



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



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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
February 8, 2018

REQUESTED ACTION

1. Authorize the Department of Transportation to amend an agreement with the City of Rochester (Vendor #177467) sub-recipient, by retroactively increasing the original agreement amount by \$97,200 from \$450,000 to \$547,200 to provide funding and services under the Federal Highway Safety Improvement Program (HSIP) through a local project administration process.

Funding is available as follows for FY 2018:

Table with 2 columns: Description (04-96-96-962515-2945 Municipal Aid Federal, 072-500574 Grants to Local Gov - Federal) and Amount (FY 2018 \$97,200.00)

2. Further, authorize to amend the agreement completion date by retroactively extending the completion date from June 30, 2013 to June 30, 2019, unless extended by the Department in accordance with standard specifications, to allow adequate time to complete the project, effective upon Governor and Executive Council approval.

EXPLANATION

This is retroactive because the intent of the project has not changed over time, however, the construction effort was delayed and the construction costs for the project have increased. The reason the project was delayed in starting is due to additional environmental coordination originally not anticipated in the contract.

The Highway Safety Improvement Program (HSIP) was established as a core Federal-aid program by the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that was signed into law on August 10, 2005. The overall purpose of this program is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements.

This project is reconstructing two (2) existing horizontal curves on Salmon Falls Road in Rochester, NH. These curve locations have been identified in the State's 2010 and 2011 HSIP Transparency Reports (5% Reports) as being in the top 15 highest run-off-the-road crash locations in rural areas of the State.

This agreement is between the State and sub-recipient to delineate responsibilities for providing services necessary for construction and construction supervision for a Federal Aid Program project approved as part of the State Transportation Improvement Program.

The Attorney General's Office at the Department of Justice, Transportation and Construction Unit, has previously reviewed and approved the use of the agreement that is being used for this locally-administered project.

Construction is 100% complete. The project total cost is \$607,588.56 (\$546,829.70 federal funds and \$60,758.86 City of Rochester). NHDOT has reimbursed \$414,893.27 in federal funds to date.

Authorization is requested to allow the Department to amend the original agreement with the sub-recipient to increase the original agreement amount and extend the completion date.

The project (Rochester, #22712) is identified in the State's Surface Transportation Improvement Plan (STIP).

Funding for the increased amount is \$108,000 (90% Federal Aid Highway funds and the 10% match coming from City funds).

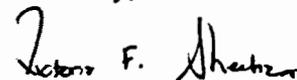
The following table illustrates the increased funding amount:

Funding	Federal Share	Town Share	Total Amount
Federal Aid Highway-Original Agreement	90% = \$450,000	10% = \$50,000	100% = \$500,000
Federal Aid Highway – Amended Agreement	90% = \$97,200	10% = \$10,800	100% = \$108,000
New Total Project Cost	\$547,200	\$60,800	\$608,000

Expenses incurred will be charged against the designated project account number and reimbursement for costs shall be borne by the Federal Aid Highway Fund (Highway Safety Improvement Program) in the amount of \$97,200.00, which represents 90% of total additional cost of \$108,000.00. The City of Rochester has agreed to pay its 10% share (\$10,800.00) of the additional project cost.

Your approval of this submission is respectfully requested.

Sincerely,



Victoria F. Sheehan
Commissioner

Attachment



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

Handwritten notes in a circle: E+C, # 104, 3/28/12

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

Bureau of Planning and Community Assistance
February 9, 2012

His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into an agreement totaling \$450,000 with the City of Rochester to provide funding and services under the Federal Highway Safety Improvement Program through a local project administration process, effective upon the date of Governor and Council approval through June 30, 2013. 100% Federal funds

Funding is available as follows:

Table with 4 columns: Item, FY 2012, FY 2013, TOTAL. Row 1: 04-96-96-963515-3054 Consolidated Federal Aid 400-500870 Construction: \$60,000, \$390,000, \$450,000

EXPLANATION

The Highway Safety Improvement Program (HSIP) was established as a core Federal-aid program by the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that was signed into law on August 10, 2005. The overall purpose of this program is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements.

This project will reconstruct two (2) existing horizontal curves on Salmon Falls Road in Rochester, NH. These curve locations have been identified in the State's 2010 and 2011 HSIP Transparency Reports (5% Reports) as being in the top 15 highest run-off-the-road crash locations in rural areas of the State. The Department's HSIP Committee reviewed the crash information and recommended these curve locations be considered for further investigation under the HSIP program. The Department contacted the City of Rochester to determine their interest in a safety improvement to address the run-off-the-road crashes. The Department then coordinated with the City of Rochester in analyzing and developing a cost effective concept for improving the safety of this segment of highway.

The concept will consist of reconstruction of the Salmon Falls Road to flatten the sharp horizontal curves to improve the geometry of the roadway and address the safety.

This agreement is between the State and sub-recipient to delineate responsibilities for providing services necessary for construction and construction supervision for a Federal Aid Program project approved as part of the State Transportation Improvement Program.

The Attorney General's Office at the Department of Justice, Transportation and Construction Unit, has previously reviewed and approved the use of the boilerplate agreement that is being used for this locally-administered project.

Authorization is requested to allow the Department to enter into this agreement with the sub-recipient to ensure compliance with Federal Aid program requirements and to permit State personnel to supervise this project and the Department to expend Federal funds.

Expenses incurred will be charged against the designated project account number and reimbursement for costs shall be borne by the Federal Aid Highway Fund (Highway Safety Improvement Program) in the amount of \$450,000.00, which represents 90% of total project cost of \$500,00.00. The City of Rochester has agreed to pay its 10% share (\$50,000) of the project cost.

Sincerely,

A handwritten signature in black ink, appearing to read "C.D. Clement, Sr.", written in a cursive style.

Christopher D. Clement, Sr.
Commissioner
NH Department of Transportation

**HIGHWAY SAFETY IMPROVEMENT PROGRAM
LOCAL PROJECT AGREEMENT
FOR**

**CITY OF ROCHESTER
STATE VENDOR #: 177467
STATE PROJECT #: 22712
FEDERAL PROJECT #: X-A002(377)**

THIS AGREEMENT, executed in *triplicate*, made and entered into this 4th day of April, 2012 between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and the CITY OF ROCHESTER, hereinafter called the "PROJECT SPONSOR".

WITNESSETH that,

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to reconstruct two (2) existing curves on Salmon Falls Road in the city of Rochester is an eligible project for funding under the Highway Safety Improvement Program created by the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA) and defined as the first curve located at station 1180+00 to 1185+00, and the second curve located at station 1225+00 to station 1230+00. The intent of which is to increase the length of the curve radius from 325 feet on a 3- 4% bank to a curve radius of 533 feet on a 4% bank at both of these locations along Salmon Falls Road; and

WHEREAS, the DEPARTMENT has established Highway Safety Improvement Project #22712 (the "Project") for the aforesaid project in the amount of Five hundred thousand dollars (\$500,000.00) with ninety percent (90%) of that cost coming from Federal Highway funds, such amount being Four hundred fifty thousand dollars (\$450,000.00), and the remaining ten percent (10%) of that cost coming from the PROJECT SPONSOR, such amount being Fifty thousand dollars (\$50,000.00); and

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 Federal-aid Highway Program for Federal Aid Construction Contracts.
- 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 "Local Public Agency Manual for the Development of 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 together with the maintenance of sidewalks, which includes winter snow and ice removal in accordance with the requirements of 23 CFR 1.27 and 28 CFR 35.133, once the work under this AGREEMENT is completed. Unless agreed otherwise at Project completion, the DEPARTMENT's maintenance responsibility shall be no greater than that which exists. Should operational adjustments be necessary, the PROJECT SPONSOR agrees that no changes will be made without prior approval of the DEPARTMENT and the Federal Highway Administration.
- D. The PROJECT SPONSOR shall submit monthly progress reports and 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 in the Application or 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 is required to maintain all project and financial records pertinent to the development of the Project for three (3) years beyond the date of closeout in the federal financial management system. If there is a failure to maintain this documentation, NHDOT and/or Federal Highway Administration could take an action up to and including requesting a refund of all reimbursed project costs.
- 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. Non-Discrimination:
1. The PROJECT SPONSOR agrees 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, "Nondiscrimination in Federally-Assisted Programs of The Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964" (referred to as the "REGULATIONS"), 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 SPONSOR receives Federal financial assistance extended by the State of New Hampshire. This AGREEMENT obligates the PROJECT SPONSOR for the period during which Federal financial assistance is extended.
 2. The PROJECT SPONSOR hereby gives assurance as required by subsection 21.7(a)(1) of the REGULATIONS that it will promptly take any measures necessary to effectuate this AGREEMENT, including but not limited to the following specific assurances:

- a. That each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the REGULATIONS will be conducted or operated in compliance with all requirements of the REGULATIONS.
 - b. That the PROJECT SPONSOR shall insert the following notification in all solicitations for negotiated agreements or bids for work or material made in connection with this Project: *The PROJECT SPONSOR hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, or disability in consideration for an award.*
 - c. That the PROJECT SPONSOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DEPARTMENT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The PROJECT SPONSOR shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DEPARTMENT-assisted contracts. The DEPARTMENT's DBE program, as required by 49 CFR part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this AGREEMENT. Upon notification to the PROJECT SPONSOR of its failure to carry out its approved program, the DEPARTMENT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)
 - d. That the PROJECT SPONSOR shall include the following assurance in each contract signed with a contractor, and each subcontract the prime contractor signs with a subcontractor: *The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DEPARTMENT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract or such other remedy, as the recipient deems appropriate.*
3. The PROJECT SPONSOR shall insert a copy of the required provisions of Federally-assisted construction contracts in accordance with Executive Order 11246, Equal Employment Opportunity, and 41 CFR Part 60-4, Affirmative Action Requirements, in each contract entered into pursuant to this AGREEMENT. Required Federal contract provisions can be obtained through the DEPARTMENT's Labor Compliance Office (271-6612) or Online at: <http://www.nh.gov/dot/org/administration/ofc/documents>
- H. If there is a default of any nature to this AGREEMENT, the PROJECT SPONSOR shall be required to reimburse the DEPARTMENT and/or the Federal Highway Trust Fund for all funds expended under this Project.

II. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT:

- A. The DEPARTMENT shall review the Project engineering plans, environmental documents and contract documents applicable to the Federal Highway Administration and State of New Hampshire requirements for a Federally-funded project and submit appropriate documentation to the Federal Highway Administration to receive Federal approval.
- 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.
- C. The DEPARTMENT shall use its best efforts to obtain authorization of the Project from the Federal Highway Administration.

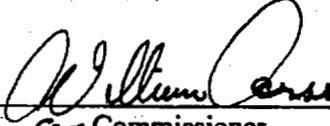
III. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE PROJECT SPONSOR:

- 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 paragraph 4 of page 1. 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. Neither the DEPARTMENT nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the PROJECT SPONSOR under this AGREEMENT in excess of the above amounts unless the DEPARTMENT expressly authorizes additional funding prior to the work being performed.
- C. That the PROJECT SPONSOR shall invoice the DEPARTMENT for incurred costs on a monthly basis and the DEPARTMENT will process these invoices for payment in an expeditious manner.
- D. That the PROJECT SPONSOR agrees to commence the Project within three (3) months after the date of this AGREEMENT and substantially complete the Project within two (2) years after the date of the first notice to proceed date given by the Department, unless earlier terminated as provided herein. The PROJECT SPONSOR may apply to the DEPARTMENT for an extension. Failure to meet either deadline without good cause may cancel the DEPARTMENT's participation in this Project at its 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.
- E. 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 schedule showing project milestones with dates. Failure to meet these dates could delay funding for construction.
- F. That 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 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**

CITY OF ROCHESTER

By: 
for Commissioner
Department of Transportation

William J. Carr, P.E.
Director of Project Development
NH DOT

By: 
Daniel Fitzpatrick, City Manager
City of Rochester

Authorized to enter into Agreement as
approved by Governor & Council on
March 28, 2012

The Attorney General's Office at the Department of Justice, Transportation and Construction Unit, has approved this template for use in municipally-managed projects.

**HIGHWAY SAFETY IMPROVEMENT PROGRAM
LOCAL PROJECT AGREEMENT AMENDMENT
FOR**

**CITY OF ROCHESTER
STATE VENDOR #: 177467
STATE PROJECT #: 22712
FEDERAL PROJECT #: X-A002(377)**

THIS AGREEMENT AMENDMENT, executed in *triplicate*, made and entered into this ____ day of _____, 20__, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and the CITY OF ROCHESTER, hereinafter called the "PROJECT SPONSOR".

WITNESSETH that,

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to reconstruct two (2) existing curves on Salmon Falls Road in the city of Rochester is an eligible project for funding under the Highway Safety Improvement Program created by the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA) and defined as the first curve located at station 1180+00 to 1185+00, and the second curve located at station 1225+00 to station 1230+00. The intent of which is to increase the length of the curve radius from 325 feet on a 3- 4% bank to a curve radius of 533 feet on a 4% bank at both of these locations along Salmon Falls Road; and

WHEREAS, the DEPARTMENT has established Highway Safety Improvement Project #22712 (the "Project") for the aforesaid project in the amount of Six hundred eight thousand dollars (\$608,000.00) with ninety percent (90%) of that cost coming from Federal Highway funds, such amount being Five hundred forty-seven thousand two hundred dollars (\$547,200.00), and the remaining ten percent (10%) of that cost coming from the PROJECT SPONSOR, such amount being Sixty thousand eight hundred dollars (\$60,800.00); and

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 AGREEMENT AMENDMENT 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 Federal-aid Highway Program for Federal Aid Construction Contracts.
- 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 "Local Public Agency Manual for the Development of Projects", as it may be amended from time to time, and, by reference, is hereby made a part of this AGREEMENT AMENDMENT.

- 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 together with the maintenance of sidewalks, which includes winter snow and ice removal in accordance with the requirements of 23 CFR 1.27 and 28 CFR 35.133, once the work under this AGREEMENT AMENDMENT is completed. Unless agreed otherwise at Project completion, the DEPARTMENT's maintenance responsibility shall be no greater than that which exists. Should operational adjustments be necessary, the PROJECT SPONSOR agrees that no changes will be made without prior approval of the DEPARTMENT and the Federal Highway Administration.
- D. The PROJECT SPONSOR shall submit monthly progress reports and 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 in the Application or 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 is required to maintain all project and financial records pertinent to the development of the Project for three (3) years beyond the date of closeout in the federal financial management system. If there is a failure to maintain this documentation, NHDOT and/or Federal Highway Administration could take an action up to and including requesting a refund of all reimbursed project costs.
- 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 AMENDMENT. 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 AMENDMENT.
- G. Non-Discrimination:
1. The PROJECT SPONSOR agrees 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, "Nondiscrimination in Federally-Assisted Programs of The Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964" (referred to as the "REGULATIONS"), 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 SPONSOR receives Federal financial assistance extended by the State of New Hampshire. This AGREEMENT AMENDMENT obligates the PROJECT SPONSOR for the period during which Federal financial assistance is extended.

2. The PROJECT SPONSOR hereby gives assurance as required by subsection 21.7(a)(1) of the REGULATIONS that it will promptly take any measures necessary to effectuate this AGREEMENT AMENDMENT, including but not limited to the following specific assurances:
 - a. That each “program” and each “facility” as defined in subsections 21.23(e) and 21.23(b) of the REGULATIONS will be conducted or operated in compliance with all requirements of the REGULATIONS.
 - b. That the PROJECT SPONSOR shall insert the following notification in all solicitations for negotiated agreements or bids for work or material made in connection with this Project: *The PROJECT SPONSOR hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, or disability in consideration for an award.*
 - c. That the PROJECT SPONSOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DEPARTMENT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The PROJECT SPONSOR shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DEPARTMENT-assisted contracts. The DEPARTMENT's DBE program, as required by 49 CFR part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this AGREEMENT AMENDMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this AGREEMENT AMENDMENT. Upon notification to the PROJECT SPONSOR of its failure to carry out its approved program, the DEPARTMENT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)
 - d. That the PROJECT SPONSOR shall include the following assurance in each contract signed with a contractor, and each subcontract the prime contractor signs with a subcontractor: *The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DEPARTMENT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract or such other remedy, as the recipient deems appropriate.*
3. The PROJECT SPONSOR shall insert a copy of the required provisions of Federally-assisted construction contracts in accordance with Executive Order 11246, Equal Employment Opportunity, and 41 CFR Part 60-4, Affirmative Action Requirements, in each contract entered into pursuant to this AGREEMENT AMENDMENT. Required Federal contract provisions can be obtained through the DEPARTMENT's Labor Compliance Office (271-6612) or Online at: <http://www.nh.gov/dot/org/administration/ofc/documents>

- H. If there is a default of any nature to this AGREEMENT AMENDMENT, the PROJECT SPONSOR shall be required to reimburse the DEPARTMENT and/or the Federal Highway Trust Fund for all funds expended under this Project.

II. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT:

- A. The DEPARTMENT shall review the Project engineering plans, environmental documents and contract documents applicable to the Federal Highway Administration and State of New Hampshire requirements for a Federally-funded project and submit appropriate documentation to the Federal Highway Administration to receive Federal approval.
- 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.
- C. The DEPARTMENT shall use its best efforts to obtain authorization of the Project from the Federal Highway Administration.

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 AMENDMENT from the DEPARTMENT shall be as set forth in paragraph 4 of page 1. 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. Neither the DEPARTMENT nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the PROJECT SPONSOR under this AGREEMENT AMENDMENT in excess of the above amounts unless the DEPARTMENT expressly authorizes additional funding prior to the work being performed.
- C. That the PROJECT SPONSOR shall invoice the DEPARTMENT for incurred costs on a monthly basis and the DEPARTMENT will process these invoices for payment in an expeditious manner.
- D. That the PROJECT SPONSOR agrees to commence the Project within three (3) months after the date of this AGREEMENT AMENDMENT and substantially complete the Project within two (2) years after the date of the first notice to proceed date given by the Department, unless earlier terminated as provided herein. The PROJECT SPONSOR may apply to the DEPARTMENT for an extension. Failure to meet either deadline without good cause may cancel the DEPARTMENT's participation in this Project at its 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.

- E. That the PROJECT SPONSOR will attend a meeting with the DEPARTMENT's representative after signing this AGREEMENT AMENDMENT to discuss the Project's scope, budget and schedule. The PROJECT SPONSOR will subsequently provide a schedule showing project milestones with dates. Failure to meet these dates could delay funding for construction.

- F. That this AGREEMENT AMENDMENT 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 AMENDMENT 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 AMENDMENT after the termination date.

**NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION**

By: 
For Commissioner
 Department of Transportation

CITY OF ROCHESTER

By: 
 Daniel Fitzpatrick, City Manager
 City of Rochester

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


 Asst. Attorney General