

# ADAIR COUNTY COMMISSION MINUTES

## TUESDAY, JUNE 9, 2015

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IN REF. ORDER NO 9 Signed Appraisal Agreements for Bridge Project BRO-NBIL-B001 (50)

CCO FORM: RW17 County: Adair  
 Approved: 04/92 (TWJ) Bridge No.: 0680007  
 Revised: 02/10 (AR) State Job No.: N/A  
 Modified: Federal Project No.: BRO-NBIL-B001 (50)

**APPRAISAL AGREEMENT**

THIS AGREEMENT is entered into by and between the Adair County Commission (hereinafter, "County"), acting herein by and through its presiding commissioner and Pamela J. Carnahan, (hereinafter, "Contractor") whose address is: 202 Broadway Street, Macon, Missouri 63552

**WITNESSETH:**

NOW THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

- (1) **APPRAISAL:** In return for the fees as herein set out, Contractor shall furnish County with an appraisal setting forth an estimate of just compensation for each of the tracts or parcels of land numbered 1 and 2, in connection with the acquisition of temporary easement rights, for Bridge Project, BRO-NBIL-B001 (50), Federal No. Adair, County, Missouri.
- (2) **WRITTEN REPORT:** Contractor shall, within a reasonable time and in no event more than 30 ( ) calendar days from the date of the Notice to Proceed, furnish a typewritten detailed appraisal, in quadruplicate, in accordance with applicable appraisal procedures.
- (3) **NOTICE TO PROCEED:** The Notice to Proceed will stipulate the date Contractor is expected to begin work. The County will issue the Notice to Proceed in a separate letter upon its approval of this Agreement.
- (4) **COUNTY RESPONSIBILITIES:** The County will provide Contractor with complete right of way plans and a legal description of each tract to be appraised and the names of the record owners. County will also provide the following information, if available: title information, plats, and any other relevant data. Contractor shall in no event be responsible for the failure to furnish the proper name or ownership of the tract involved, but if information comes to Contractor in the progress of its work indicating a different ownership, it shall notify County and include the new information in the appraisal.
- (5) **EVALUATION OF EQUIPMENT, MACHINERY, ETC.:** The appraisal shall include the evaluation of all equipment, machinery or other appurtenances which are considered real property and are contained in any improvement on the property being appraised, however, if County determines that the property includes a substantial amount of equipment, machinery and other appurtenances which are part of the realty, but are not generally included in real estate appraisals,

County will have the value of such equipment, machinery or other appurtenances, determined by competent evaluators. County shall furnish the conclusions of such evaluators to Contractor, the contributory value of which will be considered in establishing the value of the whole.

- (6) **COMPENSABLE ITEMS:** Contractor agrees that personal property, loss of business or good will, or other items not generally compensable in eminent domain proceedings will not be considered in its determination of value. If there is any doubt as to whether certain portions of the property involved are real estate or personal property, County, at the request of Contractor, will designate an attorney to make a finding as to the status of such improvements. County will, through its attorneys, give legal advice relative to consideration of benefits chargeable to the property and as to compensable and noncompensable items.
- (7) **CONFIDENTIALITY:** Contractor shall prepare the appraisal in each instance independent of any other appraiser employed by County for the same work. Unless otherwise directed to do so in writing by the County's representative, the Contractor shall not furnish to any other person or persons, except by order of the court of proper jurisdiction or officials of the United States Department of Transportation when federal funds participate in the cost of the project, a copy of the appraisal or any information contained therein. The appraisal reports to County are confidential between the parties hereto and officials of the United States Department of Transportation when federal funds participate in the cost of the project and any breach of any confidence shall be considered a material breach of this Agreement. Contractor shall not disclose to third parties confidential factual matter provided by County except as may be required by statute, ordinance, or order of court, or as authorized by County. Contractor shall notify County immediately of any request for such information. However, the County reserves the right to provide a copy of the appraisal report and any other supporting documentation to anyone requesting such a copy, including potential condemnees and requests under the Missouri Open Meetings and Records Act (Section 610.010 RSMo et seq).
- (8) **APPRAISAL UPDATE:** It is understood and agreed that the appraised value fixed in the appraisal report may be subsequently affected by economic conditions, laws, ordinances, etc. and that such value shall be valid only for a reasonable time after submission. Contractor shall update such appraisal reports or reappraise certain parcels as designated by County. Any additional compensation for an appraisal update must be in writing and attached as a supplement to this Agreement.
- (9) **COMPENSATION:**
  - (A) **SUBMISSION OF REPORTS AND BILLS:** Contractor shall submit its reports to the Office having charge of the project. Contractor shall periodically submit bills for services covering appraisals made during the contract period involved. Payment will be made approximately thirty (30) days after submission and approval of bills.
  - (B) **METHOD OF PAYMENT:** County will process for payments seventy percent (70%) of the herein stated fee per parcel upon receipt of Contractor's reports and bills for service. The remaining thirty percent (30%) may, at County discretion, be withheld until County reviews Contractor's reports for deficiencies, errors and full compliance with the attached appraisal

procedures. In no event will this thirty percent (30%) withholding exceed ninety (90) days from the report receipt date except when the reviewing process reveals a need for corrections.

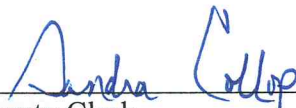
- (C) **DAMAGES/CORRECTION OF APPRAISAL DEFICIENCIES:** Failure to correct appraisal deficiencies within twenty-one (21) calendar days of Contractor's receipt of written notification by County of the deficiencies will result in liquidated damages as follows: The first seven (7) calendar days after the aforementioned twenty-one (21) day period shall accrue damages at the rate of one percent (1%) of the appraisal fee for the parcel per day. After the first seven (7) calendar days, damages accrue at the rate of two percent (2%) per calendar day until corrections are received by the District Office having charge of the project.
- (D) **LIQUIDATED DAMAGES/LATE REPORT:** For late delivery of an appraisal report, liquidated damages shall be at the rate of one percent (1%) of the parcel appraisal fee per calendar day for the first seven (7) days and two percent (2%) per calendar day thereafter, between the due date and the date on which the report is received in the Office having charge of the project.
- (10) **FEES:** Contractor shall receive a fee for each appraisal completed in accordance with this contract as listed on Exhibit 2 attached hereto and incorporated herein.
- (11) **TRIAL PREPARATION AND COURT APPEARANCES:** Contractor shall be available for consultation during trial preparation and appear in any court proceedings as requested by County's Chief Counsel in support of Contractor's appraisals. Contractor shall receive a per diem rate based upon the current prevailing rate in Contractor's geographical area for such consultation and/or court appearances as agreed upon at the time such services are requested. Contractor will receive reimbursement for reasonable expenses incurred for such services.
- (12) **CHANGE IN SCOPE OR CHARACTER OF WORK:** If for any reason due to changes in plans or otherwise, there shall be a change in the scope or character of the work to be performed by Contractor which necessitates a corresponding change in the amount of compensation, the parties hereto shall incorporate such changes in writing as a supplement to this Agreement. Under no circumstances shall Contractor proceed with the appraisal until the supplemental agreement is executed by both parties.
- (13) **NONSOLICITATION:** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, County, percentage, brokerage fee, gift, 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 shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, County, percentage, brokerage fee, gift, or contingent fee.
- (14) **TERMINATION:**
  - (A) **FOR CAUSE:** In the event Contractor shall fail to comply with the terms of this

Agreement or the progress or quality of the work is unsatisfactory, County shall have the right to terminate this Agreement upon written notice. If this Agreement is terminated under this provision, County shall pay Contractor only for those appraisals satisfactorily completed, as determined by County, and such appraisals will be the property of County.

- (B) **FOR PROJECT DELAY, CANCELLATION, ETC.:** Should the project covered by this Agreement be postponed, delayed or otherwise cancelled by County, County shall have the right to terminate this Agreement. In the event this Agreement is terminated under this provision or in the event it is terminated because of illness of Contractor or for other reasons not due to any fault on the part of Contractor, all work completed or partially completed prior to notice of termination of this Agreement shall be the property of County, and will be paid for in proportion to its value to County.
- (15) **EXTENSION OF TIME:** The length of time given this Agreement, as shown in Paragraph 2, will not be extended without the approval of the County Official having charge of this project. Any and all changes to this time period must be in writing and approved in advance by the County Official having charge of this project.
- (16) **DISPUTE RESOLUTION:** In the event of any dispute concerning a question of fact in connection with the work, the Director, Division of Right of Way, shall make a determination of such fact and his/her decision shall be final.
- (17) **INDEMNIFICATION:** The Contractor shall defend, indemnify and hold harmless the County, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Contractor's performance of its obligations under this Agreement.
- (18) **ASSIGNMENT:** The Contractor shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the County.
- (19) **PROFESSIONAL STANDARDS:** Contractor will follow accepted principles and techniques in the evaluation of real estate.
- (20) **LAW OF MISSOURI TO GOVERN:** This Agreement shall be construed according to the laws of the state of Missouri. The Contractor shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.
- (21) **VENUE:** It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.
- (22) **CONTRACTOR DETERMINATIONS:** Contractor will personally make all determinations required in the appraisal, except data involving measurements, mechanical calculations, entries on public records and computation of construction costs. Elements of the appraisal not requiring the personal professional opinion of Contractor may be delegated to others under the direct supervision of and employed by Contractor, i.e. stenographic assistance. All

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ATTEST:

  
 County Clerk

  
 Presiding Commissioner