

# **City of Scottsbluff, Nebraska**

**Monday, December 16, 2013**

**Regular Meeting**

## **Item Reports5**

**Council to consider the amended Interlocal agreement with the City of Alliance naming Perry Mader the “Responsible Charge” for their downtown Historic Lighting Federal Aid Project.**

**Staff Contact: Perry Mader, Park and Rec Director**

## DISCLAIMER & INSTRUCTIONS FOR USE OF THE FOLLOWING AGREEMENT

Nebraska Department of Roads (NDOR) has reviewed this agreement only for compliance with NDOR's understanding of FHWA's present position about the requirements of 23 CFR §635.105, particularly subsection (c). No effort has been made by NDOR to require or comment on the draft of any other necessary provisions or to analyze the legal effect of this agreement on any other issue for the Receiving Local Public Agency (LPA), the Loaning Public entity, the Responsible Charge or any other person or entity related to any issues that may arise out of a transaction as set forth in this agreement, such as employment implications, legal liability, tort liability, workers' compensation, etc. NDOR expects that entities seeking to use this agreement will undertake a thorough review of all issues related to this transaction, seek legal advice, draft appropriate language and make its own determination of the legality, the merits of this agreement, or the ability of each party to fulfill the obligations provided in the agreement. The project may be determined to be ineligible for Federal funding if all mandatory requirements are not properly set out in the agreement, the agreement does not conform to Federal or State law or the NDOR Local Public Agency Project Manual, or if the agreement is not reasonably enforced by the parties.

It is also expected that additional provisions may be included by the parties to this agreement to provide the other terms necessary to fully define the legal relationship created by this agreement. Any changes, additions, deletions, limitations, restrictions or modifications of the language of the following sections shall be approved in writing by NDOR prior to being signed by the parties:

DEFINITIONS

DUTIES OF ASSISTING PUBLIC ENTITY

DUTIES OF RECEIVING LPA

NDOR THIRD PARTY RIGHTS

The INSURANCE section was drafted with the assistance of Nebraska Association of County Officials (NACO) and/or The League of Nebraska Municipalities and it is strongly recommended that insurance of these types and limits be considered to be the minimum insurance necessary for the parties under this agreement.

*NOTE: The document must be accompanied by a resolution from the governing body which authorizes the person to sign on behalf of Assisting Public Entity.*

*NOTE: This document must be accompanied by a resolution from the governing body which authorizes the person to sign on behalf of the Receiving LPA.*

NDOR Project Number: ENH-6257 (2)  
NDOR Control Number: CN 51453  
NDOR Project Name: Box Butte Avenue Historic Lighting  
Name of Responsible Charge Person: Perry Mader

## **NEBRASKA LOCAL PUBLIC AGENCY INTERLOCAL COOPERATION ACT AGREEMENT**

### **PARTIES**

THIS AGREEMENT ("Agreement") is entered into by City of Alliance, the Receiving LPA and City of Scottsbluff, the Assisting Public Entity. The County, Municipality or other public entity undertaking the Federal-aid highway project will be referred to herein as the Receiving LPA. The public entity providing the services of an employee to act as a Responsible Charge (RC) will herein be referred to as Assisting Public Entity.

### **PURPOSE**

This Agreement is entered into pursuant to Neb. Rev. Stat. § 13-801 et. seq., and shall be considered an interlocal agreement to the extent allowable for the purposes of Neb. Rev. Stat. § 13-501 et seq., and Neb. Rev. Stat. § 77-3401 et seq. The purpose of this Agreement is to provide the terms for the Assisting Public Entity to provide the services of its employee to act as the RC for a Federally funded (through FHWA) transportation project of the Receiving LPA.

### **RECITALS**

WHEREAS, Receiving LPA intends to complete the design and construction of a county road, city street or other Federal-aid transportation improvement project identified as NDOR Project Number ENH-6257(2), NDOR Control Number 51453, Box Butte Avenue Historic Lighting, for which Receiving LPA intends to be fully eligible to receive Federal-aid highway transportation project funds.

WHEREAS, Receiving LPA cannot provide a full-time public employee to carry out the responsibilities for its Federal-aid transportation project.

WHEREAS, Assisting Public Entity has a full-time public employee on staff who has successfully completed required training to serve as a RC for a Federal-aid transportation project. According to the terms of this Agreement, Assisting Public Entity is willing to provide the services of this employee to Receiving LPA to be in day-to-day responsible charge of all aspects of Receiving LPA's project so that the project remains eligible for Federal-aid transportation project funding.

WHEREAS, the parties understand that Receiving LPA must comply with all terms of 23 C.F.R. § 635.105(c) in order for this Federal-aid transportation project to be eligible for Federal funding. The parties intend for Receiving LPA to comply with these requirements by using Assisting Public Entity's employee who will be in responsible charge of the Federal-aid

transportation project and will ensure that, at a minimum, (1) the project receive independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) the project, from planning through construction activities, including all environmental commitments are carried out according to applicable requirements and remain eligible for Federal funding, and (4) decisions made and actions taken for the project have adequate supporting documentation filed in an organized fashion.

THEREFORE, in consideration of the mutual promises set out herein, the parties agree as follows:

## DEFINITIONS

For purposes of this Agreement, the following definitions will apply:

**Fully qualified** means a person who has satisfactorily completed all applicable NDOR training courses and who has met the other requirements necessary to be included on the NDOR list of LPA RCs.

**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 public entity. A person is not a full-time public employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to NDOR 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 an entity included on a list of entities determined by the Nebraska Department of Roads, and approved by FHWA, as fulfilling public or quasi-public functions.

**Responsible Charge** means the public employee who is fully empowered by LPA and has actual day-to-day working knowledge and responsibility for all decisions related to all aspects of the Federal-aid project, including all environmental commitments. RC is the day-to-day project manager, and the LPA'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 issues, investigating options, working directly with stakeholders, making decisions, and actively monitoring project construction. It is understood that RC may elect to use consultants to provide certain technical tasks associated with the project so long as RC actively manages and represents the owner's interests in those technical tasks.

## DUTIES OF ASSISTING PUBLIC ENTITY

The Assisting Public Entity hereby agrees to provide Perry Mader to serve as the RC for Receiving LPA's Federal-aid transportation project identified as NDOR Project Number ENH-6257(2), NDOR Control Number 51453, *Box Butte Avenue Historic Lighting*, Assisting Public Entity pledges and agrees that:

- 1) This person is a **full-time public employee** of Assisting Public Entity.
- 2) This person is fully qualified and has successfully completed required training to serve as a RC.

- 3) It must require the RC to attend and complete following activities: participation in an annual workshop, which will be based on recommendations of the QA/QC program. Attendance at this workshop will fulfill the requirement for a minimum of 8 hours of professional development hours annually.
- 4) It has authorized this person to be in day-to-day **responsible charge** of Receiving LPA's Federal-aid project and to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring the project is in compliance with the LPA Guidelines Manual for Federal-aid Projects, and applicable State and Federal laws, regulations and policies in order to remain eligible for Federal-aid highway project funding.
- 5) It will not assign other duties to this person that would affect his or her ability to properly carry out the duties set out in this Agreement.
- 6) It will support the activities of this person to ensure that Receiving LPA's project is in compliance with the LPA Guidelines Manual for Federal-aid Projects, and applicable State and Federal laws, regulations and policies in order to remain eligible for Federal-aid highway project funding.
- 7) It will take any action necessary to make sure that Receiving LPA and the State of Nebraska Department of Roads, meet their respective obligations set out in 23 C.F.R. § 635.105.

#### **DUTIES OF RECEIVING LPA**

The Receiving LPA pledges and agrees that it:

- 1) Will reimburse Assisting Public Entity for the services of the RC in accordance with the terms of this Agreement.
- 2) Will provide necessary office space, materials and administrative support for the RC.
- 3) Will fully cooperate with, support and not unreasonably interfere with the day-to-day control of the RC concerning the acts necessary for making the project eligible for Federal funding.
- 4) Will take all necessary actions 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 C.F.R. § 635.105.
- 5) Will take all necessary actions to ensure that the RCs work on the project would be deemed to meet the same standards that the Nebraska Department of Roads must meet under 23 C.F.R. § 635.105.
- 6) 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. Receiving LPA understands that non-compliance with the LPA Guidelines Manual for Federal-aid Projects, and applicable State and Federal laws, regulations and policies may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, Receiving LPA, or its agents or representatives, result in a finding that a project fails to comply with the LPA Guidelines Manual for Federal-aid Projects, and applicable State and Federal laws, regulations and policies, LPA will be required to repay NDOR some or all previously paid Federal funds and any costs or expenses NDOR has incurred for the project.

## NDOR THIRD PARTY RIGHTS

The NDOR is not a signatory to this Agreement and is not assigned specific duties under this Agreement, however the NDOR may exercise the rights of a third party beneficiary to this contract, in the event of a default, or if it determines, in its sole discretion, that it would be in the best interest of the State to exercise its rights.

## PAYMENT

In order to serve as RC, Receiving LPA shall pay to Assisting Public Entity the amount of 60 hrs X \$59.24 = \$3,554.40. The Receiving LPA and RC's obligation herein is limited to 60 total hours of service, including travel time. Both parties agree that once the RC has provided 60 hours of service to Receiving LPA this Agreement will automatically terminate. Unless mutually agreed otherwise, the Assisting Public Entity shall bill the Receiving LPA for all time and expenses not later than 45 days following the period of service by the RC.

## INSURANCE

Assisting Public Entity and Receiving LPA shall each bear the risk of its own actions, as it does with its day-to-day operations.

The RC shall not begin work under this Agreement until it has shown proof that the Assisting Public Entity has in effect all insurance coverage required under this section.

- A. Workers' Compensation and Employers Liability Insurance  
The minimum acceptable limits shall be the statutory limits as required by the State of Nebraska for Coverage A, Workers' Compensation and \$500,000 each accident for Coverage B, Employers Liability.
- B. Commercial General Liability Insurance  
The minimum acceptable limits of liability shall be \$1,000,000 each occurrence. If the coverage contains a general aggregate, such limit shall not be less than \$2,000,000. The Receiving LPA is to be included as an additional insured on the insurance coverage required under this section.
- C. Automobile Liability Insurance  
The minimum acceptable limit of liability shall be \$1,000,000 Combined Single Limit for each accident. The Receiving LPA is to be included as an additional insured on the insurance coverage required under this section.
- D. Professional Liability Insurance  
Coverage shall be for wrongful acts, errors or omissions. The minimum acceptable limits of liability shall be \$1,000,000 each occurrence. If the coverage contains a general aggregate, such limit shall not be less than \$2,000,000.



E. Certificate of Insurance

The Assisting Public Entity shall furnish the Receiving LPA with a certificate(s) of insurance evidencing the coverages required in this section. If the certificate(s) is shown to expire prior to completion of all the terms of this Agreement, the Assisting Public Entity shall furnish a certificate(s) of insurance evidencing renewal of its coverage to the Receiving LPA.

### **INDEMNIFICATION**

Each party hereto agrees to indemnify and hold harmless the other parties from and against all losses, liability, expenses, damages and claims, including attorney's fees, arising out of or resulting from the indemnifying party's acts or omissions in performing under this Agreement, except to the extent caused by negligent or willful act or omission of the other party. Each party agrees to provide liability insurance to indemnify itself in the event that it becomes liable for the payment of a judgment based upon its acts or omissions, or the acts or omissions of its agents or employees in performing this Agreement.

### **TERM AND DURATION**

This Agreement shall become effective as to each party on the date such party executes the Agreement and shall continue in force and remain binding until said party terminates the Agreement. This Agreement shall remain effective until the RC has provided 60 hours of services to the Receiving LPA or March 1, 2014, whichever should occur first, at which time the Receiving LPA agrees it will release the Assisting Public Entity and RC, engage another fully qualified RC and this Agreement will automatically terminate.

## TERMINATION

With 30 days written notice, either party may terminate this Agreement. A new fully-qualified RC must be assigned to the project by the Receiving LPA prior to termination of this Agreement, or the project may be found to be ineligible for Federal funds.

NOW THEREFORE, in consideration of the covenants and obligations contained herein, the Assisting Public Entity and the Receiving LPA duly execute this NEBRASKA LOCAL PUBLIC AGENCY INTERLOCAL COOPERATION ACT AGREEMENT.

\_\_\_\_\_  
City of Scottsbluff, Assisting Public Entity

\_\_\_\_\_  
Print name of Mayor/Randy Meininger of Assisting Public Entity

\_\_\_\_\_  
Signature of Mayor/Randy Meininger of Assisting Public Entity

Attest:

\_\_\_\_\_  
*[Cindy Dickinson, City Clerk]*

*[This document must be accompanied by a resolution from the governing body which authorizes the person above to sign on behalf of Assisting Public Entity.]*

\_\_\_\_\_  
City of Alliance

\_\_\_\_\_  
Print name of Mayor/Fred Feldges of Receiving LPA

\_\_\_\_\_  
Signature of Mayor/Fred Feldges of Receiving LPA

Attest:

\_\_\_\_\_  
*[Signature and stamp of City or County Clerk or Corporate Secretary]*

*[This document must be accompanied by a resolution from the governing body which authorizes the person above to sign on behalf of the Receiving LPA.]*