

SPECIAL BOARD OF ALDERMEN

JULY 24, 2023

7:00 PM

Aldermanic Chamber

PRESIDENT LORI WILSHIRE CALLS ASSEMBLY TO ORDER

ALDERMAN O'BRIEN CALLED THE ROLL

The roll call was taken with 10 members of the Board of Aldermen present: Alderman O'Brien, Alderman Sullivan, Alderman Lopez, Alderman Jette, Alderman Clemons, Alderwoman Kelly (via Zoom), Alderman Gouveia, Alderman Thibeault, Alderwoman Timmons, Alderman Wilshire

Alderman Moran, Alderman Klee, Alderman Comeau, Alderman Dowd, Alderman Caron were recorded absent.

Dan Hudson, City Engineer gave a presentation.

PUBLIC HEARING

R-23-134

AUTHORIZING THE MAYOR TO ENTER INTO A FEDERAL AID PROGRAM PROJECT AGREEMENT WITH THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF IMPROVEMENTS TO THE WALNUT STREET OVAL INTERSECTION AND TO ACCEPT AND APPROPRIATE \$2,061,847.26 FOR THE PROJECT

Testimony in Favor - None

Testimony in Opposition - None

Testimony in Favor - None

Testimony in Opposition - None

Alderman O'Brien closed the public hearing on Resolution R-23-134 at 7:11 p.m.

ADJOURNMENT

MOTION BY ALDERMAN O'BRIEN THAT THE JULY 24, 2023 SPECIAL BOARD OF ALDERMAN BE ADJOURNED

MOTION CARRIED

The meeting was declared adjourned at 7:13 p.m.

Attest: Alderman Michael B. O'Brien, Sr. Clerk



RESOLUTION

AUTHORIZING THE MAYOR TO ENTER INTO A FEDERAL AID PROGRAM PROJECT AGREEMENT WITH THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF IMPROVEMENTS TO THE WALNUT STREET OVAL INTERSECTION AND TO ACCEPT AND APPROPRIATE \$2,061,847.26 FOR THE PROJECT

CITY OF NASHUA

In the Year Two Thousand and Twenty-Three

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to execute the attached Federal Aid Program Project Agreement with the State of New Hampshire Department of Transportation for the purpose of improvements to the Walnut Street Oval intersection.

The Mayor is further authorized to accept and appropriate the “Participating Federal Share 80%” for this project in the amount of \$2,061,847.26. The City’s “Participating Local Share 20%” in the amount of \$515,461.82 is available through a previously approved bond authorization (see R-22-038, passed on June 28, 2022).

LEGISLATIVE YEAR 2023

RESOLUTION: R-23-134

PURPOSE: Authorizing the Mayor to enter into a Federal Aid Program Project Agreement with the State of New Hampshire Department of Transportation for the purpose of improvements to the Walnut Street Oval intersection and to accept and appropriate \$2,061,847.26 for the project

ENDORSER(S): Mayor Jim Donchess

COMMITTEE ASSIGNMENT: Budget Review Committee

FISCAL NOTE: Fiscal impact is a \$2,061,847.26 federal grant to the City to be used for a specific purpose, with \$515,461.82 in City matching funds coming from a previously approved bond authorization (see R-22-038).

ANALYSIS

This resolution authorizes the City to enter into the attached Agreement with the State of New Hampshire Department of Transportation and to accept and appropriate grant funds for the purpose of improving the Walnut Street Oval intersection.

Charter Sec. 53 permits specific non-budget, supplementary appropriations. There should be notice and a public hearing. A two-thirds vote is required under Charter Sec. 56-b for an item or amount not in the mayor's budget. A roll call is required under Charter Sec. 49.

Approved as to account structure, numbers, and amount:

Financial Services Division

By: Patricia Barry, Deputy

Approved as to form:

Office of Corporation Counsel

By: Dorothy Clarke

Date: 5 July 2023

FEDERAL AID PROGRAM
PROJECT AGREEMENT
FOR

CITY OF NASHUA

STATE PROJECT #: 41586
FEDERAL PROJECT #: X-A004(682)
STATE VENDOR #: 177441
UNIQUE ENTITY IDENTIFIER #: _____

THIS AGREEMENT, is made and entered into this ____ day of _____, 2023, between the State of New Hampshire, acting through its Department of Transportation, hereinafter called the "DEPARTMENT", and the City of Nashua, hereinafter called the "PROJECT SPONSOR".

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to improve the safety, capacity, and multimodal access to the Walnut Street oval intersection in the City of Nashua is an eligible project for funding under the Federal Aid Program created under the Federal Bipartisan Infrastructure Law (BIL); and

WHEREAS, the DEPARTMENT has established Project #41586 (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	Participating Federal Share 80%	Participating Local Share 20%	Additional Non- Participating Funds	*Total Budget
2025	\$2,061,847.26	\$515,461.82	\$0.00	*\$2,577,309.08

*The Total Budget shown is the FY 2023 estimated cost, inflated at 2.8% per year for 1 year

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 yet available}
NHDOT Managed: Yes _____ No x _____
{If Yes, include description of funding with percentage federal funds and source of funds here}
NHDOT Indirect Cost Rate: N/A x 10% _____
Is award Research & Development: Yes _____ No x _____

WHEREAS, the PROJECT SPONSOR has submitted an Application 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 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, 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>

- 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 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 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 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 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 6 months of AGREEMENT execution date noted in the first paragraph of page 1. The PROJECT SPONSOR agrees to complete the Preliminary Engineering (PE) Phase of the PROJECT on or BEFORE December 31st of the Programmed Year of Advertisement date noted in the table on page 1, unless earlier terminated as provided herein. The PROJECT SPONSOR may apply to the DEPARTMENT 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 without good cause or failure to submit an extension request 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 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. 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.

- G. 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.

- H. Pursuant to authorization by the Governor and Executive Council, as Item No. 47 on March 23, 2022, 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**

CITY OF NASHUA

By: _____
 William J. Cass, PE
 Commissioner
 State of New Hampshire
 Department of Transportation

Signature: _____
 Name (typed): _____
 Title: _____