

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 1, 2009 AGENDA**

Subject:	Type:	Submitted By:
INTERLOCAL AGREEMENT -- CITY OF RALSTON	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the Mayor to execute an Interlocal Agreement with the City of Ralston (Receiving LPA) for the City of La Vista (Assisting Public Entity) providing services of its employee to act as the Responsible Charge (RC) for a Federally funded transportation project of the Receiving Local Public Agency.

FISCAL IMPACT

The agreement calls for the City of Ralston to reimburse the City of La Vista for an hourly rate plus benefits for time spent by the Responsible Charge on the project. In addition all attorney fees encumbered by the City of La Vista will be reimbursed.

RECOMMENDATION

Approval

BACKGROUND

The City of La Vista was approached by the City of Ralston regarding Public Works Director Joe Soucie serving as the Responsible Charge for a federally funded transportation project in Ralston. The City of Ralston originally planned to enter into an Interlocal Agreement with MAPA which was to provide a staff member to act as the Responsible Charge. The MAPA employee did not complete the training and MAPA is currently without a certified Responsible Charge.

The Ralston project is the reconstruction on Serum Avenue & 77th Street. The project is federally funded by American Recovery & Reinvestment Act (ARRA). Because of this funding source a very tight time line is in effect. All stimulus projects must be out to bid by February 2010; in order to be fully obligated by a March 10, 2010 deadline.

Public works Director Joe Soucie is comfortable with the amount of time that is necessary to act as the Responsible Charge. By the time the stimulus projects are bid in January and February of 2010, the City of La Vista will have a second employee certified as a Responsible Charge; Street Superintendent Greg Goldman has completed and passed the first week of training and is scheduled to complete the second week of training beginning December 2nd. In addition MAPA also has an employee that has completed the first week of training and is scheduled to complete training in December.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF RALSTON, FOR THE CITY OF LA VISTA TO PROVIDE THE SERVICES OF AN EMPLOYEE TO ACT AS A RESPONSIBLE CHARGE IN A FORM SATISFACTORY TO THE CITY ADMINISTRATOR AND CITY ATTORNEY.

WHEREAS, The City of Ralston has requested the services of an employee, certified as a Responsible Charge, from the City of La Vista for a federally funded transportation project to be known as the reconstruction of Serum Avenue and 77th Street; and

WHEREAS, The City of La Vista Public Works Director is able to give the amount of time necessary to act as the Responsible Charge; and

WHEREAS, The City of Ralston will reimburse the City of La Vista for an hourly rate plus benefits for time spent by the Responsible Charge on the project and any additional attorney fees encumbered by the City of La Vista;

NOW THEREFORE, BE IT RESOLVED, that an Interlocal Agreement with the City of Ralston for the City of La Vista to provide the services of an employee to act as a Responsible Charge is hereby approved, and the Mayor and City Clerk be and hereby are, authorized to execute same on behalf of the City with such revisions or amendments thereto that the City Administrator and City Attorney may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS 1ST DAY OF DECEMBER, 2009.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buehe, CMC
City Clerk

Project Name: Serum Avenue/77th Street in Ralston
Project Number: STPC-5027(1)
Control Number: CN22173
Name of Responsible Charge Person: La Vista Public Works Director Joe Soucie
Name of Receiving LPA Contact: Ralston Public Works Director Dan Freshman

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

PARTIES

THIS AGREEMENT ("Agreement") is entered into by the City of Ralston, the Receiving LPA and the City of La Vista, 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 or LPA, with "LPA" meaning local public agency. 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 #STPC-5027(1), NDOR Control #CN22173, Serum Avenue/77th Street in Ralston, 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, from planning through post-construction activities, for the project to be 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 so that (1) all aspects of the project receive independent and careful development, supervision and inspection, (2) the project is constructed in compliance with the plans and specifications, (3) all aspects of 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 from planning through construction project activities, 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 its Public Works Director *Joe Soucie* to serve as the RC for Receiving LPA's Federal-aid transportation project identified as NDOR Project Number STPC-5027(1), NDOR Control Number CN22173, Serum Avenue/77th Street in Ralston. 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, and a minimum of 15 hours of professional development training 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 time reasonably necessary to properly discharge such duties, including confirming that relevant aspects of the project, from planning through post-construction activities, are 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 unreasonably interfere with this person carrying out the duties set out in this Agreement.
- 6) It will not unreasonably interfere with activities reasonably required of an RC for Receiving LPA's project to be 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 not unreasonably interfere with activities reasonably required of an RC for Receiving LPA and the State of Nebraska Department of Roads to meet their respective obligations set out in 23 C.F.R. § 635.105.
- 8) RC shall be Assisting Public Entity's contact for purposes of administration of this Agreement.

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.
- 7) Designates its Public Works Director as its contact for purposes of administration of this Agreement.

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 obtain the services of RC, Receiving LPA shall pay to Assisting Public Entity all costs of Assisting Public Entity to perform this Agreement, including, but not limited to, payment or reimbursement of all salary, benefits, payroll taxes and charges incurred or paid by Assisting Public Entity to RC or to any consultant or other person supporting RC for work under this Agreement. The Assisting Public Entity shall periodically bill the Receiving LPA for all expenses incurred to date on a regular basis not more often than monthly during the period of this Agreement. Each invoice shall be due and payable within 30 days of the invoice date. Any payment that is not received by Assisting Public Entity within 10 days after the due date shall accrue interest at the rate of 12% per annum, subject to any limitation on the rate of interest under applicable law.

INSURANCE

Assisting Public Entity and Receiving LPA each shall maintain in effect at the commencement and at all times during this Agreement all insurance coverages required under this section, except as otherwise noted. Receiving LPA shall reimburse Assisting Public Entity any additional cost of Assisting Public Entity to obtain any such coverage.

- 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 \$100,000/\$500,000/\$100,000 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.
- C. Automobile Liability Insurance
The minimum acceptable limit of liability shall be \$1,000,000 Combined Single Limit for each accident.
- D. Professional Liability Insurance
Assisting Public Entity shall provide coverage 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 Receiving LPA is to be included as an additional insured on the insurance coverages Assisting Public Entity is required to provide under this section; and Assisting Public Entity is to be included as an additional insured on the insurance coverages Receiving LPA is required to provide under this section. Each party shall furnish the other party 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 party shall furnish a certificate(s) of insurance evidencing renewal of its coverage.

INDEMNIFICATION

Receiving LPA hereby agrees to indemnify, defend and hold harmless Assisting Public Entity from and against all losses, liabilities, costs, expenses, damages and claims, whatsoever, including attorney's fees and court costs, arising out of or resulting from this Agreement, except to the extent caused by gross negligence or willful act or omission of Assisting Public Entity. This paragraph shall survive the end of this Agreement.

TERM AND DURATION

This Agreement shall become effective on the date the last party executes the Agreement and shall continue in force and remain binding until the earlier of completion of the project or January 31, 2015, subject to earlier termination below. If the project is not completed by the specified date, this Agreement will continue in effect beyond that date if agreed to by the parties in a writing signed by both parties. If this Agreement will end before completion of the project, Receiving LPA will be solely responsible for providing a qualified RC to complete the project.

TERMINATION

With 30 days written notice, either party may terminate this Agreement. Receiving LPA shall be solely responsible for assigning a new fully-qualified RC 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 La Vista

Name of Assisting Public Entity

Douglas Kindig

Print name of Mayor/Chairperson/Chief Executive Officer of Assisting Public Entity

Signature of Mayor/Chairperson/Chief Executive Officer of Assisting Public Entity

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 Assisting Public Entity.]

City of Ralston

Name of Receiving LPA

Donald A. Groesser

Print name of Mayor/Chairperson/Chief Executive Officer of Receiving LPA

Signature of Mayor/Chairperson/Chief Executive Officer 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.]