

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JULY 15, 2014 AGENDA**

Subject:	Type:	Submitted By:
THOMPSON CREEK WATERSHED RESTORATION-CITY HALL BIO-RETENTION BASIN, NDEQ GRANT CONTRACT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the execution of an Intergovernmental Agreement with the Nebraska Department of Environmental Quality (NDEQ) for funding from EPA Section 319 Funds for activities associated with Thompson Creek Watershed Management demonstration projects. This agreement addresses the Thompson Creek-City Hall Bio-Retention Basin project in the southwest corner of the parking lot on the west side of City Hall. This is part of the project identified in the CIP as Phase VI, Part 2 of the Thompson Creek project.

FISCAL IMPACT

Funding has been budgeted in FY14 for the City's share of this grant award.

RECOMMENDATION

Approval subject to review by the City Attorney.

BACKGROUND

The City submitted a grant application to the Nebraska Department of Environmental Quality (NDEQ) in March of 2014 for funding of the Thompson Creek City Hall Bio-Retention Basin project. A Project Implementation Plan was prepared and approved by the USEPA. The NDEQ prepared the Interlocal agreement and requires it to be executed in order to receive the grant funding.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY (NDEQ) FOR FUNDING FROM EPA SECTION 319 FUNDS FOR ACTIVITIES ASSOCIATED WITH THOMPSON CREEK WATERSHED MANAGEMENT DEMONSTRATION PROJECTS IN AN AMOUNT NOT TO EXCEED \$38,500.

WHEREAS, the City Council of the City of La Vista has determined that said Thompson Creek improvements are necessary; and

WHEREAS, the FY 2013/14 Capital Improvement Program (CIP) has funding budgeted for this project; and

WHEREAS, the grant applications are required in order to seek funding from the NDEQ; and

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, authorizing the execution of an Intergovernmental Agreement with the Nebraska Department of Environmental Quality (NDEQ) for funding from EPA Section 319 funds for activities associated with Thompson Creek Watershed Management demonstration projects, in form and content approved by the City Attorney, in an amount not to exceed \$38,500.

PASSED AND APPROVED THIS 15TH DAY OF JULY, 2014

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

INTER-GOVERNMENTAL AGREEMENT

**Between the
Nebraska Department of Environmental Quality
and the
City of LaVista
regarding
the implementation of the project**

Thompson Creek - City Hall Bio-retention Basin

THIS INTER-GOVERNMENTAL AGREEMENT is made and entered into by and between the Nebraska Department of Environmental Quality (NDEQ) and the City of LaVista in accordance with the Interlocal Cooperation Act, Nebraska Stat. Sec. 13-801 to 13-807 (Reissue 1987) or Nebr. Rev. Stat. Sec. 81-1504 (supp.1997) of the Nebraska Environmental Protection Act, whichever is applicable;

WHEREAS, the Sponsor made a request to the NDEQ for Section 319 grant funds (CFDA #66.460), pursuant to the federal Clean Water Act and the Nebraska Nonpoint Source (NPS) Management Program, which have been made available to NDEQ through the Region VII Office of the U.S. Environmental Protection Agency (USEPA); and

WHEREAS, the Sponsor agrees to comply with all provisions of the Federal Clean Water Act as amended by the Water Quality Act of 1987, 33 U.S.C. §1251 et seq. and intends to use the funds as set out in this Agreement;

NOW, THEREFORE, the parties do hereby agree to the terms and requirements of this Agreement as follows:

I. TERM OF THE AGREEMENT

This Agreement will begin on Thursday, July 10, 2014, and will remain in effect until all identified tasks are completed for this Section 319 Project unless terminated under §IV-C-13 of this agreement, but will not remain in effect past Wednesday, December 31, 2014.

II. WORK DESCRIPTION AND SCHEDULE

This project shall complete objectives and work items as described in the approved project implementation plan (PIP). The PIP is hereby incorporated into this document in its entirety (Attachment A).

III. FINANCIAL REQUIREMENTS

- A. Grant funds in the amount up to \$44,500.00 are to be used to implement this Section 319 NPS project.
- B. Sponsor agrees to contribute at least \$29,666.67 in nonfederal match as cash and/or services in-kind for implementation of project activities.
- C. **Statement of Costs**
The Sponsor will submit, no more often than monthly , a properly documented statement of costs for which reimbursement is sought and nonfederal match as claimed pursuant to the terms of this Agreement and the approved PIP. The statement of costs shall be signed by the Sponsor's authorized representative. For purposes of this agreement, reimbursable costs and nonfederal match claims shall be related to budget items as described in the approved project implementation plan. Documentation of costs shall consist of paid receipts, signed time records, and/or similar verification of expenditures. A description of the activities performed, in relation to reported match dollars, shall be included.
- D. **Disbursements**
 - 1. All requests for reimbursement of costs incurred by the Sponsor shall be reviewed pursuant to the provisions of the Nebraska Prompt Payment Act.
 - 2. Reimbursements will be contingent on receipt of required reports.
 - 3. NDEQ shall withhold 10% but not less than \$10,000.00, of grant funds pending receipt and approval of the final project report.
 - 4. The total amount of payments under this Agreement shall not exceed Forty Four Thousand Five Hundred Dollars And No Cents (\$44,500.00).
 - 5. The Sponsor agrees to contribute at least Twenty Nine Thousand Six Hundred Sixty Six Dollars And Sixty Seven Cents (\$29,666.67) in nonfederal match as cash and/or services in-kind for implementation of project activities.

IV. GRANT REQUIREMENTS

A. Program Requirements

- 1. The Sponsor agrees to follow the approved Project Implementation Plan (PIP) outlining the project schedule and specific work items to be undertaken during the course of the project.

2. A Quality Assurance Project Plan (QAPP) must be approved by NDEQ prior to any collection of environmental data and subsequent reimbursement request from Section 319 grant funds for monitoring activities. All environmental data collected under this agreement shall be provided to NDEQ.
3. The Sponsor agrees to submit progress reports to the NDEQ by March 20 and September 20 each year for the duration of the project agreement. These reports shall contain the following components:
 - a. Progress to date;
 - b. Significant findings or events;
 - c. Corrective actions taken to resolve any problems that are encountered;
 - d. Activities planned for the next reporting period.
4. A final project report must be submitted to NDEQ within 60 days after completion of project tasks, but no later than by Wednesday, December 31, 2014. This report shall contain the following components in addition to those outlined in the 319 Project Final Report Guidelines to be provided by NDEQ:
 - a. Significant findings or events;
 - b. Corrective actions taken to resolve any problems that were encountered;
 - c. Final budget with actual amounts of expenditures and matching listed as well as the source(s) of matching identified.
5. The Sponsor agrees that if indirect costs are authorized, as specified in the approved PIP, they will be charged at the approved indirect rate.
6. The Sponsor agrees that any contract, inter-governmental agreement, sub-agreement and/or procurement of equipment under this grant must receive NDEQ approval prior to expenditure of funds associated with those transactions. Copies of all sub-agreements and inter-governmental agreements will be provided to the NDEQ.
7. All equipment purchased with Section 319 grant funds must be approved by the NDEQ. Any such purchased equipment shall be retained by the NDEQ upon completion of the project unless otherwise authorized in writing by the NDEQ.
8. The Sponsor agrees that all water quality data collected under this grant shall be provided to the NDEQ.
9. The Sponsor agrees to recognize the contributions and/or involvement of the federal Nonpoint Source Management Program (authorized by Section 319 of the Clean Water Act and administered by USEPA and NDEQ) in project publicity, reports, newsletters, and other materials. The Sponsor shall work with the NDEQ to ensure that all necessary peer review requirements are met prior to publication. A minimum of three (3) copies of outreach material (printed or other media) produced under this grant shall be provided to the NDEQ unless otherwise specified.

10. The Sponsor agrees to ensure that persons receiving cost-share assistance from Section 319(h) funds shall, where relevant, practice nutrient and best management on those portions of their operations that fall in the critical area of the project.
11. The Sponsor agrees to maintain all practices or structural Best Management Practices (BMPs) developed or constructed under Section 319, consistent with the operation and maintenance requirements for structures or practices as described in standard engineering design or as identified in the Natural Resources Conservation Service's Field Office Technical Guides or other appropriate federal/state/local standards.

B. Federal Requirements

1. All recipients of federal grant funds shall comply with the following grant conditions. The Sponsor agrees to comply with all the following provisions, rules, and regulations copies of which may be obtained from NDEQ:

1. Office of Management and Budget Circulars A-102, A-133, A-87 and 40 CFR Parts 31, 32, and 35 as they apply.
2. Procurement standards of 40 CFR 31.32(g).
3. Prohibitive lobbying 18 U.S.C. Section 1913, Section 607(a) of Public Law 96.74, or Section 319 of Public Law 101-121.
4. Federal Register, Vol. 53, No. 102, Debarment and Suspension Under EPA, Assistance Loan and Benefit Programs.
5. Rules governing "Fair Share" of federal funds to Minority Business Enterprises (MBEs), Women-Owned Business Enterprises (WBEs), Small Business Enterprises (SBEs), Small Disadvantaged Businesses (SDBs), and Small Business in Rural Areas (SBRAs). Affirmative steps outlined in 40 CFR 30.44, or 40 CFR 33.240, or 40 CFR 35.6580, or Section 129 of Public Law 100-590, whichever is applicable.

The Sponsor agrees to include in its bid specifications, and require all of its prime contractors to include in their bid specifications for subcontracts, a "Fair Share". The Sponsor agrees to document the official grant files with all efforts taken to achieve the "Fair Share" and to report annually to NDEQ all "Fair Share" procurement efforts regardless of the size of the sub-agreement.

6. Section 204 of the Demonstration Cities and Metropolitan Development Act of 1996 as amended (42 USC Section 3334).
7. Provisions of the American with Disabilities Act.
8. Hotel and Motel Fire Safety Act of 1990.
9. USEPA Order 1000.25 regulating the use of recycled paper.

10. With signature on this Agreement, the sponsor certifies that they: (1) are not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) have not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal conviction under any Federal law within 24 months preceding the award, unless EPA has considered suspension or debarment of the corporation, or such officer or agent, based on these tax liabilities or convictions and determined that such action is not necessary to protect the Government's interests.
11. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.
12. This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. The assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

C. State Requirements

1. Amendments

This agreement may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or requirements of the USEPA or NDEQ.

2. Forfeiture, Repayment, and Delays in Disbursement of Funds

Violation of any of the requirements of this Agreement by the Sponsor or failure of the Sponsor to complete and maintain the project in the manner described in the project implementation plan, including any amendments thereto which have been properly approved, shall result in the forfeiture of any funds not disbursed. In addition, if for any reason the project is not completed as described in the project PIP, including any amendments thereto that have been or are hereafter approved by the NDEQ, the NDEQ may recover from the Sponsor any or all funds disbursed.

3. Remedies Not Exclusive

The use by either the Sponsor or the NDEQ of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party from using such remedy, or limit the application of any other remedy provided by law.

4. Assignment

No assignment or transfer of this agreement or any part hereof, rights hereunder, or interest herein by the Sponsor shall be valid unless and until it is approved by the NDEQ and made subject to such reasonable terms and conditions as the NDEQ may impose.

5. Hold Harmless

The Sponsor agrees to hold NDEQ harmless for loss or damage sustained by any person as a direct result of negligent or willful acts by the Sponsor, its employees, subcontractors, or agents in the performance of this agreement including all associated costs of any defending action.

6. Waiver of Rights

The Sponsor or NDEQ may from time to time waive any of their rights under this Agreement; however, any waiver of rights with respect to a default of any condition of this Agreement shall not be deemed to be a waiver with respect to any other default.

7. Applicable Rules and Regulations

Both parties shall abide by all applicable rules and regulations of the NDEQ including any that may be adopted subsequent to the effective date of this Agreement except those that would invalidate or be inconsistent with the provisions of this Agreement.

8. Inspection of Books, Records, and Reports

The duly authorized representative of either party shall have the right to inspect and make copies of any books, records, or reports of the other party pertaining to this Agreement or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. A single audit is required if \$500,000 or more is provided by the federal funding in any one-year period. Verification of completion of the single audit report shall be sent to NDEQ.

9. Independent Contractor

The Sponsor is and shall perform this Agreement as an independent contractor and as such shall have and maintain exclusive control over all of its employees, agents, and operations. Neither the Sponsor nor any person employed by the Sponsor shall act, propose to act, or be deemed the NDEQ's agent, representative, or employee. The

9. Independent Contractor (continued)

Sponsor assumes full and exclusive responsibility for the payment of all premiums, contributions, payroll taxes and other taxes now or hereafter required by any law or regulation and agrees to comply with all applicable laws, regulations, and orders relating to social security, unemployment compensation, OSHA, affirmative action, equal employment opportunity, and other laws, regulations, and orders of like nature. For any work hereunder subject to the Veterans Readjustment Assistance Act of 1974, or the Rehabilitation Act of 1973, the parties hereto shall comply with all provisions thereof, together with all applicable rules, regulations and orders of the Department of Labor, and the notices required pursuant to 41 CFR 60-1.4, 60-250.4 and 60-741.4, which are hereby incorporated by reference into this Agreement.

10. Nondiscrimination

The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska and their subcontractors from discriminating against any employee, or applicant for employment in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, or national origin. The Sponsor's signature is a guarantee of compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The Sponsor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

11. Drug Free Workplace

The Sponsor by executing this Agreement certifies and assures that it operates a drug free workplace as addressed in the State of Nebraska Drug Free Workplace Policy of July 7, 1989.

12. Publication Rights

All parties shall have publication and reproduction rights for all reports and materials, which are produced as a result of this Agreement.

13. Termination

This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party provided that no termination may be effected unless the other party is given:

- a. Not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
- b. An opportunity for consultation with the terminating party prior to termination.
- c. If an emergency situation occurs, the effective date of termination will be negotiated.

14. New Employee Work Eligibility Status

The Sponsor is required and hereby agrees to use, and require sub-contractors to use, a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Sponsor or Contractor is an individual or sole proprietorship, the following applies:

The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at:

<http://www.das.state.ne.us/>

http://www.das.state.ne.us/lb403/attestation_form.pdf

If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

V. PROJECT MANAGERS

The Project Manager for each party to this agreement shall be as follows. The Project Manager may be changed by any agency upon written notification.

Nebraska Department of Environmental Quality (NDEQ)

Mike Archer
Program Specialist
Water Quality Planning Unit
1200 N' Street, Suite 400
P.O. Box 98922
Lincoln, NE 68509-8922
Phone: (402) 471-4224
Mike.Archer@Nebraska.gov

City of LaVista

John Kottmann
9900 Portal Road
La Vista, NE. 68128
Phone: (402) 331-8927
Jkottmann@cityoflavista.org

VI. SIGNATORIES TO THIS INTER-GOVERNMENTAL AGREEMENT

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: Thomas R. Lamberson

TITLE: Deputy Director

Date: _____

CITY OF LAVISTA

BY: _____
(Please Print)

TITLE: _____

(Signature) **Date:** _____

FEDERAL TAX ID NUMBER _____ **DUNS NUMBER:** _____