



**THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**



27A
Beaulac

**Victoria F. Sheehan
Commissioner**

**William Cass, P.E.
Assistant Commissioner**

Bureau of Highway Design
December 23, 2015

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department to enter into a State/Local Project Agreement for the Derry-Londonderry, I-93, Exit 4A project with the Towns of Derry (Vendor # 177379) and Londonderry (Vendor #177430) and authorize the Department to seek reimbursement for project costs through the Towns of Derry and Londonderry as established under the Agreement, effective upon Governor and Council authorization.

EXPLANATION

The Towns of Derry and Londonderry have commenced a municipally managed effort for the development of an Environmental Impact Statement (EIS) for the construction of a new Exit 4A interchange on Interstate 93 approximately 1 mile north of the existing Exit 4. The project is anticipated to include the development of new connector roadway, approximately one mile in length to the east of I-93, and the reconstruction and improvement along approximately 1.6 miles of existing Town roadways (North High Street, Folsom Road, Tsienneto Road) from the new connector easterly to NH 102. The Department has committed to assist the Towns in the development and finalization of the EIS for the project and to garner federal approval. This project agreement outlines the roles, responsibilities, and expectations of the Department and Towns in the completing the EIS. The Department will assume administrative oversight of the process with the Towns being financially responsible for completing the EIS. Following approval of the final EIS, the Department will assume full responsibility for the permitting, design, right-of-way acquisition and construction of the Exit 4A project in accordance with the State Transportation Improvement Plan (STIP). The project is included in the draft Ten Year Transportation Improvement Plan (2017-2026) for construction beginning in 2019. Each Town has committed funding of \$5,000,000 each for a total of \$10,000,000 towards the cost of the Exit 4A project. The local funding will pay the cost for the development of the EIS, and the Department's costs in assisting the Towns. All remaining balance of town funds will offset the Department's cost for the final design engineering of Exit 4A and construction of municipal roadway sections.

This Agreement has been approved by the Attorney General as to form and execution. Copies of the fully-executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

It is respectfully requested that authority be given to authorize the Agreement with the Towns of Derry and Londonderry as outlined above.

Sincerely,

Victoria F. Sheehan
Commissioner

VFS/kac

STATE/LOCAL PROJECT AGREEMENT
FOR
DERRY-LONDONDERRY, I-93 EXIT 4A

STATE PROJECT #: 13065
FEDERAL PROJECT #: IM-0931(201)

STATE VENDOR #: 177927
DERRY VENDOR #: 177379
LONDONDERRY VENDOR #: 177430

THIS AGREEMENT, executed in *quadruplet*, is made and entered into this 23 day of December, 2015, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, and the TOWN OF LONDONDERRY hereinafter called "LONDONDERRY", and TOWN OF DERRY hereinafter called "DERRY".

WITNESSETH that,

WHEREAS, LONDONDERRY and DERRY have commenced, as a municipally managed effort, an Environmental Impact Statement (EIS) for the construction of a new Exit 4A on Interstate 93 approximately 1 mile north of the existing Exit 4, the project including as presently proposed a new diamond interchange with I-93, approximately one mile of new connector roadway to the east of I-93, and reconstruction and improvement along approximately 1.6 miles of existing Town roadways (North High Street, Folsom Road, Tsienneto Road) from the new Connector easterly to NH 102, with a present total budget estimate of \$53,500,000 (hereafter called the PROJECT);

WHEREAS the DEPARTMENT is progressing the final design and construction for the Interstate 93 infrastructure improvements from Salem to Manchester as outlined in the State Ten Year Transportation Improvement Program (STIP);

WHEREAS, LONDONDERRY and DERRY have each committed funding of \$5,000,000 for a total of \$10,000,000 towards the Exit 4A PROJECT;

WHEREAS, LONDONDERRY and DERRY have requested that the DEPARTMENT assume administrative responsibility and management for completing the Final Environmental Impact Statement (FEIS).and, following approval of the FEIS, for the DEPARTMENT to assume full responsibility for the permitting, design, Right-of-Way acquisition and construction of the Exit 4A PROJECT in accordance to the STIP;

WHEREAS, the DEPARTMENT is willing to assume the above responsibilities; and

WHEREAS, LONDONDERRY and DERRY desire to cooperate with the DEPARTMENT 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, and to clearly define expectations responsibilities among the parties, it is mutually agreed as follows:

I. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT, AND LONDONDERRY AND DERRY:

- A. The DEPARTMENT shall assume administrative control and management of the engineering and environmental work necessary to complete the Final EIS.
 - a. The DEPARTMENT will oversee the development of a phased scope of work, in conjunction with Federal Highway Administration (FHWA) to complete the FEIS;
 - b. DERRY and LONDONDERRY will either extend the existing design contract with CLD Consultant Engineers, Inc. or enter a new Qualification Based consultant design contract to complete the FEIS scope of work as noted above;
 - c. The DERRY and LONDONDERRY design consultant will work under the direct authority of the DEPARTMENT. Consultant invoicing will be submitted to the DERRY and LONDONDERRY for approval and payment with copies forwarded to the DEPARTMENT. This should not be construed to mean or imply that the DEPARTMENT is entering into a contract with the Town's contractors or subcontractors;

- d. The DEPARTMENT will develop a review and reporting framework to keep DERRY and LONDONDERRY informed on progress. This framework will be reviewed with DERRY and LONDONDERRY for input prior to finalization. It is understood that the framework may need to change over time. All changes will be coordinated by the DEPARTMENT through DERRY and LONDONDERRY in writing;
 - e. DERRY and LONDONDERRY will offer commentary and input on the revisions of the draft EIS, issuances of the FEIS and review of the Record of Decision (ROD). The DEPARTMENT will consider all input but has ultimate approval authority; and
 - f. This AGREEMENT will be revisited upon completion of the FEIS process and updated in writing, if needed, to facilitate completion of the final phases of the PROJECT.
- B. Upon completion of the FEIS and issuance of ROD by FHWA, the DEPARTMENT will take full control of the final design engineering, permitting, right-of-way acquisition and financial management of the PPROJECT. This includes contracting consultants in accordance with the DEPARTMENT's consultant selection process to complete the final design and making all decisions during the final design, utility coordination, right-of-way acquisition and construction consistent with the DEPARTMENT's practices and in compliance with the requirements of the FEIS and ROD for the PROJECT. All right-of-way acquisitions will be in the name of the State of New Hampshire.
- C. The DEPARTMENT will endeavor to keep DERRY and LONDONDERRY involved in the final design of the PROJECT through an advisory committee. DERRY and LONDONDERRY agree to assign Town employees to this committee in an effort to provide direct input and communicate progress to the Towns. The advisory committee will focus their efforts on sections of the PROJECT that involve Town roads in an effort to garner full municipal support for the PROJECT.
- D. Upon completion of construction for the PROJECT, DERRY and LONDONDERRY will assume full maintenance responsibilities of the connector road outside of the immediate influence of the Exit ramps (further details below). The DEPARTMENT would assume full responsibility of maintenance of the overpass bridge and Exit ramps within the limits (by extension) of the Limited Access Right-of-Way (LAROW) except for winter maintenance of any sidewalks constructed within these limits.
- a. DERRY and LONDONDERRY shall provide or cause to provide for both the maintenance of the PROJECT during construction and subsequent maintenance of all PROJECT elements outside of the LAROW, together with the maintenance of all sidewalks, which includes winter snow and ice removal in accordance with the requirements of 23 CFR 1.27 and 28 CFR 35.133, once final completion and acceptance of the construction under this AGREEMENT.
 - b. Should operational adjustments be necessary once the improvements completed under this PROJECT, DERRY and LONDONDERRY agree that no changes will be made without prior written approval of the DEPARTMENT and the Federal Highway Administration.
- E. The DEPARTMENT shall submit monthly invoices to DERRY and LONDONDERRY for reimbursement of its share of all DEPARTMENT costs required to administer the PROJECT including DEPARTMENT labor, overhead and indirect costs and the amounts paid to engineering, environmental and/or right-of-way consultants and construction contractors for the performance of the work set forth in Section II of this AGREEMENT. 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 DEPARTMENT shall certify that the invoices properly represent payment for work that has been completed and paid for by the DEPARTMENT.
- F. The DEPARTMENT will be responsible for the management and operation of these facilities throughout the duration of construction of the PROJECT. DERRY and LONDONDERRY delegates to the DEPARTMENT the authority to control traffic in the construction zones along the town roads of this PROJECT.
- G. The DEPARTMENT is required to maintain all PROJECT and financial records pertinent to the development of the PROJECT for three (3) years beyond the date of the DEPARTMENT's final voucher.

H. DERRY and LONDONDERRY 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 DERRY and LONDONDERRY 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.

I. Non-Discrimination: DERRY and LONDONDERRY agree that it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d—2000d-4 (referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Non-discrimination in Federally-Assisted Programs of The Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (referred to as the "REGULA-TIONS"), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that no person shall on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the PROJECT receives Federal financial assistance extended by the State of New Hampshire. This AGREEMENT obligates DERRY and LONDONDERRY for the period during which Federal financial assistance is extended.

J. If either DERRY OR LONDONDERRY shall commit a material default of this AGREEMENT that affects the ability of the DEPARTMENT to complete the PROJECT, the defaulting municipality shall be required to reimburse the DEPARTMENT for the funds expended from the Federal Highway Trust Fund under this PROJECT.

K. The DEPARTMENT shall use its best efforts to obtain authorization of funds for the PROJECT from the Federal Highway Administration once included in the State's Ten Year Transportation Improvement Plan.

II. PROJECT FINANCIAL RESPONSIBILITIES OF DEPARTMENT, AND LONDONDERRY AND DERRY:

A. LONDONDERRY and DERRY agree to pay one hundred percent (100%) of PROJECT costs for the engineering and environmental work necessary to complete the Final EIS and issuance of the ROD as described in Paragraph 1-A, including both the TOWNS' consultant engineering costs and DEPARTMENT incurred costs. Consultant engineering costs will be in accordance with LONDONDERRY and DERRY's contractual arrangement. The DEPARTMENT's Preliminary Engineering, Right of Way, and Administrative (Indirect) costs for management and oversight of the PROJECT will be billed directly to LONDONDERRY and DERRY, equally distributed at 50% of the costs each.

B. The DEPARTMENT shall submit progress invoices on a monthly basis to LONDONDERRY and DERRY seeking reimbursement of the amounts paid for the management and oversight. Payment shall be remitted to the DEPARTMENT within 30 days of the invoice date. The invoice structure shall include details of backup information to support the charges. The DEPARTMENT shall certify that the invoices properly represent payment for work that has been completed and paid for by the DEPARTMENT.

C. LONDONDERRY and DERRY shall advise the DEPARTMENT of the consultant engineering costs incurred for overall PROJECT cost tracking on a monthly basis.

D. That the maximum amount of funding that LONDONDERRY and DERRY will be responsible for on this PROJECT is \$5,000,000 each for a total combined contribution of \$10,000,000, excluding relocations of town owned utilities within State maintained roadways in accordance with the DEPARTMENT's utility policy. As of the effective date of this Agreement, DERRY has contributed \$1,753,416.00 toward its total maximum \$5,000,000.00 contribution and LONDONDERRY has contributed \$1,687,673.00 toward its total maximum \$5,000,000.00 contribution.

E. Upon completion of the FEIS and issuance of the ROD by FHWA, the DEPARTMENT shall assume all PROJECT responsibilities going forward. All remaining municipal funds, up to the \$5,000,000 cap for each Town, shall be used on the PROJECT. Any

remaining municipal funds shall be directed for use with the following priority until all municipal funds are exhausted:

- a. Engineering Costs
- b. Construction on municipal roadway sections
- c. Other general construction costs

F. As the PROJECT is finalized and should the scope of the project result in costs exceeding the amount budgeted, the DEPARTMENT, LONDONDERRY and DERRY agree to review PROJECT costs for consideration of additional funding needs and determination of appropriate funding sources. Neither LONDONDERRY nor DERRY shall be responsible for funding in excess of \$5,000,000 each for a total combined contribution of \$10,000,000 without its express written authorization prior to the costs being incurred. Neither the DEPARTMENT nor the Federal Highway Administration will be responsible for any expenses or costs incurred by DERRY and LONDONDERRY under this AGREEMENT in excess of the above amounts unless the DEPARTMENT expressly authorizes additional funding prior to the work being performed.

G. This AGREEMENT is contingent upon the appropriation of sufficient funds from the State of New Hampshire Legislature and/or the Federal Highway Administration. If sufficient funds are not appropriated, the DEPARTMENT may terminate this AGREEMENT upon thirty (30) days' written notice to LONDONDERRY and DERRY. Such termination shall relieve the DEPARTMENT and LONDONDERRY and DERRY from obligations under this AGREEMENT after the termination date.

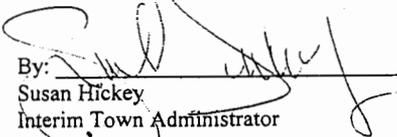
IV. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE PROJECT SPONSOR:

- A. That DERRY and LONDONDERRY 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 this AGREEMENT is contingent upon approval through the Governor and Executive Council.

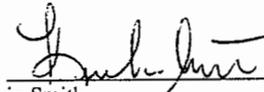
NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION

By: 
Victoria Sheehan
Commissioner

TOWN OF DERRY

By: 
Susan Hickey
Interim Town Administrator

TOWN OF LONDONDERRY

By: 
Kevin Smith
Town Manager

