

**PROJECT MUNICIPAL AGREEMENT  
FOR  
SEABROOK  
STATE PROJECT: 41712  
FEDERAL PROJECT: X-A004(720)**

THIS AGREEMENT, executed in *triplicate*, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, between the New Hampshire Department of Transportation, hereinafter called the “DEPARTMENT” and the Town of Seabrook, hereinafter called the “TOWN”.

WITNESSETH that,

WHEREAS, the DEPARTMENT has determined that a project for capacity improvements on US Route 1 from New Zealand Road to the Hampton Falls town line in Seabrook (hereinafter called the “PROJECT”) is eligible for federal funding; and

WHEREAS, the DEPARTMENT intends to manage the project; and

WHEREAS, New Zealand Road, Rocks Road, Gove Road, North Access Road, and Dearborn Ave are Town roads; and

WHEREAS, DEPARTMENT maintenance forces, by policy and practice, do not maintain sidewalks; and

WHEREAS, DEPARTMENT maintenance forces, by policy and practice, do not maintain ornamental lighting; and

WHEREAS, DEPARTMENT maintenance forces, by policy and practice, do not maintain landscaping; and

WHEREAS, all the TOWN shall participate in 50% of the total cost of the project as follows;

1. All costs of the project shall be charged against the appropriately designated State project account number and reimbursement for all costs shall be borne by the DEPARTMENT and the TOWN at the ratio of 50% DEPARTMENT funds, to be appropriated from Federal Highway Fund allocations, and 50% TOWN funds. However, in the event the TOWN, prior to construction, cancels the project and the TOWN has not made a good faith effort to continue the project, then all costs incurred to date could be 100% TOWN funds.
2. At the time of this agreement, the budgeted amount for the project budget is from the 2019-2022 Statewide Transportation Improvement Program including Amendment #2 and is as shown in the following table. These values include indirect costs and inflation (construction funds only) to the year of advertising. These values are not capped, minimum or final values and they can be changed by either party with written notice to supplement this agreement. The total cost will be based on actual expenditures by and through the DEPARTMENT.

**Commented [JLP1]:** This provision was unclear as to whether the Town would only bear 50% of the costs, regardless of whether the Department obtained sufficient federal funding. We suggest this edit to make it clear that the Town is only responsible for 50% of total costs, and that there is no situation in which the Town could be 100% responsible for funding this project. This would also be consistent with the provision below that allows DOT to cancel this agreement if DOT does not obtain sufficient federal/state funding.

PE	\$300,000
ROW	\$195,027
Construction	\$2,329,325
Total	\$2,824,351

**Commented [JLP2]:** Recommend getting clarity from DOT. Does "PE" stand for professional engineering? Recommend this is defined or explained.

**Commented [JLP3]:** Recommend getting clarification from DOT. We presume this is the estimated cost for acquiring a wider ROW for the expansion? This should be made clear to make sure all parties understand what costs this line represents.

3. Provision of cost share funds to the DEPARTMENT shall be in the following manner:

- a. Engineering and Right-of-Way. The DEPARTMENT will invoice the TOWN monthly for 50% of the expenditures for that month.
- b. Construction.

- i. The TOWN shall provide its full share of project funds prior to advertising the project for construction bids, the cost will be based on estimated project costs. After receipt of the bids, any cost discrepancies between the total cost to construct the project and the estimated price shall be promptly resolved.
  - ii. The TOWN shall be responsible for 50% of the overall actual construction costs determined after acceptance of the completed project. This includes applicable utility relocations and construction inspection (construction engineering).
  - iii. The TOWN shall be responsible for 50% of all federally participating work related to construction change orders and construction inspection (construction engineering).
  - iv. The TOWN shall be responsible for 100% of all non-federally participating work related to construction change orders and construction inspection (construction engineering).

**Commented [JLP4]:** Recommend the Town gets clarification. Section ii states 50% of overall actual construction which seems inconsistent with this clause. Section iii and iv deal with change orders and inspection. It is unclear how a construction change order could be "non-federally participating work." This agreement should be more explicit as to what "non-federally participating work" means and what work would qualify as such so that the Town has an understanding of the corresponding risk. On the contrary, this clause can be reduced to 50% figure.

- c. Indirect Expenses. The TOWN shall also be responsible for 50% of the DEPARTMENT expenditures which include 10% indirect expenses on federally participating work. This applies to all expenditures including engineering, right-of-way and construction costs.

**Commented [JLP5]:** Recommend the Town gets clarification on what these "indirect" expenses are, and how they may be implicated.

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:

**DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT**

- 1. The DEPARTMENT and its agents shall design and oversee the construction the Seabrook 41712 capacity improvement project on US Route 1 between New Zealand Road and the Hampton Falls Town line. All work associated with construction of these facilities will be in accordance with DEPARTMENT specifications.

2. The DEPARTMENT will manage the project development, including advancing the project to a public hearing, if needed, in order to affirm the project's need and secure the ability to exercise eminent domain as necessary to acquire any needed right-of-way.
3. The DEPARTMENT will assume control and management of project including the Engineering, Right-of-way appraisals and acquisitions, environmental efforts including any necessary permitting, and Construction of this project. This will require the hiring a Consultant to perform the design work.
4. The DEPARTMENT will be responsible for the management and operation of the work zone throughout the duration of the active construction of the project.
5. The DEPARTMENT will manage all contract and construction change orders for alterations and additions to the project and will submit change orders and scope amendments requiring TOWN funding to the TOWN for concurrence to proceed. The TOWN will act expeditiously on these requests to keep the project on schedule.
6. The DEPARTMENT will work with the TOWN on the scope of the services to hire a consultant and will involve them in the consultant selection process.

**Commented [JLP6]:** Recommend the Town get clarification. Our understanding is that Route 1 is a state-owned highway. If that is correct, then this agreement correctly states that DOT would have to use eminent domain to expand its right-of-way. However, there are some municipal-owned, state-maintained highways. If that is the case for Route 1, Seabrook would need to do the eminent domain using the municipal eminent domain procedure.

Please have DOT confirm that this section of Route 1 is in fact a state-owned highway.

#### DUTIES AND RESPONSIBILITIES OF THE TOWN

7. The TOWN will attend a meeting with the DEPARTMENT's representatives after signing this AGREEMENT to discuss the project's scope, budget and schedule.
8. The TOWN will offer commentary and input on the design of the project. The TOWN agrees to assign employees to provide direct input and communicate progress to the TOWN. The DEPARTMENT will consider all input, but has the ultimate approval authority.
9. The TOWN will assist the DEPARTMENT with the negotiation phase of the Right-of-Way acquisition process. The DEPARTMENT will prepare and execute appraisal reports, filing of required condemnation instruments, and litigation of condemnation actions. The TOWN will accompany the DEPARTMENT's Right-of-Way staff to assist in the acquisition negotiations.
10. The TOWN agrees that all utility locations, as verified at the beginning of the project, shall not be altered unless changes are made according to any applicable licensing procedure of the TOWN. Any changes to TOWN or private utilities within the work area must be coordinated with the DEPARTMENT.
11. The TOWN agrees that it will, at its own cost and expense, be responsible for the future year round operation and maintenance, including ice and snow removal, of the sidewalks, in accordance with the TOWN's policies and practices and the requirements of 23 CFR 1.27 and 28 CFR 35.133, once the work under this AGREEMENT is completed.
12. The TOWN will be responsible for the identification of all signs that have been permitted to reside within the project limits. Owners of permitted signs that require relocation resulting from the highway project will be reimbursed the cost to move said signs. Non-permitted signs within the existing right-of-way will be ordered removed. If the owner refuses to relocate said signs prior to the project advertising date, the DEPARTMENT will

**Commented [JLP7]:** This section is subject to the comment above regarding eminent domain. This section states that DOT will handle eminent domain actions, but the Town will help with negotiations. It is unclear how the Town will be expected help.

I recommend asking DOT to clarify by explicitly stating what help they expect the Town will have to provide.

**Commented [JLP8]:** My understanding is this is DOT's standard policy/standard requirement.

**Commented [JLP9]:** This regulation requires State highway department to maintain highway projects, but authorizes the State to provide the maintenance by formal agreement with a municipality. In other words, DOT can properly negotiate that a town will handle maintenance of sidewalks. Let us know if there are issues with this potential obligation and we can discuss.

**Commented [JLP10]:** FYI, This regulation requires facilities to be readily accessible and usable by persons with disabilities under the ADA.

**Commented [JLP11]:** Recommend the Town get some clarity. Property owners generally do not have the authority to locate a sign within the Town's right of way and there could be an argument that the expense associate with relocating that sign out of the (to be expanded) ROW should not be born by the Town. Of course, if the subject sign is outside o the right of way and requires moving pursuant to a road widening effort via an eminent domain action, compensation for the same is appropriate. We recommend the Town determine whether there are any signs which would have to be relocated due to the work and review whether they are located within the right of way or not.

order the signs removed and if necessary remove said signs. Authority for removal of signs whether permitted or not is granted to the DEPARTMENT by the TOWN as part of this agreement.

13. The TOWN agrees to prevent any additional encroachments with the Right-Of-Way limitations.
14. The TOWN delegates to the Commissioner of the New Hampshire Department of Transportation the authority to control traffic within the construction zones of this project. This includes the authority to determine the most appropriate way to control traffic within the construction work zone limits of the project. The DEPARTMENT will coordinate with the TOWN to solicit input on the Traffic Control Plans. This will be memorialized as a separate Municipal Work Zone Agreement.
15. The TOWN does hereby designate the DEPARTMENT as its lawful and exclusive agent for the purpose of effectuating compliance with all applicable Federal laws and regulations relating to the location and construction of said project, and the securing of a general contractor for the highway project and the actual construction of said highway.
16. 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 herein 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 survive the termination of this agreement.

**Commented [JLP12]:** This seems overly broad: the Town doesn't have the authority to totally prohibit public utilities and telecom facilities from being erected in the PROW. Additionally, because Route 1 is a state-owned highway, I am not sure how the Town would have the authority to enforce this provision.

Recommend you ask for clarity on what DOT intends with this language with reference to the above issues implicated by same.

**IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE TOWN:**

17. It is understood and agreed that the project may be broken into separate construction contracts to better utilize available funding.
18. As the project is finalized, prior to construction, should the scope of the project result in costs exceeding the amount budgeted by either the DEPARTMENT or the TOWN, the DEPARTMENT and TOWN agree to review the project to determine whether to reduce the scope of the project or seek additional funding sources.
19. It is understood and agreed that the TOWN does not propose to request the installation of ornamental lighting as a part of this project. If ornament lighting is requested and supported by the TOWN, the TOWN will be responsible for the all costs and expense required to install, operate and maintain ornamental lighting. The TOWN agrees that ~~is-it~~ will, at its own cost and expense, be responsible for the future year round operation and maintenance of all existing ornamental lighting and any new lighting that may be installed as part of the project, including monthly billing. If ornamental lighting is installed, this will be memorialized as a separate Lighting Agreement.
20. It is understood and agreed that the TOWN does not propose to request the installation of landscaping as a part of this project. If landscaping is requested and supported by the TOWN, the TOWN agrees that is will, at its own cost and expense, be responsible for the

**Commented [JLP13]:** Consider talking to DOT about a reciprocal provision that benefits the Town.

future year round maintenance of any landscaping that may be installed as part of the project in accordance with the TOWN's policies and/or practices. If landscaping is installed, this will be memorialized as a separate Municipal Landscaping Agreement.

21. Engineering considerations are vital to proper maintenance and operation of these improvements, and future operational adjustments may be necessary due to changed traffic conditions, technical advances or emergency situations. The TOWN agrees that no changes will be made without prior approval of the DEPARTMENT and Federal Highway Administration.
22. The engineering design for the project will be in accordance with applicable Federal and State standards. It is understood that modifications may be required to the current design based on changes in current traffic patterns, environmental regulations and other requirements.
23. It is understood and agreed that neither the DEPARTMENT, nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the TOWN, or their agents under this Agreement.
24. The failure of the TOWN to properly maintain or operate the sidewalk, lighting and landscaping portions of this project will disqualify the TOWN from any future Federal or State Aid Highway/Bridge Funds, until such time as the deficient condition has been rectified and approved by the Department.
25. 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 or the TOWN may terminate this AGREEMENT upon thirty (30) days' written notice to the TOWN or other Party. Such termination shall relieve the DEPARTMENT and the TOWN from obligations under this AGREEMENT after the termination date.

26. This agreement is effective as of \_\_\_\_\_, 2020, although executed at a later date. This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and supersedes and replaces all previous agreements, whether written or oral, pertaining to the subject matter hereof. Any changes to this agreement must be made by written amendment executed by authorized representatives of the parties.

**IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE PROJECT SPONSOR:**

IN WITNESS WHEREOF, the parties here have affixed their signatures, the TOWN of Seabrook, New Hampshire, on this \_\_\_\_ day of \_\_\_\_\_, 2020, and the Department of Transportation on this \_\_\_\_ day of \_\_\_\_\_, 2020.

**NEW HAMPSHIRE DEPARTMENT OF  
TRANSPORTATION**

**TOWN OF SEABROOK**

**Commented [JLP14]:**

**Commented [JLP15R14]:** The Town should additionally have an option to terminate this agreement if sufficient federal/state funding is not appropriated by DOT. I want to ensure the Town is protected and cannot be responsible for paying 100% of project costs in that scenario.

By: \_\_\_\_\_  
Victoria F. Sheehan  
Commissioner

By: \_\_\_\_\_  
Town Manager  
Town of Seabrook

GOVERNOR & COUNCIL AUTHORIZATION  
TO ENTER INTO AN AGREEMENT

\_\_\_\_\_  
Date

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