

RESOLUTION NO. 2009-

WHEREAS, it is in the best interests of the City of Lexington to enter into an Agreement with the Nebraska Department of Roads for Project No. STPAA-6556(4), State Control No. 61338, 13th Street Reconstruction;

BE IT THEREFORE RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEXINGTON, that the President of the Council is hereby directed and authorized to execute on behalf of the City of Lexington Supplemental Agreement No. 2 with the State of Nebraska Department of Roads for Project No. STPAA-6556(4), State Control No. 61338, 13th Street Reconstruction.

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Passed and approved on June 23, 2009.

John Fagot, President of Council

ATTEST:

City Clerk

SUPPLEMENTAL AGREEMENT NO. 2

CITY OF LEXINGTON
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. STPAA-6556(4), STATE CONTROL NO. 61338
13TH STREET RECONSTRUCTION FROM FREEDOM RD TO AIRPORT RD
ROADWAY RECONSTRUCTION

THIS SUPPLEMENTAL AGREEMENT, made and entered into by and between the City of Lexington, hereinafter referred to as the "City", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State",

WITNESSETH:

WHEREAS, the State and City entered into an agreement executed by the City on June 24, 2003, and by the State on July 7, 2003 and a supplemental agreement executed by the City on October 5, 2005 and by the State on October 14, 2005, that provided for the reconstruction of 13th Street, and

WHEREAS, it now becomes necessary that the original agreement and Supplement No. 1 be amended 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, certain streets in the City have 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 will request and use funds provided by ARRA and that the funds will be used to create jobs, promote economic growth and certifies that this project meets the requirement of ARRA, and

WHEREAS, the City is to provide a person to be in Responsible Charge (RC) of the project, and

WHEREAS, this project has been designated as a full Federal oversight project.

NOW THEREFORE, in consideration of these facts, the State and City agree as follows:

SECTION 1. This project has been designated as a full Federal oversight project and the State shall present this project to the FHWA for its approval.

SECTION 2. The City further certifies that this project meets the requirements of ARRA as follows:

1. The City is to provide a qualified, full-time public employee to be in RC of the project at all times.

2. The investment has received the full review and vetting required by law.

3. The City accepts responsibility that this infrastructure investment is an appropriate use of taxpayer dollars.

4. This investment will be used for STPAA-6556(4), is included in the Statewide Transportation Plan, and has an overall construction cost estimate of \$1,809,300, of which \$1,809,300 are estimated to be ARRA funds. When the construction contract award amount is known, a supplemental agreement with the actual capped amount of ARRA funds will be executed between the City and State.

5. The City agrees to ARRA reporting requirements and agrees that the State will not reimburse the City with Federal or State funds unless all ARRA reporting requirements are met. SECTION 3. The total cost of the project which includes: preliminary engineering, final design, Right-of-Way, nonbetterment utility rehabilitation, construction and construction engineering is currently estimated to be \$1,954,300. The Federal ARRA Share of the project is to be 100 percent of the awarded construction amount, construction engineering costs (capped at 13 percent of the awarded amount) and flat fee of \$2,500 for ARRA audits which is currently estimated to be \$1,809,300. The City's share of the project is to be 20 percent of all actual eligible costs of preliminary engineering and Right-of-Way and 100 percent of all costs over the capped construction and construction engineering amounts which is currently estimated to be \$29,000. Progress billings to reimburse the City may be submitted no more often than monthly. The State will reimburse 95 percent of the eligible 100 percent Federally Funded expenditures until the 5 percent retention reaches a maximum amount of \$25,000. Once the maximum retention is obtained, the State will reimburse 100 percent of the eligible 100 percent Federally Funded expenditures.

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 cost items
(b) plus the value of work performed by the City based on agreed prices
(c) plus cash advances by the City to the State
(d) less previous payments by the State to the City, and
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 State the amount of such bill within thirty days of its

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 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 within thirty days of their receipt. The City's 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 allowability of costs incurred by the City under this agreement.

Final payment consisting of the retention withheld minus the State incurred expenses will not be reimbursed to the City until the City has filed a completed State DR Form 299 with the State, and both the City and the State have signed it. Once the DR Form 299 is signed by the City, no reimbursement requests will be accepted by the State and the FHWA.

SECTION 4. Prior to advertising the project for bids, the City shall submit a Right-of-Way Certificate and the 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 Projects Division Urban Engineer for review. The State and City agree the State is to advertise and 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 by the City prior to State award. The City shall sign the contract or contracts.

SECTION 5. Except as specifically amended by this Supplemental Agreement, all terms and conditions of the original agreement executed by the City on June 24, 2003 and by the State on July 7, 2003 and the supplemental agreement executed by the City on October 5, 2005 and by the State on October 14, 2005 shall remain in full force and effect.

IN WITNESS WHEREOF, the State and City 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:
Pam Berke

CITY OF LEXINGTON
John Fagot

City Clerk

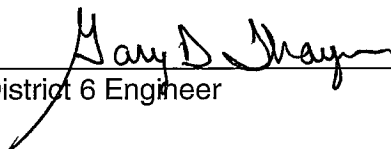
Mayor

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

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

Local Projects Division Engineer

RECOMMENDED:
Gary Thayer, P.E.



District 6 Engineer

AGR14-NR