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Public Works

City Transit
263-8152

MEMORANDUM

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

To: Gregg Mandsager, City Administrator
CC: Fran Donelson, Secretary
FROM: Randy Hill, Public Works Director
DATE: October 17, 2011
RE: DOT Federal Aid Agreement – Colorado Street Reconstruction Project

INTRODUCTION:

The Colorado Street Reconstruction Project is in the final stages of design, construction easement, property acquisition and DOT review. One feature of this project requiring council action and approval is the Federal-aid Agreement for a Surface Transportation Program Project with the Iowa Department of Transportation.

BACKGROUND:

When a city project is partially funded with Federal money, an agreement with the Federal Government via the Iowa Department of Transportation is necessary. The Colorado Street Reconstruction Project will get \$1,200,000 in STP (Surface Transportation Program) money. The Federal Aid Agreement for the Colorado project is similar to other agreements the City & IDOT have entered previously.

RECOMMENDATION/RATIONALE:

Article 3 of the Agreement states: “The Recipient shall be responsible for the development and completion of the following described STP project:

Colorado Street, Park Avenue to University Drive – PCC Pavement – Grade and Replace”.

In order for the City to be eligible to receive \$1.2 million of STP funding we are required to enter into this agreement. Bid opening is scheduled for Spring/Summer of 2012 and work to begin shortly after. We recommend the City Council approve the Iowa Department of Transportation Federal-aid Agreement for a Surface Transportation Program Project – STP-U-5330(616)—70-70.

BACKUP INFORMATION:

1. Iowa Department of Transportation Agreement
- 2.
- 3.
- 4.

**IOWA DEPARTMENT OF TRANSPORTATION
Federal-aid Agreement
for a Surface Transportation Program Project**

Recipient: City of Muscatine

Project No.: STP-U-5330(616)--70-70

Iowa DOT Agreement No.: 05-11-STPU-021

This is an agreement between the City of Muscatine, Iowa (hereinafter referred to as the Recipient) and the Iowa Department of Transportation (hereinafter referred to as the Department). Iowa Code Sections 306A.7 and 307.44 provide for the Recipient and the Department to enter into agreements with each other for the purpose of financing transportation improvement projects on streets and highways in Iowa with Federal funds. Federal regulations require Federal funds to be administered by the Department.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, as amended by the SAFETEA-LU Technical Corrections Act, Public Law 110-244, reestablished the Surface Transportation Program (STP), now codified at Section 133(b) of Title 23, United States Code (U.S.C.). This program makes Federal funds available for construction, reconstruction, rehabilitation, resurfacing, restoration and operational or safety improvement projects on highways, bridges on any public road, and several other types of projects, as specified in 23 U.S.C. 133(b). Funding for highways is limited to Federal-aid highways, except that up to 15 percent of a State's sub-allocation of STP funds for areas with less than 5,000 population may be used for projects on rural minor collectors. Federal-aid highways include all Federal Functional Classifications, except for rural minor collectors or local roads.

Pursuant to the terms of this agreement, applicable statutes, and administrative rules, the Department agrees to provide STP funding to the Recipient for the authorized and approved costs for eligible items associated with the project.

Under this agreement, the parties further agree as follows:

1. The Recipient shall be the lead local governmental agency for carrying out the provisions of this agreement.
2. All notices required under this agreement shall be made in writing to the appropriate contact person. The Department's contact person will be the District 5 Local Systems Engineer. The Recipient's contact person shall be the Public Works Director.
3. The Recipient shall be responsible for the development and completion of the following described STP project:

Colorado Street, Park Avenue to University Drive - PCC Pavement - Grade and Replace
4. Eligible project activities will be limited to the following: construction, engineering, inspection, and right-of-way acquisition. Under certain circumstances, eligible activities may also include utility relocation or railroad work that is required for construction of the project.
5. The Recipient shall receive reimbursement for costs of authorized and approved eligible project activities from STP funds. The portion of the project costs reimbursed by STP funds shall be limited to a maximum of either 80 percent of eligible costs or the amount stipulated in the Bi-State Regional Commission current Transportation Improvement Program (TIP) and approved in the current Statewide Transportation Improvement Program (STIP), whichever is less.
6. If the project described in Section 3. drops out of the Bi-State Regional Commission current TIP or the approved current STIP prior to obligation of Federal funds, and the Recipient fails to reprogram the project in the appropriate TIP and STIP within 3 years, this agreement shall become null and void.
7. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.

8. It is the intent of both parties that no third party beneficiaries be created by this agreement.
9. This agreement shall be executed and delivered in two or more copies, each of which so executed and delivered shall be deemed to be an original and shall constitute but one and the same agreement.
10. This agreement and the attached Exhibit 1 constitute the entire agreement between the Department and the Recipient concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement shall be made in the form of an addendum to this agreement. The addendum shall become effective only upon written approval of the Department and the Recipient.

IN WITNESS WHEREOF, each of the parties hereto has executed this agreement as of the date shown opposite its signature below.

City Signature Block (City Projects Only)

By _____ Date _____, 20_____

Title of city official

I, _____, certify that I am the City Clerk of Muscatine, and
that _____, who signed said Agreement for and on behalf of the city was duly
authorized to execute the same by virtue of a formal resolution duly passed and adopted by the city on the _____
day of _____, 20_____.

Signed _____ Date _____, 20_____

City Clerk of Muscatine, Iowa

County Signature Block (County Projects Only)

This agreement was approved by official action of the (County Name) County Board of Supervisors in official session
on the _____ day of _____, 20_____.

County Auditor

Chair, County Board of Supervisors

IOWA DEPARTMENT OF TRANSPORTATION
Highway Division

By _____ Date _____, 20_____
Christy Vanbuskirk, P.E.
Local Systems Engineer
District 5

EXHIBIT 1
General Agreement Provisions for use of Federal Highway Funds on Non-primary Highways

1. General Requirements.

- a. The Recipient shall take the necessary actions to comply with applicable State and Federal laws and regulations. To assist the Recipient, the Department has provided guidance in the Federal-aid Project Development Guide (Guide) and the Instructional Memorandums to Local Public Agencies (I.M.s) that are referenced by the Guide. Both are available on-line at: http://www.iowadot.gov/local_systems/publications/im/ipa_ims.htm. The Recipient shall follow the applicable procedures and guidelines contained in the Guide and I.M.s in effect at the time project activities are conducted.
- b. In accordance with Title VI of the Civil Rights Act of 1964 and associated subsequent nondiscrimination laws, regulations, and executive orders, the Recipient shall not discriminate against any person on the basis of race, color, national origin, sex, age, or disability. In accordance with Iowa Code Chapter 216, the Recipient shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability.
- c. The Recipient shall comply with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the associated Federal regulations that implement these laws. When pedestrian facilities are constructed, reconstructed, or altered, the Recipient shall make such facilities compliant with the ADA and Section 504. Pedestrian facilities include facilities that are designed for pedestrian use, such as pedestrian signals and push buttons, sidewalks, multi-use trails, curb ramps, and the street surface in the pedestrian crossing area. Alterations are changes to the structure, grade, function, or use of the pedestrian facility, and include such activities as: full depth pavement replacement, widening, resurfacing, signal installation, pedestrian signal installation, and other projects of similar scale and effect. In addition, by signing this agreement, if the Recipient has 50 or more employees, it certifies one of the following: it has provided ADA compliant curb ramps at all intersections of sidewalks with public streets under its jurisdiction; it has a transition plan that meets the requirements of 28 CFR 35.150(d), including provisions for installation of curb ramps at all intersections of sidewalks with public streets under its jurisdiction; or it is working to develop such a transition plan. If the Recipient does not have a transition plan or its transition plan does not include curb ramps, the Recipient shall prepare or modify its transition plan to include curb ramps in accordance with I.M. 1.080, ADA Requirements.
- d. The Recipient agrees to indemnify, defend, and hold the Department harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend, and hold harmless applies to all aspects of the Department's application review and approval process, plan and construction reviews, and funding participation.
- e. In case of dispute concerning the terms of this agreement, the parties shall submit the matter to arbitration pursuant to Iowa Code Chapter 679A. Either party has the right to submit the matter to arbitration after 10 days notice to the other party of their intent to seek arbitration. The written notice shall include a precise statement of the dispute. The Department and the Recipient agree to be bound by the decision of the appointed arbitrator. Neither party may seek any remedy with the State or Federal courts absent exhaustion of the provisions of this paragraph.
- f. The Office of Management and Budget (OMB) Circular A-133 requires the Department to inform the Recipient of the appropriate Catalog of Federal Domestic Assistance (CFDA) number and title to be used on the Schedule of Expenditures of Federal Awards (SEFA) that is required by OMB Circular A-133. CFDA #20.205 and title, "Highway Planning and Construction" shall be used for the Federal funds awarded for this project. If the Recipient will pay initial project costs and request reimbursement from the Department, the Recipient shall report this project on its SEFA. If the Department will pay initial project costs and then credit those accounts from which initial costs were paid, the Department will report this project on its SEFA. In this case, the Recipient shall not report this project on its SEFA.

2. Federal Authorization.

- a. The Recipient shall be responsible for including the project in the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP). The Recipient shall also ensure that the appropriate RPA or MPO, through their TIP submittal to the Department,

includes the project in the Statewide Transportation Improvement Program (STIP). If the project is not included in the appropriate fiscal year of the STIP, Federal funds cannot be authorized.

- b. Before beginning any work for which Federal funding reimbursement will be requested, the Recipient shall contact the Department to obtain the procedures necessary to secure FHWA authorization. The Recipient shall submit a written request for FHWA authorization to the Department. After reviewing the Recipient's request, the Department will forward the request to the FHWA for authorization and obligation of Federal funds. The Department will notify the Recipient when FHWA authorization is obtained. The cost of work performed prior to FHWA authorization will not be reimbursed with Federal funds.

3. In-House Services.

- a. If Federal funding is requested for in-house services, the Recipient shall follow the procedure outlined in I.M. 3.310, Federal-aid Participation in In-House Services. If the Recipient desires to claim indirect costs under Federal awards, the Recipient shall prepare an indirect cost rate proposal and related documentation in accordance with the requirements of 2 CFR 225. Before incurring costs for in-house services, such an indirect cost rate proposal shall be certified by the FHWA or the Federal agency providing the largest amount of Federal funds to the Recipient.

4. Consultant Services

- a. If the Recipient requests Federal funds for consultant services, the Recipient and the Consultant shall prepare a contract for consultant services in accordance with Title 23, Code of Federal Regulations, Part 172 - Administration of Negotiated Contracts (23 CFR 172). These regulations require a qualifications-based selection process. The Recipient shall follow the procedures for selecting and using consultants outlined in I.M. 3.305, Federal-aid Participation in Consultant Costs.
- b. If preliminary engineering is Federally funded, and if the "do nothing" alternate is not selected, and if right-of-way acquisition for or actual construction of the road is not started by the close of the tenth fiscal year following the fiscal year in which the Federal funds were authorized, the Recipient shall repay to the Department an amount equal to the amount of Federal funds made available for such engineering.

5. Environmental Requirements and other Agreements or Permits.

- a. The Recipient shall take the appropriate actions and prepare the necessary documents to fulfill the FHWA requirements for project environmental studies including historical/cultural reviews and location approval. The Recipient shall complete any mitigation agreed upon in the FHWA approval document.
- b. If farmland is to be acquired, whether for use as project right-of-way or permanent easement, the Recipient shall submit the U.S. Department of Agriculture Farmland Conversion Impact Rating form, when required, to the U.S. Natural Resources Conservation Service (NRCS).
- c. The Recipient shall obtain agreements, as needed, from railroad and utility companies; and shall obtain project permits and approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, the Department, etc.
- d. The Recipient shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highway Right of Way, and the Policy for Accommodating Utilities on Primary Road System when on State's right of way. Certain utility relocation, alteration, adjustment, or removal costs to the Recipient for the project may be eligible for Federal funding reimbursement. If the Recipient desires Federal reimbursement of these costs, it shall submit a request for FHWA Authorization prior to beginning any utility relocation work, in accordance with the procedures outlined in I.M. 3.650, Federal-aid Participation in Utility Relocations
- e. In all contracts entered into by the Recipient, and all subcontracts, in connection with this project that exceed \$100,000, the Recipient shall comply with the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all their regulations and guidelines. In such contracts, the Recipient shall stipulate that any facility to be utilized in performance of or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities or is under consideration to be listed.

6. Right-of-Way.

- a. The Recipient shall acquire the project right-of-way, whether by lease, easement, or fee title, and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in I.M. 3.605, Right-of-Way Acquisition, and the Department's Office of Right of Way Local Public Agency Manual. The Recipient shall contact the Department for assistance, as necessary, to ensure compliance with the required procedures, even if no Federal funds are used for right-of-way activities. The Recipient shall obtain environmental concurrence before acquiring any needed right-of-way. With prior approval, hardship and protective buying is possible. If the Recipient requests Federal funding for right-of-way acquisition, the Recipient shall also obtain FHWA authorization before purchasing any needed right-of-way.
- b. If the project right-of-way is Federally funded and if the actual construction is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the Federal funds were authorized, the Recipient shall repay the sum or sums of Federal funds in the right-of-way to the Department.

7. Letting the Project.

- a. The project plans, specifications, and project cost estimate (PS&E) shall be prepared and certified by a Professional Engineer licensed in the State of Iowa. The Recipient shall submit the plans, specifications, and other contract documents to the Department for review and approval to let the project.
- b. The project shall be constructed under the Department's Standard Specifications for Highway and Bridge Construction. Prior to their use in the PS&E, specifications developed by the Recipient for individual construction items shall be approved by the Department.
- c. The Recipient shall forward a completed Project Development Certification (Form 730002) and final PS&E to the Department. As a condition for the Department to let the project, the Recipient agrees that the Recipient has the financial resources to proceed with the project if bids submitted are 110% of the project cost estimate or less. If the Recipient is a city, the Recipient shall comply with the public hearing requirements of the Iowa Code section 26.12.
- d. If the project is to be accomplished via a contract awarded by competitive bidding, the project will be let by the Department in accordance with its normal letting procedures. After bids are received and reviewed, the Department will furnish the Recipient with a tabulation of responsive bids.
- e. When let by the Department, the Department will prepare an Iowa DOT Staff Action identifying the lowest responsive bidder. The Department will mail three originals of the unexecuted contract to the Recipient.
- f. The Recipient shall take action to award a contract to the lowest responsive bidder or reject all bids. Following award of a contract, the Recipient shall forward to the Department two copies of the fully executed contract, two copies of the performance bond, and two copies of the certificate of insurance.

8. Construction.

- a. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 IAC Chapter 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.
- b. If Federal funding is requested for construction performed by local agency forces, the Recipient will follow the procedures outlined in I.M. 3.810, Federal-aid Construction by Local Agency Forces.
- c. The Recipient shall comply with the procedures and responsibilities for materials testing according to Department's Material I.M.s. The Department will bill the Recipient for testing services according to its normal policy. The Recipient should use the Department's Construction Manual as a guide for conducting other construction inspection activities.

9. Payments.

- a. After costs have been incurred, the Recipient may submit to the Department periodic itemized claims for reimbursement for eligible project costs. Reimbursement claims shall include certification that all eligible project costs, for which reimbursement is requested, have been paid in full and completed in substantial compliance with the terms of this agreement.
- b. The Department will reimburse the Recipient for properly documented and certified claims for eligible project costs, less a withholding of 5% of the Federal and / or State share of construction costs. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the Department determines the Recipient has been overpaid, the Recipient shall reimburse the overpaid amount to the Department. After the final audit or review is complete and after the Recipient has provided all required paperwork, the Department will release the Federal or State funds withheld.
- c. The total funds collected by the Recipient for this project shall not exceed the total project costs. The total funds collected shall include any Federal or State funds received, and any special assessments made by the Recipient (exclusive of any associated interest or penalties), pursuant to Iowa Code Chapter 384 (cities) or Chapter 311 (counties). The total project costs shall include all costs that can be directly attributed to the project. In the event that the total funds collected by the Recipient does exceed the total project costs, the Recipient shall either:
 - 1) refund to the assessed property owners the excess special assessments collected (including interest and penalties associated with the amount of the excess), or
 - 2) refund to the Department all funds collected in excess of the total project costs (including interest and penalties associated with the amount of the excess) within 60 days of the receipt of any excess funds. In return, the Department will either credit reimbursement billings to the FHWA or credit the appropriate State fund account in the amount of refunds received from the Recipient.

10. Project Close-out.

- a. Upon completion of the project, a Professional Engineer licensed in the State of Iowa shall certify in writing to the Department that the project was completed in substantial compliance with the plans and specifications set out in this agreement. Final reimbursement of Federal funds shall be made only after the Department accepts the project as complete.
- b. The Recipient shall maintain all books, documents, papers, accounting records, reports, and other evidence pertaining to costs incurred for the project. The Recipient shall also make these materials available at all reasonable times for inspection by the Department, FHWA, or any authorized representatives of the Federal Government. Copies of these materials shall be furnished by the Recipient if requested. Such documents shall be retained for at least 3 years from the date of FHWA approval of the final amendment / modification to the project in the FHWA's Fiscal Management Information System (FMIS). Upon receipt of such approval by FHWA, the Department will notify the Recipient of the record retention date.
- c. The Recipient shall maintain, or cause to be maintained, the completed improvement in a manner acceptable to the Department and the FHWA.