



William Cass, P.E.
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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David Rodrigue, P.E.
Assistant Commissioner
Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

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

Bureau of Planning & Community Assistance
April 1, 2024

REQUESTED ACTION

Authorize the Department of Transportation to enter into an agreement totaling \$2,029,500 with the City of Manchester (sub-recipient) (Vendor #177433) to provide funding and services under the Congestion Mitigation and Air Quality (CMAQ) Program through a NHDOT direct managed local project administration process, effective upon Governor and Council approval, through June 30, 2027 unless extended by the Department in accordance with standard specifications. (80% Federal Funds and 20% Other Funds)

Funding is available for FY 2024 and FY 2025 and is contingent upon the availability and continued appropriation of funds for FY 2026 and FY 2027 with the ability to adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified:

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
04-96-96-962515-2945 Municipal Aid - Federal				
072-500574 Grants to Local Gov – Federal	\$40,000	\$90,000	\$90,000	\$1,809,500

EXPLANATION

This agreement, between the State and Sub-recipient receiving funds, is intended to delineate responsibilities for providing services necessary to plan, layout, design, acquire right-of-way, contract for construction, and/or provide oversight supervision for this Federal Aid project.

This project will reconstruct the intersection of River Road and Bicentennial Drive/Derryfield driveway to improve safety and traffic flow.

CMAQ funds (80% Federal and 20% City) will be used for this project, the following table shows the funding allocations:

Programmed Year of Advertisement	Participating Federal Share 80%	Participating Local Share 20%	Additional Non- Participating Funds	Total Budget
2027	\$1,623,600	\$405,900	\$0.00	\$2,029,500

The Local Public Agency (LPA) Program has a "NHDOT Direct Managed" option that allows a Project Sponsor to utilize NHDOT personnel for the management of LPA Projects. NHDOT, utilizing statewide on-call consultant agreements, will undertake the project management responsibilities typically provide by the Project Sponsor during design and construction. The Project Sponsor is responsible to provide their 20% match to the NHDOT prior to each phase of work. The remaining 80% will be Federally funded. An additional "management fee" of 10% is added to each phase of the project for NHDOT's project management services. The Project Sponsor will be responsible for 20% of this management fee. The remaining 80% of the fee will be Federal funds.

This NHDOT direct managed Municipal Agreement differs from the standard Municipal Agreement that has previously received Governor and Council approval. This NHDOT direct managed Municipal Agreement has been vetted through and approved by the Attorney General's office.

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 manage the project and the Department to expend project funds.

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 \$2,029,500.

Your approval of this submission is respectfully requested.

Sincerely,



William J. Cass, PE
Commissioner

WJC/lbw
Attachments

The Attorney General's Office has approved this template for use on February 17, 2023.

CONGESTION MITIGATION & AIR QUALITY PROGRAM
PROJECT AGREEMENT
FOR

CITY OF MANCHESTER

STATE PROJECT #: 42886
FEDERAL PROJECT #: X-A004(986)
STATE VENDOR #: 177433
UNIQUE ENTITY IDENTIFIER #: Z93ZBNUC43X8

THIS AGREEMENT, is made and entered into this 16th day of April, 2024, between the State of New Hampshire, acting through its Department of Transportation, hereinafter called the "DEPARTMENT", and the City of Manchester, hereinafter called the "PROJECT SPONSOR".

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to construct a roundabout at the entrance to The Derryfield School at River Road/Bicentennial Road intersection in the City of Manchester is an eligible project for funding under the Federal Aid Congestion Mitigation & Air Quality Program created under the Federal Bipartisan Infrastructure Law (BIL); and

WHEREAS, the DEPARTMENT has established Project #42886 (the "Project") for the aforesaid project, with the project funding and target ad year as represented in the table below; and

Programmed Year of Advertisement 2027	Participating Federal Share (80%)	Participating Local Share (20%)	Additional Non-Participating Funds	Total Budget
Preliminary Engineering	\$160,000.00	\$40,000.00	\$0.00	\$200,000.00
10% Department Management Fee	\$16,000.00	\$4,000.00	\$0.00	\$20,000.00
Right-of-Way	\$0.00	\$0.00	\$0.00	\$0.00
10% Department Management Fee	\$0.00	\$0.00	\$0.00	\$0.00
Construction	\$1,316,000.00	\$329,000.00	\$0.00	\$1,645,000.00
10% Department Management Fee	\$131,600.00	\$32,900.00	\$0.00	\$164,500.00
Total Project Cost (no fee)	\$1,476,000.00	\$369,000.00	\$0.00	\$1,845,000.00
Total Management Fee	\$147,600.00	\$36,900.00	\$0.00	\$184,500.00
Total Agreement	\$1,623,600.00	\$405,900.00	\$0.00	\$2,029,500.00

Additional Administrative Documentation Information: If this information is not available at the time of the Agreement signing, documentation will be sent to the PROJECT SPONSOR by the DEPARTMENT as soon as the information is available:

FEDERAL FAIN #: {Not Yet Available}
CFDA # 20.205 and DESCRIPTION Highway Planning and Construction
SUBAWARD Period of performance start date: {Not Yet Available}
SUBAWARD Period of performance end date: {Not Yes Available}
NHDOT Consultant Engineering: Yes 80% Federal Congestion Mitigation & Air Quality Program Funds
Indirect Rate: N/A _____ 10% x
Is award R&D: Yes _____ No x

WHEREAS, the PROJECT SPONSOR has supported an Application 19-10CMAQ to sponsor the Project (the "Application") and the DEPARTMENT has accepted the Application; and

WHEREAS, the Application, by reference, is hereby incorporated and made a part of this AGREEMENT; and

WHEREAS, the PROJECT SPONSOR desires the DEPARTMENT to act as the 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 pay the participating Local Share of estimated Preliminary Engineering phase costs including the DEPARTMENT management fee noted in the table on page 1 currently estimated to be \$44,000.00 to the DEPARTMENT prior to the DEPARTMENT beginning Preliminary Engineering Phase.
- B. The PROJECT SPONSOR shall pay participating Local Share of Right of Way phase costs and updated Preliminary Engineering phase costs including management fee noted in the table on page 1 currently estimated to be \$0.00 to the DEPARTMENT prior to the DEPARTMENT beginning Right-of-Way Phase.
- C. The PROJECT SPONSOR shall pay the participating Local Share of Construction phase costs, updated Preliminary Engineering phase costs, and updated Right of Way phase costs including management fee noted in the table on page 1 currently estimated to be \$361,900.00 to the DEPARTMENT prior to the DEPARTMENT advertising the project for construction.
- D. The PROJECT SPONSOR shall pay upon PROJECT completion any remaining Participating Local Share including the management fee at the percentage noted on the table on page 1 including, but not limited to, change orders during the construction phase.
- E. 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.
- F. The PROJECT SPONSOR shall provide or cause to provide the 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.
- G. The PROJECT SPONSOR is required to maintain all sponsor related 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.

H. 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.

I. Non-Discrimination:

1. The PROJECT SPONSOR agrees, for itself, its assignees and successors in interest, that it will comply with Title VI of the Civil Rights Act of 1964, (referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21, (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, religion, national origin, sex, age, sexual orientation, disability or handicap, 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. The ACT and the REGULATIONS are herein incorporated by reference and made a part of this AGREEMENT. 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, religion, national origin, sex, age, sexual orientation, disability or handicap in consideration for an award.*
 - c. That the PROJECT SPONSOR shall not discriminate on the basis of race, color, religion, national origin, sex, age, sexual orientation, disability or handicap 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, religion, national origin, sex, age, sexual orientation, disability or handicap 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>
- J. 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.
- K. If the PROJECT SPONSOR defaults or fails to fulfill any part of 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 manage the design, environmental study, right-of-way acquisition and construction of the Project. Provided, however, for right-of-way acquisition on class 5 highways, the SPONSOR agrees that it will acquire property rights in accordance with RSA 231 and if the process results in litigation SPONSOR shall retain its own attorney at its own expense and shall be solely responsible for any and all associated costs, fees, or awards of just compensation unless otherwise mutually agreed-upon by the SPONSOR and the DEPARTMENT. 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.
- B. The DEPARTMENT shall pay properly documented invoices for work that has been completed on the project using federal, state, and participating local share funds collected from the sponsor as appropriate and according to the percentages noted in the table on page 1.

- C. 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.
- D. The DEPARTMENT will maintain all Department related project and financial records pertinent to the development of the Project for three (3) years beyond the date of the project's final voucher.
- E. 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 under this AGREEMENT from the DEPARTMENT shall be as set forth in the Table on 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 DEPARTMENT agrees to commence the PROJECT within 12 months of AGREEMENT execution date noted in the first paragraph of page 1 unless earlier terminated as provided herein. The PROJECT SPONSOR or the DEPARTMENT may apply for an extension to either the START or END date. Such application for extension must be made in writing, providing an explanation of the reasons for the delay, and proposing a revised schedule. Failure to meet any deadline as a result of PROJECT SPONSOR delay or inaction may cause the DEPARTMENT to cancel its participation in this Project at its sole discretion, in which case any remaining funds will be forfeited. The DEPARTMENT is responsible for informing and coordinating a new Project completion date if any condition arises that may result in either deadline being unattainable.
- D. 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.
- E. This AGREEMENT may be amended to incorporate changes in project scope, schedule, and/or budget that may arise through the development and design stages of the project, pursuant to approval by the Governor and the Executive Council as Item No. 47 on March 23, 2022. Such amendments will be effective upon execution of an instrument in writing signed by both parties hereto. Otherwise, this AGREEMENT may be amended, waived, or discharged only by an instrument in writing signed by the parties hereto, and only after approval of such amendment, waiver of discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule, or policy.

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.

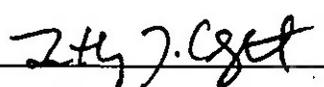
G. Pursuant to authorization by the Governor and Executive Council, as Item No. _____ on _____, this AGREEMENT is effective upon the date shown on page one of this AGREEMENT. The DEPARTMENT will include this AGREEMENT in its annual report to the Governor and the Executive Council on the status of all active Federal Local Public Agency (LPA) projects.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the date first written above.

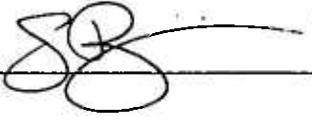
**NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION**

By: 
William Cass, P.E.
Commissioner
State of New Hampshire
Department of Transportation

CITY OF MANCHESTER

Signature: 
Name (typed): Timothy J. Clougherty
Title: DIRECTOR

New Hampshire
Department of Transportation



Signature

Samuel Burgess

Name

Assistant Attorney General

Title

NH Attorney General

Governor and Council
Approval

Secretary of State

Dated



Matthew Normand
City Clerk

JoAnn Ferruolo
Assistant City Clerk

Lisa McCarthy
Assistant City Clerk

CITY OF MANCHESTER
Office of the City Clerk

Certificate of Authority

I, Matthew Normand, the City Clerk of the City of Manchester, NH do hereby certify that:

1. I am the duly elected Clerk of the City of Manchester, NH.
2. The following is a true copy of a vote taken at a meeting of the Board of Mayor and Aldermen and held on April 16, 2024 at which a quorum of the Board of Mayor and Aldermen were present and voting.

VOTED: To accept funds and enter into a grant agreement with the New Hampshire Department of Transportation for the construction of a roundabout at the entrance of Derryfield School at River Road and Bicentennial Road intersection, and that the Public Works Director of the City of Manchester, NH is duly authorized on behalf of the City of Manchester to enter into contracts or agreements with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his judgment be desirable or necessary to effect the purpose of this vote.

3. I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract termination to which this certificate is attached. This authority remains valid for thirty (60) days from the date of this Certificate of Authority. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the incumbent Public Works Director has full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

Dated: 4/17/24


Signature of City Officer
Name: Matthew Normand
Title: City Clerk

Notarization

State of New Hampshire
County of Hillsborough.

On April 17, 2024, before me, Lisa McCarthy, Notary Public, the undersigned officer, personally appeared Matthew Normand, who acknowledged himself to be the City Clerk of the City of Manchester and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.


Notary Public or Justice of the Peace

LISA M. MCCARTHY
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
June 24, 2025

(seal)

Commission Expires: 6/24/2025