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THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



Victoria F. Sheehan  
Commissioner

William Cass, P.E.  
Assistant Commissioner

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

Bureau of Planning & Community Assistance  
August 15, 2018

REQUESTED ACTION

1. Authorize the Department of Transportation to amend an agreement with the Town of Salem (Vendor #177472) sub-recipient, by increasing the original agreement amount by \$5,228,200.00 from \$920,000.00 to \$6,148,200.00 to provide funding and services under the Federal Surface Transportation Block Grant Program through a Local Project Administration process. The original agreement was previously approved by Governor & Executive Council on January 16, 2008, Item #211. The amended agreement will be effective upon Governor and Executive Council approval, through June 30, 2023. (100% Federal funds)

Funding is available for FY 2019, and is contingent upon the availability and continued appropriation of funds for FY 2020, FY 2021, FY 2022 and FY 2023 as follows, with the ability to adjust encumbrances through the Budget Office between State Fiscal Years if needed and justified.

	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
04-96-96-962515-2945 Municipal Aid - Federal					
072-500574 Grants to Local Gov't - Federal	\$2,228,200	\$1,000,000	\$750,000	\$750,000	\$500,000

2. Further, authorize to amend the agreement completion date by extending the completion date from June 2, 2019 to June 30, 2023, 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 project will reconstruct the intersection of Broadway (NH 28) and Main Street (NH 97) known as the Depot Intersection. Reconstruction will include new pavement, new structural road box material, new drainage, new curbing and new sidewalks.

As part of the development of the design, the scope of work has increased based on information gathered during the design phase, inflation and market values. This project agreement with the Town is being amended to reflect the estimated costs associated with the preferred layout, ROW impacts, and negotiated cost sharing with the Town.

Federal funds (80% Federal and 20% Town) will be used for design, Right-of Way (ROW) Incidentals and construction services. Federal funds (50% Federal and 50% Town) will be used for ROW acquisitions.

This Agreement Amendment 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.

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 (Salem, #12334) is identified in the State's Ten Year Transportation Improvement Plan.

The total estimated cost to complete the project is \$10,079,000.00. Total project expenditures to date total \$395,032.04 for Preliminary Engineering and ROW costs.

The following table illustrates the increased funding amount from original agreement:

Salem #12334 Proposed Increase	Federal Share	Town Share	Total Amount
Original Agreement	\$920,000.00	230,000.00	\$1,150,000.00
Agreement Increase	\$5,228,200.00	\$3,700,800.00	\$8,929,000.00
Proposed Agreement	\$6,148,200.00	\$3,930,800.00	\$10,079,000.00

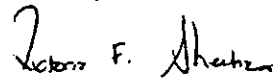
The following table illustrates the proposed funding details:

Salem, #12334 Proposed Funding Details	Federal Share	Town Share	Total	Funding %
Preliminary Engineering	\$500,000.00	\$125,000.00	\$625,000.00	80% FED & 20% Town Share
Right-of-Way Incidentals prior to 2014	\$8,000.00	\$2,000.00	\$10,000.00	80% FED & 20% Town Share
Right-of-Way	\$3,125,000.00	\$3,125,000.00	\$6,250,000.00	50% FED & 50% Town Share
NHDOT Indirect Costs	\$0.00	\$50,000.00	\$50,000.00	100% Town Share
Construction	\$2,515,200.00	\$628,800.00	\$3,144,000.00	80% FED & 20% Town Share
<b>Total</b>	<b>\$6,148,200.00</b>	<b>\$3,930,800.00</b>	<b>\$10,079,000.00</b>	

Expenses incurred will be charged against the designated project account number and reimbursement for costs shall be borne by the Federal Funds in the amount of \$6,148,200.00, which represents Preliminary Engineering and Right-of-Way Incidentals total cost of \$508,000.00 @ 80%; Construction total cost of \$2,515,200.00 @ 80% and Right-of-Way total cost of \$3,125,000.00 @ 50%. The Town of Salem has agreed to pay its share of the project cost which totals \$3,930,800.00.

Your approval of this submission is respectfully requested.

Sincerely,



Victoria F. Sheehan  
Commissioner

Attachments

**FEDERAL SURFACE TRANSPORTATION BLOCK GRANT PROGRAM**

**REVISED LOCAL PROJECT AGREEMENT  
FOR**

**SALEM**

**STATE VENDOR #: 177472**

**STATE PROJECT #: 12334**

**FEDERAL PROJECT #: STP-X-5399(011)**

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 SALEM hereinafter called the “PROJECT SPONSOR”.

WITNESSETH that,

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to reconstruct the intersection of NH 28 (Broadway) and NH 97 (Main St.) in the Town of Salem 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

WHEREAS, the DEPARTMENT under previous agreement dated March 2, 2012 established Project #12334 (the “Project”) to design and acquire Right-of-Way for the aforesaid project in the total amount of \$1,150,000.00. With 80% of that cost coming from Federal funds, and 20% of that cost coming from the PROJECT SPONSOR; and

WHEREAS, the current engineer’s estimated cost for the project has increased based on information gathered during the design phase, inflation, and market values.

WHEREAS, the previous agreement dated March 2, 2012 will be come null and void with the execution of this revised agreement

WHEREAS, the following table will document the updated Project funding including Engineering, Right-of-Way and Construction:

<b>Salem #12334</b>	<b>DEPARTMENT SHARE</b>	<b>PROJECT SPONSOR SHARE</b>	<b>TOTAL</b>	<b>FUNDING %</b>
<b>*Preliminary Engineering</b>	\$500,000.00	\$125,000.00	\$625,000.00	80% FED & 20% Project Sponsor
<b>*Right-of-Way Incidentals prior to 2014</b>	\$8,000.00	\$2,000.00	\$10,000.00	80% FED & 20% Project Sponsor
<b>^^Right-of-Way</b>	\$3,125,000.00	\$3,125,000.00	\$6,250,000.00	50% FED & 50% Project Sponsor
<b>** NHDOT 10% Indirect Costs</b>	\$0.00	\$50,000.00	\$50,000.00	100% Project Sponsor
<b>Construction</b>	\$2,515,200.00	\$628,800.00	\$3,144,000.00	80% FED & 20% Project Sponsor
<b>Total</b>	<b>\$6,148,200.00</b>	<b>\$3,930,800.00</b>	<b>\$10,079,000.00</b>	

\*Right-of-Way incidental charges (title abstracting and public hearing tasks) in the ROW Phase prior to 2014 and in the PE Phase prior to NEPA approval are 80% DEPARTMENT and 20% PROJECT SPONSOR funded.

^ Right-of-Way tasks post NEPA approval (appraisals, negotiations, acquisitions, business reestablishment, moving expenses, and legal and recording fees) are 50% DEPARTMENT and 50% PROJECT SPONSOR funded, see Section III-D below.

## 10% indirect costs currently estimated to be \$50,000 (10% of \$500,000) for DEPARTMENT Right-of-Way Phase efforts shall be billed to the PROJECT SPONSOR. 10% indirect costs will be billed for DEPARTMENT labor and expenses including right-of way incidentals, appraisals, negotiations, business reestablishment, and moving expenses. Indirect costs shall not be billed to the PROJECT SPONSOR for settlement costs paid directly to abutters for property acquisition, easements, moving expenses, and business reestablishment; 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 documents titled "Local Public Agency Manual for the Development of Projects", as 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 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 28 and NH 97 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 manage the Right-of-Way elements for the project including:
  - a. Following all requirements established in the NHDOT Right of Way Manual.
  - b. Performing title abstracting and incidental right-of-way work.
  - c. Conducting the Public Hearing.

- d. Completing Appraisals.
  - e. Establishing Just Compensation.
  - f. Negotiating with individual property owners in good faith.
  - g. Acquiring all properties and permanent easements in the name of the State using 50% Federal funds and 50% Project Sponsor funds.
  - h. Selling surplus property. Any proceeds from sales of surplus property will be shared equally (50%) between the DEPARTMENT and the PROJECT SPONSOR.
  - i. Providing, if required by law, business reestablishment and moving expenses to affected abutters.
  - j. Completing property closing documents including recording property deeds.
  - k. Processing payments through the NHDOT Right of Way Management System.
  - l. Notifying the Town in advance of initial presentation of offer for information only, and
  - m. Acquiring properties, if required via the Eminent Domain Act.
- C. 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.
- D. 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 additional Project costs nor enter into any additional agreements with any third parties, 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 7 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 all eligible Right-of-Way expenses incurred by the PROJECT SPONSOR, third parties, or the DEPARTMENT shall be shared equally (50%) between the DEPARTMENT and PROJECT SPONSOR, with the exception of eligible Right-of-Way incidentals in the Right-of-Way phase prior to 2014 and Right-of-Way incidentals in the Preliminary Engineering Phase prior to NEPA approval which shall be shared 80% DEPARTMENT and 20% PROJECT SPONSOR. The following table lists the anticipated Right-of-Way functions and funding:

Right-of-Way Function	Phase	**DEPARTMENT SHARE	PROJECT SPONSOR SHARE
Pre 2014 Title Abstracting	ROW	80%	20%
Pre-NEPA Title Abstracting, Public Hearing, and Incidentals	PE	80%	20%
Post-NEPA Recording Fees, Legal Fees, and Incidentals	ROW	50%	50%
Appraisals	ROW	50%	50%
Negotiations	ROW	50%	50%
Acquisitions	ROW	50%	50%
Business Reestablishment and Moving Expenses	ROW	50%	50%


**\*\*The DEPARTMENT shall invoice the PROJECT SPONSOR for the PROJECT SPONSOR'S share of DEPARTMENT originated PE and Right-of-Way expenses including 10% indirect costs as noted in the funding table in paragraph #7 above.**

- E. Permanent Easements and Acquisitions will be recorded in the DEPARTMENT's name. Any proceeds from sales of surplus property will be shared equally (50%) between the DEPARTMENT and the PROJECT SPONSOR.
- F. That short term costs incurred to monitor, manage, handle, dispose, or otherwise deal with contamination during construction will be shared 80% DEPARTMENT and 20% PROJECT SPONSOR. Long term costs incurred to monitor, manage, handle, dispose, or otherwise deal with contamination after Project completion will be shared 80% DEPARTMENT and 20% PROJECT SPONSOR.
- G. That the DEPARTMENT and PROJECT SPONSOR have the authority to extend this agreement for future requirements relating to long term contamination monitoring, contamination reporting, and contamination remediation, as well as the ability to hire an environmental remediation consultant to assist in the management of these potential future requirements.

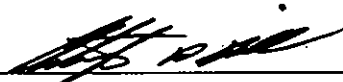


- H. That the PROJECT SPONSOR agrees to commence the Project within four (4) months after the date of this AGREEMENT and substantially complete the Project within six (6) years after the date of this agreement, unless earlier terminated as provided herein. The PROJECT SPONSOR may apply to the DEPARTMENT for a time 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 commencement date or Project completion date that will need to be approved by the DEPARTMENT if any condition arises that may result in either deadline being unattainable.
- I. 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**

By:   
Commissioner  
Department of Transportation

**TOWN OF SALEM**

By:   
Title: Town Manager

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

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