



City of Grand Island

Tuesday, November 24, 2015

Council Session

Item G-8

#2015-320 - Approving Agreements with NDOR- Rail and Public Transit for the Grand Island Area Metropolitan Planning Organization (GIAMPO) for the 2016 Fiscal Year TRANSIT, Section 5305, Transportation Planning Program

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

Council Agenda Memo

From: Terry Brown PE, Assistant Public Work Director

Meeting: November 24, 2015

Subject: Approving Agreements with NDOR- Rail and Public Transit for the Grand Island Area Metropolitan Planning Organization (GIAMPO) for the 2016 Fiscal Year TRANSIT, Section 5305, Transportation Planning Program

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

Background

All agreements must be approved by the City Council. In March 2013 the City of Grand Island was designated as a urbanized area with a population over 50,000 which requires the metropolitan area to establish a transportation planning process in accordance with Title 23 CFR 450 of the current federal transportation bill. On an annual basis, the MPO develops a Unified Planning Work Program (UPWP), which identifies work activities to be performed during the fiscal year. The UPWP is approved by the MPO Policy Board and City Council. The UPWP is then submitted to the Department of Roads for review, and forwarded for approval for federal reimbursement by the Federal Highway Administration, and Federal Transit Administration.

Discussion

The Nebraska Department of Roads-Rail and Public Transit has drawn up Program Agreements with the City of Grand Island for the purpose of assisting the Local Public Agency (LPA) in obtaining Federal financial assistance to ensure a continued, comprehensive, and cooperative transportation planning process between the state and local governments for the Grand Island Metropolitan Planning Area for Fiscal Year 2016. The agreement with the Department of Roads is attached for reference.

The maximum Federal Transit Administration, Section 5305, participation under the FY 2016 (July 1, 2015 – June 30, 2016), Unified Planning Work Program (UPWP) is not to exceed \$39,042.00 for FY 2016.

The Federal share for the FY 2016 transit planning portion of this project will be a maximum of 80% of the eligible costs. The local 20% funds would be the City's obligation not to exceed \$9,760.50 and can be part of inkind services (staff time & expenses). Total cost is not expected to exceed \$48,802.50 for the MPO transit planning portion.

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

City Administration recommends that the Council authorizes the Mayor to sign the Fiscal Year 2016 Transit Transportation Planning Program agreement.

Sample Motion

Move to approve resolution authorizing the Mayor to sign the agreement.

AGREEMENT
BETWEEN
THE CITY OF GRAND ISLAND
AND THE
STATE OF NEBRASKA
DEPARTMENT OF ROADS

City of Grand Island
Project No. C990(016)
Section 5305 – FTA Planning

THIS AGREEMENT, entered into by the City of Grand Island, (hereinafter referred to as City) and the State of Nebraska, Department of Roads (hereinafter referred to as the State) is for the purpose of providing partial funding of Grand Island Area Metropolitan Planning Organization's (GIAMPO) transportation planning activities scheduled to be performed commencing July 1, 2015, as outlined in the Unified Planning Work Program attached to this Agreement.

Funding for GIAMPO's portion of transportation planning activities is shown in the Unified Planning Work Program. The maximum amount of cash support from the State under this Agreement is \$39,042.00 of 49 USC Section 5305(d)and(e) funds for Fiscal Year 2016. The Project funds referred to in this Agreement are subject to the grant management requirements of the Federal Transit Administration Circular FTA C 5010.1D, Rev.1, August 27, 2012, and specifically, the Financial Management provisions contained in Chapter VI. The Federal Share of the Project funds will be from FTA Grant NE-80-025, Catalog of Federal Domestic Assistance #20.505.

WHEREAS, the Federal transportation's legislation requires that a continuing, comprehensive transportation planning process be carried on cooperatively between State and Local governments in urban areas of over 50,000 population; and

WHEREAS, the City has agreed to establish and maintain a continuing comprehensive and cooperative transportation planning process in the Metropolitan Area on behalf of those governmental subdivisions; and

WHEREAS, the City has been designated as the recipient agency for planning funds pursuant to the Federal Transportation Administration's legislation; and

WHEREAS, the Federal transportation's legislation requires the State to administer the 49 USC Section 5305 Planning Funds for the Federal Transit Administration (FTA);

NOW, THEREFORE, in consideration of these facts the parties agree as follows:

I. SCOPE OF AGREEMENT

- A. The work to be performed under the terms of this Agreement for GIAMPO's transportation planning program will be conducted in accordance with the fiscal year 2016 Unified Planning Work Program included herewith as Exhibit "C" and made a part of this Agreement.
- B. The City shall:
 - 1. Provide the necessary administration of committees and staff, and consult, collaborate and coordinate with the State to accomplish the objectives of the Unified Planning Work Program.
 - 2. Assign qualified GIAMPO staff personnel as needed to execute GIAMPO's portion of the Unified Planning Work Program.
 - 3. Coordinate all transit planning activities with other transportation service providers in the area.
 - 4. Arrange for and conduct meetings and conferences to review working details and make presentations to the principals, participants and other interested groups and bodies as will best promote and effect cooperation, coordination and understanding in the Program.
- C. State shall
 - 1. Assign qualified personnel as needed to accomplish tasks assigned to or agreed to by the State.

II. DURATION OF AGREEMENT

The City and the State agree to perform their responsibilities as outlined in the Unified Planning Work Program within the time of this Agreement. The Agreement shall cover all work performed commencing with the fiscal year beginning July 1, 2015 and ending June 30, 2016.

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III. PAYMENT

- A. The State agrees to pay for the services rendered by the City under the terms of this Agreement, compensation on a cost reimbursement basis for costs incurred and to include direct and indirect costs in accordance with the applicable provisions of 23 CFR 172 and the contract cost principles and procedures set forth in 48 CFR Part 1.31.6 of the Federal Acquisition Regulation System. When specific Federal Highway Administration reimbursement policy differs from the Federal Acquisition Regulation System the Federal Highway Administration policy shall apply. When claimed for reimbursement, the rate for indirect costs will be, at a maximum, that determined by an audit of GIAMPO's payroll and related expenses for the FY 2016 PL Contractual Agreement. Only those payroll-related expenses shown in the E Element of Exhibit "A" and included in the employee fringe benefits in Part 1.31.6 of the Federal Acquisition Regulation System (48 CFR 1.31.6) will be eligible for reimbursement. Direct and indirect costs shall not exceed, in any event, thirty-nine thousand and forty-two dollars (\$39,042) for costs incurred during fiscal year 2016.
- B. Payments will be made to the City not more often than once each thirty (30) days, and shall be for services theretofore performed under this Agreement. The City shall submit invoices in duplicate within twenty (20) days following the end of the period covered by the account. The invoices or supplements thereto shall be the basis of payment pursuant hereto, and shall contain a statement of the City's estimate of the percentage of work completed and be signed by a responsible representative of the City certifying that all of the items therein are true and correct for the work performed under the provisions of this Agreement. Payment shall be made subject to audit by duly authorized representatives of the State. The State upon receipt of the proper invoices will make every reasonable effort to provide payment to the City within fifteen (15) calendar days thereafter.
- C. Payment for partial billings will be determined by multiplying the value of the percentage of work completed by 0.80. In no event may the total interim payments exceed eighty percent of the value of the total work completed and may not exceed \$39,042 for fiscal year 2016.
- D. The City shall submit to the State a listing of all City personnel positions that may be selected or assigned to the work contemplated herein. Said listing shall indicate the title or classification and salary range of each such position. It is agreed that employees of the City whose time is directly assignable to the Program shall keep and sign a time record showing element of Program, date and hours worked and title of position.
- E. It is understood that reimbursement for out-of-state travel costs will not be requested by the City unless written prior approval for such travel has been given by the State. The rate of reimbursement will be that allowed by the State for travel by its own employees.

IV. CHANGES IN THE WORK PROGRAM

- A. If, after consultation with the State, it is determined that changes to the work program are necessary, written approval by the State and the FTA shall be obtained.
- B. The parties to this Agreement agree to collaborate closely on the decisions affecting the composition, scope and duration of the work and those decisions shall receive the written approval of the State prior to proceeding with the Program.
- C. If, as the work progresses, major changes in the schedules, funding, scope, character or estimated total cost of the work to be performed is deemed necessary or desirable, adjustments for payment or modification in the performance of the work shall be submitted by supplemental agreement to the State for review and approval by the State and the FTA.

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V. REPORTS

The City shall prepare reports suitable for publication as indicated in the Work Program. Two (2) copies of a draft of each report shall be submitted to the State for review and approval. Upon final review and approval by the State, and the FTA, the City will deliver to the State two (2) copies of the final printed report. If the State so requests and so authorizes in writing, the City shall deliver a reasonable number of additional copies of an interim or final report to the State within sixty (60) calendar days of such request.

VI. INSPECTION OF WORK

The State and authorized personnel of the FTA or any authorized representative of the Federal government shall at all times be accorded proper facilities for review and inspection of the work hereunder and shall at all times have access to the premises of all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to the work hereunder.

VII. RECORDS

The City shall maintain an accurate cost-keeping system as to all costs incurred in connection with the subject of this Agreement and shall produce for examination books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the State, FTA or any authorized representative of the Federal government and shall permit extracts and copies thereof to be made, during the contract period and for three (3) years after the date of final payment.

VIII. AUDITS

The City shall at all times afford a representative of the State, FTA, or any authorized representative of the Federal government, reasonable facilities for examination and audits of the cost account records; shall make such returns and reports to a representative as he may require, shall produce and exhibit such books, accounts, documents and property as he may desire to inspect, and shall in all things aid him in the performance of his duties. The City shall be responsible for meeting the audit requirements of OMB Omni Circular , or any revision or supplement thereof.

IX. OWNERSHIP OF DATA

Originals of all documents including computer tapes, tracings, drawings, estimates, specifications, field notes, investigations, studies, etc., as instruments of service under terms of this Agreement are to be the joint property of the political jurisdiction and governmental agencies participating in the transportation planning process. Copies of said documents will be made available to such participants upon request at costs of such reproduction.

X. PUBLICATION OR RELEASE OF INFORMATION

- A. Papers, interim reports, forms or other material which are a part of the work under contract will not be copyrighted without written approval of the State and FTA.
- B. Either party to the Agreement may initiate a request for publication of the final or interim reports, or any portions thereof.
- C. Publication by either party shall give credit to the other party and to the FTA. However, if the State or FTA does not wish to subscribe to the findings or conclusions of the study the following statement shall be included on the credit sheet: "The opinions, findings and conclusions expressed in this publication are those of the authors and not necessarily those of the State or the Federal Transit Administration."
- D. In the event of failure of agreement between the State and the City relative to the publication of any reports during the period of the contract, each party reserves the

right to publish independently, in which event the non-concurrence of the other party shall be set forth, if requested.

- E. Both written and oral releases are considered to be within the context of publication. However, there is no intention to limit discussion of the study with participants in the Transportation Planning Program, small technical groups or lectures to employees or students. Lectures to other groups which describe the plans are permissible.
- F. Neither party shall publish nor otherwise disclose, nor permit to be disclosed or published, the results of the investigation herein contemplated, during the period of the Agreement, without notifying the other party.
- G. When the scheduled time for presentation of a paper does not permit formal review and approval of a complete report, abstracts may be used for notification of intent to present a paper based on the study. Such presentation must protect the interest of the other party by the inclusion of a statement in the paper and in the presentation to the effect that the paper had not been reviewed by the State.

XI. CLAIMS

The City indemnifies, saves and holds harmless the State and all its agents and employees of and from any and all claims, demands, actions or causes of action of whatever nature or character arising out of or by reason of the work to be performed by the City hereunder and further agrees to defend at its own sole cost and expense any action or proceeding commenced for the purpose of asserting any such claim of whatever character arising as a result of the action taken hereunder by the City. It is further agreed that any and all employees of the City and all other employees except employees of the State while engaged in the performance of any work or services required or provided for herein to be performed by the City shall not be considered employees of the State, and that any and all claims that may or might arise under the Workers' Compensation Act of the State of Nebraska on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the State.

XII. CONTRACTUAL SERVICES

All agreements for contractual services pertinent to the Unified Planning Work Program and subject to partial reimbursement under this Agreement shall be submitted to the State for review and prior to final execution shall have been approved in writing by the State. The City intends to provide the services pertinent to the Unified Planning Work Program with its own personnel. It is understood, however, that not less than fifty percent (50%) of such work will be performed with City personnel and/or by subcontract with other public agencies.

XIII. CANCELLATION

The State reserves the right to cancel this Agreement at any time it deems it to be in the best interest of the State upon giving thirty (30) days written notice of such cancellation to the City. If the contract is cancelled under this provision, the State shall reimburse the City for all expenses incurred and work completed to the date of cancellation.

XIV. LIMITATIONS OF LAW

It is mutually understood between the parties that the final authority in highway matters now vested in the State by federal and state statutory and case law shall not be affected by this Agreement.

XV. NONDISCRIMINATION

The City agrees to abide by the provisions of the Nebraska Fair Employment Practice Act as provided by Neb.Rev.Stat. §48-1101, through 48-1126 (Reissue 2010); and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27 as set forth in Exhibit "A" attached hereto and hereby made a part of this agreement.

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XVI. TITLE VI

As the State is the recipient of the FTA Section 5305 funds and extends FTA financial assistance to the City to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. and related provisions in regulation, the State shall provide assistance to the City in complying with the general reporting requirements and shall monitor the City's compliance with Title VI (as outlined in Circular 4702.1B, Chapter III, 3, 10 and 11 and Appendix K). If the City subcontracts any of its metropolitan planning organization activities that the State provides the FTA Section 5305 funds for these activities, these Title VI provisions shall extend to the subcontracts.

XVII. DISADVANTAGED BUSINESS ENTERPRISES

The Contractor, sub-recipient or sub-contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate.

XVIII. LOBBYING CERTIFICATION

The City agrees to abide by the provisions of the Federal Lobbying Certification since federal funds shown in this agreement exceed \$100,000. "Certification for grants, loans, and cooperative agreements" is included herewith as Exhibit "B" and made a part of this agreement - - -

XIX. EQUIPMENT

- A. The State agrees to participate in the cost of specialized items of equipment, not of a nature normally used or required in the regular administrative or engineering operations of the City, which items are required for, and will be used primarily on work incident to this Agreement, and the cost of which is considered reasonable.
- B. The City agrees to certify that items of equipment included in direct costs have been excluded from the indirect costs.
- C. The City agrees to obtain the approval of the State and of the FTA prior to the purchase of an item of equipment of the type described above in Paragraph A.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be executed by their proper officers and representatives.

EXECUTED by the City this _____ day of _____ 2015.

CITY OF GRAND ISLAND

ATTEST:

EXECUTED by the State this _____ day of _____ 2015.

STATE OF NEBRASKA
DEPARTMENT OF ROADS

Ryan Huff, P.E.
Rail & Public Transportation Engineer

Acknowledgement

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Ryan Huff, P.E., Rail & Public Transportation Engineer for the State of Nebraska, Department of Roads.

Notary Public

(Seal)

City of Grand Island
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NONDISCRIMINATION CLAUSES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- (1) Compliance with Regulations: The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of handicap, race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of handicap, race, color or national origin.
- (4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,
 - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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EXHIBIT "A"

CERTIFICATION REGARDING LOBBYING

Certification for Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying."

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all such sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Certified this _____ day of _____ 2015.

CITY OF GRAND ISLAND

ATTEST:

City of Grand Island
Project No. C990(016)
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EXHIBIT "B"

RESOLUTION 2015-320

WHEREAS, the Nebraska Department of Roads has prepared a Planning Agreement for Fiscal Year 2016 for the City of Grand Island for the purpose of providing partial funding of Grand Island Area Metropolitan Planning Organization's (GIAMPO) transportation planning activities scheduled to be performed commencing July 1, 2015, as outlined in the Unified Planning Work Program attached to such agreements; and

WHEREAS, the maximum amount of cash support from the State under such agreement is \$39,042.00 of 49 USC Section 5305 funds for Fiscal Year 2016; and

WHEREAS, the local 20% funds would be the City's obligation not to exceed \$9,760.50 and can be part of inkind services (staff time & expenses); and

WHEREAS, an agreement with the Nebraska Department of Roads for Fiscal Year 2016 is required to proceed.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, the agreement with the Nebraska Department of Roads for the purpose of providing partial funding of Grand Island Area Metropolitan Planning Organization's (GIAMPO) transportation planning activities scheduled to be performed commencing July 1, 2015, as outlined in the Unified Planning Work Program attached to such agreement is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute the Planning Agreement for Fiscal Year 2016.

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Adopted by the City Council of the City of Grand Island, Nebraska, November 24, 2015.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 20, 2015	☐ City Attorney