



Mr. Keith Kurtz, Assistant Public Works Director  
City of Grand Island  
309 N 5<sup>th</sup> Street  
Norfolk, NE 68701

January 31, 2018

**RE: Agreement for Stormwater Management Post Construction BMP Master Plan**

Dear Mr. Kurtz,

Thank you for the opportunity to provide planning services to the City of Grand Island. This agreement has been developed to define the terms and conditions for professional services between the City of Grand Island ("Owner") and Felsburg Holt & Ullevig ("Consultant") for the delivery of the Stormwater Management Post Construction BMP Master Plan ("Project"). Jesse Poore will serve as your Project Manager.

**Scope of Services.** The Scope of Services is provided in **Exhibit A**. The scope outlines tasks to be conducted by the Consultant for developing a Stormwater Management Post Construction BMP Master Plan for the City of Grand Island, as well as information to be provided by the Owner.

**Project Fee.** The Project will be conducted on a on a "time and materials" basis with a not to exceed fee of \$84,840, as shown in **Exhibit B**. Owner will be billed monthly for services completed to date.

**Proposed Schedule.**

- Notice to Proceed and Kickoff Meeting: February 2018
- Phase 1 Water Quality Design Criteria: February – May 2018
- Phase 2 Post Construction Program Implementation: April – July 2018
- Draft BMP Master Plan and Stakeholder Feedback: May-June 2018
- Final BMP Master Plan and Developer Presentation: July-August 2018

We have also provided FHU's Standard Provisions in **Exhibit C**. If the terms of this contract are acceptable, please sign this letter proposal in the space below, and on the last page of the Standard Provisions, and return the signed copies for our files. A scanned pdf file is acceptable. If you have any questions or require additional information, please feel free to call me or Jesse at (402) 438-7530.

Thank you for the opportunity to serve you,

**FELSBURG HOLT & ULLEVIG**

Dave Lampe  
Principal

Accepted By

Title

February 13, 2018  
Date

Attachments

## Exhibit A

### SCOPE OF SERVICES Stormwater Management Post Construction BMP Master Plan City of Grand Island, Nebraska

This Scope of Services outlines tasks for developing a Stormwater Management Post Construction BMP Master Plan for the City of Grand Island, and includes responsibilities for both the Owner and Consultant. The Project in the following three phases:

1. Water Quality Design Criteria Update and Water Quality Assessment
2. Post-Construction Stormwater Management Program Implementation
3. Progress Reports and Project Management

The Owner will provide the following information to the Consultant:

- Provide all relevant past data and studies
- Field survey of stormwater drainage features (as needed)
- Mailing lists or invitee lists for meetings
- LiDAR contours or other representative data available
- Grand Island Existing and Future Land Use maps via GIS or other representative data available
- Grand Island storm drain infrastructure via GIS or other representative data available
- Previous watershed master plans previously completed if available
- Other pertinent historical records and data related to localized flooding within Grand Island
- Public property by parcel ID
- Current 1 & 6-year transportation improvement plan
- Current CIP list

The Consultant will conduct the following tasks:

#### Phase 1 – Water Quality Design Criteria Update and Water Quality Assessment

The project will review engineering considerations related to establishing water quality design criteria. The City experiences stormwater runoff conditions that naturally promote extended detention in existing detention cells. The City further manages extended detention of stormwater runoff within some existing municipal ditches to accommodate extended periods of tail water influence from Wood River and Moores Creek. Finally, the depth to and interaction between surface and groundwater within the stormwater drainage system would reduce the effectiveness of typical stormwater treatment practice designs. These unique stormwater drainage constraints create a unique opportunity and challenge for Grand Island to implement permanent stormwater treatment requirements differently than other communities regulated by MS4 permits. Phase I of this project will update water quality capture volume criteria to reflect drainage conditions unique to the City of Grand Island. Water quality capture volume required for planned future development will also be assessed along with the treatment capability of existing features. Finally, treatment improvements will be projected that can be accomplished by future treatment facilities and design enhancements along Moores Creek, Highland Park, Western Heights and Capital Heights drainage ways.

##### *1.1 Update WQCV Criteria*

###### **a. Review Drainage Influence of Local Soil, Topography, Ground Water, and Zoning Ordinances**

Document physical characteristics of Grand Island that exist and that justify modification of the calculation formula for establishing Water Quality Capture Volume. At a minimum, the criteria considered will include local soil profiles, topography, influence of ground water, and zoning ordinances that influence the nature of land development.

**b. Update WQCV Calculations and Methodology**

Modify the WQCV formula recommended to Nebraska H2O members to accurately reflect the physical characteristics of Grand Island stormwater drainage. This will lead to modifying the descriptions of the method for applying the updated WQCV formulas.

**1.2 Assess WQCV Needs of Future Development**

**a. Data Collection and Review**

Compile relevant development information for review of future growth patterns in the City of Grand Island. Information for study will include comprehensive plan, future land use zoning, parcel data, LiDAR, receiving waters, as well as existing and planned storm sewer drainage pipes, ditches, and existing detention cells. Support may be provided by the City to confirm sizing of prioritized ditches and detention cells within in delineated stormwater drainage basis identified in Task 1.2.b.

**b. Project WQCV Needs Based on Anticipated Growth**

Using information available, delineate stormwater treatment drainage basins and project growth by future land use type. The projection of growth will be used to establish a baseline for total treatment volume required to satisfy the future development. Calculations will reflect the formula and methodology established in Task 1.1b.

**1.3 Develop Design Standards for WQCV Treatment**

**a. Research and Develop Methods for Crediting Existing Ditches and Enhanced Ditches for Water Quality**

The City intends to demonstrate a proportion of the required WQCV of future development is treated in existing drainage ditches that periodically operate under restricted flow conditions due to influence of groundwater intrusion and downstream tail water conditions. A review of engineering literature and case examples will help illustrate the potential treatment provided as well as enhanced treatment that may be available through design modifications of standard ditch cross-sections. The research effort will lead to modifications of the WQCV flow-through equivalent calculation formula applied to existing ditches and create a new formula for ditches applying an enhanced treatment design.

**b. Research and Develop Methods for Crediting Existing Detention Ponds and Retrofits for Water Quality**

The City intends to demonstrate a proportion of the required WQCV of future development is treated in existing detention cells that operate under extended holding periods and periodic influence of groundwater intrusion and downstream tail water conditions. A review of engineering literature and case examples will help illustrate the potential treatment provided as well as enhanced treatment that may be available through minor design modifications of existing detention cell outlets, forebays and low-flow liners. The research effort will lead to modifications of the WQCV treatment estimated within existing detention cells and the potential treatment available by applying design retrofits if required to satisfy reduced WQCV treatment for future growth.

**c. Produce Plan Notes and Details for Standard and Enhanced Ditch Design**

Stormwater treatment provided in standard and enhanced ditches will meet minimum performance thresholds. Plan notes and details for both design options will be established. The design standards will be documented by the City as part of the Post Construction Stormwater BMP Master Plan.

**d. Produce Plan Notes and Details for Standard and Enhanced Detention Pond Design**

Stormwater treatment provided in standard and enhanced detention ponds will meet minimum performance thresholds. Plan notes and details for both design options will be established. The

design standards will be documented by the City as part of the Post Construction Stormwater BMP Master Plan.

#### *1.4 Assess WQCV Treatment Baseline and Future Projections*

##### **a. Establish Baseline WQCV Conditions**

Stormwater treatment drainage basins delineated in Task 1.2.b will be used to project treatment provided within existing stormwater detention cells and drainage ditches. Existing land use that drains within these treatment basins will then be used to calculate the current demand on the stormwater treatment provided in existing detention cells and drainage ditches. These calculations will establish the stormwater treatment baseline conditions for the Post Construction Stormwater BMP Master Plan.

##### **b. Calculate Remaining Treatment Required for Future Growth**

Calculations of baseline stormwater treatment and existing land use demand together with projected future land use demand will determine the remaining treatment required for the City of Grand Island. If additional treatment is required to satisfy future development and redevelopment, the amount of treatment required will be applied to inform alternatives considered in Task 1.4.c and the Post Construction Stormwater BMP Master Plan.

##### **c. Calculate Potential of Enhanced Stormwater Treatment Design and Retrofit**

The City of Grand Island will prioritize stormwater treatment design and retrofits as needed to accomplish the demand for additional stormwater treatment for future land use. Assessment will be made for enhanced treatment design of Moores Creek Drainage, Highland Park Drainage, Western Heights Drainage, Capital Heights Drainage followed by retrofit of existing detention cells that can provide additional treatment for new growth areas. A project priority list will be established to include location, type of stormwater treatment BMP, conceptual cost estimate and priority criteria.

#### Phase 2 – Post Construction Stormwater Management Program Implementation

The City of Grand Island maintains a MS4 Permit that requires adoption and implementation of Post Construction Stormwater Management Program standards. Standards must be enforced starting in 2018 and annual reports submitted to NDEQ to demonstrate compliance. Phase two will produce technical documentation that establishes stormwater treatment facility design standards and justifies how adjusted water quality capture volume criteria satisfy the Maximum Extent Practicable standard. A procedure and method for tracking water quality treatment implementation will also be prepared. Support for demonstrating these standards and criteria to NDEQ will be provided. The City will adopt these standards and requirements in a Post Construction Stormwater BMP Master Plan.

#### *2.1 Program Justification, Standards and Implementation Requirements*

##### **a. Technical Memo – WQCV Adjusted Standard**

Compile research and analysis that supported establishment of a revised WQCV standard for the City of Grand Island. Include documentation of the minimum WQCV calculation formula and methods for applying the minimum WQCV to drainage ditches. The documentation in this memorandum will establish the Maximum Extent Practicable standard of stormwater treatment for the City of Grand Island.

##### **b. Technical Memo – WQCV Approved Treatment Practices**

Compile stormwater treatment types and their respective design standards allowed to satisfy treatment requirements in the City of Grand Island. The City will limit the types of treatment

facilities allowed to those listed in this memorandum. Documentation of the physical characteristics affecting the effectiveness of traditional stormwater treatment facility design will be established and inform the Maximum Extent Practicable standard of stormwater treatment for the City of Grand Island.

**c. Technical Memo – WQCV Required Treatment Tracking**

Document the format and procedures for tracking compliance with stormwater treatment requirements of the Post Construction Stormwater BMP Master Plan. The City of Grand Island will leverage existing detention cells and drainage ditches to the extent possible prior to incorporating and enhanced designs or retrofit projects. The documentation in this memorandum will establish how the City will track that the Maximum Extent Practicable standard is met annually as a requirement of the MS4 Permit.

**2.2 NDEQ Regulatory Coordination**

**a. NDEQ Meeting Facilitation**

The stormwater treatment standards that are produced by this project and the Post Construction Stormwater BMP Master Plan will deviate from the Maximum Extent Practicable standard applied by other communities with MS4 Permits in Nebraska. An alternative program summary and justification will be prepared for the City to submit to NDEQ. A review and discussion of the alternative program summary will be facilitated with NDEQ and the City prior to drafting the Post Construction Stormwater BMP Master Plan. Review comments and recommendations will be incorporated into the Post Construction Stormwater BMP Master Plan.

**2.3 Stormwater Treatment Geodatabase**

**a. Construct and Populate Stormwater Treatment Tracking Geodatabase**

The City of Grand Island will maintain all shapefiles necessary to manage stormwater treatment information. The geodatabase will include all stormwater detention cells and drainage ditches that are included in the treatment calculations within each stormwater treatment basin. The geodatabase shall be constructed to deliver to the City with the ability to amend existing and create new records. Methods for using the geodatabase shall be recorded in the deliverable for Task 2.1c.

**2.4 Post Construction Stormwater BMP Master Plan**

**a. Stakeholder Meetings**

The City will assign a stakeholder group to support the project review of alternatives, methods and program recommendations. A minimum of two progress meetings will be held with the stakeholder group. The stakeholder group input will be documented in the deliverables for Task 2.1. The draft Master Plan shall be presented to the public at an open meeting of the City Council.

**b. Developer Presentation**

FHU will summarize documentation and programmatic updates and assist in the preparation of presentation materials for information sharing sessions that are expected to last up to three hours. FHU will assist in providing instruction for two training information sharing sessions that will take place the same day in Grand Island, Nebraska. Session facilities, notifications, and any certifications for attendance will be arranged by the City of Grand Island.

**c. Draft Master Plan**

The City of Grand Island Post Construction Stormwater BMP Master Plan will be drafted with content that supports implementation of the plan and satisfies the required documentation of the

MS4 Permit. The Draft Master Plan shall include all information documented in the deliverables for Task 2.1.

**d. Final Master Plan**

Following review of the Draft Master Plan by the stakeholder group and presented to the City Council, modifications and edits will be made and returned to the City to adopt the Final Master Plan. The City will adopt and begin implementation of the Final Master Plan document to satisfy all requirements of the Post Construction Stormwater requirements of the MS4 Permit.

Phase 3 – Progress Reporting and Project Management

Throughout the project the team will provide routine progress reporting and project management as described below.

*3.1 Project Management*

**a. Progress Report**


FHU will kick off the project with the Assistant Public Works Director, Keith Kurtz and his staff, in February when the proposed project schedule and deliverables will be confirmed. Monthly progress reports will be provided to the City describing work completed in the previous month and tasks underway with each billing. Four additional progress meetings have been planned in the proposed schedule. Two will coincide with stakeholder meetings planned as Task 2.4.a. The timing of stakeholder meetings is flexible and will be confirmed once the stakeholder group is identified. The final progress meeting will be held when the master plan is presented to the City Council in late July. All questions and feedback about progress and project management will be coordinated through the FHU Project Manager, Jesse Poore.



**Exhibit B**

**FEE PROPOSAL  
Stormwater Management Post Construction BMP Master Plan  
City of Grand Island, Nebraska**

The Project will be conducted on a on a “time and materials” basis with a **not to exceed fee of \$84,840**, based on the following estimated of labor hours, salary rates and direct expenses. Under such an agreement, the Consultant is compensated on an hourly basis for all labor. Standard rates for employees supporting the project are listed in the following fee schedule. Other direct expenses incurred on this project will be billed with 10% mark up. Such expenses may include reproduction charges, postage, etc. Vehicle usage will be charged solely at the current Federal rate at the time of the usage.

CITY OF GRAND ISLAND										
Water Quality Assessment and PCSM Program Development										
		PRIME TASK TOTAL	PRIME TASK TOTAL	Felsburg Holt and Ullevig						Direct Expenses
				Days Lampe	Jesse Poore	John Heine	Scott Speicher	Terry Lage		
				Project Principal I	Project Mgr & Sr Planner	Engineer III	Engineer I	Enviro Planner III		
		\$	HRS	\$200	\$180	\$125	\$100	\$125		
<b>TASK 1</b>	<b>Water Quality Design Criteria Update and Water Quality Assessment</b>									
1.1	Update WQCV criteria									
1.1a	Research WQCV Influences	\$2,980	21	4	1	16				
1.1b	Update WQCV Calculation	\$1,580	11	2	1	8				
1.2	Assess WQCV Needs									
1.2a	Data Collection and Review	\$7,720	68		4	4	40		20	
1.2b	Anticipated Growth WQCV	\$4,220	32		4	4	4		24	
1.3	Develop Standards for WQCV Treatment									
1.3a	Detention Ditch Credit Research	\$3,300	24	4		20				
1.3b	Detention Pond Credit Research	\$3,300	24	4		20				
1.3c	Enhanced Detention Ditch	\$4,200	36	4		8		24		
1.3d	Enhanced Detention Pond	\$4,200	36	4		8		24		
1.4	Assess Existing WQCV Treatment Provided									
1.4a	WQCV Baseline	\$2,720	24		4			20		
1.4b	Remaining Treatment	\$1,920	16		4			12		
1.4c	Retrofit Design	\$7,000	64			24		40		
	Task Hours		356		22	18	112	160	44	
	Task Fee	\$43,640		\$4,400	\$3,240	\$14,000	\$16,000	\$5,500	\$500	
<b>TASK 2</b>	<b>Post Construction Stormwater Management Program Implementation</b>									
2.1	Program justification, standard and implementation requirements									
2.1a	WQCV Std.	\$2,660	18	4	2	12				
2.1b	WQCV Practices	\$3,020	20	4	4	12				
2.1c	WQCV Tracking	\$3,340	22	2	8	12				
2.2	Regulator	\$2,160	12		12					
2.3	Geodatabase	\$2,000	24				8		16	
2.4	Post Construction Stormwater BMP Master Plan									
2.4.a	Stakeholders	\$8,480	56	16	16		24			
2.4.b	Development Presentation	\$3,840	20	12	8					
2.4.c	Draft Plan	\$6,260	46	2	12	8	12		12	
2.4.d	Final Plan	\$2,440	16		8	8				
	Task Hours		234	40	70	52	44	28		
	Task Fee	\$35,500		\$8,000	\$12,600	\$6,500	\$4,400	\$3,500	\$500	
<b>TASK 3</b>	<b>Progress Report and PM</b>									
3.1	3.1.a Progress Report and PM	\$5,200	28	8	20					
	Task Hours		28	8	20	0	0	0		
	Task Fee	\$5,700		\$1,600	\$3,600	\$0	\$0	\$0	\$500	
	<b>TOTAL</b>									
	Hours		618	70	108	164	204	72		
	Fee	\$84,840		\$14,000	\$19,440	\$20,500	\$20,400	\$9,000	\$1,500	

If additional services are required outside the Scope of Services Work, these would be handled as a contract amendment on a time and materials basis. Additional work would not be performed without written authorization from the client.

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## Exhibit C

### LETTER AGREEMENT PROVISIONS

#### A. SERVICES BY THE CONSULTANT

The CONSULTANT agrees to perform all services, hereunder, using reasonable skill and judgment in accordance with applicable professional standards. CONSULTANT agrees to keep the CLIENT informed on its progress through periodic reports, and to maintain accurate records relating to its services in connection with this project.

The CONSULTANT agrees to provide, directly or by association with such other Consultants or Contractors as it may deem necessary to further the interest of the CLIENT, the basic services as described in Scope of Work in the Letter Agreement for the Stormwater Management Post Construction BMP Master Plan dated January 30, 2018 (herein Letter Agreement or agreement).

The CONSULTANT agrees to provide, directly or by association with such other Consultants or Contractors as it may deem necessary to further the interest of the CLIENT, the basic services as described in Scope of Work in the letter proposal or Letter Agreement.

#### B. RESPONSIBILITIES OF THE CLIENT

The CLIENT shall provide and make available to the CONSULTANT, for his use, all maps, property descriptions, surveys, previous reports, historical data, and other information within its knowledge and possession relative to the services to be furnished hereunder. Data so furnished to the CONSULTANT shall remain the property of the CLIENT and will be returned upon completion of its services.

The CLIENT shall make provisions for the CONSULTANT to enter upon public and private properties as required for the CONSULTANT to perform its services hereunder.

#### C. EXTRA WORK

The CLIENT may desire to have the CONSULTANT perform work or render services other than those provided in Scope of Work. This will be Extra Work. Work shall not proceed until so authorized by the CLIENT.

#### D. TIME OF BEGINNING AND COMPLETION

Signing this form is authorization by the CLIENT for the CONSULTANT to proceed with the work. Completion is as noted in the letter agreement.

#### E. PAYMENT

Unless otherwise provided herein, CONSULTANT shall submit monthly invoices for Basic, Additional or Special Services and for Reimbursable Expenses each month for work actually performed. If hourly, invoices will be based on labor and expenses incurred. If lump sum, invoices will be based on the percentage of work completed.

Payments not made within 60 days of the billing date shall bear interest at the rate of 1% per month which is an annual interest rate of 12%. In the event any portion of or all of an account remains unpaid 90 days after billing, the CLIENT shall pay all costs of collection, including reasonable attorney's fees.

#### F. DELAYS

If the CONSULTANT is delayed at any time in the progress of work by any act or neglect of the CLIENT or its agents, employees or contractors, or by changes in the work, or by extended reviews by the CLIENT, fire, unavoidable casualties, or by any causes beyond the CONSULTANT'S control, the time schedule shall be extended for a reasonable length of time, and CONSULTANT'S compensation may be subject to renegotiation for increased expenses due to escalation of prices, extended services, relocation of other expenses incidental to such delays.

#### G. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work products developed by the CONSULTANT in connection with this project are instruments of service for this project only and shall remain the property of the CONSULTANT whether the project is completed or not. The CONSULTANT shall furnish originals or copies of such work product to the CLIENT in accordance with the services required hereunder. Reuse of any of the work product of the CONSULTANT by the CLIENT on an extension of this project or on any other project without the written permission of the CONSULTANT shall be at the CLIENT'S risk and the CLIENT agrees to defend, indemnify and hold harmless the CONSULTANT from all claims, damages, and expenses including attorneys fees arising out of such unauthorized reuse by the CLIENT or by others acting through the CLIENT. Any reuse or adaptation of the CONSULTANT'S work product shall entitle the CONSULTANT to equitable compensation.

#### H. INSURANCE

During the course of the services, the CONSULTANT shall maintain Workmen's Compensation Insurance in accordance with the Workmen's Compensation laws of the State of Nebraska; Professional Liability Insurance with a minimum coverage of \$1,000,000 per occurrence, \$2,000,000 aggregate; Automobile Liability with a combined single limit coverage of \$1,000,000; and Commercial General Liability of \$1,000,000 per occurrence, \$2,000,000 aggregate. Upon request, the CONSULTANT shall provide certificates of insurance to the CLIENT indicating compliance with this paragraph.

#### I. TERMINATION

Either the CLIENT or the CONSULTANT may terminate this Agreement at any time with cause upon giving the other party seven (7) calendar days prior written notice. The CLIENT shall within sixty (60) calendar days of termination pay the CONSULTANT for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

#### J. DISPUTES

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and the CONSULTANT agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.



## K. GOVERNING LAW

Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the law of the State of Nebraska.

## L. SUCCESSORS AND ASSIGNS

The CLIENT and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party with respect to all covenants of this Agreement. Neither party shall assign or transfer its interest in this Agreement without the written consent of the other.

## M. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations and representations. Nothing herein shall be deemed to create any contractual relationship between the CONSULTANT and any other CONSULTANT or contractor or material supplier on the project, nor obligate it to furnish any notices required under other such contracts, nor shall anything herein be deemed to give anyone not a party to this Agreement any right of action against a party which does not otherwise exist without regard to this Agreement.

## N. NOTICES

All notices and instructions given by either party to the other shall be in writing, and shall be deemed to be properly served if delivered to the address of record shown below, or if deposited in the United States Mail properly stamped with the required postage and addressed to such party. The date of service of a notice sent by mail shall be deemed to be the day following the date on which said notice is so deposited. Either party hereto shall have the right to change its address by giving the other party written notice thereof.

City of Grand Island  
PO Box 1968  
Grand Island, NE 68802-1968

Felsburg Holt & Ullevig  
321 S. 9<sup>th</sup> Street  
Lincoln, NE 68508

## O. WORK ELIGIBILITY STATUS VERIFICATION

**E-Verify Program:** The CONSULTANT is required and hereby 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. 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.

**United States Citizenship Attestation Form:** In addition, contractor's organized as individuals or sole proprietorship's must complete the United States Citizenship Attestation Form, available either on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us) or from the City of Grand Island. If he/she indicates on such attestation form that he/she is a qualified alien, he/she agrees to provide the US Citizenship and Immigration Services documentation required to verify his/her

lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. He/She understands and agrees that lawful presence in the United States is required and he/she may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

## P. TITLE VI NON-DISCRIMINATION PROGRAM

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest (herein this section referred to as the CONSULTANT) agrees as follows:

(1) **Compliance with Regulations:** The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (herein this section referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Non-discrimination:** The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

(4) **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (Recipient) or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the (Recipient), or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this contract, the (Recipient) shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: (a.) withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The **CONSULTANT** shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The **CONSULTANT** shall take such action with respect to any subcontract or procurement as the (Recipient) or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a **CONSULTANT** becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the **CONSULTANT** may request the (Recipient) to enter into such litigation to protect the interests of the (Recipient), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Q. ACCURACY OF SERVICES AND LIMITATION OF LIABILITY**

The **CONSULTANT** shall use reasonable professional skill and judgment in connection with services, hereunder, but does not warrant that such services are without errors and/or omissions. If, during the authorized use and prudent interpretation of documents or advice furnished by the **CONSULTANT**, an error or omission is discovered within a reasonable time, the **CONSULTANT** shall be responsible for correction of any work which must be removed or altered to meet the project requirements, provided the **CONSULTANT** is given a reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself.

In providing opinions of probable construction cost, the **CLIENT** understands that the **CONSULTANT** has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of the **CONSULTANT'S** qualifications, and experience. The **CONSULTANT** makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

The **CONSULTANT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CLIENT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CONSULTANT'S** negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subconsultants or anyone for whom the **CONSULTANT** is legally liable.

The **CLIENT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CONSULTANT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CLIENT'S** negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the **CLIENT** is legally liable, and arising from the project that is the subject of this Agreement.

IN WITNESS WHEREOF, the **CLIENT** agrees to the terms of these Special Provisions in conjunction with the attached Letter Agreement:

**CLIENT:** City of Eiranda Island

**By:** 

**Title:** Mayor

**Date:** February 13, 2018