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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 and Community Assistance
 October 9, 2020

REQUESTED ACTION

Authorize the New Hampshire Department of Transportation (NHDOT) and New Hampshire Department of Natural and Cultural Resources (NHDNCR) to enter into a Memorandum of Agreement (MOA) for up to \$6,250,000.00 to define all of the roles and responsibilities of NHDNCR and NHDOT as they relate to the administration of the Recreational Trails Program (RTP) funded by Federal Highway Administration (FHWA) through NHDOT to NHDNCR, effective upon Governor and Council approval through September 30, 2025. 100% Federal Funds.

Funding for this MOA is available in FY 2021 and is contingent upon the availability and continued appropriation of funds for FY 2022, FY 2023, FY 2024 and FY 2025 as follows, with the ability to adjust encumbrances through the Budget Office between State Fiscal Years if needed and justified.

	<u>FY 2021</u>	
04-96-96-963515-3054 Consolidated Federal Aid 085-588535 Interagency Transfer Out of Federal Funds	\$1,250,000.00	
	<u>FY 2022</u>	<u>FY 2023</u>
04-96-96-962515-2945 Municipal Aid – Federal 085-588535 Interagency Transfer Out of Federal Funds	\$1,250,000.00	\$1,250,000.00
	<u>FY 2024</u>	<u>FY 2025</u>
	\$1,250,000.00	\$1,250,000.00

EXPLANATION

The Recreational Trails Program (RTP) is anticipated to continue under transportation reauthorization that will replace the Fixing America's Surface Transportation (FAST) Act. The Federal Highway Administration sets aside funding for the RTP. The RTP is a Federal-Aid assistance and reimbursement program designed to help the states provide and maintain recreational trails for both motorized and non-motorized use. FHWA's RTP guidelines state that a State's Governor designate a State's Resource agency as the manager of the Recreational Trails Program. In New Hampshire the program has been delegated to the Division of Parks & Recreation, Bureau of Rails and Trails within the Department of Natural and Cultural Resources.

The New Hampshire Department of Transportation (NHDOT) Bureau of Planning and Community Assistance has partnered with the New Hampshire Department of Natural and Cultural Resources to secure the attached Memorandum of Agreement that outline the roles and responsibilities for both agencies to properly manage and facilitate the use of the Recreational Trails Program funds.

This MOA has been reviewed and approved by the Federal Highway Administration.

This MOA has also been approved by the Attorney General's Office as to form, substance and execution.

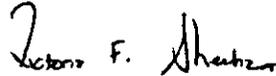
Your acceptance of this agreement and approval to expend the funds to complete the project outlined above is respectfully requested.

Sincerely,



Sarah L. Stewart
Commissioner – NHDNCR

Sincerely,



Victoria F. Sheehan
Commissioner - NHDOT

VFS/WEW/dmp
Attachments

**MEMORANDUM OF
AGREEMENT BETWEEN
NH DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
AND
NH DEPARTMENT OF TRANSPORTATION**

September 1, 2020

This Memorandum of Agreement (MOA) is entered into by the New Hampshire Department of Natural and Cultural Resources, hereinafter referred to as NHDNCR and the New Hampshire Department of Transportation, hereinafter referred to as NHDOT.

SECTION 1: PURPOSE

The purpose of this MOA is to identify all of the roles and responsibilities of NHDNCR and NHDOT as they relate to the administration of the Recreational Trails Program (RTP) funded by Federal Highway Administration (FHWA) through NHDOT to NHDNCR.

SECTION 2: PROGRAM BACKGROUND

The Recreational Trails Program (RTP) is anticipated to be continued under transportation reauthorization that will replace the Fixing America's Surface Transportation (FAST) Act of 2015. FHWA sets aside an amount of Transportation Alternative Program funding to the RTP. The RTP is a Federal-Aid assistance and reimbursement program designed to help the states provide and maintain recreational trails for both motorized and non-motorized use. FHWA's RTP guidelines state that a State's Governor designate a State's Resource agency as the manager of the Recreational Trails Program; in New Hampshire the program has been delegated to the Division of Parks & Recreation.

SECTION 3: PROGRAM ADMINISTRATION

NHDNCR has been designated by the NH Governor as the state agency responsible for administering the State of New Hampshire's Recreational Trails Program as authorized by 23 U.S.C. 206, and pursuant to NH RSA 215-A:3,IV-a(f), NH RSA 215-C:2,V(f) and NH RSA 216-F:4.

NHDOT is the direct recipient of RTP funding from FHWA, and NHDOT passes this funding through to NHDNCR as the subrecipient of funds.

As the sub recipient of federal-aid funds for the State of New Hampshire's Recreational Trails Program thru NHDOT, NHDNCR is accountable to both NHDOT and the Federal Highway Administration (FHWA) for the proper use of the federal funds.

As a subrecipient of funds, NHDNCR shall use its RTP funds in accordance with all applicable Federal legislation and regulations. NHDNCR shall also follow all NHDOT Local Public Agency (LPA) processes and requirements, which are also reviewed and approved by FHWA. NHDOT recognizes that the RTP program has separate rules from the NHDOT administered LPA projects that may not be covered within the LPA manual and the agencies can work cooperatively through these items.

As the recipient of funds from FHWA, NHDOT shall be responsible to ensure proper compliance and oversight of the RTP funds by NHDNCR. Therefore, all decisions regarding the use of RTP funds shall be made by NHDNCR under the oversight of NHDOT. Any audit or federal-aid review that determines non-participation of NHDNCR expenditures will require that NHDNCR be responsible for any and all pay back to FHWA through NHDOT.

SECTION 4: PROGRAM FUNDING

STIP/TIP

23 U.S.C. 134 and 135 requires FHWA-funded RTP projects to be included in the Statewide Transportation Improvement Program (STIP) and applicable Metropolitan Planning Organizations (MPOs) Transportation Improvement Plans (TIPs). NHDNCR shall forward the approved annual Work Plan and list of projects determined eligible for funding to NHDOT's Bureau of Planning and Community Assistance for incorporation into the STIP, and to applicable TIPs. Unless the RTP projects are determined to be regionally significant, they may be grouped and submitted as one line item to NHDOT for incorporation into the STIP, and to applicable MPOs for incorporation into their TIPs. If an RTP project is determined to be regionally significant by NHDOT and/or through the interagency consultation process, it must be listed individually within the STIP and any applicable TIP.

NHDNCR, in consultation with NHDOT, shall also annually project anticipated RTP funding levels for up to four fiscal years for inclusion in the STIP and MPO TIPs until specific projects are identified. Once specific projects are identified, project funding levels will need to be updated by NHDNCR thru the NHDOT Bureau of Planning and Community Assistance (P&CA).

Any and all modifications to the individual listing of projects or to the line item as listed in the STIP and appropriate TIPs shall be subject to federal STIP requirements and subjected to the FHWA approved STIP Revision Procedures that are used to guide NHDOT STIP actions.

Obligation Limitation

The RTP is subject to the same annual obligation limitation as the remaining Federal-Aid Highway Program that NHDOT receives. Congress determines the annual obligation limitation through authorization legislation or through annual appropriations acts. As specified in law, the FHWA allocates the annual obligation limitation to NHDOT.

NHDOT shall notify NHDNCR, in writing, of the yearly apportionment when released by FHWA, as well as of any rescissions or adjustments to apportionment by FHWA. NHDOT, in consultation with NHDNCR, shall determine the obligation limitation share that RTP funds shall receive for the upcoming Federal Fiscal Year so that NHDNCR can plan for their program.

Funds Availability

Under 23 U.S.C. 118(b)(2), apportioned funds are available for obligation for four fiscal years: the current fiscal year plus three additional years. The funds are treated in a "first in, first out" manner; older year funds are obligated before newer year funds. Neither NHDNCR nor NHDOT is required to fully use the RTP funds made available through Congress and FHWA if sufficient progress has not been made to close out existing funded projects (noted in Section 5.4).

SECTION 5: AGENCY RESPONSIBILITIES UNDER THIS MOA

1. NHDNCR shall require the Trails Bureau Chief, and RTP Program Specialist maintain an LPA Certification from NHDOT. The certification for both staff members must be updated every 3 years. The LPA certification is awarded to the individual not organization so any change of staff on the RTP would require new certification from NHDOT. RTP projects shall not be allowed to move forward if NHDNCR does not have LPA certified staff overseeing the RTP projects.
2. NHDNCR shall manage the RTP in accordance with all applicable FHWA rules and regulations governing the use of FHWA funding, as well as in accordance of all of the pertinent LPA requirements outlined under the most recent NHDOT LPA Manual. NHDOT recognizes that the RTP program has separate rules from the NHDOT administered LPA projects that may not be covered within the LPA manual and the agencies can work cooperatively through these items. NHDNCR will be responsible for:
 - i. Develop program guidance that reflects federal Recreational Trails Program guidance and is reviewed by FHWA – NH Division. An approved copy of this Program guidance and any additional FHWA RTP guidance shall be shared with NHDOT when it becomes available;
 - ii. Conducting a competitive application process for distribution of the RTP funds to individual projects that is compliant with RTP and other Federal requirements;
 - iii. Executing Project Agreements with the individual sub-recipients that are approved by Governor and Executive Council;
 - iv. Reviewing and approving individual projects for compliance with RTP and other federal requirements; and
 - v. Ensure that acceptable supporting documentation is provided and maintained for expenditures for reimbursement through the RTP.
3. NHDNCR shall undertake the following activities for RTP project and financial transactions through the NHDOT Bureau of Planning and Community Assistance (P&CA):
 - i. Initiate project setup and definition, to include defining the project term and other related details. Sufficient detail must be provided so that NHDOT staff can update their Project Management System completely.

- ii. Request the obligation, de-obligation and/or re-obligation of project funds thru NHDOT P&CA for review and submission to the FHWA.
 - iii. Request reimbursement for the Federal share of allowable project work completed, on a monthly basis, through NHDOT P&CA. Submit copies of all supporting documentation to NHDOT for review and approval by NHDOT along with reimbursement request.
 - iv. Work with NHDOT P&CA to ensure that completed projects are closed (final voucher) within 90-days after completion of the project, in accordance with the current NHDOT and FHWA approved processes.
4. No more than two (2) Term Projects open within FMIS at any time. One project can be starting up as another is being completed and closed.
 5. Coordinate all required reviews for the National Environmental Protection Act (NEPA) reviews and submit all projects to the NHDOT Bureau of Environment for approvals, after consultation with the State Historical Preservation Office.
 6. Meet quarterly, or more as needed, with FHWA, the NHDOT P&CA and the NHDOT Bureau of Finance about the program for billing reviews and other items if needed.
 7. Maintain project files and further maintain expenditure support; documentation to include vendor contracts, procurement process, project ledgers and invoices. Such files shall be retained for a period of 3 years after final voucher.
 8. NHDNCR, as part of every project closeout process, shall utilize an auditor to verify that expenditures are allowable in accordance with FHWA guidelines. In the case that unallowable (non-participating) expenses are found through this audit or through a billing review initiated by NHDOT or FHWA, NHDNCR shall be responsible for paying those funds back to NHDOT. Failure to do so will result in the current program being given a "Hold" or "Stop Work Order" until such funds are repaid. The auditor's report shall be forwarded to NHDOT P&CA with the request to close the project.
 9. As the sub-recipient of Federal-aid funds for the State of New Hampshire's Recreational Trails Program, NHDNCR is accountable to the NHDOT as the recipient for the use of the Federal funds

NHDOT shall undertake the following activities for RTP:

1. NHDOT P&CA shall provide training opportunities for NHDNCR staff to be LPA certified to be able to manage RTP projects. Make determination whether NHDNCR is able to manage the RTP program on at least an annual basis based on review of LPA certifications. Each NHDNCR staff MUST be certified no less than once every 3 years.
2. NHDOT P&CA shall process all initial project listings and projections through the NHDOT's Project Management System (Currently known as ProMIS) so that all

projects will be included in the NHDOT's STIP and all appropriate MPO TIPs as part of the NHDOT's normal required processes.

3. NHDOT P&CA shall process all project setups and modifications through ProMIS, including but not limited to scope, schedule and budget and term end dates as provided to NHDOT from NHD.
4. NHDOT P&CA shall process all requests for obligation, de-obligation and/or re-obligation of project funds through ProMIS and NHDOT processes for review and submission to the FHWA.
5. NHDOT Bureau of Finance and Contracts (F&C) – Project Programming will program FMIS for obligation, de-obligation and/or re-obligation of project funds and other required project information.
6. NHDOT (F&C) shall process all of NHD's approved reimbursement requests of project work completed within state and federal requirements through its Current Billing System (CBS). NHDOT F&C will direct the revenue received from FHWA through NHFIRST to a revenue account designated by NHD.
7. NHDOT F&C shall provide CBS and other financial system history when requested to document revenue activity for a project.
8. NHDOT P&CA shall work with DNCR on STIP amendments and/or minor revisions, if necessary, for the RTP providing that any amendments and/or minor revisions do not negatively impact NHDOT projects.
9. As the recipient of Federal-aid funds for the State of New Hampshire's Recreational Trails Program, NHDOT is accountable to the FHWA for the use of the Federal funds.

SECTION 6: ADDITIONAL PROVISIONS OF AGREEMENT

Effective Date

This MOA shall be effective upon Governor and Council approval. It shall be in effect for a period of time not to exceed five (5) years through September 30, 2025, at which time it will be subject to review, renewal, revision, or expiration as mutually agreeable by NHDNCR and NHDOT.

Amendments

Amendments to this MOA shall only be made in writing and shall be signed and dated by the agencies.

Sovereign Immunity

This MOA does not abridge or limit, nor shall it be interpreted as abridging or limiting the sovereign or official immunity to which the State and its representatives and agents are lawfully entitled.

SECTION 7: PRINCIPAL CONTACTS FOR THIS MOA

NHDNCR

Phil Bryce, Director
Division of Parks and Recreation
Bureau of Trails
172 Pembroke Road
Concord, NH 03301
Tel.: 603-271-3254
Email: Philip.a.Bryce@dncr.nh.gov

NHDOT

Bill Watson, Administrator
Bureau of Planning &
Community Assistance
7 Hazen Drive, JOM Building
Concord, NH 03301
Tel.: 603-271-3344
Email: Bill.Watson@dot.nh.gov

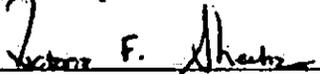
AUTHORIZED OFFICIALS

By signature below, the commissioners certify that the individuals listed as the principal contacts in this document, or their duly appointed successors, are their representatives and are authorized to act in their respective areas for matters related to this agreement.

New Hampshire Department of Natural and Cultural Resources

By:  10/30/20
Sarah L. Stewart, Commissioner Date

New Hampshire Department of Transportation

By:  10-30-2020
Victoria F. Sheehan, Commissioner Date

NH Attorney General

Allison B. Greenstein

Signature

Allison B. Greenstein

Name

Assistant Attorney General

Title

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

Secretary of State

Dated