



Highway Department

Telephone: 701-298-2370

Fax: 701-298-2395

MEMORANDUM

TO: Cass County Commission

FROM: Jason Benson, Cass County Engineer

DATE: July 12, 2023

SUBJECT: Consent Agenda Item for July 18, 2023, Commission Meeting: Houston Engineering, Inc. - Engineering Services Agreement for Project MS2301, a Pre-construction/Feasibility Study for the Sheyenne Riverbank Stabilization in Normanna Twp near the Norman Church along 52nd St SE.

Normanna Township and the Cass County Highway Department have been tracking progression of the bank erosion along 52nd St SE in sections 24 & 25 of Normanna Township for several years. If this riverbank is not stabilized soon, the township road and potentially the church will eventually slide into the Sheyenne River. This road does support higher than typical township traffic to and from Kindred School, along with agricultural needs. The attached map provides further details.

The ND State Water Resources office has approved \$50,000 in Preconstruction cost share at 50% for this project. The remaining \$25,000 is planned to be submitted to the Flood Sales Tax Committee for 50% or possibly a higher cost share. Then the remaining proposed local cost share split is then 75% County and 25% Normanna Township. The County does have an interest in this project to keep the township road alignment close to existing, to match into the 1995 concrete bridge that is in excellent shape. A reroute approximately 1 mile of township road and new bridge using today's prices would be approximately \$4.5 million.

Attached are the contract documents for Houston Engineering, Inc. to provide pre-construction/feasibility study services that include coordination for the geotechnical evaluation, preliminary design, and project management for the above subject project. The project management involves coordination with the County Highway Department and ND Water Resources Department to apply for further construction cost share assistance.

SUGGESTED MOTION: AUTHORIZE CHAIRPERSON TO SIGN CONTRACT DOCUMENTS WITH HOUSTON ENGINEERING, INC. FOR PROJECT MS2301 A PRE-CONSTRUCTION/FEASIBILITY STUDY FOR \$50,000 FOR THE SHEYENNE RIVERBANK STABILIZATION IN NORMANNA TWP NEAR THE NORMAN CHURCH ALONG 52ND ST SE. SUBJECT TO THE STATE'S ATTORNEYS APPROVAL.

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CONTRACT APPROVAL REQUEST

COMPANY REQUESTING CONTRACT:

Houston Engineering, Inc., 1401 21st Ave N, Fargo, ND 58102

DATE OF REQUEST: July 12, 2023

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: July 18, 2023

DEPARTMENT HEAD REQUESTING SIGNATURE: **Jason Benson, 701-298-2372**

STATE'S ATTORNEY SIGNATURE: _____

STATE'S ATTORNEY COMMENTS: _____

PORTFOLIO COMMISSIONER SIGNATURE: _____

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CASS COUNTY GOVERNMENT ENGINEERING SERVICES AGREEMENT

Project Numbers and Locations: MS2301 – Normanna Twp Slide Repair

Type of Project: Preliminary Engineering & Geotechnical

Type of Construction: Slide Repair

THIS AGREEMENT is entered into by and between Cass County, herein after known as the County, and Houston Engineering, Inc., of Fargo, North Dakota hereinafter known as Engineer.

I.

The Engineer shall perform the needed detailed preliminary engineering services only per Request for Proposal.

II.

The County will pay the Engineer as follows:

A. Maximum Payment: The total contract cost not to exceed \$50,000.00 unless changed according to Section VI.

III.

The work under this agreement shall be performed as required to meet the project requirements and the contractor’s work schedule.

IV.

Duly authorized representatives of the County, North Dakota Department of Transportation, and Federal Highway Administration (FHWA) shall have right to inspect and copy the Engineer’s plans, files, and records relating to the work included in this agreement.

All books, documents, papers, accounting records, and other evidence pertaining to the cost incurred under the agreement shall be retained by the Engineer and available for inspection by the County, North Dakota Department of Transportation, or FHWA for a period of three years after the date of final payment.

The files and records shall be available in the Engineer’s office located at Houston Engineering, Inc.

V.

The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Engineer, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the County and North Dakota Department of Transportation shall have the right to annul this agreement without liability, or to deduct from the agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

VI.

No change in the type or extent of the work to be performed by the Engineer shall be made except by supplemental agreement in writing between the County and the Engineer. The supplemental agreement shall set forth the proposed changes of work, extension of time for preparation of the plans, and adjustment to the fee to be paid by the County to the Engineer, if any. On federal-aid participating projects any supplemental agreement must be approved by the North Dakota Department of Transportation.

VII.

This agreement may be terminated by the County and North Dakota Department of Transportation at any time upon written notice to the Engineer. In the event that such termination should take place before the completion of the total work to be performed hereunder the County will pay the Engineer for the completed hourly work not to exceed the total work to be performed under this contract.

In the event that the termination of this agreement is not the fault of the Engineer the County shall compensate the Engineer for services performed prior to the termination, along with reimbursable expenses then due.

The original copies of all drawing, prints, plans, and field notes prepared by the Engineer prior to termination shall become the property of the County. Such termination shall not affect any legal right of the County against the Engineer for any breach of this agreement.

The design services done as a result of this agreement are intended for use only on the project that is the subject of this agreement. The design services are not intended to be used on other projects. In the event that the County uses the design services that are the subject of this agreement on another project the use of the design services will be at the County's own risk.

VIII.

The Engineer shall indemnify, save, and hold harmless the County and/or North Dakota Department of Transportation and employees thereof, from any and all claims, demands, actions arising out of the negligent acts, errors, or omissions of the Engineer, his employees, or agent, in the performance of the agreement, or matters incidental thereto.

Any and all persons employed directly or indirectly by the Engineer who are engaged in the performance of any work or services required of the Engineer under this agreement shall be considered employees of the Engineer only and not of the County or North Dakota Department of Transportation.

The Engineer shall comply with applicable federal state and local laws together with all applicable ordinances and regulations applicable to the work. He shall procure all licenses, permits, and other rights necessary for the fulfillment of his obligations under this agreement.

The appropriate professional engineer (P.E.) and/or land surveyor (L.S.) endorsement shall be placed on all documents, plans, or plats.

The Engineer shall comply with Title VI of the Civil Rights Act of 1964, Executive Order 112246 and Executive Order 11375. In accordance with the aforementioned act, no person in the United States shall, on the grounds of race, color, religion, sex, age, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this agreement.

IX.

The services of the Engineer to be performed hereunder are personal and shall not be assigned, sublet, or transferred, except specialized services or additional work items. If the specialized services or additional work exceeds \$10,000.00, the contract with the agency or firm doing the work shall contain all the provisions of this agreement. The Engineer shall not engage, on a full-or part-time or other basis during the period of this agreement, any professional or technical personnel who are or have been at any time during the period of the agreement in the employment of the FHWA, the

North Dakota Department of Transportation, or the County, without the written consent of the public employer of such person.

X.

The Engineer shall obtain all risk record protection insurance to cover the loss of all survey notes or all other records or data obtained in connection with the work.

XI.

The Engineer is advised that his or her signature on this contract and/or agreement certifies that the company or any person associated with it is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.

ATTESTED:

COUNTY OF CASS

County Finance Director

Chairperson, Board of County Commissioners

Date

Houston Engineering, Inc.

Date