February 2017

IOWA DEPARTMENT OF TRANSPORTATION
Cooperative Agreement
For Primary Road Project

County	Pottawattamie
City	Council Bluffs
Project No.	STBG-SWAP-1642(686)--SG-78 ITS-1642(646)--25-78 STP-A-1642(646)--86-78 ITS-29-2(66)47--25-78
Iowa DOT Agreement No.	2023-16-036
Staff Action No.	

This Agreement, is entered into by and between the Iowa Department of Transportation, hereinafter designated the "DOT", and the city of Council Bluffs, 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 South Expressway within the city of Council Bluffs, Pottawattamie 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):

- Agreement No. 4-22-STBG-SWAP-008 for STBG Federal-aid Swap funds was executed by the DOT and LPA on October 18, 2022, and October 12, 2022, respectively; and
- Agreement No. 2006-16-058 for a fiber optic installation on I-29/80 and other local streets within the city of Council Bluffs was executed by the DOT and LPA on July 13, 2006, and June 12, 2006, respectively; and
- Addendum No. 2006-16-058A to amend the funding for a fiber optic installation on I-29/80 and other local streets within the city of Council Bluffs was executed by the DOT and LPA on April 17, 2007, and April 9, 2007, respectively; and
- Agreement No. 2009-16-024 for an Intelligent Transportation System (ITS) installation on I-29, I-80, I-480, I-680, U.S. 275, U.S. 6, Iowa 92 and Iowa 192 and in and around the city of Council Bluffs and fiber sharing was executed by the DOT and LPA on January 22, 2009, and January 12, 2009, 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 ZACHARY A. GUNSOLLEY. The LPA's contact person shall be the DAVID VERMILLION.

c. The LPA shall be responsible for the development and completion of the following described primary highway project:

Portland Cement Concrete (PCC) pavement replacement in the city of Council Bluffs on South Expressway from I-80 north approximately 0.7 mile to 21st Avenue.

d. It is understood that fiber optic communication lines shared between the DOT, LPA and the Iowa Communications Network (ICN) are deemed to be in conflict with the proposed construction of the LPA project. As part of the LPA project, the DOT has requested that the LPA relocate or adjust said shared fiber optic communication lines. The shared fiber optic lines are utilized by the DOT (50%), LPA (25%) and ICN (25%) and the cost to relocate or adjust the shared fiber optic communication lines will be distributed in the same manner.

2. Project Costs

a. The total cost of the relocation or adjustment of the shared fiber optic communication lines is estimated to be $150,000 and will be represented as a non-participating division of the LPA project.

b. The DOT shall reimburse the DOT LPA 50% of the cost to relocate or adjust the shared fiber optic communication lines. The amount paid by the DOT upon completion of construction and proper billing by the LPA will be determined by the actual quantities in place and the accepted bid at the contract letting.

c. The LPA will bear all costs except those allocated to the DOT under other terms of this Agreement.

d. The DOT shall invoice the ICN for its share of the project costs as a part of an existing fiber sharing agreement.

3. Project Design

a. The LPA or its consultant shall be responsible for the design of the fiber optic communication line relocation or adjustment.

4. 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 3.010, Project Development Submittal Dates and Information, published by the DOT's Local Systems Bureau.

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. 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.

d. The LPA shall be the contracting authority for the project.

5. 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.

6. Payments and Reimbursements

a. The LPA shall be responsible for making initial payments to the consultant(s) and 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.

7. 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 A which is attached hereto and by this reference incorporated into this agreement.

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.

IN WITNESS WHEREOF, each of the parties hereto has executed Agreement No. 2023-16-036 as of the date shown opposite its signature below.

CITY OF COUNCIL BLUFFS:

By: _____ Date_____, 20___.
Title: Mayor

I, _____, certify that I am the Clerk of the City, and that _____, who signed said Agreement for and on behalf of the City was duly authorized to execute the same on the day of_____, 20___.

Signed: _____
City Clerk of Council Bluffs, Iowa.

IOWA DEPARTMENT OF TRANSPORTATION:

By:_____ Date_____, 20___.
Zachary A. Gunsolley
Western Region Local Systems Field Engineer

EXHIBIT A

UTILIZATION OF TARGETED SMALL BUSINESS (TSB) ENTERPRISES ON NON-FEDERAL AID PROJECTS (THIRD-PARTY STATE-ASSISTED PROJECTS)

In accordance with Iowa Code Section 19B.7, it is the policy of the Iowa Department of Transportation (Iowa DOT) that Targeted Small Business (TSB) enterprises shall have the maximum practicable opportunity to participate in the performance of contracts financed in whole or part with State funds.

Under this policy the Recipient shall be responsible to make a positive effort to solicit bids or proposals from TSB firms and to utilize TSB firms as contractors or consultants. The Recipient shall also ensure that the contractors or consultants make positive efforts to utilize TSB firms as subcontractors, subconsultants, suppliers, or participants in the work covered by this agreement.

The Recipient's "positive efforts" shall include, but not be limited to:

1. Obtaining the names of qualified TSB firms from the Iowa Economic Development Authority (515-348-6159) or from its website at: https://www.iowaeda.com/small-business/targeted-small-business/

2. Notifying qualified TSB firms of proposed projects involving State funding. Notification should be made in sufficient time to allow the TSB firms to participate effectively in the bidding or request for proposal (RFP) process.

3. Soliciting bids or proposals from qualified TSB firms on each project, and identifying for TSB firms the availability of subcontract work.

4. Considering establishment of a percentage goal for TSB participation in each contract that is a part of this project and for which State funds will be used. Contract goals may vary depending on the type of project, the subcontracting opportunities available, the type of service or supplies needed for the project, and the availability of qualified TSB firms in the area.

5. For construction contracts:

    a) Including in the bid proposals a contract provision titled "TSB Affirmative Action Responsibilities on Non-Federal Aid Projects (Third-Party State-Assisted Projects)" or a similar document developed by the Recipient. This contract provision is available from the Administering Bureau.

    b) Ensuring that the awarded contractor has and shall follow the contract provisions.

6. For consultant contracts:

    a) Identifying the TSB goal in the Request for Proposal (RFP), if one has been set.

    b) Ensuring that the selected consultant made a positive effort to meet the established TSB goal, if any. This should include obtaining documentation from the consultant that includes a list of TSB firms contacted; a list of TSB firms that responded with a subcontract proposal; and, if the consultant does not propose to use a TSB firm that submitted a subcontract proposal, an explanation why such a TSB firm will not be used.

The Recipient shall provide the Iowa DOT the following documentation:

1. Copies of correspondence and replies, and written notes of personal and/or telephone contacts with any TSB firms. Such documentation can be used to demonstrate the Recipient's positive efforts and it should be placed in the general project file.

2. Bidding proposals or RFPs noting established TSB goals, if any.

3. Form 260017 "Checklist and Certification for the Utilization of TSBs" shall be filled out upon completion of each project, and sent to Iowa Department of Transportation, Civil Rights Bureau, 800 Lincoln Way, Ames, IA 50010: https://iowadot.seamlessdocs.com/f/ChecklistandCertforUtilizationofTSBonNonFederalProjects.