



City of Grand Island

Tuesday, June 14, 2016

Council Session

Item G-14

#2016-137 - Approving Interlocal Agreement with the Grand Island Public Schools for Improvements to Adams Street

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Attorney
Meeting: June 14, 2016
Subject: Interlocal Agreement for Improvement to Adams Street
Presenter(s): Jerry Janulewicz, City Attorney

Background

Hall County School District 2 a/k/a Grand Island Public Schools (“GIPS”) is constructing a new Starr Elementary School and additions to Barr Middle School. Upon completion of the construction projects, it is anticipated that increased pedestrian and motor vehicle traffic will be present on and near Adams Street at that street’s location between Barr Middle School and the new Starr Elementary School. GIPS has offered to equally share with the City of Grand Island the cost of improvements to Adams Street in the area of the newly constructed Starr Elementary School and Barr Middle School so as to improve and promote traffic and pedestrian safety.

Discussion

Under the terms of the proposed agreement the City and GIPS would equally share the Adams Street project costs.

Alternatives

The Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the resolution thereby approving the Interlocal Agreement.
2. Disapprove or /Deny the resolution.
3. Table the issue.

Recommendation

City Administration recommends that the Council approve the resolution approving the Interlocal Agreement with GIPS for sharing costs of the Adams Street Project.

Sample Motion

Move to approve the Resolution approving the Interlocal Agreement with Hall County School District 2 for sharing costs of the Adams Street Project.

**INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF GRAND ISLAND,
NEBRASKA AND HALL COUNTY SCHOOL DISTRICT 2, A/K/A GRAND ISLAND
PUBLIC SCHOOLS FOR IMPROVEMENTS TO ADAMS STREET**

WHEREAS, under the provisions of the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 et seq., local political subdivisions may contract with one another for the performance of any governmental service, activity or undertaking that at least one of the contracting public agencies is authorized by law to perform; and

WHEREAS, the City of Grand Island, Nebraska (the “City”) and Hall County School District 2 a/k/a Grand Island Public Schools (“GIPS”) desire to enter into such a contractual agreement for the City and GIPS to share equally in the cost of improvements to Adams Street at that street’s location between Barr Middle School and the new Starr Elementary School in Grand Island, Nebraska.

NOW THEREFORE, the City and GIPS (the “parties”) agree as follows:

1. General Purpose. Subject to the preparation of design documents, and the parties’ approval of the same, setting forth in detail the requirements for improvements to Adams Street (the “Project”), the parties anticipate that the Project shall consist of changes to Adams Street to accommodate the presence of increased traffic and pedestrians that will likely result with the completion of the new Starr Elementary School and additions to Barr Middle School.
2. Term. This Agreement shall commence upon execution by the last signing party. The parties anticipate that the Project will be completed by September 1, 2017, unless the work is delayed by conditions or circumstances that were not contemplated upon approval of this Agreement by the governing bodies of the City and GIPS.
3. Cost of the Work. For purposes of this Agreement the Cost of the Work shall be the total cost to the City to design and construct all elements of the Project.
4. Financing. The City will invoice GIPS on a monthly basis for one-half (1/2) of the cost incurred by the City for that particular month for the design and/or construction of the Project. GIPS will pay the invoice, in full, within forty-five (45) days of receipt, such that at the completion of the Project GIPS will have reimbursed the City for one-half (1/2) the Cost of the Work. However, GIPS reserves the right to not pay for

one-half (1/2) the Cost of the Work resulting from change orders, and if the City receives requests for change orders the City shall promptly notify GIPS to allow it an opportunity to evaluate the requested change order and provide input about the choice of options.

5. Responsibilities of the City. The City shall be responsible for the design, means, methods, techniques, sequences or procedures for completing the Project, regardless of whether the City completes this work in-house or contracts with third-parties. Said responsibilities include, but are not limited to: all usual and customary design phase services, including estimates of the Cost of the Work; all usual and customary geotechnical testing; the preparation of construction documents and specifications; evaluations of the progress and quality of the work; determining if the Project, when completed, is in accordance with the contract documents; making and executing contracts with contractors, and making payments to the contractors in accordance with the Nebraska Construction Prompt Pay Act, Neb. Rev. Stat. § 45-1201 et seq. The City shall keep GIPS reasonably informed of known deviations, defects or deficiencies in the work, or changes in the work that require changes in the Cost of the Work or extensions of the construction timeline. All responsibilities of the City shall be completed in a workmanlike and timely manner.
6. City to Provide Documents. The City shall provide in a timely manner to GIPS, either in tangible or electronic format, the following:
 - a. Construction documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the Project;
 - b. All Requests for Proposals and bids from contractors;
 - c. Any updates on the estimated Cost of the Work including change orders;
 - d. Any reports concerning evaluations of the Project including any known deviations from the construction documents, or the construction schedule, or defects and deficiencies observed in the Project;
 - e. All invoices from contractors;
 - f. All certificates of payment to contractors;
 - g. All reports concerning the date or dates of substantial completion of the Project, and the date of final completion; and

- h. All notices or documents regarding claims or causes of action, whether in contract, tort or otherwise, arising out of or related to the Project.
7. Responsibility of GIPS. GIPS shall be responsible for constructing its driveways from Barr Middle School and the new Starr Elementary School to Adams Street; constructing sidewalks on its property to access any proposed crosswalks on Adams Street; and to provide to the City any additional rights-of-way as may be needed by the City to complete the Project. All responsibilities of GIPS shall be completed in a workmanlike and timely manner.
 8. Ownership of the Project. At all times relevant under this Agreement, the City shall maintain ownership and control of Adams Street and any improvements thereto.
 9. Indemnification. The City shall indemnify, defend and hold harmless GIPS, and its Board of Education, officers, agents and employees from any claim, lawsuit or cause of action arising out of the City's performance of its responsibilities under this Agreement. GIPS shall indemnify, defend and hold harmless the City, its Mayor and City Council and its officers, agents and employees from any claim, lawsuit or cause of action arising out of GIPS' performance of its responsibilities under this Agreement.
 10. Amendment. This Agreement may be modified only by written amendment, duly executed by authorized representatives of the parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Every amendment shall specify the date on which its provisions shall be effective.
 11. Assignment. Neither party may assign its rights under this Agreement without the express prior written consent of the other party.
 12. Captions. Captions used in this Agreement are for convenience and not to be used in the construction of this Agreement.
 13. Waiver. Failure or delay by any party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or

power. In addition, any act by either party which it is not obligated to do hereunder shall not be deemed to impose any obligation upon the party to do any similar act in the future or in any way change or alter any of the provisions of this Agreement.

14. Notice. In further consideration of the mutual covenants contained herein, the parties hereto expressly agree that for the purposes of notice, during the term of this Agreement and for the period of any applicable statute of limitations thereafter, the following designated officers shall be the authorized representatives of the parties:
 - a. For City: City of Grand Island, Attn: Mayor, P.O. Box 1968, Grand Island, NE 68802.
 - b. For GIPS: Grand Island Public Schools, Attn: Executive Director of Business, P.O. Box 4904, Grand Island, NE 68802.

Notice shall be in writing and shall be effective upon receipt. Delivery may be by hand, in which case a signed and dated receipt shall be obtained, or by United States mail, registered or certified, return receipt requested.

15. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.
16. Nondiscrimination. The parties agree that in accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §48-1101 et seq., they will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment because of the race, color, religion, sex, disability or national origin of the employee or applicant. None of the parties shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances.
17. No Third Party Rights. There are no third-party beneficiaries to this Agreement, and no third-party shall have any direct or indirect cause of action or claim in connection with this Agreement.
18. Independent Contractors. This Agreement shall not be construed as creating or establishing a partnership, a relationship of employment, agency, joint venture, joint public agency or any other form of legal association. The individual responsibilities

of each party under this Agreement shall be undertaken as independent contractors and not as employees of another party. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever.

19. Acquisition, Ownership and Disposal of Personal Property. All personal property acquired and used in furtherance of the Project shall be owned by the party which pays for said personal property or fixture. In the event the Project is terminated or is not superseded by another Interlocal Cooperation Agreement, the parties shall take possession of their respective personal property.
20. Separate Entity. No separate legal or administrative entity is created by this Agreement. This Agreement shall be administered by the Director of Public Works for the City and the Executive Director of Business for GIPS.
21. Termination. Either party may terminate this Agreement upon written notice of such termination to the other party in the event that the other party is in material breach of any provision of this Agreement and the breaching party has not cured the breach within thirty (30) days of receipt of notice from the non-breaching party.
22. Choice of Laws. This Agreement shall be construed in accordance with the laws of the State of Nebraska.
23. Entire Agreement. This Agreement constitutes the entire agreement between the City and GIPS relating to the Project that is the subject of this Agreement. This Agreement may be amended only in writing, duly approved, adopted and executed by the respective governing bodies of each party.
24. Execution. This Agreement of the parties hereto is expressed by the approval in open meetings by the City Council of the City of Grand Island, Nebraska, and the Board of Education of Hall County School District 2, and the following execution by the respective authorized representatives.

[Signatures on Page Six]

City of Grand Island, Nebraska

Hall County School District 2,
a/k/a Grand Island Public
Schools

By: _____
Mayor Jeremy Jensen

By: _____
Bonnie Hinkle President, Board
of Education

Dated: _____

Dated: _____

RESOLUTION 2016-137

WHEREAS, the City of Grand Island, Nebraska (the “City”) and Hall County School District 2 a/k/a Grand Island Public Schools (“GIPS”) desire to enter into an Interlocal agreement for the City and GIPS to share equally in the cost of improvements to Adams Street at that street’s location between Barr Middle School and the new Starr Elementary School in Grand Island, Nebraska, the improvements hereafter referred to as the “Project”; and

WHEREAS, the parties anticipate that the Project shall consist of changes to Adams Street to accommodate the presence of increased traffic and pedestrians that will likely result with the completion of the new Starr Elementary School and additions to Barr Middle School.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND that the Interlocal agreement by and between the City and GIPS to share equally the Project cost should be, and hereby is, approved.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, June 14, 2016.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
June 10, 2016	☒ City Attorney