



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



21

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 Highway Design
December 23, 2019

REQUESTED ACTION

Authorize the Department of Transportation to enter into a Municipal Agreement with the Town of Londonderry to allow the Department to bill Londonderry for costs associated with improvements to the intersection of NH 28 and Stonehenge Road in the Town Londonderry, effective upon Governor and Council approval and continuing through engineering design, construction, inspection, and final acceptance of the completed project, in accordance with the Department's 10-Year Transportation Improvement Plan. (Project costs will be shared 50% by NH and 50% by Londonderry).

EXPLANATION

This project is part of the State's Ten Year Transportation Improvement Plan. The project proposes to provide operational and capacity improvements to the intersection and includes preliminary design, final design and construction activities. The project (Londonderry 41715) is planned for construction in 2021 with an estimated construction cost of \$1,675,188.

The Agreement, after approval by Governor and Council, allows the Department to bill Londonderry for Londonderry's share of costs for engineering design and applicable construction work incurred by the Department. The division of costs between the Department and Londonderry for this project is 50% by the Department and 50% by Londonderry, as stated in the Agreement. This project was included in the current Ten Year Plan (2019-2028) and construction was advanced as a result of the cost sharing included in the agreement.

The Agreement has been approved by the Attorney General as to form and execution. This Agreement does not involve commitment of funds. Copies of the fully-executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Services and subsequent to Governor and Council approval will be on file at the Department of Transportation.

It is respectfully requested that authority be given for this Municipal Agreement, as outlined above.

Sincerely,

Victoria F. Sheehan
Commissioner

Attachments

PROJECT AGREEMENT

FOR

TOWN OF LONDONDERRY

STATE VENDOR #: 177430

STATE PROJECT #: 41715

FEDERAL PROJECT #: X-A004(724)

THIS AGREEMENT, executed in *triplicate*, made and entered into this ____ day of _____, 2019, between the New Hampshire Department of Transportation, hereinafter called the "DEPARTMENT" and the Town of Londonderry hereinafter called the "TOWN".

WITNESSETH that,

WHEREAS, the DEPARTMENT intends to construct a project in Londonderry along NH 28, currently identified as a federally-funded roadway project, Londonderry 41715, which includes operational and capacity improvements at the intersection of NH 28 and Stonehenge Road (hereinafter called the "PROJECT"); and

WHEREAS, Stonehenge Road is a Town street; and

WHEREAS, this project has been included in the 2019-2028 Ten-Year Plan; and

WHEREAS, the costs associated with the PROJECT are currently estimated at approximately \$1.7 million in fiscal year 2021; and

WHEREAS, all costs for the Project as described above, other than those related to relocation of utilities as outlined in the DEPARTMENT'S Utility Accommodation Manual, are to be shared equally by the DEPARTMENT and the TOWN with the project funding and target ad date as represented in the table below; and

Ad Year: 2021	State Share 50%	Town Share 50%	Total Budget
Current Day Estimate	\$837,594	\$837,594	\$1,675,188

NOW, THEREFORE, in consideration of the above premises, it is mutually agreed as follows:

DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT

1. The DEPARTMENT shall design and construct project Londonderry 41715, operational and capacity improvements to the intersection of NH 28 and Stonehenge Road. All work associated with construction of these facilities will be in accordance with DEPARTMENT specifications.

2. The DEPARTMENT will assume control and management of the Engineering, Right-of-way appraisals and acquisitions, environmental efforts including any necessary permitting, and Construction of this project.
3. The DEPARTMENT will be responsible for the management and operation of the work zone throughout the duration of the active construction of the project.
4. The DEPARTMENT will be responsible for operation and maintenance of any traffic control devices and or signals.

DUTIES AND RESPONSIBILITIES OF THE TOWN

5. The TOWN will offer commentary and input on the design of the project. The TOWN agrees to assign employees to provide direct input and communicate progress to the TOWN. The DEPARTMENT will consider all input, but has the ultimate approval authority.
6. The TOWN will, at its own cost, be responsible to provide for the year round maintenance, including snow removal, of the existing roadway and other transportation facilities within the Town right-of-way, in accordance with the TOWN's policies and/or practices, until construction begins and during winter shut-down periods.
7. The TOWN agrees that all utility locations, as verified at the beginning of the project, shall not be altered unless changes are made according to any applicable licensing procedure of the TOWN. Any changes to TOWN or private utilities within the work area must be coordinated with the DEPARTMENT.
8. The TOWN shall, at its own cost, provide or cause to provide for the future maintenance of the reconstructed roadway, sidewalks and other transportation facilities indicated above within the Town Right-of-way and all other sidewalks constructed as part of this project, which includes winter snow and ice removal in accordance with the TOWN's policies and/or practices and the requirements of 23 CFR 1.27 and 28 CFR 35.133, once the work under this AGREEMENT is completed.
9. The TOWN will, at its own cost and expense, operate and maintain all existing lighting and any new lighting that may be installed as part of the project within the Town right-of-way in accordance with the TOWN's policies and/or practices.
10. Engineering considerations are vital to proper maintenance and operation of these improvements, and future operational adjustments may be necessary due to changed traffic conditions, technical advances or emergency situations. The TOWN agrees that no changes will be made without prior approval of the DEPARTMENT and Federal Highway Administration.

IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE TOWN:

11. The TOWN delegates to the Commissioner of the New Hampshire Department of Transportation the authority to control traffic within the construction zones of this project. The Department will coordinate with the TOWN to solicit input on the Traffic Control Plans. This will be memorialized as a separate Municipal Work Zone Agreement.
12. The engineering design for the project will be in accordance with applicable Federal and State standards. It is understood that modifications may be required to the current design based on changes in current traffic patterns, environmental regulations and other requirements.

13. All right-of-way (ROW) shall be acquired in fee in the name of the State.
14. Notwithstanding the requirements herein, it is further understood that neither the DEPARTMENT, nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the TOWN under this agreement unless expressly authorized by the DEPARTMENT prior to the work being performed.
15. This agreement is contingent upon the appropriation of sufficient funds from the State of New Hampshire Legislature and the Federal Highway Administration. If sufficient funds are not appropriated, the DEPARTMENT may terminate this AGREEMENT upon thirty (30) days' written notice to the TOWN. Such termination shall relieve the DEPARTMENT and the TOWN from obligations under this AGREEMENT after the termination date.
16. Provision of cost share funds to the DEPARTMENT shall be in the following manner.

	STATE	TOWN	TOTAL
PE	\$ 55,000	\$ 55,000	\$ 110,000
ROW	\$ 100,000	\$ 100,000	\$ 200,000
Construction	\$ 682,594	\$ 682,594	\$1,365,188

- a. All costs will include 10% indirect charges.
 - b. The TOWN shall provide its full share of project funds for Preliminary Engineering prior to commencement of that phase.
 - c. The DEPARTMENT will invoice the TOWN monthly for Right-of-Way Acquisition costs including Bureau of Right of Way staff time.
 - d. The TOWN shall provide its full share of project funds for Construction based on estimated project costs after receipt of bids and prior to award of the Contract.
 - e. The DEPARTMENT will invoice the TOWN monthly for Construction Engineering costs.
 - f. The TOWN shall be responsible for 50% of the overall actual project costs determined after acceptance of the completed project.
 - g. The DEPARTMENT will provide monthly reports on expenditures.
17. Project scope, schedule and budget shall be reviewed by the DEPARTMENT and the TOWN upon completion of the NEPA process. If it is determined at this point that the project is not feasible, the project will be cancelled and project costs to date will be shared at 50/50 split.
 18. As the project is finalized, should the scope of the project result in costs exceeding the amount budgeted, the DEPARTMENT and TOWN agree to review the project to determine whether to reduce the scope of the project or seek additional funding sources.
 19. The TOWN 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 TOWN or its subcontractors in carrying out the provisions of this agreement. Notwithstanding the foregoing, nothing herein contained, shall be deemed to constitute a waiver of the sovereign immunity of the STATE or the


DEPARTMENT, which immunity is hereby reserved. This covenant shall survive the termination of this agreement.

20. This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and supersedes and replaces all previous agreements, whether written or oral, pertaining to the subject matter hereof. Any changes to this agreement must be made by written amendment executed by authorized representatives of the parties.

IN WITNESS WHEREOF, the parties here have affixed their signatures, the Town of Londonderry, New Hampshire, on this 24th day of October, 2019, and the New Hampshire Department of Transportation on this 31st day of December, 2019.


**NEW HAMPSHIRE DEPARTMENT OF
TRANSPORTATION**

BY:


Victoria F. Sheehan
Commissioner

TOWN OF LONDONDERRY

BY:


Town Manager
Town of Londonderry

New Hampshire
Department of Transportation

Emily C. Goring
Signature

EMILY C. GOERING
Name

Assistant Attorney General
Title

NH Attorney General

Governor and Council
Approval

Secretary of State

Dated