



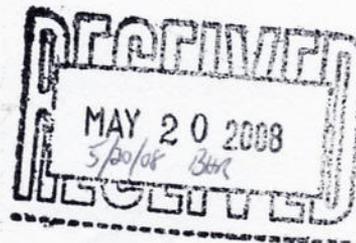
Handwritten initials and signature.

GEORGE N. CAMPBELL, JR.
COMMISSIONER

May 20, 2008

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

Mr. Burton Reynolds
Town Administrator
Town of New Boston
PO Box 250
New Boston, NH 03070-0250



Re: NEW BOSTON, #14835
TE # X-A000(563)
Millpond Steel Truss Bridge & Boardwalk
NOTICE TO PROCEED

Dear Mr. Reynolds:

We are sending you an original executed copy of an agreement between the Town and NHDOT for the above-noted project.

This letter also serves as Notice to Proceed for the project, effective May 20, 2008. The project should move forward in accordance with the Agreement and the document titled "New Hampshire Department of Transportation Manual for Development of TE and CMAQ Projects". Please note that any expenditure prior to this Notice to Proceed is not reimbursable.

I would appreciate you keeping me updated with the timeline the Town plans to proceed with for the implementation of this project. Please let me know if you need assistance. I would be happy to help.

Sincerely,

Ram S. Maddali

Ram S. Maddali, P.E.
Project Manager
Bureau of Planning and Community Assistance
Tel. (603) 271-2107
Fax (603) 271-8093

RSM/sdb
Enclosure

cc: Finance and Contracts
M&E File
Pam Mitchell, District 5
Sandi VanScoyoc, New Boston

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**TRANSPORTATION ENHANCEMENT PROGRAM
AGREEMENT
FOR**

**NEW BOSTON
STATE VENDOR: 21196
STATE PROJECT: 14835
FEDERAL PROJECT: X-A000(563)**

THIS AGREEMENT, executed in *triplicate*, made and entered into this 20th day of MAY, 2008, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and the TOWN OF NEW BOSTON, hereinafter called the "TOWN".

WITNESSETH that,

WHEREAS, the DEPARTMENT and the TOWN have determined that a project to construct a steel truss bridge and boardwalk at Millpond in the Town of New Boston is an eligible project for funding under the Transportation Enhancement Program created by the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA); and

WHEREAS, the DEPARTMENT has established Transportation Enhancement Project #14835 (the "Project") for the aforesaid project in the amount of One hundred fifty thousand dollars (\$150,000.00) with eighty percent (80%) of that cost coming from Federal Highway funds, such amount being One hundred twenty thousand dollars (\$120,000.00), and the remaining twenty percent (20%) of that cost coming from the TOWN, such amount being Thirty thousand dollars (\$30,000.00); and

WHEREAS, the TOWN has submitted an application (06-34TE) to sponsor the Project (the "Application") and the DEPARTMENT has accepted the Application; and

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

NOW, THEREFORE, in consideration of the above premises and in further consideration of the agreements herein set forth by and between the parties hereto, it is mutually agreed as follows:

I. DUTIES AND RESPONSIBILITIES OF THE TOWN:

- A. The TOWN 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 "New Hampshire Department of Transportation Manual for Development of TE and CMAQ Projects", as it may be amended from time to time, and, by reference, is hereby made a part of this AGREEMENT.
- B. The TOWN 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 TOWN's policy and practices, once the work under this AGREEMENT is completed. Should operational adjustments be necessary, the TOWN agrees that no changes will be made without prior approval of the DEPARTMENT and the Federal Highway Administration.

- C. The TOWN agrees to maintain financial records pertinent to the development of the Project for three (3) years beyond the date of the Project's final reimbursement letter, and to make the records available to the DEPARTMENT and the Federal Highway Administration upon request.
- D. The TOWN 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.
- E. The TOWN shall submit invoices to the DEPARTMENT for eighty percent (80%) 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. 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 TOWN shall certify that the invoices properly represent payment for work that has been completed and paid for by the TOWN.
- F. 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 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 TOWN 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, "Nondiscrimination 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 TOWN receives Federal financial assistance extended by the State of New Hampshire. This AGREEMENT obligates the TOWN for the period during which Federal financial assistance is extended.
 2. The TOWN 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 TOWN shall insert the following notification in all solicitations for negotiated agreements or bids for work or material made in connection with this

Project: *The TOWN 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 TOWN 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 TOWN 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://webster.state.nh.us/dot//municipalhighways/tecmaq/pdf/FApackage.pdf>

- H. If there is a default of any nature to this AGREEMENT, the TOWN shall be required to reimburse the DEPARTMENT and/or 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, after receipt and approval of properly documented invoices, pay to the TOWN eighty percent (80%) of the total costs after the invoices have been certified by the TOWN as properly representing work that has been completed and paid for by the TOWN.
- 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 TOWN:

- A. That the TOWN will not enter into any agreement with engineering and/or environmental consultant for which costs the TOWN intends to be reimbursed, until such time that it receives written notice from the DEPARTMENT that the Federal Highway Administration has authorized the Project.
- B. That the TOWN will not enter into any agreement with a construction contractor until such time that it receives written notice from the DEPARTMENT that the Federal Highway Administration has authorized the Project.
- C. That neither the DEPARTMENT nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the TOWN under this AGREEMENT prior to the date of the DEPARTMENT's written Notice to Proceed.
- D. That the maximum amount of funds available for this Project for reimbursement under this AGREEMENT from the DEPARTMENT shall be One hundred twenty thousand dollars (\$120,000.00). The TOWN shall bear the remaining twenty percent (20%) of the cost, such amount being Thirty thousand dollars (\$30,000.00). 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 TOWN under this AGREEMENT in excess of the above amounts unless the DEPARTMENT expressly authorizes additional funding prior to the work being performed.
- E. That the TOWN may invoice the DEPARTMENT for incurred costs on a monthly basis and the DEPARTMENT will process these invoices for payment in an expeditious manner.
- F. That the TOWN agrees to commence the Project within nine (9) months after the date of the Notice to Proceed and complete the Project within two (2) years after the date of the Notice to Proceed, unless earlier terminated as provided herein. The TOWN may apply to the Transportation Enhancement Advisory Committee 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 TOWN is responsible for informing the DEPARTMENT if any condition arises that may result in either deadline being unattainable.
- G. 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 TOWN. Such termination shall relieve the DEPARTMENT and the TOWN from obligations under this AGREEMENT after the termination date.

**NEW HAMPSHIRE DEPARTMENT OF
TRANSPORTATION**

By: 

Commissioner
Department of Transportation

Authorized to enter into Agreement as
approved by Governor & Council on
December 12, 2006

TOWN OF NEW BOSTON

By: 

Chairman, Board of Selectmen
Town of New Boston
Gordon Carlstrom