



# **City of Grand Island**

**Tuesday, February 09, 2010**

**Council Session**

## **Item G10**

**#2010-45 - Approving Supplemental Agreement Number 2 for Safe Routes to School Program Funding for the Walk to Walnut Project**

**Staff Contact: Steven P. Riehle, Public Works Director**

# **Council Agenda Memo**

**From:** Steven P. Riehle, Public Works Director

**Meeting:** February 9, 2010

**Subject:** Approving Supplemental Agreement Number 2 for Safe Routes to School Program Funding for the Walk to Walnut Project

**Item #'s:** G-10

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

## **Background**

The City Council approved the program agreements with the Nebraska Department of Roads for Safe Routes to School Infrastructure and Non-Infrastructure Program Funding for the Walk to Walnut Project on August 28, 2007. The agreement provided for awarding a construction contract by December 31, 2008.

Supplemental Agreement Number 1, which was approved by City Council on December 16, 2008, extended the schedule by specifying a construction contract be awarded by December 31, 2009.

## **Discussion**

In following with the State's new federal aid requirements it is necessary to approve Supplemental Agreement Number 2, which will designate responsibility to the State for the letting of this project, name the Responsible Charge (RC) for the project and also extend the construction contract award deadline.

Steven Riehle, Public Works Director/City Engineer, has been certified as an RC for federal aid projects and will be named as such for this project.

The construction contract award deadline has been extended to November 1, 2010 through this supplemental agreement.

## **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 Supplemental Agreement Number 2 for time extension for Safe Routes to School Program Funding for the Walk to Walnut Project.

## **Sample Motion**

Moven to approve Supplemental Agreement Number 2.

## **SUPPLEMENTAL AGREEMENT NO. 2**

STATE OF NEBRASKA DEPARTMENT OF ROADS  
CITY OF GRAND ISLAND  
PROJECT NO. SRTS-40(57)  
CONTROL NO. 42521  
GRAND ISLAND WALNUT MIDDLE SCHOOL PROJECT

THIS SUPPLEMENTAL AGREEMENT, made and entered into by and between the City of Grand Island 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 Original Agreement (YL0746) executed by the City August 28, 2007, and the State September 11, 2007 and Supplement Agreement No. 1 executed by the City December 16, 2008 and by the State December 24, 2008, providing for the construction of Project SRTS-40(57), and

WHEREAS, it now becomes necessary that said agreement be supplemented to provide for the State to advertise, conduct a letting, and receive bids for the project and pay all eligible project costs directly to the consultants and contractors, and

WHEREAS, it now becomes necessary to supplement the agreement to extend the deadline for securing a construction contract to construct the project, 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 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, it is the desire of the City that the project be constructed under the designation of Project No. SRTS-40(57), 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. Responsible Charge (RC)

- A. The City hereby designates \_\_\_\_\_ as the City's 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 his or her 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 3. The State and the City agree the State will advertise, conduct a letting, and receive bids for the City on the contemplated improvement. The selection of the lowest bidder and the awarding of a contract or contracts must be concurred in and signed by the City prior to award.

SECTION 4. 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 **Site Manager software** and must be approved by the City Responsible Charge before payment to the Contractor can be made by the State.
- B. The City Responsible Charge shall submit the City approved **construction engineering** invoice and progress report to the State District Construction Representative for



and to the Enhancement Program Consultant. The State District Construction Representative will forward the invoice and progress report to the State's Planning and Project Development Division for payment processing with a copy to the State's LPD Enhancement Program Manager and the Enhancement Program Consultant. The State will make payment directly to the consultant for the construction engineering.

- C. The City Responsible Charge shall submit the City approved **preliminary engineering** invoice and progress report to the State's LPD Enhancement Program Manager, with a copy to the Enhancement Program Consultant. The LPD Enhancement Program Manager will forward the approved preliminary engineering invoice and 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.

SECTION 5. The Parties agree that all costs of this project shall be the sole responsibility of the City if the proposed project improvements are not awarded for construction by November 1, 2010. This includes repayment to the State of Federal Funds reimbursed for preliminary engineering costs and payment of all other expenses incurred as specified in of the original program agreement.

SECTION 6. Except as specifically amended by this supplemental agreement, all terms and conditions of the agreement executed by the City August 28, 2007, and the State September 11, 2007 and Supplement Agreement No.1 executed by the City December 16, 2008 and by the State December 24, 2008, 2008, 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 \_\_\_\_\_, 20\_\_\_\_.

WITNESS: \_\_\_\_\_ City of Grand Island

\_\_\_\_\_  
City Clerk Mayor

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
Local Projects Engineer

RESOLUTION 2010-45

WHEREAS, on August 28, 2007, by Resolution 2007-205, the City Council of the City of Grand Island approved the Program Agreement with the Nebraska Department of Roads for the Safe Routes to School Infrastructure and Non-Infrastructure Program funding for the Walk to Walnut Project; and

WHEREAS, on December 16, 2008, by Resolution 2008-351 the City Council approved Supplemental Agreement Number 1 with the Nebraska Department of Roads for the Safe Routes to School Program funding for the Walk to Walnut Project; and

WHEREAS, the completion of such project has been delayed due to environmental reviews; and

WHEREAS, it will be the responsibility of the Nebraska Department of Roads to let the project; and

WHEREAS, the Responsible Charge (RC) for the Walk to Walnut project will be Steven Riehle, Public Works Director/City Engineer; and

WHEREAS, the construction contract award deadline is being extended to November 1, 2010; and

WHEREAS, it is necessary to enter into Supplemental Agreement Number 2 with the Nebraska Department of Roads; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Supplemental Agreement Number 2 with the Nebraska Department of Roads for the Safe Routes to School Program funding for the Walk to Walnut Project 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, February 9, 2010.

\_\_\_\_\_  
Margaret Hornady, Mayor

Attest:

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

Approved as to Form  
February 4, 2010

\_\_\_\_\_  
City Attorney