



RESOLUTION

AUTHORIZING A MUNICIPAL AGREEMENT WITH THE STATE OF NEW HAMPSHIRE TO MUNICIPALLY MANAGE THE BROAD STREET PARKWAY PROJECT AND PROVIDE THE REQUIRED LOCAL FUNDS

CITY OF NASHUA

In the Year Two Thousand and Eight

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into the attached municipal agreement with the State of New Hampshire to municipally manage the Broad Street Parkway project. As part of the agreement, the City will commit to providing the required local funds, estimated not to exceed \$37,600,000.

**AGREEMENT
FOR**

**NASHUA
STATE PROJECT: 10040-A
FEDERAL PROJECT: NRBD-X-5315(021)**

THIS AGREEMENT made and entered into this _____ day of _____, 2008, 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 construct the Broad Street Parkway east from Blue Hill Avenue to West Hollis Street in the City of NASHUA is an eligible project for funding under the Surface Transportation Program designated by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and subsequent Transportation Equity Act for the 21st Century (TEA-21) and Safe Accountable Flexible Efficient Transportation Equity Act for the 21st Century- Legacy for Users (SAFETEA-LU; and

WHEREAS, the DEPARTMENT has established a combined High Priority/Surface Transportation Program Project 10040-A, NRBD-X-5315(021), and related projects in the amount of Fifty Million Nine Hundred and Seven Thousand Dollars (\$50,907,000.00) consisting of Nineteen Million Nine Hundred and Seven Thousand Dollars (\$19,907,000.00) of One Hundred Percent (100%) Federal Funds and Thirty-One Million Dollars (\$31,000,000.00) 80%/20% Federal Funds consisting of Eighty Percent (80%) or Twenty-Four Million Eight Hundred Thousand Dollars (\$24,800,000.00) Federal and Twenty Percent (20%) or Six Million Two Hundred Thousand Dollars (\$6,200,000.00) City matching funds plus non-participating funds as provided by the City; and

WHEREAS, the CITY desires to act as manager of said project; and

WHEREAS, the DEPARTMENT desires to cooperate with the CITY in accomplishing the project.

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, and construction of the project. This management is described in the current version of the DEPARTMENT's guidelines titled "New Hampshire Department of Transportation Process for Municipally Managed Surface Transportation Program Projects" as it may be amended from time to time and, by reference, is hereby made a part of this agreement.

NASHUA
STATE PROJECT: 10040-A
FEDERAL PROJECT: NRBD-X-5315(021)

- B. The CITY shall provide or cause to provide for both the maintenance of the project during construction and subsequent maintenance, including pavement markings, traffic signals, removal of snow, and to provide for full flow of traffic in a manner satisfactory to the State and Federal Highway Administration 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 State and Federal Highway Administration.
- C. The CITY agrees to maintain financial records pertinent to the development and construction of the project for at least three years beyond the issuance of the final voucher for the project, and to make the records available to the State and Federal Highway Administration upon request.
- D. The CITY shall comply with all Federal and State 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 one hundred percent (100%) or 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 herein. The invoice structure shall include details of work completed consistent with the Scope of Work, as well as backup information to support the charges and include non-participating work. 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 commit to provide their matching funds at the rate required for the Federal funds that have been programmed and these matching funds will be available for the design and construction of the contemplated project as needed. Such amount being a minimum of Twenty Percent (20%) of the 80%/20% portion of the project. The project is currently estimated to cost Fifty Million Nine Hundred and Seven Thousand Dollars (\$50,907,000.00) of which the CITY would be responsible for at least Six Million Two Hundred Thousand Dollars (\$6,200,000.00).
- G. The CITY agrees, obligates, and binds itself to prevent any encroachments within the right-of-way limitations and to prohibit the parking of any vehicles within the right-of-way except in designated parking areas shown on the plans. Encroachments include, but are not limited to signs occupying the highway right- of-way. Removal of signs within the right-of-way, whether permitted or not, is a requirement to utilize Federal funds as part of this agreement.
- H. 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 or the DEPARTMENT, which immunity is hereby reserved. This covenant shall

NASHUA
STATE PROJECT: 10040-A
FEDERAL PROJECT: NRBD-X-5315(021)

survive the termination of this agreement.

I. 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, creed, 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. 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 the 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 ground of race, color, or national origin, sex, age, creed, ore 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 DOT 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.*

NASHUA
STATE PROJECT: 10040-A
FEDERAL PROJECT: NRBD-X-5315(021)

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 obtain through the NHDOT Labor Compliance Office (271-6612) or Online at: <http://webster.state.nh.us/dot//municipalhighways/tecmaq/pdf/FAPackage.pdf>
- J. If there is a default of any nature to this agreement, the city shall be required to reimburse the Federal Highway Trust Fund for all such funds expended under this project.

II. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT:

- A. The DEPARTMENT shall review the project's engineering plans, environmental documents, and contract documents applicable to the Federal Highway and State requirements for a Federally-funded project and submit appropriate documentation to Federal Highway Administration to complete the NEPA process and receive Federal design approval.
- B. The DEPARTMENT shall, after receipt and approval of properly documented and CITY certified invoices, pay to the CITY One Hundred (100%) or Eighty Percent (80%) of the total invoice costs representing the work that has been completed.
- C. The DEPARTMENT shall obtain authorization of the project through the Federal Highway Administration.
- D. The DEPARTMENT shall manage the right-of-way acquisition.

III. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE CITY:

- A. That Federal Aid funds for construction will not be available for construction prior to years stipulated in the State's 10-Year Transportation Improvement Program.
- B. That the CITY will not enter into any Agreement with an 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.
- C. 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 project has been authorized by the Federal Highway Administration.

NASHUA
STATE PROJECT: 10040-A
FEDERAL PROJECT: NRBD-X-5315(021)

- D. That the CITY will not enter into any agreement for which the CITY intends to be reimbursed until such time that it receives written notice from the DEPARTMENT that the project has been authorized by the Federal Highway Administration or the CITY receives authorization to proceed under conditions of "Advanced Construction." Conditions of Advanced Construction Authorization consist of:
1. Only direct project costs incurred in conformity with the Municipal Managed Process guidelines for Federal Aid Surface Transportation Program Projects shall qualify for reimbursement. Costs incurred by the CITY to finance the Advanced Construction will not qualify for Reimbursement.
 2. Reimbursement is predicated on appropriation of Federal Aid funds at the current level (FY 2008) of funding. Should Congress appropriate funds at a lower level than the current anticipated level of funding, then reimbursement may be delayed beyond the project's programmed schedule of funding authorization.
 3. Should Federal Aid match requirements change, then reimbursement shall be adjusted to reflect the limitation of the authorized Federal match.
- E. 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.
- F. That the maximum amount of funds available for this project for reimbursement under this Agreement from the DEPARTMENT shall be in the amount of Fifty Million Nine Hundred and Seven Thousand Dollars (\$50,907,000.00) with One Hundred Percent (100%) or Eighty Percent (80%) of that cost coming from Federal Highway funds, such amount being Forty-four Million Seven Hundred and Seven Thousand Dollars (\$44,707,000.00) and the remaining twenty percent (20%) of that cost coming from the CITY, such amount being Six Million Two Hundred Thousand Dollars (\$6,200,000.00). As the scope of the project is finalized or should the bids for the project exceed the amounts 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 additional funding is expressly authorized by the DEPARTMENT prior to the work being performed. In the event the project is canceled prior to construction, and the CITY has not made a good faith effort to continue the project, then the CITY shall be responsible for all project costs incurred to date. The CITY shall reimburse the State all Federal Aid funds previously paid to the CITY for work performed on the project to date.
- G. 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

NASHUA
STATE PROJECT: 10040-A
FEDERAL PROJECT: NRBD-X-5315(021)

expeditious manner. NOTE: This provision does not apply if the project is authorized to proceed under provisions of Advanced Construction.

- H. That the CITY agrees to commence the project within one year after the date of the Notice to Proceed and complete the project within ten (10) years after the date of the Notice to Proceed. An extension will be granted should the CITY need to request additional funding. Failure to meet either deadline without good cause may cancel the DEPARTMENT'S participation in this project, at the discretion of the DEPARTMENT. Any remaining funds will be forfeited. The CITY is responsible for informing the DEPARTMENT if any condition arises which may result in either deadline being unattainable.

- I. If NH RSA provides for the project to be delivered by design/build, then the CITY may elect to do so in compliance with State and Federal program requirements.

NASHUA
STATE PROJECT: 10040-A
FEDERAL PROJECT: NRBD-X-5315(021)

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION

CITY OF NASHUA

By: _____
George N. Campbell, Jr.
Commissioner

By: _____
Donnalee Lozeau
Mayor

Date: _____
Authorized to enter into Agreement
as approved by Governor and Council

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