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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



Victoria F. Sheehan
Commissioner

William Cass, P.E.
Assistant Commissioner

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Planning & Community Assistance
December 17, 2018

REQUESTED ACTION

1. Authorize the Department of Transportation to enter **retroactively** into **Local Project Agreements** (and their amendments) with municipalities and others eligible for State Aid Highway Construction in accordance with RSA 235 (State Aid Highway) to be effective upon Governor and Executive Council approval through June 30, 2019.
2. Authorize the Department of Transportation to annually report an informational item, within 90 days of the end of the State Fiscal Year, on the status of all active State Aid Highway projects.

Funding for this request is available based upon the source of funds for each particular project as established and funded and previously appropriated through the State's biennial budget and is contingent upon the availability of funds in the State Aid Highway Program.

EXPLANATION

The purpose of this **retroactive** request is to propose and approve that the Department of Transportation be allowed to enter into Local Project Agreements for State Aid Highway projects on a rolling basis, as requests come in from a municipality. A formal agreement as proposed will allow for better management and tracking of financial commitments to the projects, and for additional communication of program requirements and reference information. A sample agreement is attached.

These agreements, between the State and a Municipality to delineate responsibilities for providing services necessary to manage the design and construction of a state highway aid projects and to receive State Aid Highway funds under the applicable provisions of RSA 235, shall comply with the following requirements:

The municipality shall apply or has applied for funding on the form titled "Application for State Highway Aid Construction or Reconstruction of Class I, II and III Highways" available from the Department of Transportation, Bureau of Planning and Community Assistance. Upon receipt of the application, the Department of Transportation will conduct a review of the project application to indicate confirmation of a cost estimate to establish the baseline budget and proposed schedule for the project based on funding availability.

Once a municipality has appropriated funds for their match on the project, then the project can move forward through the design process. Projects are enrolled in the program with the year based on consideration of: projected availability of funds; anticipated design schedule; and other factors that may include and affect human health, public safety, or the environment. As part of enrollment into the program, the Municipality will be required to enter into a Local Project Agreement.

The State Aid Highway program has previously been funded with revenue generated as part of the Department's Operating budget of \$1.7M per year. The municipality typically provides a 33% match to provide total program of \$2.5M per year.

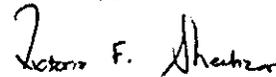
To assure the oversight of the Governor and Executive Council, the Department of Transportation also proposes to prepare an annual update of active projects in the State Aid Highway Program. Information will include identifying project information (Project Town, Name, Number, Current Scope of Work), as well as, current budget and schedule information for all active projects, as well as, overall program information. Through this annual reporting, the Governor and Executive Council will be kept abreast of the changes to the local projects. The Department of Transportation proposes to submit an Informational Item to the Governor and Executive Council by September 30 of each year (90 days after the end of the State Fiscal Year).

Approval of this method will increase the transparency and accountability of project work in the State Aid Highway program, and improve efficiency of project completion allowing the Department of Transportation to enter into agreements with a municipality that will be able to perform and complete the necessary work to improve their own infrastructure.

The Agreement has been approved by the Attorney General as to form.

It is respectfully requested that this item be approved.

Sincerely,



Victoria F. Sheehan
Commissioner

Attachment

**STATE BRIDGE AID PROGRAM
PROJECT AGREEMENT
FOR**

[PROJECT SPONSOR NAME]
STATE VENDOR #: _____
STATE PROJECT #: _____

THIS AGREEMENT, executed in *triplicate*, made and entered into this ____ day of _____, 20__, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and [PROJECT SPONSOR NAME] of [city/town], hereinafter called the "PROJECT SPONSOR".

WITNESSETH that,

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to _____ in the [city/town] of [city/town Name] is an eligible project for funding under the State Bridge Aid Program; and

WHEREAS, the DEPARTMENT has established State Bridge Aid Project # _____ (the "Project") for the aforesaid project, with the following project funding and target ad date as represented in the table below:

Ad Year: 20xx	State Share 80%	Local Share 20%	Non-Participation	Total Budget
Current Day Estimate				
Future Budget Limit (Current Estimate inflated to ad year)				

WHEREAS, the PROJECT SPONSOR desires to act as Sponsor and Manager of the Project; and

WHEREAS, the DEPARTMENT desires to cooperate with the PROJECT SPONSOR in accomplishing the Project;

NOW, THEREFORE, in consideration of the above premises and in further consideration of the agreements herein set forth by and between the parties hereto, it is mutually agreed as follows:

I. DUTIES AND RESPONSIBILITIES OF THE PROJECT SPONSOR:

- A. The PROJECT SPONSOR shall comply with all Federal and State of New Hampshire laws and rules, regulations, and policies as applicable under the Municipally-Managed State Bridge Aid Program.
- B. The PROJECT SPONSOR shall manage the design, environmental study, right-of-way acquisition and construction of the Project. This management is described in the current version of the DEPARTMENT's document titled "New Hampshire Department of Transportation Process for Municipally-Managed State Bridge Aid Program Projects", as it may be amended from time to time, and by reference is hereby made a part of this AGREEMENT.

- C. The PROJECT SPONSOR shall provide or cause to provide for both the maintenance of the Project during construction and subsequent maintenance of all Project elements once the work under this AGREEMENT is completed.
- D. In accordance with TRA 501.13, the PROJECT SPONSOR shall submit invoices to the DEPARTMENT for reimbursement of its share of the amounts paid to engineering, environmental and/or right-of-way consultants and construction contractors for the performance of the work set forth and agreed upon at the scoping meeting. The invoice structure shall include details of work completed consistent with the Scope of Work as defined in the Application, as well as backup information to support the charges. The PROJECT SPONSOR shall certify that the invoices properly represent payment for work that has been completed and paid for by the PROJECT SPONSOR.
- E. The PROJECT SPONSOR agrees to maintain financial records pertinent to the development of the Project for three (3) years beyond the date of the Project's final reimbursement letter from the DEPARTMENT, and to make the records available to the DEPARTMENT upon request.
- F. The PROJECT SPONSOR shall defend, indemnify and hold harmless the DEPARTMENT and its officials, agents and employees from and against any and all claims, liabilities or suits arising from (or which may be claimed to arise from) any act or omission of the PROJECT SPONSOR or its subcontractors in the performance of this AGREEMENT. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State of New Hampshire or the DEPARTMENT, which immunity is hereby reserved. This covenant shall survive the termination of this AGREEMENT.
- G. If there is a default by the PROJECT SPONSOR of any nature to this AGREEMENT, the PROJECT SPONSOR shall be required to reimburse the DEPARTMENT for all funds expended under this Project.

II. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT:

- A. The DEPARTMENT shall review the Project plans, environmental documents, and contract documents.
- B. The DEPARTMENT shall reimburse its share to the PROJECT SPONSOR after receipt and approval of properly documented invoices that have been certified by the PROJECT SPONSOR as properly representing work that has been completed and paid for by the PROJECT SPONSOR. Reimbursements will be made in accordance with the "New Hampshire Department of Transportation Process for Municipally-Managed State Bridge Aid Program Projects" as referenced in this Agreement in Section IB.

III. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE PROJECT SPONSOR:

- A. That the PROJECT SPONSOR will not incur any Project costs nor enter into any agreement with any third party, including but not limited to consultants, contractors, or engineers until such time that it receives a written notice to proceed from the DEPARTMENT to do so.

- B. That the maximum amount of funds available for this Project for reimbursement under this AGREEMENT from the DEPARTMENT shall be as set forth in the Table on page 1 herein. In establishing project budgets, a preliminary estimate to be completed for the project (typically by the DEPARTMENT), will identify the baseline project costs in the current year of funding. This cost will also be inflated to the projected year of construction with costs based on current DEPARTMENT processes and practices. This inflated cost will reflect the maximum amount of DEPARTMENT funding to be made available for the project. As the scope of the Project is finalized, should the costs for the Project exceed the amount budgeted, the DEPARTMENT agrees to review Project costs for consideration of additional funding. The DEPARTMENT will not be responsible for any expenses or costs incurred by the PROJECT SPONSOR under this AGREEMENT in excess of the above amount unless the DEPARTMENT expressly authorizes additional funding prior to the work being performed.
- C. That the PROJECT SPONSOR agrees to commence the Project within three (3) months after the date of the notice to proceed, advertise the Project for construction in State fiscal year ____, and complete the Project (including submittal of all final completion documents) within two (2) years after the date of the construction advertisement of the Project, unless earlier terminated as provided herein. The PROJECT SPONSOR may apply to the DEPARTMENT for an extension in writing explaining the reasons for the delay and proposing a new revised schedule that the PROJECT SPONSOR can achieve. Failure to meet either deadline without good cause or failure to submit an extension request letter may cause the DEPARTMENT to cancel its participation in this Project at its sole discretion. Any remaining funds will be forfeited. The PROJECT SPONSOR is responsible for informing and coordinating a new Project completion date that will need to be approved by the DEPARTMENT if any condition arises that may result in either deadline being unattainable.
- D. That the PROJECT SPONSOR will attend a meeting with the DEPARTMENT's representative after signing this AGREEMENT to discuss the Project's scope, budget and schedule. The PROJECT SPONSOR will subsequently provide a project schedule semi-annually (2 times per year) showing project milestones with completion dates and target dates. Failure to meet dates shown in the project schedule could delay funding for construction.
- E. This AGREEMENT is contingent upon the appropriation of sufficient funds from the State of New Hampshire Legislature. If sufficient funds are not appropriated, the DEPARTMENT may terminate this AGREEMENT upon thirty (30) days' written notice to the PROJECT SPONSOR. Such termination shall relieve the DEPARTMENT and the PROJECT SPONSOR from obligations under this AGREEMENT after the termination date.

**NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION**

PROJECT SPONSOR NAME

By: _____
Commissioner
Department of Transportation

By: _____
Title: _____

Authorized to enter into Agreement as
approved by Governor & Council on
