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Public Works

City Transit
263-8152

MEMORANDUM

To: Brian Stineman, Public Works Director

CC: Gregg Mandsager, City Admin., Pat Lynch, Asst. City Eng.

FROM: Jim Edgmond, City Engineer

DATE: May 08, 2019

RE: Request to Sign Agreement for the Park Avenue Reconstruction and 4 to 3 Lane Conversion Project.

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

INTRODUCTION:

TSIP-Traffic Safety Improvement Program
ADA- State Grant Program for disabled persons access
USTEP- Urban-State Traffic Engineering Program
3R-Primary Road Funds for Repair, Reconstruction and Resurfacing

The City Council approved a request in December of 2018 to apply for USTEP, 3R, and ADA funds to supplement the already approved agreement for TSIP funds. These requests have been approved and an agreement that covers all 4 funding sources has been written by the IowaDOT and submitted to the city for approval and signature.

BACKGROUND:

Although the original TSIP agreement was executed by the City and the DOT this new agreement that combines all the funding sources needs to be signed as well. The funding for the project is as shown below.

| | |
|----------|--|
| USTEP- | \$122,714 (45% Local Match) |
| DOT 3R- | \$600,000 |
| DOT ADA- | \$250,000 these funds can only be used to improve access |
| TSIP- | \$325,000 |
| CITY- | \$418,000 |
| MPW- | \$102,000 (estimated cost, not a funding commitment) |

RECOMMENDATION/RATIONALE:

Staff recommends that council approve the request to sign the agreement covering all the DOT

"I remember Muscatine for its sunsets. I have never seen any on either side of the ocean that equaled them" — Mark Twain

funding sources. The estimated project cost is \$1.8 million with these funding sources plus the estimated cost share with MPW covering \$1.4 million. The City share of the project will be approximately \$418,000 and this cost is proposed to be funded on the May 2020 bond issue. This \$418,000 consists of \$157,000 in design engineering fees, \$144,000 in Construction Engineering fees, and \$117,000 in construction cost. The Project Development Team will do the Construction Engineering estimated at \$144,000 to save these consultant costs.

BACKUP INFORMATION:

1. Agreement

**IOWA DEPARTMENT OF TRANSPORTATION
Cooperative Agreement
For Primary Road Project**

| | |
|------------------|--|
| County | <u>Muscatine</u> |
| City | <u>Muscatine</u> |
| Project No. | <u>STPN-038-1(15)--2J-70 (3R)</u> <u>STPN-038-1(16)--2J-70 (ADA)</u> <u>UST-038-1(17)--4A-70 (USTEP)</u> <u>CS-TSF-5330(628)—85-70 (TSIP)</u> |
| Iowa DOT | |
| Agreement No. | <u>2019-16-139</u> |
| Staff Action No. | <u>5-2019-0670</u> |

This Agreement, is entered into by and between the Iowa Department of Transportation, hereinafter designated the "DOT", and the city of Muscatine, Iowa, a Local Public Agency, hereafter designated the "LPA" in accordance with Iowa Code Chapters 28E, 306, 306A and 313.4 as applicable;

The LPA proposes to establish or make improvements to Iowa 38 within Muscatine County, Iowa; and

The LPA and the DOT are willing to jointly participate in said project, in the manner hereinafter provided; and

The LPA and the DOT previously entered into the following agreement(s) for the above referenced project: Agreement No. 2019-TS-002 for Traffic Safety Improvement Program funds was executed by the DOT and LPA on February 7, 2019 and December 20, 2018 respectively; and

This Agreement reflects the current concept of this project which is subject to modification by mutual agreement between the LPA and the DOT; and

Therefore, it is agreed as follows:

1. Project Information

- a. The LPA shall be the lead local governmental agency for carrying out the provisions of this agreement.
- b. All notices required under this agreement shall be made in writing to the DOT's and/or the LPA's contact person. The DOT's contact person shall be the District 5 Staff Engineer, Jim Phillips. The LPA's contact person shall be the Public Works Director, Brian Stineman.
- c. The LPA shall be responsible for the development and completion of the following described primary highway project:

Hot Mix Asphalt (HMA) resurfacing with milling and Portland Cement Concrete (PCC) sidewalk/trail (ADA) on Iowa 38 from the south junction with Iowa 92 to Harrison Street in Muscatine. The project provides for four-to-three lane conversion and traffic signal upgrades on Iowa 38; and resurfacing on Iowa 22 a distance of approximately 210 feet east of Iowa 38.
- d. The DOT provides funds through the Urban-State Traffic Engineering Program (U-STEP), a cooperative program for safety or operational improvements on primary road extensions. The DOT has made these funds available for reimbursement and will share eligible construction and right-of-way costs in the ratio of 55% DOT funds to 45% local funds, up to a maximum amount in DOT funds of \$200,000 for a "spot improvement" or \$400,000 for a "linear improvement" pertaining to project UST-038-1(17)--4A-70.

- e. For USTEP projects a "spot improvement" shall mean a limited improvement project such as intersection reconstruction or signalization; and a "linear improvement" shall mean an improvement project such as street or highway widening or reconstruction which spans two or more intersections.
- f. The DOT agrees to provide U-STEP funding to the LPA for the authorized and approved costs for eligible items associated with the linear improvements.
- g. All storm sewers constructed as part of the project will become the property of the LPA, which will be responsible for their maintenance and operations. The LPA will not make any connections to said storm sewers without the prior written approval of the DOT. The LPA will prevent use of such storm sewers as a sanitary sewer.

2. Funding Sources

- a. The total project cost is estimated to be \$1,818,605.50. The DOT will contribute \$600,000 from 3R Primary Road Funds for resurfacing on Iowa 38 and Iowa 22 and a maximum of \$250,000 for ADA toward the project (shown as Division 1 on Exhibit B).
- b. The funding sources for the projects are as follows:

| | |
|---------|-------------------|
| USTEP | \$122,714 |
| DOT 3R | \$600,000 |
| DOT ADA | (up to) \$250,000 |
| TSIP | \$325,000 |
| LPA | \$520,891.50 |

- c. The LPA shall be responsible for all other project costs which are not reimbursed with or paid for by the funds specified above.

3. Environmental, Right-of-Way, Permits and Other Requirements

- a. The LPA shall be responsible for obtaining any necessary permits from the DOT, such as the Work Within the Right-of-Way Permit, Access Connection/Entrance Permit, Utility Accommodation Permit, Application for Approval of a Traffic Control Device, or other construction permits required for the project prior to the start of construction. Neither the approval of funding nor the signing of this Agreement shall be construed as approval of any required permit from the DOT.
- b. The LPA shall obtain all project permits and / or 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, or other State or Federal agencies as may be required.
- c. If right-of-way is required for the project, the LPA shall acquire the necessary right-of-way in accordance with 761 Iowa Administrative Code Chapter 111, Real Property Acquisition and Relocation Assistance. The LPA shall submit preliminary right-of-way plans to the DOT's Office of Right-of-way for review and approval prior to the commencement of any acquisition.
- d. Additionally, the portions right-of-way acquired for improvements to the Primary Road System shall be acquired in the name of the State of Iowa. The LPA will properly close the sale of each parcel and shall furnish the DOT copies of all completed contracts, deeds, conveyances and condemnation documents (for state right of way).

- e. If there is a railroad crossing within or near the project work area, the LPA shall obtain the necessary approvals or agreements from the railroad to allow the proposed work to be completed on or around the railroad crossing and / or right-of-way.
- f. If the project requires utility relocations, subject to the approval of and without expense to the DOT, the LPA agrees to perform or cause to be performed all relocations, alterations, adjustments or removals of existing utility facilities, including but not limited to power, telephone lines, fiber optics lines, natural gas pipelines, water mains and hydrants, curb boxes, utility accesses, storm water intakes, sanitary sewers, and related poles, installations and appurtenances, whether privately or publicly owned, and all parking meters, traffic signals and other facilities or obstructions which are located within the limits of an established street or alley and which will interfere with construction of the project and the clear zone. All utility relocations shall be accomplished in accordance with the DOT's Utility Accommodation Policy, as set forth in 761 Iowa Administrative Code, Chapter 115.
- g. If the LPA has completed a Flood Insurance Study (FIS) for an area which is affected by the proposed Primary Highway project and the FIS is modified, amended or revised in an area affected by the project after the date of this Agreement, the LPA shall promptly provide notice of the modification, amendment or revision to the DOT. If the LPA does not have a detailed Flood Insurance Study (FIS) for an area which is affected by the proposed Primary Highway project and the LPA does adopt an FIS in an area affected by the project after the date of this Agreement, the LPA shall promptly provide notice of the FIS to the DOT.

4. Project Design

- a. The LPA or its consultant shall be responsible for the design of all proposed improvements.
- b. The project plans, specifications and engineer's cost estimate shall be prepared and certified by a Professional Engineer licensed to practice in the State of Iowa.
- c. All proposed highway or street improvements shall be designed using good engineering judgment and the American Association of State Highway and Transportation Officials (AASHTO) "Policy on Geometric Design of Highways and Streets", (latest edition).
- d. The project design shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways", by the Federal Highway Administration, as adopted by DOT, as per 761 Iowa Administrative Code, Chapter 130.

5. Bid Letting

- a. The LPA shall submit the plans, specifications, estimate, and all other contract documents for review by the DOT. The project may be submitted for letting in phases, in the order of preference as determined by the LPA. All plan submittals shall be in accordance with the Major Project schedule, as shown on the Instructional Memorandum to Local Public Agencies 3.005, Project Development Submittal Dates and Information, published by the DOT's Office of Local Systems.
- b. The project will be let by the DOT in accordance with its normal letting procedures. As a condition for the DOT to let the project, the LPA agrees that the LPA has the financial resources to proceed with the project if bids submitted are 110% of the project cost estimate or less. If the LPA is a city, the LPA shall comply with the public hearing requirements of the Iowa Code section 26.12.
- c. The LPA shall include in their Notice to Bidders that Sales Tax Exemption Certificates will be issued, as provided for by Iowa Code section 423.3, subsection 80. The LPA shall be responsible for obtaining the sales tax exemption certificates through the Iowa Department of Revenue and Finance. The LPA shall issue these certificates to the successful bidder and any subcontractors to enable them to purchase qualifying materials for the project free of sales tax.

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- d. When let by the DOT, the DOT will identify the lowest responsive bidder. When bids submitted are more than 110% of the project cost estimate, the DOT will provide an electronic tabulation of responsive bids to the LPA for concurrence. The LPA shall either take action to accept the award to the lowest responsive bidder or reject all bids. The LPA shall provide such confirmation by email. Following LPA concurrence in the award of contract, the DOT shall execute the contract.
- e. The LPA shall be the contracting authority.

6. Construction & Maintenance

- a. The LPA shall be responsible for the daily inspection of the project, including the compilation of a daily log of materials, equipment, and labor used on the project.
- b. The LPA shall comply with the procedures and responsibilities for materials testing and construction inspection according to DOT's Materials Instructional Memorandums (I.M.'s) and the Construction Manual. If requested, the DOT may be able to perform some testing services. If performed, the DOT will bill the LPA for testing services according to its normal policy.
- c. The work on this project shall be in accordance with the approved plans and specifications. Any substantial modification of these plans and specifications must be approved by the DOT prior to the modification being put into effect.
- d. The LPA, in cooperation with the DOT, will take whatever steps may be required with respect to alteration of the grade lines of the new highway facilities constructed under the project in accordance with Iowa Code section 364.15. The DOT and LPA will work together to minimize potential impacts to properties that may occur as a result of the project.
- e. Subject to the provisions hereof, the LPA in accordance with 761 Iowa Administrative Code sections 150.3(1)c and 150.4(2) will remove or cause to be removed all encroachments or obstructions in the existing primary highway right of way. The LPA will also prevent the erection and/or placement of any structure or obstruction on said right of way or any additional right of way which is acquired for this project including but not limited to private signs, buildings, pumps, and parking areas.
- f. With the exception of service connections no new or future utility occupancy of project right-of-way, nor any future relocations of or alterations to existing utilities within said right-of-way (except service connections), will be permitted or undertaken by the LPA without the prior written approval of the DOT. All work will be performed in accordance with the Utility Accommodation Policy and other applicable requirements of the DOT.
- g. New lighting and/or traffic signal construction for this project shall be provided under guidelines established in 761 Iowa Administrative Code Chapter 150. The LPA shall construct traffic signal installations all at no cost to the DOT. If constructed, the LPA shall accept ownership of and responsibility for future energy and maintenance costs of those lighting and/or traffic signal units which lie within the corporate boundaries.
- h. Upon completion of the project, no changes in the physical features thereof will be undertaken or permitted without the prior written approval of the DOT.
- i. Future maintenance of the primary highway within the project area will be carried out in accordance with the terms and conditions contained in 761 Iowa Administrative Code Chapter 150.

7. Traffic Control

- a. Iowa 38 through-traffic will be maintained during the construction.

- b. 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" as per 761 Iowa Administrative Code, 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.

8. Payments and Reimbursements

- a. The LPA shall be responsible for making initial payments to the contractor(s) for all project costs incurred in the development and construction of the project. After payments have been made, the LPA may submit to the DOT periodic itemized claims for reimbursement for eligible project activities. Reimbursement claims shall include certification by a Professional Engineer licensed to practice in the State of Iowa that all eligible project activities for which reimbursement is requested have been paid in full and completed in substantial compliance with the terms of this agreement.
- b. The DOT shall reimburse the LPA for properly documented and certified claims for eligible project activity costs. The DOT may withhold up to 5% of the Federal and / or State share of construction costs, either by state warrant or by crediting other accounts from which payment may have been initially made. If upon final audit, the DOT determines the LPA has been overpaid, the LPA shall reimburse the overpaid amount to the DOT. After the final audit or review is complete and after the LPA has provided all required paperwork, the DOT will release the Federal or State funds withheld.
- c. Upon completion of the project, a Professional Engineer licensed to practice in the State of Iowa shall certify in writing to the DOT that the project activities were completed in substantial compliance with the plans and specifications set out in this agreement. Final reimbursement of State and / or Federal funds shall be made only after the DOT accepts the project as complete

9. General Provisions

- a. The LPA shall maintain records, documents, and other evidence in support of the work performed under the terms of this agreement. All accounting practices applied and all records maintained will be in accordance with generally accepted accounting principles and procedures. Documentation shall be made available for inspection and audit by authorized representatives of the DOT and / or the Federal Highway Administration (FHWA), or their designees at all reasonable times. The LPA shall provide copies of said records and documents to the DOT upon request. The LPA shall also require its contractors to permit authorized representatives of the DOT and / or the FHWA to inspect all work materials, records, and any other data with regard to agreement related costs, revenues and operating sources. 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 DOT will notify the LPA of the record retention date.
- b. In accordance with Title VI of the Civil Rights Acts of 1964 and Iowa Code Chapter 216 and associated subsequent nondiscrimination laws, regulations and executive orders, the LPA 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 LPA shall use positive efforts to solicit proposals or bids from and to utilize Targeted Small Business (TSB) enterprises as consultants or contractors and ensure that the consultants or contractors make positive efforts to utilize these enterprises as subconsultants, subcontractors, suppliers or participants in the work covered by this agreement. Efforts shall be made and documented in accordance with Exhibit C which is attached hereto and by this reference incorporated into this agreement.

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- d. The LPA agrees to indemnify, defend and hold the DOT 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 DOT's application review and approval process, plan and construction reviews, and funding participation.
- e. If any part of this agreement is found to be void and unenforceable then the remaining provisions of this agreement shall remain in effect.
- f. This agreement is not assignable without the prior written consent of the DOT.
- g. It is the intent of both (all) parties that no third party beneficiaries be created by this Agreement.
- h. 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 ten (10) days notice to the other party of their intent to seek arbitration. The written notice must include a precise statement of the disputed question. The DOT and the LPA 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 for arbitration.
- i. This Agreement may be executed in (two) counterparts, each of which so executed will be deemed to be an original.
- j. This Agreement, as well as the unaffected provisions of any previous agreement(s), addendum(s), and/or amendment(s); represents the entire Agreement between the LPA and DOT regarding this project. All previously executed agreements will remain in effect except as amended herein. Any subsequent change or modification to the terms of this Agreement will be in the form of a duly executed amendment to this document.