



City of Grand Island

Tuesday, December 01, 2009

Council Session

Item G7

**#2009-310 - Approving Supplemental Agreement No. 1 with NDOR
for South Locust Street for Northbound Roadway Construction**

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: December 1, 2009

Subject: Approving Supplemental Agreement No. 1 with NDOR for South Locust Street for Northbound Roadway Construction

Item #'s: G-7

Presenter(s): Steven P. Riehle, Public Works Director

Background

All agreements must be approved by the City Council. The Nebraska Department of Roads (NDOR) and the City of Grand Island entered into a program agreement for the above project. The agreement was executed by the City on June 14, 2007 and by the State on June 19, 2007 and provided for the paving of the northbound lanes on South Locust Street.

The plans, specifications and estimates (PS&E) package for the paving project was hand delivered to the NDOR on Friday, September 25, 2009. The NDOR is reviewing the PS&E packing in preparation for an anticipated February or March 2010 bid letting.

The City has requested that the paving project for the northbound lanes be completed before the 2010 State Fair. Public Works Administration believes there is enough time to complete the project as long as the environmental restrictions placed on the project do not hold up the contractor.

Discussion

Supplemental Agreement Number 1 for this project was approved at the July 28, 2009 council meeting. This supplemental agreement allowed for Federal Stimulus Funds to be used toward the construction phase of the project modified the estimated project cost and updated the bid letting responsibilities.

During the time the City signed the supplemental agreement and the NDOR received the agreement to sign an additional item regarding the naming of a Responsible Charge has

arisen. The NDOR did not fully execute the supplemental agreement and sent a new supplemental agreement on November 16, 2009. The new one replaces the one that was approved by council in July 2009.

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 authorizing the Mayor to sign the agreement.

Sample Motion

Move to approve authorization for the Mayor to sign the agreement.

SUPPLEMENTAL AGREEMENT NO. 1

STATE OF NEBRASKA DEPARTMENT OF ROADS
CITY OF GRAND ISLAND
PROJECT NO. URB-2235(5)
CONTROL NO. 42519
LOCUST STREET NORTH OF I-80 (NB)

THIS SUPPLEMENTAL AGREEMENT, made and entered into by and between the City of Grand Island, Nebraska hereinafter referred to as the "City", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State", and hereinafter referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, the Parties hereto entered into an agreement executed by the City June 14, 2007 and by the State June 19, 2007 providing for the construction of Project No. URB-2235(5), and

WHEREAS, it now becomes necessary that the original agreement be supplemented to allow Federal Stimulus Funds to be used toward the construction phase of the project, modify the estimated project cost and update the bid letting responsibilities, and

WHEREAS, this project has been designated as being eligible for American Recovery and Reinvestment Act (ARRA) Funds by the Department of Transportation, Federal Highway Administration, in compliance with Federal Laws pertaining thereto, and

WHEREAS, the City certifies that it has been designated for ARRA funds and will use the funds provided by ARRA to create jobs, promote economic growth and certifies that this project meets the requirements of ARRA, and

WHEREAS, ARRA funds cannot be used for preliminary engineering or Right-of-Way. Federal Surface Transportation Program funds will be used for eligible preliminary engineering and Right-of-Way, and

WHEREAS, any eligible utility work authorized prior to construction will not be eligible for ARRA funds and will be 100 percent City funds. If eligible utility work is authorized with the construction, and authorized occurred after February 17, 2009, then it is eligible for ARRA funds, and

WHEREAS, Federal regulations provide that the State shall have the responsibility for all Federal-Aid projects, and will be responsible for insuring that such projects receive the same degree of supervision and inspection as projects constructed under a contract let and directly supervised by the State and that the project is completed in conformity with approved plans and specifications, and

WHEREAS, the State and the City agree that the State will advertise, conduct a letting and receive bids for the project and will pay all eligible project costs directly to the consultants and contractors, and

WHEREAS, the City has designated an available fully-qualified public employee to act as "Responsible Charge" (RC) for the subject Federal-aid Transportation project, and
WHEREAS, the RC has successfully completed training required by the State to serve as an RC for the Federal-aid Transportation project, and

WHEREAS, the RC will be in day-to-day responsible charge of all aspects of the project, from planning through post-construction activities and maintain the project's eligibility for Federal-aid Transportation project funding, and

WHEREAS, the City understands that it must comply with all terms of 23 C.F.R. 635.105 order for this Federal-aid transportation project to be eligible for Federal funding, and

WHEREAS, the City will support the RC and is ultimately responsible to ensure that, at a minimum, (1) the project receives independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) all aspects of the project from planning through construction activities, including all environmental commitments remain eligible for Federal funding, and (4) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion, and

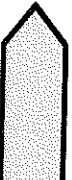
WHEREAS, this project has been designated as a full Federal oversight project, and
WHEREAS, ARRA funds used for construction will be capped at the award amount with no matching funds required. Any charges for construction beyond the capped ARRA amount will be 100 percent City funds, and

WHEREAS, ARRA funds will be used for construction engineering and ARRA audits with no matching funds required, and

WHEREAS, City understands that this agreement and the receipt of ARRA funds are expressly conditioned on (1) City's fulfilling all federal and state requirements for the project to be eligible for ARRA funding, (2) there being sufficient remaining ARRA funds available for this project, when eligibility is established, and (3) FHWA authorization of ARRA funding for this project, and

WHEREAS, it is the desire of the City that the project be constructed under the designation of Project No. URB-2235(5), as evidenced by the Resolution of the City Council dated the _____ day of _____, 20__, attached and identified as EXHIBIT "A" and made a part of this agreement, and

WHEREAS, the City is responsible for any costs not paid for by Federal funds.



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

SECTION 1. Definitions. For purposes of this agreement, the following definitions will apply:

Fully Qualified means a person who has satisfactorily completed all applicable State training courses and who has met the other requirements necessary to be included on the State list of qualified Local Public Agency "Responsible Charge" (RC's).

Full-Time Public Employee means a public employee who meets all the requirements and is afforded all the benefits of full-time employees as that phrase is applied to other employees of the employing entity. A person is not a full-time employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to the State in advance, that employee's non-public employment is in a field unrelated to any aspect of the project for which Federal-aid is sought.

Public Employee means a person who is employed solely by a county, a municipality, a political subdivision, a Native American tribe, a school district, another entity that is either designated by statute as public or quasi-public, or entity included on a list of entities determined by the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

Responsible Charge means the public employee who is fully empowered by the City and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the Federal-aid project from planning through construction project activities, including all environmental commitments. The RC is the day-to-day project manager, and the City's point-of-contact for the project. Responsible charge does not mean merely delegating the various tasks; it means active day-to-day involvement in identifying options, working directly with stakeholders, making decisions, and actively monitoring project construction. It is understood that RC may delegate or contract certain technical tasks associated with the project so long as RC actively manages and represents the owner's interests in the delegated technical tasks.

SECTION 2. This project has been designated as a full Federal oversight project and the State will present this project to the FHWA for its approval.

SECTION 3. Responsible Charge (RC)

- A. The City designates David Goedeken as RC for this project.
- B. Duties and Assurances of the City for this project.
 - 1. The City has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject Federal-aid project; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the

project including identifying issues, investigating options, working directly with stakeholders, and decision making.

2. The RC is a full-time employee of the City.

3. The RC is fully qualified and has successfully completed required training to serve as an RC.

4. The City shall allow the RC to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through post-construction activities, remain eligible for Federal-aid highway project funding.

5. The City shall not assign other duties to the RC that would affect their ability to properly carry out the duties set out in this agreement.

6. The City shall provide necessary office space, materials and administrative support for the RC.

7. The City shall fully cooperate with, support and not unreasonably interfere with day-to-day control of the RC concerning the acts necessary for making the project eligible for Federal funding.

8. The City shall take all necessary actions and make its best good faith efforts to comply and assist the RC in complying with all Federal and State requirements and policies applicable to Federal-aid transportation projects, including, but not limited to, all applicable requirements of 23 CFR 635.105.

9. The City agrees to take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that the State must meet under 23 CFR 635.105.

10. The City shall comply with the conflict-of-interest requirements of 23 CFR 1.33.

11. If the designated RC becomes no longer assigned to the project during the design phase, the City shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer and the LPD Project Coordinator; after such notification the City shall replace the RC no later than thirty calendar days or sooner if possible. If the designated RC becomes no longer assigned to the project in the letting or construction phases, the City shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer, the LPD Project Coordinator, and the State District Representative; after such notification, the City shall replace the RC no later than ten calendar days or sooner if possible. During any of the project phases, the State will require the City to sign a supplemental agreement designating the replacement RC.

12. The City agrees that it is ultimately responsible for complying with all Federal and State requirements and policies applicable to Federal-aid highway projects. This includes meeting all post-construction environmental commitments. The City understands that failure to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the City or its agents or representatives result in a finding that a project is ineligible for Federal funding, the City will be required to repay the State some or all previously paid Federal funds and any costs or expenses the State has incurred for the project, including but not limited to, those costs for the RC.
- C. The City understands that the following are the duties of the RC:
 1. Serve as the City's contact for issues or inquiries for Federal-aid projects assigned by the City
 2. Ensure that all applicable Federal, State and local laws, regulations, policies and guidelines are followed during the development and construction of the project.
 3. Know and follow the State's LPA Guidelines Manual for Federal-Aid Projects.
 4. Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision making.
 5. Ensure that the project plans and specifications are sealed, signed and dated by a professional licensed engineer in the State of Nebraska, and that estimates have been prepared and the construction has been observed by a professional engineer licensed in the State of Nebraska or a person under direct supervision of a professional engineer licensed in the State of Nebraska (reference Neb.Rev.Stat. §81-3445).
 6. Competently manage and coordinate the project day-to-day operations, including all project related decisions, on behalf of the City, which includes the City's governing body, staff and any extended staff dedicated to the project such as consulting engineers.
 7. Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to the State and/or FHWA.
 8. Monitor the progress and schedule of the project and be responsible for ensuring that the project is completed on time in accordance with established milestone dates.
 9. Notify and invite the State to all coordination meetings, environmental scoping meetings, Plan-In-Hand review, public meetings/hearings.
 10. Keep the State informed of all project issues.
 11. Arrange preconstruction conference.

12. Keep the State's District Construction Representative informed of project start, and ending dates and other scheduled construction milestones.
13. Prepare contractor change orders and supplemental agreements.
14. Properly serve as the City's representative, and to visit the project site during construction frequency commensurate with the magnitude and complexity of the project.
15. Ensure that proper construction management processes have been developed and implemented for the project.
16. Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for.
17. Attend all required training including the annual workshop.
18. Fulfill continuing education requirements as specified in the State's LPA Guidelines Manual for Federal-aid projects.

SECTION 4. ARRA funds cannot be used for preliminary engineering or Right-of-Way phases. Federal Surface Transportation Program funds will be used to pay preliminary engineering and Right-of-Way phases.

SECTION 5. Acknowledging the necessity for prioritizing of funding, and the unknown availability of remaining unobligated ARRA funds at the time of eligibility is determined, the City agrees to develop this project in an effort to meet all federal and state eligibility requirements so the project may be determined eligible for ARRA funding. The City understands this supplemental agreement is null and void in the event that (1) the project is determined for any reason to be ineligible for ARRA funding, (2) after eligibility is determined, ARRA funds are not available for this project, or (3) despite the existence of unobligated ARRA funds, the project is not authorized by FHWA for any reason, including the perceived priority of this project compared to other potential ARRA projects.

SECTION 6. The City further certifies that this project meets the requirements of ARRA as follows:

1. The City will provide a qualified, full time public employee to be the RC of the project at all times.
2. The investment has received the full review and vetting as required by law.
3. The City accepts the responsibility that this infrastructure investment is an appropriate use of taxpayer dollars.
4. This investment will be used for Project No. URB-2235(5) that is included in the Statewide Transportation Plan, and has an overall cost estimate of \$4,600,601 of which \$4,424,626 is estimated to be ARRA funds, however; this is a preliminary estimate and the final award may be higher or lower than this estimate. When the actual construction contract award

amount is known, a supplemental agreement with the capped amount of ARRA funds will be executed between the City and the State.

5. The Federal ARRA share of the project is to be 100 percent of the capped ARRA amount, which includes the awarded construction amount and the construction engineering. The allowable construction engineering cost will be 13 percent of the capped construction award amount, plus a flat fee of \$2500 for ARRA audits.

6. The City's share of the project is 100 percent of all costs over the capped construction and construction engineering amounts.

7. The City shall follow ARRA reporting requirements and agrees that the State will not provide Federal Stimulus or State funds unless all ARRA reporting requirements are met and any funds already paid out by the City will not be reimbursed.

SECTION 7. The State will pay the contractor and consultant directly as follows.

A. All project contractor construction costs will be paid directly to the contractor by the State. Progress invoices and final invoices shall be prepared by the City using **SiteManager** software and must be approved by the City's Responsible Charge before payment to the Contractor can be made by the State.

B. The City's Responsible Charge shall submit the City's approved **preliminary engineering** invoice and progress report to the State's Local Projects Division Project Coordinator. The Local Projects Division Project Coordinator will forward the approved preliminary engineering invoice and the progress report to the State's Planning and Project Development Division for payment processing. The State will make payment directly to the consultant for the preliminary engineering.

C. The City's Responsible Charge shall submit the City's approved **construction engineering** invoice and progress report to the State Representative for approval of payment, with a copy to the State's Local Projects Division Project Coordinator. The State Representative will forward the approved invoice and progress report to the State's Planning and Project Development Division for payment processing with a copy to the State's Local Projects Division Project Coordinator. The State will make payment directly to the consultant for the construction engineering.

SECTION 8. Any eligible utility work authorized prior to construction will not be eligible for ARRA funds and will be paid with 100 percent City funds. If eligible utility work is authorized with the construction, and the authorization occurred after February 17, 2009, then it is eligible for ARRA funds.

SECTION 9. The final settlement between the State and the City will be made after the State accepts the project and the final costs have been determined by the State. The amount of the final settlement between the State and the City will be the difference between:

1. (a) the net expenditure by the City for actual items
- (b) plus the value of work performed by the City based upon agreed prices
- (c) less previous payments by the State to the City
- 2 The City share of the project costs.

If (1) is greater than (2), the State will pay to the City the difference within thirty days after that determination has been made. If (2) is greater than (1), the State will bill the City for the difference. The City agrees to pay the amount of such bill within thirty days of receipt.

Costs incurred by the State with respect to the entire project must be considered as a part of the cost of the project to be paid out of the City and Federal funds. The State may at its discretion, initiate progress invoices for costs incurred by the State during the progression of the project and the City agrees to pay such invoices with thirty days of their receipt. The City share of the total project cost will be all costs not paid for by Federal funds.

The criteria contained in Part 31 of the Federal Acquisition Regulation System (48 CFR 31) will be applied to determine the allowable costs incurred by the City under this agreement.

The City shall complete a State DR Form 299, "Notification of Project Completion and Materials Certification" with the State, and both the City and the State must sign it. Once the DR Form 299 is signed by the City, and the State, the project will be considered to be complete and no other costs or expenditures will be considered.

SECTION 10. Prior to advertising for bids, the City shall submit a Right-of-Way Certificate and final plans package (100 percent full size plans, specifications, summary of quantity sheets, status of utilities, environmental permits, and other PS&E required documents) to the State's Local Project Division Urban Engineer for review. The State and City agree the State will advertise, conduct a letting and receive bids for the City on the contemplated improvement. The selection of the lowest responsible bidder and the awarding of a contract or contracts must be concurred in and signed by the City prior to State award.

SECTION 11. This agreement contains the entire agreement of the City and State. No representations were made or relied upon by the City and State other than those expressly set forth herein. No agent, employee or other representative of the City and State is empowered to alter any of the terms in this agreement unless done in writing and signed by an authorized officer of the City and State.

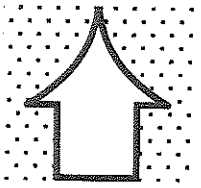
SECTION 12. Except as specifically amended by this supplemental agreement, all terms and conditions of the agreement executed by the City June 14, 2007 and by the State June 19, 2007, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the City this _____ day of _____, 2009.

WITNESS:
RaNae Edwards
CITY OF GRAND ISLAND
Margaret Hornady

City Clerk _____ Mayor _____
EXECUTED by the State this _____ day of _____, 2009.



STATE OF NEBRASKA
DEPARTMENT OF ROADS
Jim Wilkinson, P.E.

Local Projects Engineer

RECOMMENDED:
Wesley Wahlgren, P.E.



District 4 Engineer

LLD11-NS

RESOLUTION 2009-310

WHEREAS, the City of Grand Island is widening South Locust Street using American Recovery and Reinvestment Act (ARRA) Funds; and

WHEREAS, for such work the State and City entered into an agreement; and

WHEREAS, on July 28, 2009, by Resolution 2009-180 the Grand Island City Council approved Supplemental Agreement Number 1 to the original agreement; and

WHEREAS, the initial Supplemental Agreement Number 1 has become null and void due to required additional information; and

WHEREAS, it is now necessary to amend the original Supplemental Agreement Number 1 to allow Federal Stimulus Funds to be used toward the construction phase of the project, modify the estimated project cost, update the bid letting responsibilities and designate a Responsible Charge individual; and

WHEREAS, the construction cost is estimated to be \$4,012,600.00, all of which is proposed to be ARRA Funds; and

WHEREAS, the City's share of the project is to be 100% of the design and preliminary engineering, and all other costs over the capped construction and construction engineering amounts, and

WHEREAS, David Goedecken has been designated as the Responsible Charge for such project; and

WHEREAS, Supplemental Agreement No. 1 with the Nebraska Department of Roads is required to proceed with this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the supplemental agreement number 1 with the Nebraska Department of Roads to amend the original agreement for the widening of South Locust Street is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, December 1, 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk