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New Hampshire DOT
Department of Transportation

Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

William Cass, P.E.
Assistant Commissioner

Bureau of Human Resources
December 27, 2021

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

REQUESTED ACTION

Authorize the Department of Transportation to enter into a **SOLE SOURCE** agreement with Federal Highway Administration Finance Division, National Highway Institute, (NHI) of 1310 N. Courthouse Road, Suite 300, Arlington, Virginia 22201 (Vendor 170717) for an amount not to exceed $138,685.00 for training from the date of Governor and Council approval through September 30, 2022. 100% Federal Funds.

Funding is available as follows:	FY 2022
04-96-96-960315-3027 Employee Training 066-500543 Continuing Professional Education	$138,685.00

EXPLANATION

This contract is **sole source** because the training must be in full compliance with the requirements of the Federal Highway Administration. The National Highway Institute is the training arm of the Federal Highway Administration (FHWA). Congress established the NHI in 1970 to provide direct training, resource materials, and educational opportunities to the surface transportation community. It is an integral part of the FHWA Office of Professional Development and works closely with FHWA Field Resource Centers to assure the highest-level possible of professional training and consistency with applicable FHWA standards. The actual cost averaged out per student per course is reasonable in comparison with the cost of similar courses of a technical nature given by institutes of higher learning or private consultants. This training is part of the Statewide 12563Z STP-X-A004 (153) project for the annual training program. The National Highway Institute (NHI) is part of the Federal Highway Administration and is responsible for providing expertise and training on new technology, research, and best practices for highway and bridge related design, contracting, and project delivery.

Funds are available for payment of the cost of tuition and educational expenses in conjunction with the training of Department employees in the amounts outlined above. The training will improve the quality

of Department projects and enhance the safety and efficiency of Department staff implementing transportation projects.

Some of the training will be held at or near the NHDOT headquarters in Concord, and will include approximately 10-30 NHDOT employees per course. Other courses are web-based teaching for employees to take at NHDOT facilities.

The National Highway Institute will provide the following training courses for the New Hampshire Department of Transportation:

Appraisal for Federal-Aid Highway Programs
Railroad Highway Grade Crossing Improvement Program
Strut-and-Tie Modeling (STM) for Concrete Structures
Highway Safety Manual Practitioners Guide for Geometric Design Features
Access Management: Fundamental Principles and Applications
Highway Slope Maintenance and Slide Restoration
Culvert Design
Combating Roadway Departures
Maintenance Leadership Academy
Public Involvement in Transportation Decision Making Process
Bridge Inspection Refresher

The agreement has been approved by the Attorney General as to form and execution, and the Department has verified that necessary funds are available. Copies of the fully executed agreement are on file at the Secretary of State's office and the Department of Administrative offices and, subsequent to Governor and Council approval, will be on file at the Department of Transportation.

The Department respectfully requests approval of this resolution.

Sincerely,

Victoria F. Sheehan
Commissioner

VS/pn
Attachments

MEMORANDUM OF AGREEMENT (MOA)
BETWEEN
NATIONAL HIGHWAY INSTITUTE (NHI) OF THE FEDERAL HIGHWAY ADMINISTRATION (FHWA)
AND
THE STATE OF NEW HAMPSHIRE
NHI TRAINING COURSES
(EFFECTIVE UPON GOVERNOR AND COUNCIL APPROVAL THROUGH SEPTEMBER 30, 2022)

This Memorandum of Agreement ("Agreement") is made effective upon date of signature (the "Effective Date") by and between the National Highway Institute ("NHI" or "Consultant") of the Federal Highway Administration ("FHWA") and the State of New Hampshire. The State of New Hampshire and NHI may each be referred to herein as a "Party" and collectively as "Parties."

Part 1: Initial Information

1.1 **PURPOSE**. The purpose of this Agreement is to come to a common understanding between the Parties regarding NHI training courses effective upon date of signature through September 30, 2022.

1.2 **LEGAL AUTHORITY**. The legal authority for FHWA to enter into this MOA is established under 23 U.S.C. 504(a)(6), which permits NHI to "engage in training activities authorized under this subsection, including the granting of training fellowships," and to "carry out its authority independently or in cooperation with any other branch of the Federal Government or any State agency, authority, association, institution, for pro-profit or nonprofit corporation, other national or international entity, or other person. The Collection of fees is specifically authorized in 23 U.S.C. 504(a)(7).

1.3 **PERIOD OF AGREEMENT**. NHI's services under this Agreement shall commence on the date both parties sign the agreement for purposes of providing service for the purposes identified in 1.1, unless terminated sooner or modified pursuant to the conditions identified in 1.4 of this Agreement. Further classes may be added in accordance with the needs and availability of both parties.

1.4 **CANCELLATION/MODIFICATION/TERMINATION**. This MOA shall be effective as of the date of final signature by both Parties and shall remain in effect for the duration of the course(s) specified herein. The period of the agreement may be extended by written agreement of both Parties. Any changes or amendments to this Agreement shall be made in writing and signed by all Parties.

Session Cancellation
If the host (NHDOT) cancels the session and it is not an emergency situation (see weather cancellation below), the host is required to contact NHI at 1-877-558-6873 or via

e-mail at NHICustomerService@dot.gov. Cancellation must be requested no later than fifteen (15) business days prior to the course start date to avoid a cancellation fee of $1500. In the case of an emergency or weather related closing, the session cancellation fee will not apply.

In the event of cancellation, it is the host's responsibility to contact all participants (including the instructor(s) and those registered for public seats). There must be validation that the registrants received the cancellation notice. Notice to participants traveling from other locations is especially important, so that they may alter or cancel their travel arrangements. In order to notify participants of the session cancellation, the host must contact NHI Customer Service to obtain a list of enrollees and their contact information.

Emergency and Weather Related Cancellations

NHI follows the local host office's policy for inclement weather or other emergencies. If the host's office in the location of the course closes, then the course must also be stopped during the closure. When a course is canceled, the host must inform NHI immediately of the session status and determine plans for the remainder of the course. The host must also contact all participants and the instructor if the course is not yet in session.

1.5 **SEVERABILITY/CONFLICT** This MOA constitutes the entire agreement between the Parties. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof. Nothing in this MOA is intended to conflict with current law, regulation, orders, or directives of DOT, FHWA, TFHRC, or any other Federal agency or entity. If a provision of this MOA is inconsistent with that authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOA and any appendix or annex will remain in full force and effect.

1.6 **DISPUTE RESOLUTION.** In the event that disagreements or disputes arise between the parties regarding their respective roles and responsibilities, FHWA will follow the procedures as established in the Federal Acquisitions Regulations (FAR), which govern government contracts.

1.7 **KEY OFFICIALS/POINT OF CONTACT.** The following represents both Parties' key officials/points of contact for purposes of this agreement.

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION:

New Hampshire Department of Transportation
John O. Morton Building
7 Hazen Drive
Concord, NH 03302
Attn: Alexis Martin
Email: alexis.martin@dot.nh.gov

NHI:

National Highway Institute
2600 Park Tower Drive, Suite 500
Vienna, VA 22180
Attn: Thomas Harman
Email: Tom.Harman@dot.gov

*Unless an alternative method of contract is specifically mentioned otherwise in this agreement.

1.8 **PUBLICATION/RELEASE OF INFORMATION.** The Parties agree that sharing credit is mutually beneficial, and will make every effort to assure that appropriate citation and attribution, including the use of official agency emblems and seals, is given for work performed under this MOA. Parties shall not use each other's official seals, logos, or insignia without prior written approval.

1.9 **FINANCIAL ARRANGEMENT.** This MOA does not obligate federal funds. Payment to NHI for any activities authorized shall be in accordance with the terms specified in this agreement. Furthermore, this MOA in no way restricts the Parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

Part 2: Responsibilities of the Parties

2.1 **COURSE.** The Course(s) that will be offered is as follows:
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 141043 – Appraisal for Federal-Aid Highway Programs.
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 380005 – Railroad-Highway Grade Crossing Improvement Program.
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 130126 – Strut-and-Tie Modeling (STM) for Concrete Structures.
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 380070 – Highway Safety Manual Practitioners Guide for Geometric Design Features.
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 133078 – Access Management: Fundamental Principles and Applications.
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 132081 – Highway Slope Maintenance and Slide Restoration.
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 135056 – Culvert Design
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 380117 – Combating Roadway Departures
NHI TRAINING COURSE NUMBER FHWA-**NHI**- 134063 – Maintenance Leadership Academy

NHI TRAINING COURSE NUMBER FHWA-**NHI-** 142036 – Public Involvement in Transportation Decision Making Process
NHI TRAINING COURSE NUMBER FHWA-**NHI-** 130053 – Bridge Inspection Refresher

Detailed information about NHI's policies and procedures for hosting a course along with the NHI course catalog are available on the NHI website at http://www.nhi.fhwa.dot.gov/. Assistance is available by contacting NHI at 1-877-558-6873 or via e-mail at NHICustomerService@dot.gov.

2.2 **NHI Responsibility.** NHI is responsible for:

- Providing skilled, knowledgeable instructional staff
- Shipping the course materials to the designated location
- Providing a list of public seat registrants and FHWA participants to the host
- Providing marketing assistance if requested and as time allows
- Collecting fees from public seat participants who register for a session on the NHI website.
- Formally providing confirmation to the host. Classes are not confirmed until this is sent.
- Notifying the host if a public seat or an FHWA participant cancels enrollment.

2.3. **Host (NHDOT) Responsibility.** Hosts are responsible for:

- Providing training facilities and equipment
- Coordinating all logistics regarding the facility
- Communicating session information including session location and access information with all participants, including FHWA and public seat participants
- Communicating with NHI to request public seats and assess local charges
- Paying course fees
- Coordinating with the assigned instructor
- Accepting course materials and delivering them to the site
- Providing an accurate list of participants to the instructor
- Printing and providing certificates of participation to the instructor
- Contacting NHI for session marketing assistance
- Contacting NHI to obtain approval to increase a session maximum and to cancel sessions.

2.4 **HOST PARTICIPANTS AND FEES.** The total amount of fees collected under this contract shall not exceed $138,685. (See attached for course list and fees)

a. The rate of pay for services rendered under this agreement shall vary depending on the class (see attached for course list and fees).

b. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to NHI's electronic billing procedures.

c. Host participants refer to any participant who the host registers for the session. These may include the host organization's employees or others. The host is responsible for paying the fees associated with these individuals and providing a list of these individuals to the NHI instructor. Any fees that the host collects for external participants should be forwarded upon receipt to:

National Highway Institute
Attn: NHI Scheduler
2600 Park Tower Drive, Suite 500
Vienna, VA 22180

If the host prefers that NHI register and handle billing for all external participants, the host can request that NHI open public seats and direct external participants to the NHI website for registration in the session.

d. In order to reach class size minimums, the host may request that NHI open public seats. This allows other transportation professionals to attend the session, which can add a beneficial level of diversity of experience to your session.
The host should request the number of public seats needed to fill the course to the desired session size, considering the anticipated number of host and FHWA participants. The desired session size is between the course minimum and maximum listed in the course description on the NHI website.
Public seats are sold on the NHI website on a first-come, first-served basis. The host organization cannot designate any of these seats to specific individuals, as they are open to the public. Public seat registration closes three business days before the course begins.

e. Course fees, which include the cost of materials for each participant, are listed on the NHI website with the course descriptions. The host will be charged at the price per participant times the number of host participants. In addition, the host is responsible for meeting the course minimum size through a combination of host participants and public seat participants.

NHI will charge the host for the additional number of participants needed to reach the course minimum if the course is held with less than the minimum participants. Therefore, if registration for a course is lower than anticipated, it is important for the host to contact NHI prior to the cancelation period (15 business days) to discuss a remedy. With sufficient notice, NHI can increase marketing for the course to attract additional attendees. When the session is listed on the NHI website at a fixed price, the host will be invoiced for the total session amount less the fees collected by NHI for public seats.

f. Hosts may request that NHI charge public seat participants an additional fee to recover all or part of direct costs associated with hosting the course. Local charges are not assessed to FHWA participants. However, FHWA participants are not permitted to receive any host provided amenities (e.g., snacks and beverages), without paying the cash value to the host organization. Therefore, hosts providing food and beverages during training sessions must coordinate with FHWA participants to determine whether they intend to participate in food and beverage purchases and how to handle reimbursement. If advanced coordination is not possible, then the host should not include FHWA participants in any food and beverage totals.

NHI requires hosts to contact the NHI Scheduler at 1-877-558-6873, or via e-mail at NHICustomerService@dot.gov, to coordinate local charges prior to the confirmation of the session. Hosts will not receive a refund from NHI to cover associated expenses incurred in hosting the session. Instead, the surplus amount collected from public seat participants is credited to the host's final invoice for its participants in the course. It is important that local charges assessed to public seats do not exceed the amount the host owes NHI for its participants.

2.5 **OBLIGATION TO REPORT DAMAGE.** Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

2.6 **AVAILABILITY OF FUNDS.** This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

2.7 **ASSIGNMENT.** This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

2.8 **NOTICE.** Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to **Alexis Martin** on behalf of the State, and by **Michael Davies**, on behalf of the NHI or Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

2.9 REASONABLE ACCOMODATION. The United States Department of Transportation, Federal Highway Administration, is committed to providing equal access to training courses for all participants. The State will be responsible for accommodating those with a disability via the necessary reasonable accommodation. If a participant needs alternative formats or services because of a disability, they are to contact **Paula Nash**.

IN WITNESS WHEREOF, the Parties hereto have caused originals of this Agreement to be executed by their respective duly authorized representatives as of the date and year first written above.

THOMAS P HARMAN Digitally signed by THOMAS P HARMAN Date: 2022.01.12 09:22:03 -05'00'

Signature

Thomas Harman

Name

Director

Title

Federal Highway Administration
National Highway Institute

Frances E. Buczynski

Signature

Frances E. Buczynski

Name

Director of Policy & Admin.

Title

New Hampshire
Department of Transportation

Emily C. Goering

Signature

EMILY C. GOERING

Name

Assistant Attorney General

Title

New Hampshire
State Attorney General's Office

Signature

Name

Title

New Hampshire
Governor and Executive Council

Course List:

Course Title	Format	$/person	Days	Total participants	Total Cost
FHWA-NHI- 141043 – Appraisal for Federal-Aid Highway Programs	workshop	$500	2	1	$500
FHWA-NHI- 380005 – Railroad-Highway Grade Crossing Improvement Program	workshop	$500	2	30	$15,000
FHWA-NHI- 130126 – Strut-and-Tie Modeling (STM) for Concrete Structures	workshop	$970	1.5	20	$19,400
FHWA-NHI- 380070 – Highway Safety Manual Practitioners Guide for Geometric Design Features	workshop	$500	2	30	$15,000
FHWA-NHI- 133078 – Access Management: Fundamental Principles and Application	workshop	$700	2	25	$17,500
FHWA-NHI- 132081 – Highway Slope Maintenance and Slide Restoration	workshop	$700	2.5	25	$17,500
FHWA-NHI- 135056 – Culvert Design	workshop	$800	3	20	$16,000
FHWA-NHI- 380117 – Combating Roadway Departures	workshop	$300	1	20	$6,000
FHWA-NHI- 134063 – Maintenance Leadership Academy	workshop	$1,995	10.5	3	$5,985
FHWA-NHI- 142036 – Public Involvement in Transportation Decision Making	workshop	$500	3	30	$15,000
FHWA-NHI- 130053 – Bridge Inspection Refresher	workshop	$900	3	12	$10,800