



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



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Victoria F. Sheehan
Commissioner

William Cass, P.E.
Assistant Commissioner

Bureau of Planning and Community Assistance
October 11, 2017

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

REQUESTED ACTIONS

- 1) Authorize the Department of Transportation to amend an existing agreement previously approved by Governor and Executive Council on August 26, 2015, late item "A", to increase the federal and state share from \$2,100,000.00 to \$2,924,675.00, an increase of \$824,675.00 and to extend the expiration date from June 30, 2018 to June 30, 2022, with the Town of Conway (Vendor #177377). This request is to provide funding and services under the Federal Surface Transportation Block Grant Program and the State Aid Highway Program through a Local Project Administration process to reconstruct NH 16 (Conway Village Main Street), effective upon Governor and Council approval through June 30, 2022. 100% Federal funds.
2) Authorize the Department of Transportation, pursuant to RSA 235:21-Additional Payment by State, to increase the State's share of State Aid Highway project costs from 66.67% to 90%, increasing the State's share from \$456,500.00 to \$616,275.00, an increase of \$159,775.00 to be effective upon Governor and Council approval. 100% Highway Funds.

Funding is available for FY 2018 and FY 2019, and is contingent upon the availability and continued appropriation of funds for FY 2020 as follows:

Table with 5 columns: Item ID, Description, FY 2018, FY 2019, FY 2020. It lists funding amounts for various grant categories like 'Municipal Aid - Federal' and 'State Aid Construction' across different fiscal years.

EXPLANATION

This project will reconstruct Main Street from near the intersection of West Main Street going east to near the intersection of Olympic Lane. Reconstruction will include new pavement, new structural road box material, new drainage, new curbing, and new sidewalks. Associated work will include Conway Village Fire District's water line upgrade, below and above ground utility relocations, repairing traffic signal detection systems, replacing pavement markings, installing Americans with Disabilities Act (ADA) elements at sidewalk and crosswalk terminations, and other incidental items.

As part of the development of the design, the scope of work has increased and the Town has agreed to participate in these costs. An amended agreement is needed to reflect scope increases in drainage and sidewalk replacement due to underground utility conflicts, as well as to reflect a change in cost sharing percentages with the Town of Conway to maintain the Town's original contribution amount based on the original budget.

RSA 235:15 establishes that the State shall pay 2/3rds of the costs of State Aid Highway projects. RSA 235:21 allows the Commissioner, with the approval of the Governor and Executive Council, to pay additional amounts deemed equitable in cases where a town is unable to pay its portion of such costs. As part of the project referenced above, the town is willing to locally manage the project, as well as, finance the State's share of costs for the project prior to seeking reimbursement from the State. In consideration of this, the Department believes it is reasonable to increase the State's funding participation rate from 2/3rds to 90% to accomplish this project.

The purpose of the Federal Surface Transportation Block Grant Program is to provide funding for infrastructure projects including roadway reconstruction on the National Highway System. The locally managed project referenced above is part of the National Highway System. The purpose of the State Aid Highway Program (RSA 235) is to provide funding for construction or reconstruction of roadway segments on Class I, II, or III highways. The locally managed project referenced above will rehabilitate a Class II State highway.

Authorization is requested to allow the Department to enter into this amended agreement with the sub-recipient (Town of Conway) to ensure compliance with Federal Aid and State Aid Program requirements at a State Aid Highway Program participation rate of 90% of eligible project costs, as well as, permit State personnel to supervise the project and the Department to expend Federal and State funds. The Attorney General's Office at the Department of Justice, Transportation and Construction Unit, has approved the project agreement template for use in municipally-managed projects.

The project (Conway #40018) is identified in the State's Surface Transportation Improvement Plan (STIP).

Funding for this project has been programmed with the total amount, including Town matching funds, being \$3,310,750.00 (69.7% Federal Highway funds, 18.6% State Highway Funds, and 11.7% Town funds).

The following table illustrates the total project funding:

Funding	100% Project Estimate	Federal Share	HWY Fund –State Aid Hwy Program	Town Share
Previously Committed Federal Fast Act Funding	\$166,666.66	57% = \$95,000.00		43% = \$71,666.66
Federal Fast Act Funding	\$2,459,333.34	90% = \$2,213,400.00		10% = \$245,933.34
State Aid Highway Funding	\$684,750.00		90% = \$ 616,275.00	10% = \$68,475.00
Total Funds	\$3,310,750.00	\$2,308,400.00	\$616,275.00	\$386,075.00

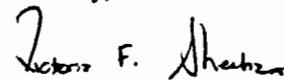
Total Federal & State Share Combined

\$2,924,675.00

Expenses incurred will be charged against the designated project account number and reimbursement for costs shall be borne by the Municipal Aid – Federal account in the total amount of \$2,308,400.00 in accordance with Federal Aid Program requirements, as well as, the Municipal Aid – State account in the total amount of \$616,275.00 in accordance with State Aid Program requirements.

Your approval of this submission is respectfully requested.

Sincerely,



Victoria F. Sheehan
Commissioner

Attachments
VFC/CRW/dmp

FEDERAL SURFACE TRANSPORTATION BLOCK GRANT PROGRAM
AND
STATE AID HIGHWAY PROGRAM

REVISED LOCAL PROJECT AGREEMENT
FOR

CONWAY
STATE VENDOR #: 177377
STATE PROJECT #: 40018
FEDERAL PROJECT #: X-A004(327)

THIS AGREEMENT, executed in *triplicate*, is made and entered into this ____ day of _____, 20__, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the “DEPARTMENT”, and the TOWN OF CONWAY, hereinafter called the “PROJECT SPONSOR”.

WITNESSETH that,

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to reconstruct NH 16 in the Town of Conway is an eligible project for funding under the Federal Surface Transportation Block Grant Program created under the FAST-ACT (Fixing America’s Surface Transportation Act) and the State Aid Highway Program; and

WHEREAS, the DEPARTMENT under previous agreement dated August 26, 2015 established Project #40018 (the “Project”) for the aforesaid project in the amount of Two million one hundred thousand dollars (\$2,100,000.00), with fifty seven percent (57%) of that cost coming from a combination of Federal and State funds, such amount being One million two hundred thousand dollars (\$1,200,000.00) and forty three percent (43%) of the cost coming from the Conway Village Fire District, Conway, NH, such amount being Nine hundred thousand dollars (\$900,000.00).

WHEREAS, One hundred sixty-six thousand six hundred sixty-six dollars and sixty-six cents (\$166,666.66) of the funds under the previous agreement dated August 26, 2015 have been committed as per that agreement and at this time the remainder of that agreement shall become null and void with the execution of this revised agreement.

WHEREAS, the DEPARTMENT has re-established Project #40018 (the “Project”) for the aforesaid project in the amount of Three million three hundred ten thousand seven hundred fifty dollars (\$3,310,750.00), with Two million nine hundred twenty-four thousand six hundred seventy-five dollars (\$2,924,675.00) coming from a combination of Federal and State funds, and Three hundred eighty-six thousand seventy-five dollars (\$386,075.00) coming from the PROJECT SPONSOR. To further identify the Federal and State shares, the project funding formulas are noted in the following table:

Funding * ^	100%	Federal Share (57% or 80%)	State Share (10% or 90%)	Town Share ^{###} (43% or 10%)
Previously Committed Federal Fast Act Funding	\$ 166,666.66	57% = \$ 95,000.00		43% = \$ 71,666.66
Federal Fast Act Funding	\$ 2,459,333.34	80% = \$ 1,967,466.67	10% = \$ 245,933.33	10% = \$ 245,933.34
State Aid Highway Funding	\$ 684,750.00		90% = \$ 616,275.00	10% = \$ 68,475.00
Total Funds	\$ 3,310,750.00	\$ 2,062,466.67	\$ 862,208.33	\$ 386,075.00

* Subject to change based on future project revisions, see paragraph III-B below.

^^ As CVFD is not financially part of this agreement, the CVFD Water Line Funding, approximately equal to \$734,125.00, is considered a non-participating amount and is not shown in this agreement between the Project Sponsor and the Department.

Per the attached MOA between the Town of Conway and the CVFD, the CVFD is responsible for 83.7% of the Town's previously committed \$71,666.66 or \$59,984.99.

;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 and the Municipally-Managed State Aid Highway 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 documents titled "New Hampshire Department of Transportation Process for Municipally-Managed State Highway Aid Program Projects" and "Local Public Agency Manual for the Development of Projects", as they may be amended from time to time and, by reference, are hereby made a part of this AGREEMENT.
- C. The PROJECT SPONSOR shall provide or cause to provide for the maintenance of all Project elements during construction and subsequent 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 within the proposed Project limits on NH 16, NH 113, and NH 153 prior to the start of construction. 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 or agreed upon at the scoping meeting. The invoice structure shall include details of work completed consistent with the scope of work as agreed upon at the scoping meeting, 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 the DEPARTMENT's final voucher. The DEPARTMENT will send a letter to the PROJECT SPONSOR with the date of this approval. 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.htm>

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:

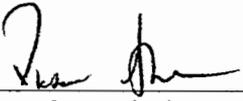
A. That the PROJECT SPONSOR will not incur any Project costs nor enter into any agreement with any third party, including but not limited to consultants, contractors, or engineers until such time that it receives a written notice to proceed from the DEPARTMENT to do so.

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 6 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 six (6) months after the date of this AGREEMENT and substantially complete the Project within six (6) 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. 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.
- G. This AGREEMENT supersedes the previously Agreement executed on August 26, 2015.
- H. A future Conway project in the DEPARTMENT's 10 Year Plan (Conway Project #40638) involving capacity improvements to the two signalized intersections within this Project's limits may be moved from fiscal year 2025 to 2019 as part of the upcoming 10 Year Plan biannual update process. If Conway Project #40638 is successfully moved forward in the 10 Year Plan, then both the PROJECT SPONSOR and the DEPARTMENT agrees to the following: Both projects may be advertised for construction under one contract. Conway Project #40638 would be locally managed similar to Project #40018. Conway Project #40638 would be funded by the DEPARTMENT with 100% Federal and / or State funds up to a capped amount to be determined in the future. The future capped amount will include a 10% Construction Item Contingency. If Conway Project #40638 incurs costs over the future capped amount, then the PROJECT SPONSOR will share 10% of #40638 project costs above the future capped amount.

- I. The information noted in Section III-H above will be documented in a future Conway #40638 Project Agreement prior to that project commencing.

**NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION**

By: 
Commissioner
Department of Transportation

TOWN OF CONWAY

By: 
C. David Weathers
Chairman of Selectmen

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



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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AUG 26 2015

WILLIAM CASS, P.E.
ASSISTANT COMMISSIONER

Bureau of Planning and Community Assistance
August 10, 2015

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

REQUESTED ACTION

Authorize the Department of Transportation to enter into an agreement totaling \$2,100,000.00 with the Town of Conway (Vendor #177377) and the Conway Village Fire District (Vendor #177213) to provide funding and services under the Federal Resurfacing Program and State Aid Highway Program through a local project administration process to reconstruct NH 16 (Conway Village Main Street), effective upon Governor and Council approval through June 30, 2018. 43% Federal funds, 14% State Aid Highway Funds, and 43% Local Match.

Funds to support this request are anticipated to be available in the following accounts in State FY 2016, State FY 2017 and State FY 2018 upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office, if needed and justified:

	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
04-96-96-962515-2945 Municipal Aid - Federal			
072-500574 Grants to Local Gov't - Federal	\$200,000	\$1,200,000	\$400,000
04-96-96-963015-2929 State Aid Construction			
073-500580 Grants to Local Gov't - State	\$ 30,000	\$ 200,000	\$ 70,000

EXPLANATION

This is a collaborative project between the Department, the Conway Village Fire District and the Town of Conway. The Department was planning to resurface NH 16/Main Street through Conway Village as part of the Federal Resurfacing Program and upgrade the traffic signal at the intersection of NH 16 and NH 113 as part of the State Aid Highway Program. The purpose of the Federal Resurfacing Program is to provide funding for roadway reconstruction/pavement preservation on the National Highway System. The purpose of the State Aid Highway Program (RSA 235) is to provide funding for construction or reconstruction of roadway segments on Class I, II, or III highways.

The Conway Village Fire District was also pursuing plans to upgrade water infrastructure and other improvements through the Village. This project will consolidate these efforts to reconstruct NH 16 in Conway Village in conjunction with other funds that will upgrade the roadway, traffic signals, water line, curbing and sidewalks along the NH 16 village corridor under the Town's direction and oversight. Construction is planned to begin in FY 2017. The Conway Village Fire District (CVFD) is contributing \$900,000 to the project. Overall project funding is as follows:

	USEPA / NHDES Water Line Loan to CVFD	CVFD Water Line Capital Improvement Plan	CVFD Sidewalk Capital Improvement Plan	TOTAL
	\$640,950	\$109,050	\$150,000	\$2,100,000
	31%	5%	7%	100%

The \$900,000 federal resurfacing portion of the project is 80% federal funds with 20% state match. Turnpike toll credit is being utilized for match requirements, effectively using 100% federal funds. The \$300,000 State Aid Highway program funds are 100% state funds. RSA 235:21 allows the Commissioner, with approval of the Governor and Council, to pay additional amounts deemed equitable above the typical 2/3rds share of the costs of State Aid Highway projects. The State Aid Highway Funds are being used to replace and upgrade traffic signals in conjunction with this project, are of primary benefit to the State, and the overall project involves substantial municipal funds.

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

Expenses incurred will be charged against the designated project account number and reimbursement for costs shall be borne by the Municipal Aid – Federal account in the amount of \$900,000.00 in accordance with Federal Aid Program requirement, as well as the Municipal Aid – State account in the amount of \$300,000.00.

Your approval of this submission is respectfully requested.

Sincerely,



William Cass, P.E.
Assistant Commissioner

Attachment

**FEDERAL HIGHWAY RESURFACING PROGRAM
STATE AID HIGHWAY PROGRAM**

**3 PARTY PROJECT AGREEMENT
FOR**

**TOWN OF CONWAY & CONWAY VILLAGE FIRE DISTRICT
STATE VENDOR #: 177377 & 177213
STATE PROJECT #: 40018
FEDERAL PROJECT #: X-A004(327)**

THIS AGREEMENT, executed in quadruplicate, is made and entered into this ____ day of _____, 2015, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and the CONWAY VILLAGE FIRE DISTRICT, hereinafter called CVFD and the TOWN OF CONWAY, hereinafter called the "PROJECT SPONSOR".

WITNESSETH that,

WHEREAS, the DEPARTMENT, CVFD, and the PROJECT SPONSOR have determined that a project to reconstruct the water line, sidewalk, curbing, and roadway of NH 16, as well as the traffic signals at the intersection of NH 113 and NH 16 in the Town of Conway is an eligible project for funding under Federal, State, and Local funding sources as described below:

FUND SOURCE	FEDERAL HIGHWAY ADMINISTRATION (FHWA)
PROGRAM	FEDERAL RESURFACING
FUND SOURCE	DEPARTMENT
PROGRAM	STATE AID HIGHWAY
FUND SOURCE	US ENVIRONMENTAL PROTECTION AGENCY (USEPA)
PROGRAM	CFDA #66-468 DRINKING WATER THRU CVFD
FUND SOURCE	CVFD
PROGRAM	CAPITAL IMPROVEMENT - WATER LINE
FUND SOURCE	CVFD
PROGRAM	CAPITAL IMPROVEMENT - SIDEWALK

WHEREAS, the DEPARTMENT has established Project #40018 (the "Project") for the aforesaid project in the amount of Two million one hundred thousand dollars (\$2,100,000) with the following cost allocation:

	USEPA / NHDES / CVFD Water Line Loan	CVFD Water Line CIP	CVFD Sidewalk CIP	TOTAL
	\$640,950	\$109,050	\$150,000	\$2,100,000
	31%	5%	7%	100%

WHEREAS, the DEPARTMENT, CVFD, AND PROJECT SPONSOR has developed a list of major project items with funding participation as noted below:

MAJOR PROJECT ITEMS	CVFD PARTICIPATION	
PRELIMINARY ENGINEERING	43%	57%
RIGHT OF WAY ACQUISITIONS	43%	57%
BID PHASE SERVICES	43%	57%
CONSTRUCTION ENGINEERING	43%	57%
MOBILIZATION	43%	57%
PERMITTING	43%	57%
SWPPP & EROSION CONTROL	43%	57%
TRAFFIC CONTROL ITEMS	43%	57%
WATER MAIN ITEMS	100%	
WATER MAIN EXCAVATION ITEMS	100%	
WATER MAIN BACKFILL ITEMS	100%	
WATER MAIN Q/A Q/C ITEMS	100%	
SIDEWALK ITEMS	100%	
CURBING ITEMS	100%	
PAVEMENT REMOVAL ITEMS		100%
ROADWAY BOX MATERIAL ITEMS		100%
PAVING ITEMS		100%
DRAINAGE ITEMS		100%
TRAFFIC SIGNAL ITEMS		100%
TRAFFIC SIGN ITEMS		100%
PAVEMENT MARKING ITEMS		100%
ROADWAY Q/A Q/C ITEMS		100%

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

WHEREAS, the DEPARTMENT and CVFD 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 within the proposed Project limits on NH 16 prior to the start of construction. 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 the DEPARTMENT's final voucher. The DEPARTMENT will send a letter to the PROJECT SPONSOR with the date of this approval. 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 and CVFD 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, "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 "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 One Million Two Hundred Thousand dollars (\$1,200,000). As the scope of the Project is finalized, should the costs for the Project exceed the amount budgeted, the DEPARTMENT, the CVFD and PROJECT SPONSOR agree 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 six (6) months after the date of this AGREEMENT and substantially complete the Project within Seven (7) 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.
- G. In the event that the CVFD or the PROJECT SPONSOR cannot secure the targeted source of USEPA / NHDES water line funding within (4) months after the effective date of this AGREEMENT, and no Project expenses have been incurred, the PROJECT SPONSOR or CVFD may terminate this AGREEMENT upon thirty (30) days' written notice to the DEPARTMENT. Such termination shall relieve the DEPARTMENT, the CVFD, and the PROJECT SPONSOR from obligations under this AGREEMENT after the termination date.

**NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION**

By: _____
Commissioner
Department of Transportation

CONWAY VILLAGE FIRE DISTRICT

By: _____
CVFD Commission Chair
Janine Bean

TOWN OF CONWAY

By: _____
Chairmen of Selectmen
C. David Weathers

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

MEMORANDUM OF AGREEMENT

BETWEEN THE TOWN OF CONWAY, NEW HAMPSHIRE

AND

THE CONWAY VILLAGE FIRE DISTRICT, CONWAY, NEW HAMPSHIRE

The following paragraphs constitute a Memorandum of Agreement (MOA) between the **Town of Conway, New Hampshire (Town)** and the **Conway Village Fire District, Conway, New Hampshire (CVFD)** with regard to the **Main Street Improvements Project (Project)** in Conway Village, consisting of roadway, drainage, water, and sidewalk improvements.

The Town has entered into a revised Agreement with the New Hampshire Department of Transportation (NHDOT) to locally administer the Project. The Town will be administering and financing the project and will ultimately be responsible for up to \$326,090.01 in expenses towards the sidewalk portion of the project. The NHDOT will reimburse the Town of Conway for the remainder of the project costs associated with roadway and drainage improvements. The CVFD is not a party to the revised Agreement but is the Owner of the water utilities in Main Street and, therefore, this MOA is required to establish how the water utility improvements will be paid for.

It should be noted that the Main Street Project has been separated into two parts: the Western Project and the Eastern Project. The Western Project extends from the railroad tracks on the south end of Main Street to the four-corners intersection at Washington Street and Pleasant Street. The Eastern Project extends from the four-corners intersection at Washington Street and Pleasant Street to Village Lane on Route 113 and to the Saco River Bridge on Route 16. The CVFD will not be participating in any of the costs for the Eastern Project.

Preliminary Engineering for the Western Project has already been committed at \$166,666.66. Per the Agreement dated August 26, 2015 between the Town, the CVFD, and the NHDOT, the Town and the CVFD are responsible for 43% or \$71,666.66 of those costs which are assumed to cover Preliminary Engineering of the water and sidewalk improvements. Based on the relative effort anticipated for water and sidewalk improvements design, it is agreed that costs for Preliminary Engineering for the Main Street Western Project shall be shared as follows:

	Percentage	Amount
Town of Conway, NH	16.3%	\$11,681.67
Conway Village Fire District	83.7%	\$59,984.99

For **Final Design and Construction Phase Engineering** costs for the Western Project, The Engineer shall negotiate separate contracts with the Town and the CVFD based on relative effort anticipated for roadway, drainage, and sidewalks for the Town and for water for the CVFD. The Town's final design and construction phase engineering costs are estimated at \$555,933.34 of which they will be responsible for 10% (\$55,593.33) and NHDOT will be responsible for 90% (\$500,340.01). The CVFD's final design and construction phase engineering costs are estimated at \$116,690.00.

For all final design and construction phase engineering costs, it is agreed that at the time of invoicing, the Town and the CVFD will author individual payment checks to the Engineer in accordance with their respective contracts with the Engineer.

With regard to **Construction Costs** for the Western Project, it is understood that the water improvements costs will be tracked independently from the roadway, drainage, and sidewalk improvements costs. The CVFD will be directly responsible for all water improvements costs and also for police and flagger hours spent specifically directing traffic during water main improvements work as per the field notes from the Resident Project Representative. During construction, the Contractor will invoice the Town through its consultant (Underwood Engineers) for all costs incurred for construction of the Main Street Improvements. Underwood Engineers will then submit the invoices pertaining to the water improvements to CVFD for payment after thorough review. Per this MOA, the CVFD agrees to author a check directly to the Contractor for their portion of the Pay Requisition cost within 45 days of receipt of the Pay Requisition. The Town will not finance the CVFD's construction costs and seek reimbursement.

Based on Preliminary Engineering estimates, it is estimated that the water improvements related construction costs will be \$575,710.00.

By signing this agreement, all parties agree to the conditions outlined above.

TOWN OF CONWAY, NEW HAMPSHIRE
Board of Selectmen

BY: <u>David Weathers</u> David Weathers, Chair	Date: <u>7-25-17</u>
BY: <u>Mary Carey Seavey</u> Mary Carey Seavey, Vice Chair	Date: _____
BY: <u>Steven Porter</u> Steven Porter, Selectman	Date: <u>7-25-17</u>
BY: <u>John Colbath</u> John Colbath, Selectman	Date: <u>7/25/17</u>
BY: <u>Carl Thibodeau</u> Carl Thibodeau, Selectman	Date: <u>7-25-17</u>

CONWAY VILLGE FIRE DISTRICT
Board of Commissioners

BY: <u>Steven Bamsey</u> Steven Bamsey, Chair	Date: <u>7-20-17</u>
BY: <u>Michael DiGregorio</u> Michael DiGregorio, Commissioner	Date: <u>7/20/17</u>
BY: <u>Tom Buco</u> Tom Buco, Commissioner	Date: <u>7/20/17</u>