



## REPORT/RECOMMENDATION

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| <b>To:</b> MAYOR AND COUNCIL   | <b>Agenda Item #</b> <u>IV. N.</u>   |
| <b>From:</b> Jack Sullivan, PE<br>Assistant City Engineer  | <input checked="" type="checkbox"/> <b>Action</b><br><input type="checkbox"/> <b>Discussion</b><br><input type="checkbox"/> <b>Information</b> |
| <b>Date:</b> January 17, 2012  |  |
| <b>Subject:</b> Resolution No. 2012-22 Approving Agreement No. 00354 Minnesota Department of Transportation – Bike Boulevard Project |  |

**Recommendation:**

Authorize Mayor to sign resolution, and Mayor and City Manager to sign attached agreement.

**Info/Background:**

This agreement is required by the State of Minnesota in order for the City of Edina to receive federal funds from the Transit for Livable Communities grants.

**ATTACHMENTS:**

- Resolution No. 2012-22
- State of Minnesota Agency Agreement Between Department of Transportation and the City of Edina for Federal Participation in Preliminary Engineering – MNDOT Agreement No. 00354

**RESOLUTION NO. 2012-22  
APPROVING STATE OF MINNESOTA AGENCY AGREEMENT  
BETWEEN DEPARTMENT OF TRANSPORTATION AND THE CITY OF EDINA  
FOR FEDERAL PARTICIPATION IN PRELIMINARY ENGINEERING  
MNDOT AGREEMENT NO. 00354**

**WHEREAS**, the City of Edina has been awarded federal funds for transportation projects;

**WHEREAS**, pursuant to Minnesota Stat. Sect. 161.36, the Commissioner of Transportation be appointed as Agent of the City of Edina to accept as its agent, federal aid funds which may be made available for eligible transportation related projects;

**NOW, THEREFORE, BE IT RESOLVED**, Mayor James B. Hovland and City Manager Scott H. Neal, are hereby authorized and directed for and on behalf of the City to execute and enter into an agreement with the Commissioner of Transportation prescribing the terms and conditions of said federal aid participation as set forth and contained in " Minnesota Department of Transportation Agency Agreement No. 00354", a copy of which said agreement was before the City Council and which is made a part hereof by reference.

ADOPTED this 17<sup>th</sup> day of January, 2012.

Attest:

\_\_\_\_\_  
Debra A. Mangen, City Clerk

\_\_\_\_\_  
James B. Hovland, Mayor

STATE OF MINNESOTA    )  
COUNTY OF HENNEPIN   ) SS  
CITY OF EDINA            )

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of January 17, 2012, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

STATE OF MINNESOTA AGENCY AGREEMENT  
BETWEEN  
DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF EDINA

FOR FEDERAL PARTICIPATION IN PRELIMINARY ENGINEERING  
FOR  
S.P. 120-091-001; M.P. NMTP 2712(079)

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This agreement is entered into by and between City of Edina ("City") and the State of Minnesota acting through its Commissioner of Transportation ("MnDOT"),

Pursuant to Minnesota Statutes Section 161.36, the City desires MnDOT to act as the City's agent in accepting federal funds on the City's behalf for the construction, improvement, or enhancement of transportation financed either in whole or in part by federal funds, hereinafter referred to as the "Project"; and

The City is proposing a federal aid project to hire a consultant to perform preliminary engineering for the proposed Edina Bicycle Boulevards project, hereinafter referred to as the "Preliminary Engineering;" and

The Preliminary Engineering is eligible for the expenditure of federal aid funds, and is identified in MnDOT records as State Project 120-091-001, and in Federal Highway Administration ("FHWA") records as Minnesota Project NMTP 2712(079); and

MnDOT requires that the terms and conditions of this agency be set forth in an agreement.

THE PARTIES AGREE AS FOLLOWS:

I. DUTIES OF THE CITY.

A. DESIGNATION. The City designates MnDOT to act as its agent in accepting federal funds in its behalf made available for the Project.

B. ELIGIBILITY / COSTS. The estimated cost of the Preliminary Engineering is \$30,000.

1. It is anticipated that 100% (up to \$ 30,000) of the cost of the Preliminary Engineering is to be paid from federal funds made available by the FHWA. The City will pay any part of the cost or expense of the work that the FHWA does not pay.
2. Any costs incurred by the City prior to authorization of the Federal Funds, will not be eligible for federal participation.

3. Eligible cost and expense, if approved, may consist of the following:
  - a) The cost of developing an environmental document, performing necessary design surveys, development of construction plans and specifications, and any testing necessary for the development of plans for the Edina Bike Boulevard project,
  - b) The direct labor charges for City employees for the time that said employees are performing work pursuant to this agreement must be documented in a Public Interest Finding and approved by the FHWA. Said labor charges may include the prorata share of "labor additives" applicable to said labor charges. Costs to the City of "labor additives" consisting of holiday pay, vacation, sick leave, retirement, pension, unemployment taxes, compensation and liability insurance, lost time charges and similar costs incidental to labor employment will be reimbursed only when supported by adequate records.
  - c) The applicable equipment rental charges for City owned equipment used by the City and mileage charges for employee owned vehicles used by the City on work performed pursuant to this agreement, at rates reflective of the City actual cost.
  - d) Expenditures for materials, supplies, mechanical data processing and equipment rental, limited to the actual expenditures for the purposes of this agreement.
  - e) The cost incurred by the City to employ outside forces to perform any or all of the work pursuant to this agreement, subject to the provisions of section I.D. SUBLETTING.
4. Expenditures for general administration, supervision, maintenance and other overhead or incidental expenses of the City are not eligible for federal participation.
5. Acceptability of costs under this agreement will be determined in accordance with the cost principles and procedures set forth in the applicable Federal Acquisition Regulations, Contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR) 31 which is hereby incorporated by reference and made a part of this agreement.
6. For costs expected to exceed \$ 30,000, the City must request the preparation and execution of a supplement to this agreement, prior to incurring such costs.

#### C. STAFFING.

1. The City will designate a publicly employed registered engineer, ("Project Engineer"), to be in responsible charge of the Project and to supervise and direct the work performed under any contract let for the Project. If City elects to use a private consultant for engineering services, the City will provide a qualified, full-time public employee of the City, to be in responsible charge of the Project. The services of the City to be performed pursuant to this agreement may not be assigned, sublet, or transferred unless the City is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the City from its primary

responsibility for performance of the work.

2. During the progress of the work on the Project, the City authorizes its Project Engineer to request in writing specific engineering and/or technical services from MnDOT, pursuant to Minnesota Statutes Section 161.39. Such services may be covered by other technical service agreements. If MnDOT furnishes the services requested, and if MnDOT requests reimbursement, then the City will promptly pay MnDOT to reimburse the state trunk highway fund for the full cost and expense of furnishing such services. The costs and expenses will include the current MnDOT labor additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit. Provision of such services will not be deemed to make MnDOT a principal or co-principal with respect to the Project.
  3. The City will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project.
- D. SUBLETTING. The City will prepare request for proposals in accordance with Minnesota law and applicable Federal laws and regulations.
1. The City will solicit proposals for Preliminary Engineering after obtaining written notification from MnDOT that the FHWA has authorized the Project. Any Project advertised prior to authorization will not be eligible for federal reimbursement.
  2. The City will prepare the request for proposal, which will include all of the federal-aid provisions supplied by MnDOT.
  3. The City will prepare and publish the proposals solicitation for the Project as required by state and federal laws. The City will include in the solicitation the required language for federal-aid contracts as supplied by MnDOT. The solicitation will state where the City will receive the sealed proposals.
  4. The City may not include other work in the contract for the authorized Project without obtaining prior notification from MnDOT that such work is allowed by FHWA. Failure to obtain such notification may result in the loss of some or all of the federal funds for the Project.
  5. The City will prepare proposal packages and prepare and distribute any addendums, if needed.
  6. The City will receive open, and evaluate proposals.
  7. After the proposals are opened, the City will consider the proposals begin negotiations on the price of the Preliminary Engineering in accordance with the practice commonly known as Quality Based Selection. If the proposal contains a goal for Disadvantaged Business Enterprises, the City will not award the bid until it has received certification of the Disadvantaged Business Enterprise participation from the MnDOT Equal Employment Opportunity Office.
  8. This written consent will in no way relieve the City from its primary responsibility for performance of the work. Subcontractor agreements must contain all appropriate terms and conditions of this agreement.

#### E. CONTRACT ADMINISTRATION.

1. The City will request approval from MnDOT for all costs in excess of the amount of federal funds previously approved for the Project prior to incurring such costs. Failure to obtain such approval may result in such costs being disallowed for reimbursement.
2. The City will prepare reports, keep records, and perform work so as to enable MnDOT to collect the federal aid sought by the City. The City will retain all records and reports in accordance with MnDOT's record retention schedule for federal aid projects.
3. Upon completion of the Project, the Project Engineer will determine whether the work will be accepted.

#### F. PAYMENTS.

1. The entire cost of the Project is to be paid from federal funds made available by the FHWA and by other funds provided by the City. The City will pay any part of the cost or expense of the Project that is not paid by federal funds.
2. The City may request partial payments not more than once each thirty (30) days. The Project Engineer will certify each partial payment.
3. The invoice and supplements thereto, will contain all details that may be necessary for a proper audit. Such details will consist of at least the following:
  - (a) A breakdown of labor by individual, classification, dates and hours worked times the applicable rate to arrive at a total dollar amount for each individual.
  - (b) The labor additive shall be applied to total labor dollars.
  - (c) The equipment charges shall be broken down by type of equipment times the applicable rate and dates used to arrive at total equipment charges.
  - (d) A detailed breakdown of outside services used and supporting invoices and documentation that costs of outside services have been paid.
  - (e) Detail for materials, supplies, and other items with the description, units, and unit prices included in the invoice. If materials or supplies are purchased from an outside source, a copy of that invoice should be included.
  - (f) The invoices will include 100% of eligible charges applicable to the Preliminary Engineering so that the prorata share of federal and City participation can be applied to the total costs.
4. Following certification of the final estimate, the City may request reimbursement for costs eligible for federal funds. The City's request will be made to MnDOT

and will include a copy of the certified final estimate along with the required records.

5. Reimbursement of costs under this agreement will be based on actual costs.

G. LIMITATIONS.

1. The City will comply with all applicable Federal, State, and local laws, ordinances, and regulations.
2. Nondiscrimination. It is the policy of the FHWA and the State of Minnesota that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 U.S.C. 2000d). Through expansion of the mandate for nondiscrimination in Title VI and through parallel legislation, the proscribed bases of discrimination include race, color, sex, national origin, age, and disability. In addition, the Title VI program has been extended to cover all programs, activities and services of an entity receiving Federal financial assistance, whether such programs and activities are Federally assisted or not. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in, or is denied the benefits of, the program or activity on the grounds of race, color, national origin, sex, age, or disability. It is the responsibility of the City to carry out the above requirements.
3. Workers' Compensation. Any and all employees of the City or other persons while engaged in the performance of any work or services required or permitted by the City under this agreement will not be considered employees of MnDOT, and any and all claims that may arise under the Workers' Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, will in no way be the obligation or responsibility of MnDOT. The City will require proof of Workers' Compensation Insurance from any contractor and sub-contractor.

H. AUDIT.

1. The City will comply with the Single Audit Act of 1984 and Office of Management and Budget (OMB) circular A-133 including amendments and successors thereto, which are incorporated herein by reference.
2. As provided under Minnesota Statutes Section 16C.05, subdivision 5, all books, records, documents, and accounting procedures and practices of the City are subject to examination by the United States Government, MnDOT, and either the Legislative Auditor or the State Auditor as appropriate, for a minimum of six years. The City will be responsible for any costs associated with the performance of the audit.

- I. MAINTENANCE. The City assumes full responsibility for the operation and maintenance of any facility constructed or improved under this Agreement.

- J. CLAIMS. The City acknowledges that MnDOT is acting only as the City's agent for acceptance and disbursement of federal funds, and not as a principal or co-

principal with respect to the Project. The City will pay any and all lawful claims arising out of or incidental to the Project including, without limitation, claims related to contractor selection (including the solicitation, evaluation, and acceptance or rejection of bids or proposals), acts or omissions in performing the Project work, and any *ultra vires* acts. The City will indemnify, defend (to the extent permitted by the Minnesota Attorney General), and hold MnDOT harmless from any claims or costs arising out of or incidental to the Project, including reasonable attorney fees incurred by MnDOT. The City's indemnification obligation extends to any actions related to the certification of DBE participation, even if such actions are recommended by MnDOT.

- K. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA). This Agreement requires the City to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The City is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the City provides information to the MnDOT as required.

The City shall comply with the following:

- 1, Reporting of Total Compensation of the City's Executives.
  - (a) The City shall report the names and total compensation of each of its five most highly compensated executives for the City's preceding completed fiscal year, if in the City's preceding fiscal year it received:
    - i. 80 percent or more of the City's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

Executive means officers, managing partners, or any other employees in management positions.

- (b) Total compensation means the cash and noncash dollar value earned by the executive during the City's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - i. Salary and bonus.

- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
2. The City must report executive total compensation described above to the MnDOT by the end of the month during which this agreement is awarded.
  3. The City will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this agreement. This number shall be provided to MnDOT on the plan review checklist submitted with the plans for each project. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.
  4. The City's failure to comply with the above requirements is a material breach of this agreement for which the MnDOT may terminate this agreement for cause. The MnDOT will not be obligated to pay any outstanding invoice received from the City unless and until the City is in full compliance with the above requirements.

## II. DUTIES OF MnDOT.

- A. ACCEPTANCE. MnDOT accepts designation as Agent of the City for the receipt and disbursement of federal funds and will act in accordance herewith.
- B. PROJECT ACTIVITIES.
  1. MnDOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project, and for reimbursement of eligible costs pursuant to the terms of this agreement.
  2. MnDOT will provide to the City copies of the required Federal-aid clauses to be included in the proposal solicitation and will provide the required Federal-aid provisions to be included in the Proposal.
  3. MnDOT will review and certify the DBE participation and notify the City when certification is complete. If certification of DBE participation cannot be obtained, then the City must decide whether to proceed with awarding the contract. Failure

to obtain such certification will result in the project becoming ineligible for federal assistance, and the City must make up any shortfall.

C. PAYMENTS.

1. MnDOT will receive the federal funds paid by the FHWA for the Project, pursuant to Minnesota Statutes § 161.36, Subdivision 2.
2. MnDOT will review and certify each partial pay request. Following certification of the partial estimate, MnDOT will reimburse the City, from said federal funds made available to the Project, for each partial payment request, subject to the availability and limits of those funds.
3. Upon completion of the Project, the City will prepare a final payment request in accordance with the terms of this agreement. MnDOT will review and certify the final payment request with a final audit.
4. No more than 90% of the reimbursement due under this agreement will be paid until completion of the final audit and approval by MnDOT's authorized representative.
5. If MnDOT does not obtain funding from the FHWA or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the City may continue the work with local funds only, until such time as MnDOT is able to process the federal aid reimbursement requests.

D. AUTHORITY. MnDOT may withhold federal funds, if MnDOT or the FHWA determines that the Project was not completed in compliance with federal requirements.

E. INSPECTION. MnDOT, the FHWA, or duly authorized representatives of the state and federal government will have the right to audit, evaluate and monitor the work performed under this agreement. The City will make available all books, records, and documents pertaining to the work hereunder, for a minimum of seven years following the closing of the construction contract.

III. AUTHORIZED REPRESENTATIVES. Each authorized representative will have responsibility to administer this agreement and to ensure that all payments due to the other party are paid pursuant to the terms of this agreement.

A. The City authorized representative is Wayne Houle, Edina City Engineer, 7450 Metro Boulevard, Edina, MN 55424, or his successor.

B. MnDOT's authorized representative is Lynnette Roshell, Minnesota Department of Transportation, State Aid for Local Transportation, 395 John Ireland Boulevard, Mail Stop 500, St Paul, MN 55155, phone 651-366-3822, or her successor.

IV. TORT LIABILITY. Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs MnDOT liability.

- V. ASSIGNMENT. Neither party will assign or transfer any rights or obligations under this agreement without prior written approval of the other party.
- VI. AMENDMENTS. Any amendments/supplements to this Agreement must be in writing and be executed by the same parties who executed the original agreement, or their successors in office.
- VII. TERM OF AGREEMENT. This agreement will be effective upon execution by the City and by appropriate State officials, pursuant to Minnesota Statutes Section 16C.05, and will remain in effect for five (5) years from the effective date or until all obligations set forth in this agreement have been satisfactorily fulfilled, whichever occurs first.
- VIII. TERMINATION. This agreement may be terminated by the City or MnDOT at any time, with or without cause, upon ninety (90) days written notice to the other party. Such termination will not remove any unfulfilled financial obligations of the City as set forth in this Agreement. In the event of such a termination the City will be entitled to reimbursement for MnDOT-approved federally eligible expenses incurred for work satisfactorily performed on the Project to the date of termination subject to the terms of this agreement.

Remainder of this page left intentionally blank.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

CITY

City certifies that the appropriate person(s) have executed the contract on its behalf as required by applicable resolutions, ordinances, or charter provisions

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Title: Director,  
State Aid for Local Transportation

Date: \_\_\_\_\_

COMMISSIONER OF ADMINISTRATION

By: \_\_\_\_\_

Date: \_\_\_\_\_