



City of Grand Forks
Staff Report
Committee of the Whole – May 11, 2020
City Council – May 18, 2020

APPROVED & ACCEPTED
by City Council

05/18/20

Maureen Storstad
Maureen Storstad
City Auditor

Agenda Item: Agreement for City Project No. 8193 – Agreement with East Grand Forks for Inspection of the Point Bridge

Submitted by: Engineering Department, Mark S. Walker, PE (Assistant City Engineer)

Staff Recommended Action: **Approve Agreement with the City of East Grand Forks for Bridge Inspection Services for the Point Bridge, City Project No. 8193**

Committee Recommended Action:

Refer to City Council with the recommendation to approve.

Council Action:

Approved unanimously on consent agenda

BACKGROUND:

Federal requirements require that all bridges with a span of 20' or greater be inspected for the safety of the traveling public. Previously, the North Dakota Department of Transportation (NDDOT) has inspected bridges owned by the City, including the Point Bridge, but has recently decided to no longer provide this service. In addition, the City of East Grand Forks hires a firm to inspect the Point Bridge as required by the Minnesota Department of Transportation (MNDOT). With the NDDOT no longer providing bridge inspection services to the City, we could hire a firm to inspect the bridge but since the City of East Grand Forks is also inspecting the bridge, it makes sense to jointly share the cost of the inspection services and jointly share the results of the inspection. The NDDOT is encouraging entities who share a bridge structure with another agency to enter into such an agreement and jointly inspect the bridge rather than duplicate services.

ANALYSIS AND FINDINGS OF FACT:

- The attached agreement has been prepared by the Grand Forks City Attorney and has been review by the East Grand Forks City Attorney.
- Approval of the attached agreement is scheduled to be considered at the 5/12 East Grand Forks City Council Work Session and at the 5/18 East Grand Forks City Council.

- As per the agreement, East Grand Forks will be responsible for hiring the bridge inspector who is required to meet National Bridge Inspection Standards which is a requirement of both the NDDOT and MNDOT.
- A report of the findings of the bridge inspection will be distributed to both cities, the NDDOT, and the MNDOT.
- The City of Grand Forks owns approximately 23 other bridge/box culvert structures that are required to be inspected and are scheduled to be inspected by a consultant hired by the NDDOT.
- With the exception of the Minnesota Avenue Bridge, University Avenue Bridge over the English Coulee, Columbia Road Overpass, and a small bridge on N 69th Street, the remainders are box culverts.
- Bridges such as the Kennedy Bridge, Sorlie Bridge, Demers Avenue Overpass, Washington Street Underpass, and I-29 Overpass structures are on the State and Federal system, are not owned by the City, and are not a responsibility of the City to inspect.
- Bridges are to be inspected every 2 years and box culverts are to be inspected every 4 years; however, box culverts in poorer condition are to be inspected every 2 years.

SUPPORT MATERIALS:

- Intermunicipal Agreement for Bridge Inspections (7 pages)

INTERMUNICIPAL AGREEMENT
FOR BRIDGE INSPECTIONS

This Agreement is made and entered into this _____ day of _____, 2020, by and between the **City of Grand Forks, North Dakota**, a North Dakota municipal corporation, hereinafter referred to as “Grand Forks” and the **City of East Grand Forks, Minnesota**, a Minnesota municipal corporation, hereinafter referred to as “East Grand Forks”.

WITNESSETH:

WHEREAS, Grand Forks and East Grand Forks are served by the Point Bridge crossing the Red River of the North;

WHEREAS, Grand Forks and East Grand Forks seek to obtain bridge inspection services of the Point Bridge;

WHEREAS, Grand Forks and East Grand Forks intend to work cooperatively to provide their citizens and visitors with the benefit of using the Point Bridge;

WHEREAS, Grand Forks and East Grand Forks deem it to be in the public interest to enter into this Agreement whereby the cities would receive the mutual benefit of bridge inspection services;

WHEREAS, Grand Forks and East Grand Forks recognize the public interest to be served and the economic savings to be recognized by avoid duplication of services;

WHEREAS, Grand Forks and East Grand Forks desire to comply with all applicable federal and state requirements relating to bridge inspections;

NOW, THEREFORE, In consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed by and between Grand Forks and East Grand Forks as follows:

Article 1. Scope.

1.1 The purpose of this Agreement is to set forth the circumstances and conditions by which Grand Forks and East Grand Forks will obtain inspection services for the Point Bridge.

Article 2. Term.

2.1 Except in the event of early termination as provided herein, the term of this Agreement shall be for a period of five (5) years expiring on the 31st day of December, 2025.

2.2 This Agreement shall be automatically renewed for an additional five (5) year term under the same terms and conditions if not earlier terminated as provided herein.

Article 3. Termination of Agreement.

3.1 Either party may terminate this Agreement in the event of a material breach of the provisions of this Agreement by the other if the defaulting party has not cured such material breach within ninety (90) days after the non-defaulting party has made written demand to cure the same.

3.2 Events that shall constitute a “material breach” of this Agreement include, but are not limited to:

- A. Failure to perform any material covenant or obligation contained in this Agreement.
- B. Remaining delinquent for any payment due hereunder for a period of ninety (90) days after receiving notice thereof.

3.3 This Agreement may be terminated by the mutual consent of the parties given in writing.

Article 4. Fees and Charges.

4.1 All fees and cost of services for the inspection of the Point Bridge shall be shared equally between Grand Forks and East Grand Forks.

4.2 East Grand Forks shall make the initial payment for inspection services. Upon payment East Grand Forks shall forward a copy of the paid invoice for inspection services to Grand Forks for reimbursement of fifty percent (50%) of the fees incurred. Such amount shall be paid by Grand Forks within forty-five (45) days of receipt.

4.3 In the event that the total cost of inspection is expected to exceed \$5,000.00, notice shall be given to Grand Forks for approval in advance of such services being provided.

Article 5. Miscellaneous Provisions

5.1 East Grand Forks shall be responsible for selecting and retaining the bridge inspector. Such inspector shall meet all appropriate and necessary Federal, Minnesota and North Dakota requirements as well as the National Bridge Inspection Standards as required by 23 C.F.R. 650.3.

5.2 Upon receipt of any reports produced by the inspector, copies shall be distributed to Grand Forks as well as the Minnesota Department of Transportation and the North Dakota Department of Transportation.

5.3 The Point Bridge must be inspected in accordance with federal and state requirements in the National Bridge Inspection Standards as required by 23 C.F.R. 650.3.

Article 6. General Provisions.

6.1 Minnesota Statutory Authority. East Grand Forks is authorized to enter into this Agreement under the laws of the State of Minnesota, including Minnesota Statutes Section 471-59.

6.2 North Dakota Statutory Authority. Grand Forks is authorized to enter into this

Agreement under the laws of the State of North Dakota, including N.D.C.C. Chapter 54-40.3.

6.3 Records Available for Inspection. Grand Forks and East Grand Forks shall make available for review all records relating to the matters covered by this Agreement.

6.4 Interpretation of Agreement. This Agreement, or any portion thereof, shall not be interpreted by a court of law or arbitrator to the detriment of a party based solely upon that party's authorship of the Agreement or any provision contained herein. Each party has been involved in the drafting and preparation of this Agreement and it is hereby expressly agreed that any uncertainty or ambiguity contained herein shall not be construed for or against any party. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

6.5 No Waiver. The failure of either party to this Agreement to insist upon compliance of any provision of this Agreement shall not constitute a waiver by said party of its rights to enforce any such provision or other provisions of this Agreement.

6.6 Relationship of Parties. Neither the execution nor delivery of this Agreement nor actions to complete this Agreement shall create or constitute a partnership, joint venture, joint enterprise or any other form of business organization or arrangement between the parties, except for the contractual arrangements specifically set forth herein. Except as set forth herein, no party, or any of its agents, officers or employees, has any power to assume or create any obligation on behalf of the other party.

6.7 Modification or Amendment to Agreement. Except as otherwise provided herein, this Agreement shall not be modified, amended or altered except upon the written agreement of

Grand Forks and East Grand Forks, duly executed and adopted by the City Council of each municipality.

6.8 Limitation of Liability. The employees and officers of a party are deemed to be employees of that party. The limits of liability for some or all of the parties may not be added together to determine the maximum liability for each party. Any and all liability of the parties related to the terms of this Agreement will be limited to the amount specified by the statutory requirements set forth in North Dakota Century Code § 32-12.1-03 and Minnesota Statute Annotated §466.04, as they apply to the cities.

6.9 No Rights to Third Parties. This Agreement is between Grand Forks and East Grand Forks only and creates no rights in or to third parties as beneficiaries of this Agreement. Nothing in this Agreement is intended or shall be construed or conferred upon, or give to, any person or entity other than the parties hereto, any right, remedy or claim under or by reason of this Agreement; or any covenants, terms, conditions and provisions in this Agreement by and on behalf of the parties shall be for the sole and exclusive benefit of the parties. Nothing in this Agreement is intended to interfere with any agreements of any party with any third party.

6.10 Severability. In the event that any provision of this Agreement is determined and adjudged to be unconstitutional, invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Agreement or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties hereto.

6.11 Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any provisions of the Agreement.

6.12 Entire Agreement. The terms, covenants, conditions and provisions of this Agreement, including the present and all future attachments, shall constitute the entire agreement between the parties hereto, superseding all prior agreements and negotiations. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

6.13 Notice. Any notices required under the provisions of this Agreement shall be in writing, and sufficiently given if delivered in person or sent by U.S. Mail, postage prepaid, as follows:

If to Grand Forks: Mayor
Grand Forks City Hall
255 N. 4th St.
Grand Forks, ND 58203

If to East Grand Forks Mayor
East Grand Forks City Hall
600 DeMers Ave.
East Grand Forks, MN 56721

6.14 Counterparts. This Agreement may be executed in as many counterparts as the parties deem necessary and each counterpart, so executed, shall be considered one and the same instrument.

IN WITNESS WHEREOF, The parties hereto have set their hands the day and year first written above.

CITY OF GRAND FORKS,
a North Dakota municipal corporation

By: _____
_____, Its _____

By: _____
_____, Its _____

CITY OF EAST GRAND FORKS,
a Minnesota municipal corporation

By: _____
_____, Its _____

By: _____
_____, Its _____