

Memo to the Programs, Projects and Operations Subcommittee

Subject: Western Douglas County Trails Project – Contract with EGA

Date: July 3, 2006

From: Gerry Bowen

In March, 2006, the Board approved the funding agreement with the Nebraska Department of Roads (NDOR) for the Western Douglas County Trails Project. The NRD is partnering with the City of Elkhorn, Village of Waterloo, City of Valley, and Douglas County on the project.

It is now possible to take action on the professional engineering services contract with Ehrhart Griffin and Associates (EGA) for the project.

Since federal funds are used on the project, NDOR requires the District to use their “boiler plate” contract for consultant services (see attached). The scope of services, prepared by EGA, is also attached. It is intended that the contract will be amended annually to include the current phase of the project.

Since the federal funding was approved in the federal fiscal year ending September 30, 2005, there will be two years of construction included in the initial consultant contract and scope of services. Therefore, Phases 1 and 2 of the project will be constructed with the initial contract. These two phases will complete the trail from 180th Street through, Elkhorn, Waterloo (including the Elkhorn River pedestrian bridge), and Valley extending into western Douglas County, and the segment connecting Valley with the Platte River Landing Recreation Area operated by the NRD.

In addition, preliminary engineering will be done to prepare the implementation schedule for all remaining phases of the project. This will aid in preparing budgets for the NRD and its cooperating partners on the project as it proceeds to completion.

It is intended that the initial contract would be amended annually to include the current fiscal year’s phase of the project.

The interlocal agreement names the District as the contracting agent for the project. The initial contract has a not to exceed amount of \$324,892.34. The NDOR agreement commits 80% cost share on this amount. In addition, the partners also will reimburse the District a portion of this amount. The District’s share of this amount is 40% of the local share, or \$64,978.

It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute a professional engineering services contract with Ehrhart Griffin and Associates, Inc. for the Western Douglas County Trails Project, with a maximum amount of \$324,892.34.

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C O N S U L T A N T A G R E E M E N T

(Actual cost)

WEST DOUGLAS COUNTY TRAILS
PROJECT NO. DPU-28(87)
CONTROL NO. 22227
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
EHRHART GRIFFIN & ASSOCIATES

THIS AGREEMENT, entered into by and between the Papio-Missour River Natural Resources District, hereinafter referred to as the "NRD", and the firm of Ehrhart Griffin & Associates, hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS, NRD desires to engage the Consultant to render professional services for the above named project at the location described in EXHIBIT "A", which is attached and hereby made a part of this agreement, and

WHEREAS, the Consultant is willing to perform such work in accordance with the terms hereinafter provided, and does represent that it is in compliance with the Nebraska statutes relating to the registration of professional engineers, and hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work.

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

I. DEFINITIONS

Wherever in this agreement the following terms are used, or pronouns used in their stead, they will have the meaning here given:

"CONSULTANT" means Ehrhart Griffin & Associates whose business and mailing address is 3552 Farnam Street, Omaha, NE 68131.

"SUBCONSULTANT/SUBCONTRACTOR" means Thiele Geotech, Inc., whose business and mailing address is 13478 Chandler Road, Omaha, NE 68138.

"SUBCONSULTANT/SUBCONTRACTOR" means E&A Consulting Group, whose business and mailing address is 330 No. 117th Street, Omaha, NE 68154.

"SUBCONSULTANT/SUBCONTRACTOR" means RDG Planning & Design, whose business and mailing address is 900 Farnam on the Mall., Suite 100, Omaha, NE 68102.

"STATE" means the Nebraska Department of Roads in Lincoln, Nebraska, the Director of the department, or his authorized representative.

"NRD" means Papio-Missouri River Natural Resources District, whose mailing address is 8901 South 154th Street, Omaha, NE 68138.

"FHWA" means the Federal Highway Administration, Department of Transportation, Washington, D.C. 20590, acting through its authorized representative.

"DOT" means the United States Department of Transportation, Washington, D.C. 20590, acting through its authorized representatives.

To "ABANDON" the work means that a determination has been made by the NRD that conditions or intentions as originally existed have changed and that the work as contemplated herein is to be renounced and deserted for as long in the future as can be foreseen.

To "SUSPEND" the work means that it has been determined by the NRD that progress is not sufficient or that the conditions or intentions as originally existed have changed or the work completed or submitted is unsatisfactory and that the work as completed herein should be stopped on a temporary basis. This cessation will prevail until such time as a determination can be made to abandon or terminate the work or to reinstate it under the conditions as defined in this agreement.

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

II. GENERAL DESCRIPTION OF SCOPE AND CONTROL OF THE WORK

The Consultants shall provide preliminary surveying and engineering services, resulting in the preparation of construction documents, for Phases 1 and 2; and preliminary engineering services for the preliminary design, cost opinion preparation and prioritization of Phases 3 thru 7 of the West Douglas County Trail System, designated as Project No. DPU-28(87), located in Douglas County, Nebraska.

Upon receiving a notice to proceed, the Consultant shall perform all of the work required under this agreement as outlined in EXHIBIT "B", Scope of Services, and EXHIBIT "C", Consultant's fee proposal, attached and hereby made a part of this agreement.

III. STANDARD PRACTICES AND REQUIREMENTS

It is mutually agreed that the NRD, the State, and the FHWA have continuing rights of work progress inspections. Any additions, deletions, changes, elaborations, or modifications of the services provided under the terms of this agreement, which may from time to time be determined by the NRD as desirable or preferable, will be controlling and governing.

IV. TIME OF BEGINNING AND COMPLETION

The NRD will issue the Consultant a written Notice-to-Proceed after this agreement is approved by the NRD. Any work or services performed on the project prior to the Notice-to-Proceed date is not eligible for reimbursement.

The Consultant shall complete all work required under this agreement in a satisfactory manner within 180 Calendar Days.

Any costs incurred after the completion deadline are not eligible for reimbursement unless the NRD has approved an extension of time.

The completion time will not be extended because of any avoidable delay attributed to the Consultant, but delays attributable to the NRD may constitute a basis for an extension of time.

NRD authorized changes in the scope of work which increase the workhours or services required of the Consultant will provide the basis for an extension of time.

V. FEES AND PAYMENTS

- A. For performance of the work as outlined in this agreement, the Consultant will be paid a fixed-fee-for-profit of \$24,437.31, and up to a limiting amount of \$300,455.03 for actual costs that are allowable subject to the terms of this agreement and the federal cost principles contained in the Federal Acquisition Regulation (48 CFR 31). The total agreement amount is \$324,892.34.
- B. The Consultant is responsible for determining if its actual costs will exceed the limiting amount stated above. If at any time during this project, the Consultant determines that its costs will exceed, or have exceeded, the limiting amount stated above, the Consultant must immediately notify the NRD in writing and describe which costs are causing the overrun and the reason. The Consultant will also estimate the additional costs needed to complete the work. The State will then determine if the limiting amount is to be increased, and a supplemental agreement will be prepared if needed.
- C. The NRD is not responsible for costs incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in Section IV of this agreement.
- D. The fixed-fee is computed upon the direct salary or wage costs, indirect salary costs, indirect non-salary costs, and direct payroll additives. The fixed-fee is not allowable upon direct non-salary costs.
- E. The Consultant should submit invoices to the NRD at monthly intervals. The invoices must present actual direct labor, actual overhead, and actual direct non-labor costs, as well as a prorated amount of the fixed-fee based upon the actual direct labor and overhead costs billed for that period relative to the Consultant's estimated total direct labor and indirect overhead costs, until 100

percent of the fixed-fee has been billed. 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. 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.

Invoices must be substantiated by progress reports which indicate the percent of work completed.

- F. The NRD 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 NRD determines that the work is satisfactory. Upon determination that the work was adequately substantiated and satisfactory, payment will be made in the amount of 100 percent of the billed actual costs and 90 percent of the billed fixed-fee. The 10 percent fixed-fee retention will be paid after all work required under this agreement is completed and accepted by the State.

The acceptance by the Consultant of the final payment will constitute and operate as a release to the NRD 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 agreement or any part thereof. The Consultant agrees to reimburse the NRD for any overpayments discovered by the NRD or its authorized representative.

- G. The Consultant shall maintain, and also require that any Subconsultants/Subcontractors 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 agreement period and for three years from the date of final payment under this agreement. Such materials must be available for inspection by the NRD, the State, FHWA, or any authorized representative of the federal government, and copies thereof shall be furnished by the Consultant, when requested.

VI. DUE PROFESSIONAL CARE

It is understood by the parties that the NRD will rely on the professional performance and ability of the Consultant. Any examination by the NRD, the State or FHWA, or any acceptance or use of the work product of the Consultant, will not be considered to be a full comprehensive examination and will not be considered an approval of the work product of the Consultant which would relieve

the Consultant from any 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 agreement. That further, acceptance or approval of any of the work of the Consultant by the NRD, or of payment, partial or final, will not constitute a waiver of any rights of the NRD 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 the construction of the project and revision or reworking of the plans is necessary, the Consultant shall make such revisions without expense to the NRD. The Consultant shall respond to the NRD's notice of any errors or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to the construction contractor. This may involve visits by the Consultant to the project site, if directed by the NRD. If the Consultant discovers errors in its work, it shall notify the NRD of such errors within seven days. Failure to so notify the NRD will constitute a breach of this agreement. The Consultants' legal liability for all damages incurred by the NRD caused by error, omission, or negligent acts of the Consultant will be borne by the Consultant without liability or expense to the NRD.

VII. CHANGE OF PLAN, ABANDONMENT, SUSPENSION, AND TERMINATION

Additions to the schedule of services, if approved in writing, will require negotiation of a supplemental agreement. For any work beyond the schedule of services, the Consultant shall document the additional work, estimate the cost to complete said work, and receive written approval from the NRD before the Consultant begins such work. Any such work performed prior to written approval of the NRD will be done at the expense of the Consultant.

The NRD has the absolute right to abandon the project or to change the general scope of work at any time, and such action on its part shall in no event be deemed a breach of agreement. The right is reserved by the NRD to suspend this agreement at any time or to terminate it. Such suspension or termination may be effected by the NRD giving the Consultant seven days written notice.

If the NRD abandons or subtracts from the work, or suspends or terminates the agreement as presently outlined, the Consultant will be compensated in accordance with 48 CFR, Part 31, provided however, that in case of suspension, abandonment, or termination for breach of this agreement or for tender of improper work, the NRD will have the power to suspend payments, pending the Consultant's compliance with the provisions of this agreement. In determining the percentage of work completed, the NRD will consider the work performed by the Consultant prior to abandonment or termination, to the total amount of work contemplated by this agreement. The ownership of all project documents, completed or partially completed at the time of such termination or abandonment,

will be retained by the NRD and the Consultant shall immediately deliver all documents to the NRD.

VIII. OWNERSHIP OF DOCUMENTS

All surveys, tracings, plans, specifications, maps, computations, sketches, charts, and other project data prepared or obtained under the terms of this agreement will become the property of the NRD and the Consultant shall deliver them to the NRD without restriction or limitation to further use.

IX. GENERAL COMPLIANCE WITH LAWS

The Consultant hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work.

X. 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 of the State or his duly authorized representative, whose decision in the matter will be final and conclusive on the parties to this agreement.

XI. PROFESSIONAL REGISTRATION

The Consultant shall affix the seal of a registered professional engineer/architect, licensed to practice in the State of Nebraska, on all plans, documents, and specifications prepared hereunder.

XII. SUCCESSORS AND ASSIGNS

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

XIII. DRUG-FREE WORKPLACE POLICY

The Consultant shall have an acceptable current drug-free workplace policy.

XIV. FAIR EMPLOYMENT PRACTICES ACT

The Consultant agrees to abide by the Nebraska Fair Employment Practices Act as provided by Sections 48-1101 through 48-1126, Nebraska Revised Statutes (Reissue 1988), which is hereby made a part of and included in this agreement by reference.

XV. 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.

XVI. MINORITY BUSINESS ENTERPRISES

The Consultant agrees to ensure that minority business enterprises, as defined in 49 CFR 23, have the maximum opportunity to compete for and participate in the performance of subcontracts financed in whole or in part with federal funds under this agreement. Consequently, the minority business

requirements of 49 CFR 23 are hereby made a part of and included in this agreement by reference.

XVII. NONDISCRIMINATION

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 relative to nondiscrimination in federally assisted programs of the DOT (49 CFR 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.

XVIII. SUBLETTING, ASSIGNMENT, OR TRANSFER

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

XIX. CONSULTANT CERTIFICATION

The Consultant hereby certifies that wage rates and other factual unit costs supporting the fees in this agreement are accurate, complete, current, and subject to adjustment, if required, as provided by Sections 81-1701 through 81-1721, Nebraska Revised Statutes (Reissue 1987).

After being duly sworn on oath, I do hereby certify that except as noted below, neither I nor any person associated with this firm in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds:

- (a) 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
- (b) has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person connection with carrying out this agreement, or
- (c) 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).

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Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

Instructions for Certification

1. By signing this AGREEMENT, the Consultant is providing the certification set out below.
2. 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 NRD'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.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the NRD 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 NRD may terminate this agreement for cause of default.
4. The Consultant shall provide immediate written notice to the NRD if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. 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.
6. 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 NRD before entering into this agreement.
7. The Consultant further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the NRD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. The Consultant is a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant

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may decide the method and frequency by which it determines the eligibility of its principals.

9. 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.

10. Except for transactions authorized under paragraph six 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 NRD may terminate this agreement for cause or default.

Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

A. The Consultant certifies to the best of its knowledge and belief, that is and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(2) Have not within a three-year period preceding this agreement have been convicted of or had a civil judgment rendered against them for commission of fraud or 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;

(3) 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.(2) or this certification; and

(4) 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 FHWA in connection with this agreement involving participation of federal-aid highway

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funds and is subject to applicable local, state, and federal laws, both criminal and civil.

XX. CERTIFICATION OF NRD

After being duly sworn on oath, I, _____ (Signee for NRD), by signing this agreement do hereby certify that 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 certificate is to be furnished to 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.

XXI. 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 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.

STATE OF NEBRASKA)
) ss.
DOUGLAS COUNTY)

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 _____, 2006.

Ehrhart Griffin & Associates

Name & Title

Subscribed and sworn to before me this ____ day of _____, 2006.

Notary Public

EXECUTED by the NRD this _____ day of _____, 2006.

PAPIO-MISSOURI RIVER NRD

General Manager

STATE OF NEBRASKA)
) ss.
DOUGLAS COUNTY)

Subscribed and sworn to before me this ____ day of _____, 2006.

Notary Public