineering Services Agreement to provide Preliminary Engineering Services for the Federal-aid projects.

Be It Resolved: By the Board of Directors of Papio-Missouri River Natural Resources District, Nebraska that:

John Winkler, General Manager, is hereby authorized to sign the attached Engineering Services Agreement between Papio-Missouri River Natural Resources District and Felsburg Holt & Ullevig

NDOR Project Numbers: DPU=28(87) and DPU-28(102)

NDOR Control Numbers: 22227 and 22227A

NDOR Project Descriptions: West Douglas County Trail Phases 1 & 2

Adopted this 8th day of December, 2011 at Omaha, Nebraska.

Chairperson

Attest:

Secretary