



The State of New Hampshire  
**Department of Environmental Services**

Clark B. Freise, Assistant Commissioner



June 20, 2017

The Honorable Neal M. Kurk, Chairman  
Fiscal Committee of the General Court  
State House  
Concord, NH

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

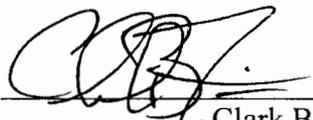
**REQUESTED ACTION**

Pursuant to RSA 14:30-a: VI, authorize the New Hampshire Department of Environmental Services (NHDES) to **RETROACTIVELY** amend Fiscal Committee item# FIS 17-009 (January 13, 2017) and Governor and Council item# 50 (February 1, 2017) by extending the end date to December 31, 2018 from June 30, 2017 for the purpose of completing construction of the Suncook River stabilization project to protect the U.S. Route 4 Bridge in Epsom, New Hampshire, effective upon Fiscal Committee and G&C approval through December 31, 2018. 100% federal funds.

**EXPLANATION**

NHDES is requesting approval of this **RETROACTIVE** amendment in order to provide the necessary time to issue bids, award a contract for construction, and to complete the project. The amendment request is necessary because of complications encountered during the right-of-way easement procurement process, and the need for additional site investigations and data collection to revise bid packages before they were issued by NHDES. This amendment will allow the required time to secure the final easement, perform deed recording procedures, and complete construction. The request is retroactive primarily because the development of temporary and permanent easements, recordable deed, and compensation agreements between the land owner and the Department of Transportation, delayed the project period by several months which further delayed the construction schedule. A copy of the original accept and expend and Memorandum of Agreement is included.

We respectfully request your approval.

  
Clark B. Freise,  
Assistant Commissioner

[www.des.nh.gov](http://www.des.nh.gov)

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The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

FIS 17 009



Thomas S. Burack, Commissioner

December 19, 2016

**APPROVED G & C**

The Honorable Neal M. Kurk, Chairman  
 Fiscal Committee of the General Court  
 State House  
 Concord, NH

DATE 2/1/17  
 ITEM # 50

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

**APPROVED  
 FISCAL COMMITTEE**  
 DATE 1/13/17  
 FISCAL YEAR FIS 17-009

**REQUESTED ACTIONS**

1. Pursuant to RSA 14:30-a: VI, authorize the New Hampshire Department of Environmental Services (NHDES) to accept and expend \$900,000 in Pass-Thru Federal Highway funds from the New Hampshire Department of Transportation (NHDOT) to complete construction of the Suncook River stabilization Project to protect the U.S. Route 4 Bridge in Epsom, New Hampshire, effective upon Fiscal Committee and Governor and Council (G&C) approval through June 30, 2017. 100% federal funds. Funding is to be budgeted as follows:

**Suncook River Stabilization Project  
 03-44-44-442010-6932  
 FY 2017**

Class	Budget Category	Current Budget	Requested Action	Revised Budget
<b>Income</b>				
002-401475	Due From DOT	\$0	(\$900,000)	(\$900,000)
<b>Expenditures</b>				
102-500731	Contract for Program Services	\$0	\$900,000	\$900,000
	<b>TOTAL</b>	\$0	\$900,000	\$900,000

The Honorable Neal M. Kurk, Chairman  
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2. Authorize the NHDOT to enter into a Memorandum of Agreement (MOA) with NHDES (Vendor Code #177894-B001) in the amount of \$900,000 to jointly fund the Suncook River Stabilization Project, in Epsom, New Hampshire. This MOA shall be effective for two years following the G&C approval. 100% Federal Highway Funds.

Funding is available in the account as follows:

	<u>FY 2017</u>
04-96-96-963515-3054-400-500870	\$900,000
Dept of Transportation, Consolidated Federal Aid, Highway Contract Payments	

#### EXPLANATION

An extreme rain event occurred on May 15 and 16, 2006 in New Hampshire which resulted in a statewide flood and triggered a 100-year flood on the Suncook River. The "Mother's Day Flood" caused the Suncook River to change course (an event known as an "avulsion") in the Town of Epsom, creating nearly 1.5 miles of abandoned channel and a rapidly adjusting new channel. As a result of the 2006 avulsion, the Suncook River now flows through two actively farmed corn fields and a gravel pit. Moreover, continued channel bed erosion and lateral channel migration threaten the structural stability of vital infrastructure adjacent to the Suncook River. The critical infrastructure at risk includes the U.S. Route 4 Bridge crossing over the Suncook River in Epsom. The bridge footings that support the U.S. Route 4 Bridge are not anchored into underlying geology (bedrock) or situated on pilings that would provide resistance to the scour and undercutting created by the Suncook River as it continues to adjust to the 2006 avulsion.

The purpose of this project is to stabilize the Suncook River to protect the U.S. Route 4 Bridge and active agricultural lands on the floodplain. The construction will include stabilization of approximately 600 feet of bank along the Suncook River adjacent to an agricultural field approximately 2,700 feet downstream of the U.S. Route 4 Bridge. The work will also include stabilization of the channel banks on both sides of the river for approximately 900 feet downstream of the U.S. Route 4 Bridge and construction of a grade-controlling stone riffle in the channel at the downstream terminus of the in-channel stabilization practices. Subsurface sheet-pile will span both floodplains and will be tied into the grade-controlling riffle to provide a secondary barrier to upstream and lateral channel migration in the event that downstream practices are compromised.

NHDES is the lead agency for the *The Suncook River Stabilization Project* and responsible for the design, contracting, permitting, construction, and general supervision of the project. The MOA enables NHDES and NHDOT to collaborate on obtaining National Environmental Policy Act (NEPA) approval, the preparation of Right of Way documents for the project area, and a mechanism for jointly funding this infrastructure protection project on the Suncook River in Epsom, New Hampshire. The maximum amount of funds available for this project from NHDOT is \$900,000 and shall be for all work performed by contractors for construction of this project, including construction engineering in the area immediately downstream of the U.S. Route 4 Bridge. Funds provided by NHDOT shall not be utilized for channel stabilization construction at the second construction site adjacent to "Cutter's Field."

The Honorable Neal M. Kurk, Chairman  
Fiscal Committee of the General Court and

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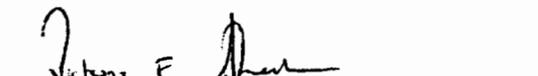
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The MOA has been approved by the Office of the Attorney General as to form, execution, and content, and the NHDOT has certified that the necessary funds are available.

The project funding is 80% Federal funding with 20% State match. Turnpike Toll Credit is being used for the NHDOT match requirements effectively using 100% Federal funds for the NHDOT portion.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner, NHDES

  
Victoria F. Sheehan, Commissioner, NHDOT

Memorandum of Agreement between  
New Hampshire Department of Transportation  
and  
New Hampshire Department of Environmental Services  
relative to  
The Stabilization of Suncook River in Epsom

WHEREAS, The New Hampshire Department of Environmental Services (DES) intends to construct a project to stabilize the Suncook River in Epsom (NHRIV700060503-04) in two locations, the first being to the southeast of the Epsom traffic circle, where US Route 4 intersects with NH 28, and the second being in a location known as "Cutter's Field"(hereinafter referred to as "the Project"); and

WHEREAS, US Route 4 is a State Highway that is owned and maintained by the New Hampshire Department of Transportation (DOT), including both roadways and bridges; and

WHEREAS, the Project will serve to protect the infrastructure of US Route 4 and provide a benefit to DOT in the form of reduced or delayed maintenance and replacement costs; and

WHEREAS, DES and DOT have agreed in principle to share the construction costs associated with the Project in the vicinity of US Route 4 as described, herein

NOW, THEREFORE, DES and DOT agree as follows:

**I. DUTIES AND RESPONSIBILITIES OF DES:**

- A. DES shall be the Agency responsible for the design, contracting, construction, and general supervision of the Project;
- B. DES shall coordinate with DOT to ensure that all contract documents and work performed on the Project complies with all applicable laws, rules, regulations, and with the policies under the Federal-aid Highway Program for Federal Aid Construction Contracts.
- C. DES shall provide DOT with an estimate of construction costs with the costs for the area to the southeast of the Epsom traffic circle separated from the costs for the area near "Cutter's Field". Costs for items that are not easily distributed between the two areas of stabilization (e.g. mobilization and field office) shall be prorated based on the value of the work that is easily quantified per location. Work performed southeast of the Epsom Traffic Circle and prorated portions of general costs shall be defined as "DOT Reimbursable Scope of Work" and shall be agreed upon between DOT and DES prior to DES' execution of a construction contract for the Project.
- D. DES shall oversee construction inspection throughout the construction of the project.

- E. DES shall submit monthly progress reports and invoices to DOT for reimbursement of its share of the amounts paid to construction contractors for the performance of the work set forth within the DOT Reimbursable Scope of Work. The invoice structure shall include details of work, as well as backup information to support the charges. DES shall certify that the invoices properly represent payment for work that has been completed and paid for by DES.
- F. DES agrees that it will maintain all project and financial records pertinent to the development and execution of the Project for three (3) years beyond the date of completion of the Project. DES acknowledges that a failure to maintain this documentation may result in Federal Highway Administration seeking a refund of all reimbursed project costs.
- G. DES agrees that its' contractor will name DOT as an additional insured on all policies of insurance required for the Project.
- H. In the event of a default by DES of any of its obligations under this AGREEMENT, which default triggers a claim by the Federal Highway Administration for a refund of funds provided by DOT, DES shall be required to reimburse DOT for all Federal Highway Trust Fund monies expended by DES under this Project.

## II. DUTIES AND RESPONSIBILITIES OF DOT:

- A. DOT 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. Costs incurred by DOT in coordinating the design with DES or in providing review of the DES design shall be 100% the responsibility of DOT.
- C. DOT shall coordinate with DES to assist with obtaining National Environmental Policy Act (NEPA) approval.
- D. DOT shall coordinate with DES in the preparation of ROW documents for this project.
- E. DOT shall reimburse its share of Project costs, subject to the limitations set forth in Part III. Section D, to DES after receipt and approval of properly documented invoices that have been certified by DES as properly representing work that has been completed and paid for by DES.
- F. DOT shall use its best efforts to obtain authorization of the Project from the Federal Highway Administration.

- G. DOT shall assist DES, to the extent reasonably possible, to avoid, mitigate, and/or cure any default of Federal Highway Trust Fund requirements by DES so as to avoid a potential claim for a refund by the Federal Highway Administration.

**III. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN DOT AND DES:**

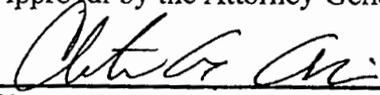
- A. That all design costs for the entire project, as designed by DES or its subcontractors and reviewed and approved by DOT, shall be borne by DES.
- B. That all environmental, archaeological, and cultural resources costs incurred for this project by either DOT or DES shall be paid in their entirety by the department that incurred the costs and shall not be included in any shared costs.
- C. That DOT shall not expend money in the acquisition of any easements or property.
- D. That the MAXIMUM amount of funds available for this Project for reimbursement under this AGREEMENT from DOT shall be \$900,000 and shall be for all work performed by DES, other NH agencies, consultants, and contractors in the construction of this project, including construction engineering in the area to the southeast of the Epsom traffic circle. As the Project documents are finalized, should the costs for the Project exceed the \$900,000 DOT contribution, DES shall be responsible for all additional costs.
- E. That DOT will pay no costs associated with the Cutter's Field portion of this project.
- F. That DES shall invoice DOT for incurred costs on a monthly basis and DOT will process these invoices for payment in an expeditious manner.
- G. That DES agrees to commence the construction of this Project within nine (9) months after the date of this AGREEMENT and substantially complete the construction of this Project within two (2) years after the date of the first notice to proceed date given by DOT, unless earlier terminated as provided herein. DES may apply to DOT for an extension. Failure to meet either deadline without good cause may cancel DOT's participation in this Project at its discretion. Any remaining funds will be forfeited. DES is responsible for informing and coordinating a new Project completion date that will need to be approved by DOT if any condition arises that may result in either deadline being unattainable.
- H. 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, DOT may terminate this AGREEMENT upon thirty (30) days' written notice to DES. Such termination shall relieve DOT and DES from obligations under this AGREEMENT after the termination date.

IN WITNESS WHEREOF, the respective parties have hereunto set their hands on the dates indicated.

Date 11/18/2016   
Victoria F. Sheehan, Commissioner  
Department of Transportation

Date 9/2/16   
for Thomas S. Burack, Commissioner  
Department of Environmental Services

Approval by the Attorney General as to Form, Substance and Execution:

 12/2/16  
Signature Date

SECRETARY OF STATE

I hereby certify that the foregoing Memorandum of Agreement was approved by the Governor and Executive Council of the State of New Hampshire at their meeting on

Signed \_\_\_\_\_