



## RESOLUTION

**AUTHORIZATING THE MAYOR TO ENTER INTO A TRANSPORTATION ENHANCEMENT AGREEMENT WITH THE STATE OF NEW HAMPSHIRE FOR THE PURPOSE OF EXPANDING THE CLOSED LOOP TRAFFIC SIGNAL SYSTEM OF THE CITY'S EXISTING TRAFFIC MANAGEMENT CENTER AND TO ACCEPT AND APPROPRIATE \$1,840,000 FOR THE PROJECT**

### *CITY OF NASHUA*

*In the Year Two Thousand and Ten*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the Mayor is authorized to execute the attached transportation enhancement agreement with the State of New Hampshire for the purpose of expanding the closed loop traffic signal system of the City's existing traffic management center.

The Mayor is hereby further authorized to accept and appropriate 80% federal funding for this project, in the amount of \$1,840,000 into account #751-3719 "Loop Traffic Signal Expansion". The city's required 20% share is \$460,000, which is to be funded through the following developer contribution accounts:

951-5336	Broad Street Improvements
951-5353	Amherst Street Traffic Mitigation
951-5354	Searles Road Traffic Mitigation
951-5355	West Hollis Street Traffic Mitigation
951-5356	Northeastern Blvd/Main Dunstable Traffic Mitigation
951-5357	Pine Hill/Charron Avenue Traffic Mitigation
951-5359	Main Street Traffic Mitigation

**LEGISLATIVE YEAR 2010**

**RESOLUTION:** R-2010-18

**PURPOSE:** Authoring the Mayor to enter into a transportation enhancement agreement with the State of New Hampshire for the purpose of expanding the closed loop traffic signal system of the City's existing traffic management center and to accept and appropriate \$1,840,000 for the project

**ENDORSER(S):** Mayor Donnalee Lozeau

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** Fiscal impact is a \$1,840,000 grant to the city to be used for a specific purpose. The city's 20% share is \$460,000, to be funded through developer contribution accounts.

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**ANALYSIS**

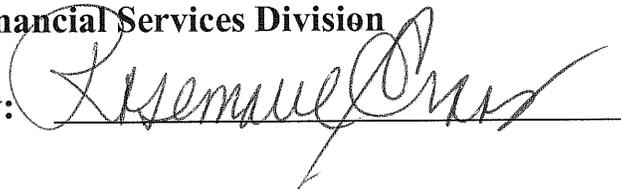
This resolution authorizes the Mayor to enter into the attached transportation enhancement agreement with the State of New Hampshire for the purpose of expanding the closed loop traffic signal system of the City's existing traffic management center and to accept and appropriate \$1,840,000 (80%) federal funding for the project. The required local match of \$460,000 (20%) will come from developer contribution accounts.

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**Approved as to account  
structure, numbers,  
and amount:**

**Financial Services Division**

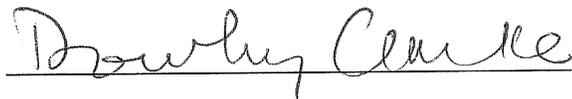
**By:**



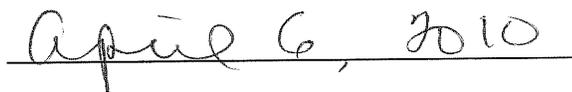
**Approved as to form:**

**Office of Corporation Counsel**

**By:**



**Date:**



**CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM  
AGREEMENT  
FOR**

**NASHUA**

**STATE VENDOR: 177441-B001**

**STATE PROJECT: 14432**

**FEDERAL PROJECT: X-A000(372)**

THIS AGREEMENT, executed in *triplicate*, made and entered into this \_\_\_ day of \_\_\_\_\_ 2009, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and the CITY OF NASHUA, hereinafter called the "CITY".

WITNESSETH that,

WHEREAS, the DEPARTMENT and the CITY have determined that a project to expand the closed-loop traffic signal system and connect an additional thirty (30) traffic signals to the existing Traffic Management Center in the city of Nashua is an eligible project for funding under the Congestion Mitigation and Air Quality Program created by the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA); and

WHEREAS, the DEPARTMENT has established Congestion Mitigation and Air Quality Project #14432 (the "Project") for the aforesaid project in the amount of Two million three hundred thousand dollars (\$2,300,000.00) with eighty percent (80%) of that cost coming from Federal Highway funds, such amount being One million eight hundred forty thousand dollars (\$1,840,000.00), and the remaining twenty percent (20%) of that cost coming from the CITY, such amount being Four hundred sixty thousand dollars (\$460,000.00); and

WHEREAS, the CITY has submitted an application (04-30CM) 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 CITY:**

- A. The CITY 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 CITY 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 CITY agrees that no

changes will be made without prior approval of the DEPARTMENT and the Federal Highway Administration.

- C. The CITY 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 from the DEPARTMENT, and to make the records available to the DEPARTMENT and the Federal Highway Administration upon request.
- D. The CITY 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 CITY 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 CITY shall certify that the invoices properly represent payment for work that has been completed and paid for by the CITY.
- F. The CITY 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 CITY 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 CITY 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 CITY receives Federal financial assistance extended by the State of New Hampshire. This AGREEMENT obligates the CITY for the period during which Federal financial assistance is extended.
  - 2. The CITY 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 CITY shall insert the following notification in all solicitations for negotiated agreements or bids for work or material made in connection with this Project: *The CITY 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 CITY 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 CITY 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 [www.nhdot.com](http://www.nhdot.com).
- H. If there is a default of any nature to this AGREEMENT, the CITY 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, after receipt and approval of properly documented invoices, pay to the CITY eighty percent (80%) of the total costs after the invoices have been certified by the CITY as properly representing work that has been completed and paid for by the CITY.
- 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 CITY:**

- A. That the CITY will not enter into any agreement with engineering and/or environmental consultant for which costs the CITY 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 CITY 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 CITY 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 million eight hundred forty thousand dollars (\$1,840,000.00). The CITY shall bear the remaining twenty percent (20%) of the cost, such amount being Four hundred sixty thousand dollars (\$460,000.00). 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 CITY 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 CITY 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 CITY 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 CITY may apply to the Congestion Mitigation and Air Quality 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 CITY 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 CITY. Such termination shall relieve the DEPARTMENT and the CITY from obligations under this AGREEMENT after the termination date.

**NEW HAMPSHIRE DEPARTMENT OF  
TRANSPORTATION**

**CITY OF NASHUA**

By: \_\_\_\_\_  
Commissioner  
Department of Transportation

By: \_\_\_\_\_  
City Manager  
City of Nashua

Authorized to enter into Agreement as  
approved by Governor & Council on  
January 25, 2005.



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The Mayor is hereby further authorized to accept and appropriate 80% federal funding for this project, in the amount of \$1,840,000 into account #751-3719 "Loop Traffic Signal Expansion".

The City's match would be \$460,000. A portion of the City's match, \$189,861, is available through expendable trust funds. The amounts drawn from the expendable trust funds bear proportional relationship to the areas they benefit. The breakdown would be as follows:

Acct #	Description	Signals	Amount
951-5336	Broad Street Improvements	8	\$41,196
951-5353	Amherst Street Traffic Mitigation	18	\$123,588
951-5354	West Hollis Street Traffic Mitigation	6	\$3,470
951-5355	Northeastern Blvd/Main Dunstable Traffic Mitigation	5	\$18,208
951-5359	Main Street Mitigation	10	\$3,399
	<b>Total</b>		<b>\$189,861</b>

The balance of the City's match \$270,139 would be available through Account 653-23 Street Paving Program FY10 pending FY11 escrow approval.