



# City of Grand Island

Tuesday, October 28, 2014

Council Session

## Item G-17

### **#2014-332 - Approving Storm Water Management Plan Program Grant**

Staff Contact: John Collins, P.E. - Public Works Director

# **Council Agenda Memo**

**From:** Terry Brown PE, Manager of Engineering Services

**Meeting:** October 28, 2014

**Subject:** Approving Storm Water Management Plan Program Grant

**Item #'s:** G-17

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

In 2004, the EPA expanded the “pollutant discharge” portion of the Clean Water Act of 1977 to include storm water runoff from all Nebraska communities with a population over 10,000. Subsequently, the City of Grand Island was designated as a National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water Community in 2005. The City was issued a storm water permit for the time period of July 1, 2005 through December 31, 2010 by the Nebraska Department of Environmental Quality that includes a Storm Water Management Plan. During the 2011 year the City operated on an Administrative Extension, with a new 5 year permit cycle expected to be January 1, 2012 through December 31, 2017.

As a result of the passage of LB1226 in the 2006 Nebraska Legislative Session, \$2.5 million in funding was allocated for cities and counties with Storm Water permits to implement their local Storm Water Management Plans (SWMPs).

Grant awards are distributed to applicants according to population size.

The City has received funds from this storm water grant program each year since July 2007 for a total of \$685,904.70 to date.

<i>FISCAL YEAR</i>	<i>GRANT AMOUNT RECEIVED</i>
2007	\$93,807.00
2008	\$93,806.70
2009	\$94,849.00
2010	\$92,849.00
2011	\$88,659.00
2012	\$73,978.00
2013	\$73,978.00
2014	\$73,978.00
<b><i>TOTAL GRANT DOLLARS RECEIVED</i></b>	<b><i>\$685,904.70</i></b>

The past grant funds have been used for activities such as educating the public, developers/contractors of the requirements of the permit; storm sewer stenciling; dry weather inspections; municipal evaluations and facility run-off control planning; mapping of the storm sewer system; inspection of detention cells, and implementing Best Management Practices (BMP) at City owned facilities. Additionally, the grant funds have purchased a vehicle, GPS equipment, printer/plotter and various water sampling equipment.

The funds from this grant will be used for additional mapping of the storm sewer system, finalizing and implementing the construction (erosion/sediment control) program, wet weather sampling and supporting education efforts through various media forms.

## **Discussion**

The Storm Water Management Plan Program Intergovernmental Agreement, which provides \$70,567.00 to the City to continue with this plan, is due Monday, December 1, 2014. A 20% match, or \$14,113.00, for the project is required and will be provided by the Public Works Department through salaries. Grant work under this program must be completed by June 30, 2016.

The City has seven (7) Minimum Control Measures (MCMs) that are identified in the storm water permit. Each MCM has a number of BMPs that are used to carry out the MCMs. An example BMP is marking curb inlets that remind the public not to dump in the inlet because it drains to a stream or river.

Grant activities are restricted to the BMPs and seven (7) MCMs identified in the City storm water permit. The seven (7) MCMs are:

1. Education and Outreach
2. Public Involvement/Participation
3. Illicit Discharge Detection and Elimination
4. Construction Site Storm Water Runoff Control
5. Post-Construction Storm Water Management in new development and redevelopment
6. Pollution Prevention good housekeeping for municipal operations
7. Wet Weather Monitoring

## **Alternatives**

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

Public Works Administration recommends that the Council approve a resolution directing the Mayor to sign the Intergovernmental Agreement.

### **Sample Motion**

Move to approve the resolution.

**INTERGOVERNMENTAL AGREEMENT**  
**Between the**  
**Nebraska Department of Environmental Quality**  
**and the**  
**City of Grand Island**  
**Regarding the Implementation of the**  
**Storm Water Management Plan Program**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into by and between the Nebraska Department of Environmental Quality (NDEQ) and the City of Grand Island (Sponsor)

WHEREAS, the Sponsor agrees to utilize funds which have been made available to NDEQ pursuant to Nebraska State Statute 46-2,139; and

WHEREAS, grant monies are being awarded to cities and/or counties with an NDEQ-approved storm water management plan to fund the duties required under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System (NPDES) requirements; and

WHEREAS, grant funds of **\$ 70,567** and a nonfederal match of at least **\$ 14,113** are to be used to implement the activities identified in the Sponsor's NPDES Municipal Separate Storm Sewer System permit.

NOW, THEREFORE, the parties do hereby agree to the terms and conditions of this Agreement as follows:

**I. TERM OF AGREEMENT**

This Agreement will go into effect **December 1, 2014** and will remain in effect until **June 30, 2016** unless either terminated under §P or extended by amendment under §E of this Intergovernmental Agreement.

**II. CONDITIONS OF AGREEMENT**

**A. General Conditions**

1. The Sponsor agrees to submit annual progress reports to the NDEQ by July 31<sup>st</sup>. These reports shall address project activity for the previous state fiscal year, which runs from July 1<sup>st</sup> – June 30<sup>th</sup>, and contain the following components:
  - a. Progress to date;
  - b. Financial report of the money spent on each NPDES Municipal Separate Storm Sewer permitted activity;
  - c. Certification that equipment purchased from grant funds was used only for grant purposes;
  - d. Significant findings or events;
  - e. Corrective actions taken to resolve any problems that are encountered.
2. The Sponsor agrees that if indirect costs are authorized, as specified in the approved plan, they will be charged at the approved indirect rate.
3. The Sponsor agrees that a copy of any contract, interagency agreement, subagreement and/or procurement of equipment under this grant for a value of \$5,000 or more, must receive NDEQ approval prior to expenditure of funds associated with those transactions. Copies of all contracts, procurements, subagreements, and interagency agreements will be provided to the NDEQ with the annual report.

4. Any equipment purchased from grant funds shall be retained by the Sponsor unless otherwise notified in writing by the NDEQ. The Sponsor agrees that at the end of the grant period the Sponsor will continue to use the equipment purchased under this Intergovernmental Agreement only in the project or program for which it was acquired, whether or not the project or program continues to be supported by stormwater funds.
5. A Quality Assurance/Quality Control plan must be approved by NDEQ prior to expending any funds for environmental monitoring. Any environmental data collected must be provided to NDEQ.
6. The Sponsor agrees to recognize the contributions and/or involvement of the Nebraska Department of Environmental Quality in project publicity, reports, newsletters, and other materials. The Sponsor shall work with the NDEQ to ensure that all necessary peer review requirements are met. A minimum of 3 copies of outreach material (printed or other media) produced under this grant shall be provided to the NDEQ, with the final report, unless otherwise specified.
7. A final project report must be submitted to NDEQ within 30 days after the end date of this agreement. The report must identify, in detail, the activities funded, the NPDES Municipal Separate Storm Sewer System permit category the activity is listed under, and the amount (in dollars) of funds spent in each category.

**B. Statement of Costs**

The Sponsor will submit, with their annual report, a detailed cost documentation of actual project expenses. For purposes of this agreement, expenditures and match claims shall be related to the activities identified in the Sponsor's NPDES Municipal Separate Storm Sewer System permit. The Sponsor must contribute and report a 20% cash match by completion of the project.

**C. Disbursements**

1. The Sponsor shall receive full payment of the award amount within thirty (30) working days after receipt of this Intergovernmental Agreement signed by the Sponsor's authorized representative except that payment may be withheld if sponsor has failed to meet the requirements of prior agreements made pursuant to the requirements of §46-2,139. The NDEQ shall not be held responsible for delays in payment, due to causes beyond its control.
2. The Sponsor must make expenditures only for activities identified in the Sponsor's NPDES Municipal Separate Storm Sewer System permit.
3. The total amount of payments under this Agreement shall not exceed **\$ 70,567**.

**D. Work Description**

This Agreement encompasses the activities identified in the Sponsor's NPDES Municipal Separate Storm Sewer System permit.

**E. Amendments**

This agreement may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or requirements of the NDEQ.

**F. Forfeiture, Repayment and Delays in Disbursement of Funds**

Violation of any of the conditions of this Agreement by the Sponsor or failure of the Sponsor to complete and maintain the project in the manner described in the Municipal Separate Storm Sewer System permit, including any amendments thereto which have been properly approved by the NDEQ, may result in the recovery of any or all funds disbursed by the NDEQ. Any funding expended for an unapproved activity shall be forfeited.

**G. Remedies Not Exclusive**

The use by either the Sponsor or the NDEQ of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party from using such remedy, or limit the application of any other remedy provided by law.

**H. Assignment**

No assignment or transfer of this agreement or any part hereof, rights hereunder, or interest herein by the Sponsor shall be valid unless and until it is approved by the NDEQ and made subject to such reasonable terms and conditions as the NDEQ may impose.

**I. Hold Harmless**

The Sponsor agrees to hold NDEQ harmless for loss or damage sustained by any person as a Direct result of negligent or willful acts by the Sponsor, its employees, subcontractors, or agents in the performance of this agreement including all associated costs of any defending action.

**J. Waiver of Rights**

The Sponsor or NDEQ may from time to time waive any of their rights under this Agreement. However, any waiver of rights with respect to a default of any condition of this Agreement shall not be deemed to be a waiver with respect to any other default.

**K. Applicable Rules and Regulations**

Both parties shall abide by all applicable rules and regulations of the NDEQ including any that may be adopted subsequent to the effective date of this Agreement, except those that would invalidate or be inconsistent with the provisions of this Agreement.

**L. Inspection of Books, Records and Reports**

The duly authorized representative of either party shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements and receipts with respect to its activities under this Agreement.

**M. Independent Contractor**

The Sponsor is and shall perform this Agreement as an independent contractor and as such shall have and maintain exclusive control over all of its employees, agents and operations. Neither the Sponsor nor any person employed by the Sponsor shall act, propose to act or be deemed the NDEQ's agent, representative or employee. The Sponsor assumes full and exclusive responsibility for the payment of all premiums, contributions, payroll taxes and other taxes now or hereafter required by any law or regulation and agrees to comply with all applicable laws, regulations and orders relating to social security, unemployment compensation, OSHA, affirmative action, equal employment opportunity and other laws, regulations and orders of like nature. For any work hereunder subject to the Veterans Readjustment Assistance Act of 1974, or the Rehabilitation Act of 1973, the parties hereto shall comply with all provisions thereof, together with all applicable rules, regulations and orders of the Department of Labor, and the notices required pursuant to 41 CFR 60-1.4, 60-250.4 and 60-741.4 which are hereby incorporated by reference into this Agreement.

#### **N. Nondiscrimination**

The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska and their subcontractors from discriminating against any employee, or applicant for employment in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability or national origin. The Sponsor's signature is a guarantee of compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The Sponsor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

#### **O. Drug Free Workplace**

The Sponsor by executing this Agreement, certifies and assures that it operates a drug free workplace as addressed in the State of Nebraska Drug Free Workplace Policy of July 7, 1989.

#### **P. Publication Rights**

All parties shall have publication and reproduction rights for all reports and materials which are produced as a result of this Agreement.

#### **Q. Termination**

This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

1. Not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
2. An opportunity for consultation with the terminating party prior to termination.

#### **R. New Employee Work Eligibility Status**

The Contractor 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.

If the Contractor is an individual or sole proprietorship, the following applies:

1. Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108



## S. Project Managers

The Project Manager for each party to this agreement shall be as follows. The Project Manager may be changed by any agency upon written notification.

### NDEQ

Lindsey Phillips  
Source Water Coordinator/  
Watershed Planning Specialist  
Planning Unit  
402-471-6988

### Sponsor

Mr. Terry Brown  
Manager Engineering Services  
City of Grand Island

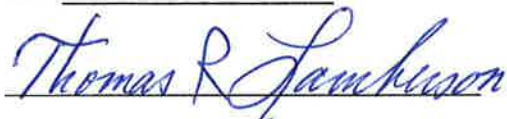
## III. SIGNATORIES TO THE INTERGOVERNMENTAL AGREEMENT

By signature on this document, the Sponsor certifies that all funds spent will be utilized for activities identified in the Sponsor's Municipal Separate Storm Sewer System permit.

### NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: Thomas R. Lamberson

TITLE: Deputy Director



DATE: October 10, 2014

City of Grand Island

BY: Jay Vavricek

TITLE: Mayor

DATE: \_\_\_\_\_

FEDERAL TAX ID NUMBER: \_\_\_\_\_

RESOLUTION 2014-332

WHEREAS, in 2005, the Environmental Protection Agency expanded the “pollutant discharge” portion of the Clean Water Act of 1977 to include storm water runoff from Nebraska communities with a population over 10,000; and

WHEREAS, the City Of Grand Island was designated as a National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water Community and was issued a storm water permit from the Nebraska Department of Environmental Quality; and

WHEREAS, the City Of Grand Island has developed a Storm Water Management Plan (SWMP) in conformance with the storm water permit; and

WHEREAS, the City Of Grand Island, Nebraska is an eligible unit of a general local government authorized to file an application through the Nebraska Department of Environmental Quality for a grant to implement the Storm Water Management Plans (SWMPs) to be used to implement the activities identified in the Sponsor’s NPDES Municipal Separate Storm Sewer System permit from the State of Nebraska; and

WHEREAS, the City is scheduled to receive \$70,567.00 with the required twenty percent (20%) match for the project provided by the City of Grand Island, Public Works Department; and

WHEREAS, the Nebraska Department of Environmental Quality will accept the signed agreement until Monday, December 1, 2014, with funds being awarded to the City upon execution and submission of the grant.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island, Nebraska, is hereby authorized to accept the funding from the Nebraska Department of Environmental Quality, for the Storm Water Management Plan Program Grant.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized and directed to execute such grant intergovernmental agreement and other documentation on behalf of the City Of Grand Island for such grant purposes.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 28, 2014.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
October 24, 2014	☐ City Attorney