

#1D

To: City Council and Mayor
From: Matt Kerbs, Deputy City Attorney
Date: May 10, 2022
Re: State/Local Agreement for Project No. A022 (411) Safety Improvements
on S. 5th Ave.

Having reviewed the above referenced Agreement between the City of Pocatello and Idaho Transportation Department, I have no legal concerns with the Council approving and authorizing the Mayor to sign.

MK

EXECUTIVE SUMMARY
S. 5TH AVE. SAFETY IMPROVEMENT PROJECT –
AGREEMENTS/CONTRACTS

TO: Mayor Blad and City Council Members
FROM: Merrill Quayle, P.E., Public Works/Development Engineer
Becky Robison, MPA, Project Manager
DATE: Meeting Date – May 19, 2022
SUBJECT: S. 5th Ave. Safety Improvement Project

REQUEST

City Council may authorize the Mayor to execute the State and Local Agreement between the State of Idaho Transportation Department and the City of Pocatello, subject to legal review. Staff also requests City Council to authorize the payment of \$65,689 as the current required match, so the project may move forward to bid.

BACKGROUND

In 2019, the City was awarded and accepted a Local Highway Safety Improvement Program (LHSIP) for the South 5th Avenue Safety Improvement Project. The project has been designed and is ready to proceed to the construction phase.

Local Highway Technical Advisory Council, acting on behalf of the Idaho Transportation Department, sent to the City the State/Local Agreement (Construction) to initiate the construction phase.

Due to the ITD cost estimate for this project, the estimated scope exceeds the programmed funds. LHTAC has committed to share the cost overage per the estimate to this critical project. The City's match requirements for this LISP Grant is 7.34% for the programmed cost. The fiscal impact to the City's FY22 budget for the State/Local Agreement (Construction) is \$65,689. Funding for the local match will come from Fund 70.

STAFF RECOMMENDATION

Staff recommends that the Council:

1. Authorize the Mayor to execute the State/Local Agreement (Construction) with the Idaho Transportation Department for the South 5th Avenue Safety Improvement Project
2. Authorize payment of the current required local match from Fund 70 for \$65,689.

RESOLUTION NO. 2022-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POCATELLO, A MUNICIPAL CORPORATION OF IDAHO, AUTHORIZING A LOCAL CONSTRUCTION AGREEMENT BETWEEN THE IDAHO TRANSPORTATION DEPARTMENT AND THE CITY OF POCATELLO SETTING OUT TERMS AND CONDITIONS FOR THE CONSTRUCTION OF SAFETY IMPROVEMENTS ON A PORTION OF SOUTH 5TH AVENUE WITHIN THE CITY LIMITS; PROVIDING THAT A COPY OF THIS RESOLUTION SHALL BE ATTACHED TO SAID AGREEMENT; AND PROVIDING THAT AN EXECUTED COPY OF THE AGREEMENT AND THIS RESOLUTION SHALL BE PROVIDED TO THE IDAHO TRANSPORTATION DEPARTMENT.

WHEREAS, the Idaho Transportation Department, hereinafter called "ITD", has submitted a Construction Agreement stating obligations of ITD and the City of Pocatello, hereinafter called "City", for the construction of safety improvements on a portion of South 5th Avenue within City of Pocatello limits, Project No. A022 (411); and

WHEREAS, certain functions to be performed by ITD involve the expenditure of funds as set forth in the Agreement; and

WHEREAS, the City is fully responsible for its share of project costs as identified on the attached exhibit.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF POCATELLO AS FOLLOWS:

1. That the Agreement for the construction of safety improvements on a portion of South 5th Avenue is hereby approved.

2. That the Mayor and the City Clerk are hereby authorized to execute the Agreement on behalf of the City of Pocatello.

3. That this resolution be attached to the Agreement.

4. That copies of this Resolution as well as the Agreement shall be provided to ITD.

RESOLVED this 19th day of May, 2022.

CITY OF POCA TELLO, a municipal
corporation of Idaho

BRIAN C. BLAD, Mayor

ATTEST:

KONNI R. KENDELL, City Clerk

**STATE/LOCAL AGREEMENT
(CONSTRUCTION)**

**PROJECT NO. A022(411)
S 5TH AVE SAFETY IMPROV
BANNOCK COUNTY
KEY NO. 22411**

PARTIES

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the **IDAHO TRANSPORTATION DEPARTMENT**, hereafter called the **STATE**, and the CITY OF POCATELLO, acting by and through its Mayor and Council, hereafter called the **SPONSOR**.

PURPOSE

The **SPONSOR** has requested the **STATE** to program a project for federal participation in the costs of constructing several safety improvements, to consist of new raised median, new crosswalk, new flashing beacon and new sidewalk system, which has been designated as Project No. A022(411). This Agreement sets out the responsibilities of the parties in the construction and maintenance of the project.

Authority for this Agreement is established by Section 40-317 of the Idaho Code.

The Parties agree as follows:

SECTION I. GENERAL

1. This Agreement is entered into for the purpose of complying with certain provisions of the Federal-Aid Highway Act in obtaining federal participation in the construction of the project.
2. Federal participation in the costs of the project will be governed by the applicable sections of Title 23, U.S. Code (Highways) and rules and regulations prescribed or promulgated by the Federal Highway Administration.
3. Funds owed by the Sponsor shall be remitted to the State through the ITD payment portal at: <https://apps.itd.idaho.gov/PayITD>.
4. All information, regulatory and warning signs, pavement or other markings, and traffic signals, the cost of which is not provided for in the plans and estimates, must be

erected at the sole expense of the **SPONSOR** upon the completion of the project.

5. The location, form and character of all signs, markings and signals installed on the project, initially or in the future, shall be in conformity with the Manual of Uniform Traffic Control Devices as adopted by the **STATE**.
6. During construction, the latest edition of the **STATE's** *Guide for Utility Management* will be followed in all matters relating to utilities.
7. This State/Local Agreement (Construction) upon its execution by both Parties, supplements the State/Local Agreement (Project Development) by and between the same parties, dated May 18, 2020.
8. Sufficient Appropriation. It is understood and agreed that the **STATE** is a governmental agency, and this Agreement shall in no way be construed so as to bind or obligate the **STATE** beyond the term of any particular appropriation of funds by the Federal Government or the State Legislature as may exist from time to time. The **STATE** reserves the right to terminate this Agreement if, in its sole judgment, the Federal Government or the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the **STATE** to continue payments. Any such termination shall take effect immediately upon notice and be otherwise effective as provided in this Agreement.

SECTION II. That the **STATE** shall:

1. Enter into an Agreement with the Federal Highway Administration covering the federal government's pro rata share of construction costs.
2. Submit to FHWA a request for partial advance construction approval for the cost of construction of the project. FHWA approval of the partial advance construction request will allow a portion of the costs of construction incurred by the **SPONSOR** as of the date of FHWA approval to be eligible for federal participation in a future Federal-aid project agreement with FHWA. The amount scheduled for advance construction is \$50,000.

3. Advertise, open bids, prepare a contract estimate of cost based on the successful low bid and notify the **SPONSOR** thereof.
4. Award a contract for construction of the project, based on the successful low bid, if it does not exceed the **STATE'S** estimate of cost of construction by more than ten (10) percent. If the low bid exceeds the estimate by more than 10%, the bid will be evaluated, and if justified, the contract will be awarded and the **SPONSOR** will be notified.
5. Obtain concurrence of the **SPONSOR** before awarding the contract if the **SPONSOR'S** share of the low bid amount exceeds the amount set forth in Section III, Paragraph 1 by more than ten (10) percent.
6. Provide to the **SPONSOR** sufficient copies of the Contract Proposal, Notice to Contractors, and approved construction plans.
7. Designate a resident engineer and other personnel, as the **STATE** deems necessary, to supervise and inspect construction of the project in accordance with the plans and specifications in the manner required by applicable state and federal regulations. This engineer, or his authorized representatives, will prepare all monthly and final contract estimates and change orders, and submit all change orders to the **SPONSOR** for their concurrence. If the **SPONSOR'S** share of any change order exceeds \$1,000.00, the **STATE** will submit a statement to the **SPONSOR** indicating the amount owed by the **SPONSOR**.
8. Notify the **SPONSOR** when construction engineering and inspection (CE&I) costs have reached approximately 85% of the estimated cost for CE&I.
9. Maintain complete accounts of all project funds received and disbursed, which accounting will determine the final project costs.
10. Upon completion of the project, after all costs have been accumulated and the final voucher paid by the Federal Highway Administration, provide a statement to the **SPONSOR** summarizing the estimated and actual costs, indicating an adjustment for or against the **SPONSOR**. Any excess funds transmitted by the **SPONSOR** and not required for the project will be applied to any

outstanding balance the **SPONSOR** may have on a previously completed project. If no such outstanding balance exists, the excess funds will be returned to the **SPONSOR**.

11. Subject to the limitations hereinafter set forth, **STATE** shall indemnify, defend and save harmless **SPONSOR** from and against any and all demands, claims or liabilities caused by or arising out of any negligent acts by **STATE**, or **STATE's** officers, agents, and employees while acting within the course and scope of their employment, which arise from this project. Any such indemnification hereunder by **STATE** is subject to the limitations of the Idaho Tort Claims Act (currently codified at chapter 9, title 6, Idaho Code). Such indemnification hereunder by **STATE** shall in no event cause the liability of **STATE** for any such negligent act to exceed the liability limits set forth in the Idaho Tort Claims Act. Such indemnification shall in no event exceed the amount of loss, damages, expenses or attorney fees attributable to such negligent act, and shall not apply to loss, damages, expenses or attorney fees attributable to the negligence of **SPONSOR**.

SECTION III. That the **SPONSOR** shall:

1. Pay to the **STATE** before the advertisement for bids, the amount of **SIXTY FIVE THOUSAND, SIX HUNDRED EIGHTY-NINE DOLLARS (\$65,689)**, which is the **SPONSOR'S** estimated share of the cost for construction plus preliminary engineering, and construction engineering & inspection (CE&I) by the **STATE**. The actual cost to the **SPONSOR** will be determined from the total quantities obtained by measurement plus the actual cost of engineering and contingencies required to complete the work. CE&I will be approximately 15% of the total construction cost.
2. Upon approval of the lowest qualified bid received, if the **SPONSOR'S** share exceeds the amount set forth in Section III, Paragraph 1, transmit to the **STATE** the **SPONSOR's** portion of such excess cost.
3. Authorize the **STATE** to administer the project and make any necessary changes and decisions within the general scope of the plans and specifications. Prior approval of the **SPONSOR** will be obtained if it is necessary, during the life of the construction contract, to deviate from the plans and specifications to such a degree that the costs will be increased or the nature of the completed work will be significantly changed.

4. Designate an authorized representative to act on the **SPONSOR'S** behalf regarding action on change orders. That authorized representative's name is _____, Phone No. _____.
5. When change orders are submitted by the **STATE** for approval pursuant to Section II, Paragraph 7, the **SPONSOR** or its authorized representative shall give approval of same as soon as possible, but no later than ten (10) calendar days after receipt of the change order. If approval is delayed, any claims due to that delay shall be the responsibility of the **SPONSOR**.
6. Upon receipt of any statement referred to in Section II, Paragraphs 7 and 10, indicating an adjustment in cost against the **SPONSOR**, promptly remit to the **STATE** a check or warrant in that amount.
7. Maintain the project upon completion to the satisfaction of the **STATE**. Such maintenance includes, but is not limited to, preservation of the entire roadway surface, shoulders, roadside cut and fill slopes, drainage structures, and such traffic control devices as are necessary for its safe and efficient utilization. Failure to maintain the project in a satisfactory manner will jeopardize the future allotment of federal-aid highway funds for projects within the **SPONSOR'S** jurisdiction.
8. Agree that in the event future Federal funding for the advance construction portion is not available for the project, the **SPONSOR** forfeits all claims for reimbursement of all funds paid for the project, including costs previously reimbursed with Federal funds in the event the project is not completed.
9. Comply with Appendix A, Title 49 CFR, Part 21, attached hereto and made a part hereof.
10. To the extent permitted by Idaho law and as provided by the Idaho Tort Claims Act, indemnify, save harmless the State, regardless of outcome, from the expenses of and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by reason of any act or omission, neglect or misconduct of the Sponsor or its consultant in the design, construction and maintenance

of the work which is the subject of this Agreement, or Sponsor's failure to comply with any state or federal statute, law, regulation or rule. Nothing contained herein shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby expressly reserved.

EXECUTION

This Agreement is executed for the State by its Highways Construction and Operations Division Administrator, and executed for the Sponsor by the Mayor, attested to by the City Clerk, with the imprinted corporate seal of the City of Pocatello.

IDAHO TRANSPORTATION DEPARTMENT

Division Administrator
Highways Construction and Operations

ATTEST:

CITY OF POCATELLO

City Clerk

Mayor

(SEAL)

By regular/special meeting
City Clerk
on _____.

Financial Services

cf: 22411 SLA Const AC

WORKSHEET FOR STATE / LOCAL CONSTRUCTION AGREEMENTS

Key No: 22411
 Project No: A022(411)
 Project Name: S 5th Avenue Safety Improvements
 Sponsor: City of Pocatello
 Description of work: Several safety-related improvements on 5th Avenue in Pocatello including but not limited to a new raised median, a new crosswalk, a new rectangular rapid flashing beacon, and a new sidewalk system.
 Date of State/Local Agreement for Project Development: 5/18/2020

| | | | |
|---|-----------|----------------|--------------|
| TOTAL ESTIMATED COST OF CONSTRUCTION <i>Includes E&C</i> | \$314,739 | | |
| APPROVED FORCE ACCOUNT WORK | \$0 | | |
| PLUS PE BY STATE <i>(from 2101)</i> | \$1,000 | | |
| PLUS PL BY LHTAC <i>(from 2101)</i> | \$7,000 | | |
| PLUS PC <i>(from PC Agreements)</i> | \$0 | | |
| MINUS ALL NON-PARTICIPATING PARTICIPATING TOTAL | \$322,739 | | |
| MATCH PERCENTAGES | | FEDERAL | LOCAL |
| PERCENTAGE AMOUNTS | | 92.66% | 7.34% |
| MINUS FEDERAL MAXIMUM | | \$299,049.96 | \$23,689.04 |
| ADD Overage <i>(If Any To Local)</i> | | \$0 | |
| LOCAL SHARE OF CONSTRUCTION AMOUNT | | 299,050 | \$0 |
| | | | \$23,689 |

ADJUSTMENTS

| | |
|---|--------------------------|
| PLUS ALL NON-PARTICIPATING <i>(From above if work by contract)</i> | \$0 |
| MINUS FUNDS ADVANCED BY THE SPONSOR FOR STATE PE <i>(from PD Agreement)</i> | \$8,000 |
| MINUS APPROVED FORCE ACCOUNT WORK <i>(From above)</i> | \$0 |
| MINUS PRELIMINARY ENGINEERING PAID BY LOCAL | \$0 |
| <i>(If LPA has not rec'd reimbursement, use actual PC dollars paid by LPA)</i> | <i>"No PC Agreement"</i> |
| <i>(If LPA has rec'd reimbursement, use local match % of actual PC dollars paid by LPA)</i> | |
| <i>(Amounts must be supported by District Records Inspector Audit)</i> | |

CONSTRUCTION AMOUNT REQUIRED FROM SPONSOR AFTER ADJUSTMENTS **\$15,689**

| | | | |
|--------------------------------|-----------------------|-------------------------|---------------------|
| Construction Estimate (CN): | \$251,790.00 | Program Funds | |
| Non-Bid Items : | \$0.00 | CE: | \$1,000.00 |
| Contingencies (5%): | \$12,590.00 | CL: | \$6,000.00 |
| Const Engineering (CE&I 15%): | \$37,769.00 | CC: | \$22,000.00 |
| Const Admin (CL 4.5%): | \$11,331.00 | Contingency: | \$7,000.00 |
| Const Admin (CE .5%): | \$1,259.00 | CN: | \$160,000.00 |
| TOTAL CN ESTIMATED COST | \$314,739.00 | CN & CE ITIP | \$196,000.00 |
| Difference: | (\$118,739.00) | | |

Comments:
 Agreement Administrator: Kevin Kuther, P.E.
 Resident Engineer: Kevin Kuther, P.E.
 Construction Funds: \$50,000 Advance

PREPARED BY: Ryan Rush Date: 1/26/2022