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New Hampshire DOT
Department of Transportation

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
November 25, 2020

REQUESTED ACTION

Authorize the Department of Transportation to enter into an agreement totaling $1,649,000.85 with the Town of Milford (sub-recipient) (Vendor #177503) to provide funding and services under the Section 1702 Federal Funding Designated Program through a Local Project Administration process, effective upon Governor and Council approval, through June 30, 2024, unless extended by the Department in accordance with Department approved procedures. (100% Federal Funds).

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

	FY 2021	FY 2022	FY 2023	FY 2024
04-96-96-962515-2945				
Municipal Aid – Federal				
072-500574 Grants to Local Gov - Federal	$160,000.00	$80,000.00	$704,500.00	$704,500.85

EXPLANATION

This agreement is between the State and the sub-recipient to delineate responsibilities for providing services necessary to plan, layout, design, and/or provide oversight supervision for this Federal Aid project.

This project will improve traffic flow along NH 101A and NH 13 in the area known as the "Oval" in the Town of Milford.

Section 1702 Federal Funds (80% Federal and 20% Town) will be used for Preliminary Engineering, Right-of-Way and Construction. For reference; the following table shows the funding allocations:

Ad Year: 2023	DEPARTMENT SHARE (80%)	PROJECT SPONSOR SHARE (20%)	NON-PARTICIPATION	TOTAL
Current Day Estimate	$1,649,000.85	$412,250.21	$0.00	$2,061,251.06

Authorization is requested to allow the Department to enter into an agreement with the sub-recipient to ensure compliance with Federal Aid requirements and to permit State personnel to supervise the project and the Department to expend Federal 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.

Expenses incurred will be charged against the designated project account number and reimbursement for costs shall be borne by the Federal Aid Program in the amount of $1,649,000.85.

Your approval of this submission is respectfully requested.

Sincerely,

Victoria F. Sheehan
Commissioner

VFS/TEJ/dmp
Attachments

SECTION 1702 FEDERAL FUNDING DESIGNATED PROGRAM
PROJECT AGREEMENT
FOR
TOWN OF MILFORD

PROJECT SPONSOR DUNS # 025087362
STATE VENDOR #: 177503
STATE PROJECT #: 42470
FEDERAL PROJECT #: X-A004(864)

THIS AGREEMENT, is made and entered into this ____ day of _____, 20__, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and the TOWN OF MILFORD, hereinafter called the "PROJECT SPONSOR".

WITNESSETH that,

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to improve traffic flow along NH 101A and NH 13 in the area known as the "Oval" in the Town of Milford is an eligible project for funding under the Section 1702 Federal Funding Designated Program created by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); and

WHEREAS, the DEPARTMENT has established Section 1702 Federal Funding Designated Project #42470 (the "Project") for the aforesaid project, with the project funding and target ad date as represented in the table below; and

Ad Year: 2023	DEPARTMENT SHARE (80%)	PROJECT SPONSOR SHARE (20%)	NON-PARTICIPATION	TOTAL
Current Day Estimate	$1,649,000.85 *	$412,250.21	$0.00	$2,061,251.06

* Department share of costs are capped at $1,649,000.85. All project costs in excess of this total will be 100% funded by the PROJECT SPONSOR.

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 agreement 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 document titled "Local Public Agency Manual for the Development of 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. 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 in the Application or 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 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. Any and all of these project and financial records must be made available to the DEPARTMENT and Federal Highway Administration at their 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. 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, "Non-discrimination 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. The PROJECT SPONSOR certifies by entering into this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of New Hampshire. The term "principal" for purposes of this Agreement means an officer, director, key employee or other person with primary management or supervisory responsibilities, or a person who has critical influence on or substantive control over the operations of the PROJECT SPONSOR. The PROJECT SPONSOR also certifies that it will verify the state and federal suspension and debarment status for all parties (consultant/vendor/contractor, etc.) receiving funds under this

Agreement as a sub-Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred party. The PROJECT SPONSOR shall immediately notify the Department if any sub-Agreement party is debarred or suspended, and shall, at the DEPARTMENT'S request, take all steps required by the State to terminate its sub-Agreement relationship with the party for work to be performed under this Agreement.

I. 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 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.

C. 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 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. 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 the PROJECT SPONSOR agrees to commence the Project within three (3) months after the date of this AGREEMENT and substantially complete the Project within four (4) 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.

E. 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.

F. 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, 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: Victor F. Weston
Commissioner
Department of Transportation

TOWN OF MILFORD

By: John Shannon

Title: Town Administrator

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

_____.