



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



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CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

Bureau of Planning and Community Assistance
January 21, 2014

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 \$723,000.00, with the Town of Conway (Vendor #177377) to provide funding and services under the State Aid Highway (SAH) Program through a local project administration process to reconstruct and reclassify Washington Street, effective upon Governor and Council approval, through June 30, 2015. Town is responsible for match requirements. 100% Highway Funds.

Funding is available as follows:

	<u>FY 2014</u>	<u>FY2015</u>
04-96-96-963015-2929		
State Aid Construction		
073-500580 Grants to local Gov't - State	\$480,000	\$243,000

EXPLANATION

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. This locally-managed State Aid Highway project will rehabilitate the Class II section of Washington Street in the town of Conway. Construction is planned to begin in FY 2014.

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. The Town of Conway has appropriated \$240,000 as its 1/3rd share which would, with an equivalent \$480,000 of funding as the State's 2/3 share, equal a total of \$720,000. However, the current cost estimate for this project is estimated to be \$963,000. This leaves an overall funding shortfall of \$243,000 and a typical 1/3 Town share short fall equal to \$81,000.

As part of the project, the Town is willing to take over ownership of this section of road from the State. In consideration of this, the Department believes it is reasonable to absorb the additional costs to accomplish the project. The NHDOT is proposing to cap the Town's participation at \$240,000 and fund the remainder. Accordingly, this request modifies the overall funding share from 1/3 Town, 2/3 State to 25% Town (\$240,000) and 75% State (\$723,000) and caps the State amount. In consideration of this additional funding, the local project agreement between the Town and NHDOT will include the reclassification of Washington Street from a Class II State-owned and maintained highway to a Class V Town-owned and maintained highway.

For reference, the following table shows the funding allocations:

Conway 27062 Reconstruct and Reclassify Washington Street	State Aid Highway Share	Town Share	Project Total	Funding Share
Engineering and Construction Cost up to \$720,000	\$480,000	\$240,000	\$720,000	2/3 rd s SAH 1/3 rd Town
Costs over \$720,000 up to \$963,000	\$243,000	\$0	\$243,000	100% SAH
PROJECT TOTAL	\$723,000	\$240,000	\$963,000	75% SAH 25% Town
	Capped @ \$723,000			

Authorization is requested to allow the Department to enter into this agreement with the Town of Conway to ensure compliance with State requirements and to permit State personnel to supervise the project and the Department to expend State funds.

Expenses incurred will be charged against the designated project account number and reimbursement for costs shall be borne by the State Highway Fund in the amount of \$723,000.

Your approval of this submission is respectfully requested.

Sincerely,

Christopher D. Clement, Sr.
Commissioner

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

**STATE AID HIGHWAY PROGRAM
PROJECT AGREEMENT
FOR**

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

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

WITNESSETH that,

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

WHEREAS, the DEPARTMENT has established State Aid Highway Project # ____ (the "Project") for the aforesaid project in the amount of ____ dollars (\$_), with two-thirds (2/3rd) of that cost coming from State Aid Highway funds, such amount being ____ dollars (\$_), and the remaining one-third (1/3rd) of that cost coming from the PROJECT SPONSOR, such amount being ____ dollars (\$_); 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 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 document titled "New Hampshire Department of Transportation Process for Municipally-Managed State Highway Aid Program Projects", as it may be amended from time to time, and by reference is hereby made a part of this AGREEMENT.
- C. The PROJECT SPONSOR shall provide or cause to provide for both the maintenance of the Project during construction and subsequent maintenance of all Project elements 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 ____ prior to the start of construction.] (This section needed if State has current maintenance responsibility** Should operational adjustments be necessary, the PROJECT SPONSOR agrees that no changes will be made without prior approval of the DEPARTMENT.

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

II. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT:

- A. The DEPARTMENT shall review the Project all plans, environmental documents, and contract documents.
- B. The DEPARTMENT shall reimburse its share to the PROJECT SPONSOR after receipt and approval of properly documented invoices that have been certified by the PROJECT SPONSOR as properly representing work that has been completed and paid for by the PROJECT SPONSOR.

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 herein. As the scope of the Project is finalized, should the costs for the Project exceed the amount budgeted, the DEPARTMENT agrees to review Project costs for consideration of additional funding. The DEPARTMENT will not be responsible for any expenses or costs incurred by the PROJECT SPONSOR under this AGREEMENT in excess of the above amount unless the DEPARTMENT expressly authorizes additional funding prior to the work being performed.
- C. That the PROJECT SPONSOR agrees to commence the Project within three (3) months after the date of this AGREEMENT and substantially complete the Project within _____ () 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.
- D. That the PROJECT SPONSOR will attend a meeting with the DEPARTMENT's representative after signing this AGREEMENT to discuss the Project's scope, budget and schedule. The PROJECT SPONSOR will subsequently provide a schedule showing project milestones with dates. Failure to meet these dates could delay funding for construction.
- E. This AGREEMENT is contingent upon the appropriation of sufficient funds from the State of New Hampshire Legislature. If sufficient funds are not appropriated, the DEPARTMENT may terminate this AGREEMENT upon thirty (30) days' written notice to the PROJECT SPONSOR. Such termination shall relieve the DEPARTMENT and the PROJECT SPONSOR from obligations under this AGREEMENT after the termination date.

**NEW HAMPSHIRE DEPARTMENT OF
TRANSPORTATION**

PROJECT SPONSOR NAME

By: _____
Commissioner
Department of Transportation

By: _____
Project Sponsor Name
Title

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