

10R-185

**SUPPLEMENTAL AGREEMENT NO. 1**

CITY OF LINCOLN  
STATE OF NEBRASKA  
PROJECT NO. STPC-5212(5)  
CONTROL NO. 11215K  
SOUTH STREET BRIDGE AND ROAD FROM 37<sup>TH</sup> TO 38<sup>TH</sup> STREETS

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

WITNESSETH:

WHEREAS, the City of Lincoln and the State of Nebraska Department of Roads have previously entered into a program agreement for Project No. STPC-5212(5) executed by the City on July 15, 2004 and executed by the State on August 5, 2004, and

WHEREAS, it now becomes necessary that the agreement be supplemented to incorporate the following language into this program agreement it pertains to invoicing, state letting and responsible charge (RC). This supplemental agreement shall supersede all relevant sections within the original agreement, and shall become effective upon execution by both parties.

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

SECTION 1. DEFINITIONS

For purposes of this agreement, the following definitions will apply:

**Fully Qualified** means a person who has satisfactorily completed all applicable State training courses and who has met the other requirements necessary to be included on the State list of qualified Local Public Agency "Responsible Charge" (RC's).

**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 entity. A person is not a full-time employee if that person provides outside private consulting services, or is employed by any private entity, unless that person can prove to the State 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 entity included on

a list of entities determined by the State and approved by the Federal Highway Administration (FHWA), as fulfilling public or quasi-public functions.

**Responsible Charge** means the public employee who is fully empowered by the 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 and development through construction project activities, including all environmental commitments before, during and after construction. The 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 options, working directly with stakeholders, making decisions, and actively monitoring project construction. It is understood that RC may delegate or contract certain technical tasks associated with the project so long as RC actively manages and represents the owner's interests in the delegated technical tasks.

SECTION 2. RESPONSIBLE CHARGE (RC)

- A. The LPA hereby designates (9) as the RC for this project.
- B. Duties and Assurances of the LPA for this project.
  - 1. The LPA has authorized and fully empowered the RC to be in day-to-day responsible charge of the subject Federal-aid project; this does not mean merely supervising, overseeing or delegating various tasks, it means active day-to-day involvement in the project including identifying issues, investigating options, working directly with stakeholders, and decision making.
  - 2. The RC is a full-time employee of the LPA or of another entity as defined in "Public Employee" above.
  - 3. The RC is fully qualified and has successfully completed required training to serve as an RC.
  - 4. The LPA shall allow the RC to spend all time reasonably necessary to properly discharge all duties associated with the project, including ensuring that all aspects of the project, from planning through post-construction activities, remain eligible for Federal-aid highway project funding.
  - 5. The LPA shall not assign other duties to the RC that would affect his or her ability to properly carry out the duties set out in this agreement.
  - 6. The LPA shall provide necessary office space, materials and administrative support for the RC.

7. The LPA shall fully cooperate with, support and not unreasonably interfere with day-to-day control of the RC concerning the acts necessary for making the project eligible for Federal funding.
8. The LPA shall take all necessary actions and make its best good faith efforts 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 CFR 635.105.
9. The LPA agrees to take all necessary actions and make its best good faith efforts to ensure that the RC's work on the project would be deemed to meet the same standards that the State must meet under 23 CFR 635.105.
10. The LPA shall comply with the conflict-of-interest requirements of 23 CFR 1.33.
11. If the designated RC becomes no longer assigned to the project during the design phase, the LPA shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer and the LPD Project Coordinator; after such notification the LPA shall replace the RC no later than thirty calendar days or sooner if possible. If the designated RC becomes no longer assigned to the project in the letting or construction phases, the LPA shall, within one day or sooner if possible, notify verbally and in writing the State's LPD Quality Management Engineer, the LPD Project Coordinator, and the State District Representative; after such notification, the LPA shall replace the RC no later than ten calendar days or sooner if possible. The State will require the LPA to sign a supplemental agreement designating the replacement RC.
12. The LPA agrees that it 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. The LPA understands that failure to meet any eligibility requirements for Federal funding may result in the loss of all Federal funding for the project. In the event that the acts or omissions of RC, the LPA or its agents or representatives result in a finding that a project is ineligible for Federal funding, the LPA will be required to repay the State some or all previously paid Federal funds and any costs or expenses the State has incurred for the project, including but not limited to, those costs for the RC.

C. The LPA understands that the following are the duties of the RC:

1. Serve as the LPA's contact for issues or inquiries for Federal-aid projects assigned by the LPA.
2. Ensure that all applicable Federal, State and local laws, regulations, policies and guidelines are followed during the development and construction of the project.
3. Know and follow the State's LPA Guidelines Manual for Federal-Aid Projects.
4. Have active day-to-day involvement in identifying issues, investigating options, working directly with stakeholders, and decision making.
5. Ensure that the project plans and specifications are sealed, signed and dated by a professional licensed engineer in the State of Nebraska, and that estimates have been prepared and the construction has been observed by a professional engineer licensed in the State of Nebraska or a person under direct supervision of a professional engineer licensed in the State of Nebraska (reference Neb. Rev. Stat. §81-3445).
6. Competently manage and coordinate the project day-to-day operations, including all project related decisions, on behalf of the LPA, which includes the LPA's governing body, staff and any extended staff dedicated to the project such as consulting engineers.
7. Ensure that project documents are thoroughly checked, reviewed and have had quality control measures applied, prior to submitting to the State and/or FHWA.
8. Monitor the progress and schedule of the project and be responsible for ensuring that the project is completed on time in accordance with established milestone dates.
9. Notify and invite the State to all coordination meetings, environmental scoping meetings, Plan-In-Hand review, public meetings/hearings.
10. Keep the State informed of all project issues.
11. Arrange preconstruction conference.
12. Keep the State's District Construction Representative informed of project start, and ending dates and other scheduled construction milestones.
13. Prepare contractor change orders and supplemental agreements.
14. Properly serve as the LPA's representative, and to visit the project site during construction frequency commensurate with the magnitude and complexity of the project.

15. Ensure that proper construction management processes have been developed and implemented for the project.
16. Serve as a steward of the public funds, i.e. ensure that the public gets what it is paying for.
17. Attend all required training including the annual workshop.

### SECTION 3. LETTING

The State agrees to receive and review all plans, specifications, estimates and surveys of the LPA to ensure they conform to Federal Standards and to advertise, conduct a letting and receive bids for this project. The selection of low bidders and the awarding of a contract or contracts shall be concurred in by the LPA and the contract shall be signed by the LPA.

Prior to advertising the project for bids, the LPA shall submit a Right-of-Way Certificate and the final plans package (100 percent plans, specifications, engineers' estimate, status of utilities, environmental permits and contract bidding documents) to the State's Local Projects Division Project Coordinator. The State will review the submitted items and proceed with advertising the project for bids. The selection of low bidders and awarding of a contract or contracts must be concurred in and signed by the LPA prior to State award.

### SECTION 4. PAYMENT

The State will pay the contractor and consultant directly as follows.

- A. The LPA Responsible Charge shall submit the LPA approved **preliminary engineering** invoice and progress report to the State's Local Projects Division Coordinator. The Local Projects Division Project Coordinator will forward the approved preliminary engineering invoice and progress report to the State's Planning and Project Development Division for payment processing. The State will make payment directly to the engineering firm and/or agency for the preliminary engineering.
- B. All project contractor construction costs will be paid directly to the contractor by the State. Progress invoices and final invoices shall be prepared by the LPA using **Site Manager software** and must be approved by the LPA Responsible Charge before payment to the Contractor can be made by the State.
- C. The LPA Responsible Charge shall submit the LPA approved **construction engineering** invoice and progress report to the State District Construction Representative for **approval of payment**, with a copy to the State's Local Projects Division Coordinator. The State District Construction Representative will forward the

invoice and progress report to the State's **Planning and Project Development Division** for payment processing. The State will make payment directly to the engineering firm and/or agency for the construction engineering.

SECTION 5. Except as specifically amended by this Supplemental Agreement, all terms and conditions of the agreement executed by the City on July 15, 2004, and by the State on August 5, 2004, shall remain in effect.

IN WITNESS WHEREOF, the parties hereto 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 \_\_\_\_\_, 2010.

WITNESS:  
Joan Ross

CITY OF LINCOLN  
Chris Beutler

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

\_\_\_\_\_  
Local Projects Division Engineer

RECOMMENDED:  
Richard J. Ruby, P.E.

\_\_\_\_\_  
District 1 Engineer

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