

SPECIAL BOARD OF ALDERMEN

NOVEMBER 27, 2023

7:00 PM

Aldermanic Chamber

PRESIDENT LORI WILSHIRE CALLS ASSEMBLY TO ORDER

PRAYER OFFERED BY CITY CLERK DAN HEALEY

PLEDGE TO THE FLAG LED BY ALDERMAN ERNEST A. JETTE

ROLL CALL

PUBLIC HEARINGS

R-23-171

AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDED FEDERAL AID PROJECT AGREEMENT WITH THE STATE OF NEW HAMPSHIRE FOR THE PURPOSE OF CONSTRUCTING AN ACCESSIBLE RAMP TO THE COTTON MILL TRANSFER BRIDGE AND TO ACCEPT AND APPROPRIATE \$724,186 FOR THE PROJECT

Testimony in Favor

Testimony in Opposition

Testimony in Favor

Testimony in Opposition

R-23-172

AUTHORIZING THE CITY TO ENTER INTO A COMMUNITY CENTER INVESTMENT PROGRAM LOAN AGREEMENT WITH THE COMMUNITY DEVELOPMENT FINANCE AUTHORITY AND BORROW AN AMOUNT NOT TO EXCEED ONE MILLION DOLLARS (\$1,000,000) FOR REPAIRS AND RENOVATIONS OF THE ARLINGTON STREET COMMUNITY CENTER

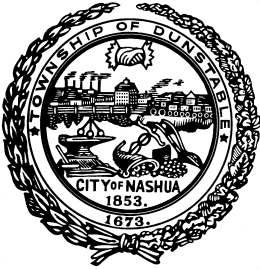
Testimony in Favor

Testimony in Opposition

Testimony in Favor

Testimony in Opposition

ADJOURNMENT



RESOLUTION

AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDED FEDERAL AID PROJECT AGREEMENT WITH THE STATE OF NEW HAMPSHIRE FOR THE PURPOSE OF CONSTRUCTING AN ACCESSIBLE RAMP TO THE COTTON MILL TRANSFER BRIDGE AND TO ACCEPT AND APPROPRIATE \$724,186 FOR THE PROJECT

CITY OF NASHUA

In the Year Two Thousand and Twenty-Three

WHEREAS, Resolution R-23-155 “Authorizing the Mayor to enter into a Federal Aid Project Agreement with the State of New Hampshire for the purpose of constructing an accessible ramp to the Cotton Mill Transfer Bridge and to accept and appropriate \$300,000 for the project” was passed by the Board of Aldermen on May 9, 2023.

WHEREAS, the Federal Aid Project Agreement has been updated and amended with additional available funds for the project, an increase in the total budget of the project, and a period of performance start date and end date.

WHEREAS, the parties must now amend and replace the previous Agreement, dated July 13, 2023, which will become null and void with the execution of the Amended Agreement.

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to execute the attached New Hampshire Department of Transportation Federal Aid Program Amended Project Agreement for the purpose of constructing an accessible ramp to the Cotton Mill Transfer Bridge in Nashua.

The Mayor is hereby further authorized to accept and appropriate the “Participating Federal Share 80%” for this project in the amount of \$724,186. Both the City’s “Participating Local Share 20%” in the amount of \$181,046.50, and “Additional Non-Participating Funds” in the amount of \$704,128.50 will be spent from the Riverwalk Project Bond authorized by R-21-193, approved on December 15, 2021, for a total project cost of \$1,609,361.

LEGISLATIVE YEAR 2023

RESOLUTION: R-23-171

PURPOSE: Authorizing the Mayor to enter into an amended Federal Aid Project Agreement with the State of New Hampshire for the purpose of constructing an accessible ramp to the Cotton Mill Transfer Bridge and to accept and appropriate \$724,186 for the project

ENDORSER(S): Alderman Patricia Klee

COMMITTEE ASSIGNMENT: Budget Review Committee

FISCAL NOTE: Fiscal impact is a \$724,186 federal grant to the City to be used for a specific purpose with \$181,046.50 in City matching funds and \$704,128.50 in additional non-participating funds coming from the Riverwalk Project Bond authorized by R-21-193.

ANALYSIS

This resolution authorizes the Mayor to enter into the attached amended Agreement with the State of New Hampshire and to accept and appropriate increased federal grant funds for the purpose of constructing an accessible ramp to the Cotton Mill Transfer Bridge.

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: 

Approved as to form:

Office of Corporation Counsel

By: 

Date: 

6 November 2023

**FEDERAL AID PROGRAM
AMENDED PROJECT AGREEMENT
FOR
CITY OF NASHUA**

STATE PROJECT #: 44141
FEDERAL PROJECT #: X-A005(325)
STATE VENDOR #: 177441
UNIQUE ENTITY IDENTIFIER #: MCTGNTGFVD53

THIS AMENDED 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 construct an accessible ramp to the Cotton Mill Transfer Bridge in the City of Nashua is an eligible project for funding under the Federal Aid NH-088 and Highway Safety Improvement Programs created under the Federal Bipartisan Infrastructure Law (BIL); and

WHEREAS, the Parties now wish to amend and replace the previous Agreement dated July 13, 2023, which will become null and void with the execution of this AMENDED AGREEMENT; and

WHEREAS, the DEPARTMENT has established Project #44141 (the "Project") for the aforesaid project, with the Based on Bids project funding represented in the table below; and

Bid Analysis Approval Date	Participating Federal Share 80%	Participating Local Share 20%	Additional Non-Participating Funds	Total Budget
8/21/2023	\$724,186.00	\$181,046.50	\$704,128.50	\$1,609,361.00

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 #: 693JJ22340000Y928NHA005325, 693JJ22330000YS70NHA005325, 693JJ22330000YS70NHA005325, 693JJ22330000YS70NHA005325

CFDA #20.205 and DESCRIPTION Highway Planning and Construction

SUBAWARD Period of performance start date: June 21, 2023

SUBAWARD Period of performance end date: May 2, 2025

NHDOT Managed: Yes ___ No x

NHDOT Indirect Cost Rate: N/A x 10% ___

Is award Research & Development: Yes ___ No x

WHEREAS, the PROJECT SPONSOR has submitted an Application 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 AMENDED 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 incorporated and made a part of this AMENDED 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 AMENDED 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 AMENDED 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 AMENDED 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 AMENDED AGREEMENT. This AMENDED 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 AMENDED 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 AMENDED AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this AMENDED 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 AMENDED 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 on any element of this AMENDED 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 AMENDED AGREEMENT from the DEPARTMENT shall be as set forth in the Table on page 1 herein. This Based on Bids cost will reflect the maximum amount of DEPARTMENT funding to be made available for the project. As the construction 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 construction in Federal fiscal year 2023 unless earlier terminated as provided herein and complete the Project on or BEFORE the SUBAWARD Period of Performance END date on page 1. The PROJECT SPONSOR may apply to the DEPARTMENT for an extension of Period of Performance 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 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 deadline being unattainable.
- E. This AMENDED 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 AMENDED AGREEMENT may be amended, waiver 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.
- F. That this AMENDED 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.

- G. Pursuant to authorization by the Governor and the Executive Council, as Item No. 47 on March 23, 2022, this AMENDED AGREEMENT is effective upon the date shown on page one of this AMENDED AGREEMENT. The DEPARTMENT will include a record of this AMENDED 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 AMENDED 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: _____



RESOLUTION

AUTHORIZING THE CITY TO ENTER INTO A COMMUNITY CENTER INVESTMENT PROGRAM LOAN AGREEMENT WITH THE COMMUNITY DEVELOPMENT FINANCE AUTHORITY AND BORROW AN AMOUNT NOT TO EXCEED ONE MILLION DOLLARS (\$1,000,000) FOR REPAIRS AND RENOVATIONS OF THE ARLINGTON STREET COMMUNITY CENTER

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 of the City of Nashua and the City Treasurer of the City of Nashua are hereby authorized to borrow up to One Million Dollars (\$1,000,000) through a Community Center Investment Program Loan for State Fiscal Recovery Funds offered through the Community Development Finance Authority.

The funds will be used for repairs and renovations of the Arlington Street Community Center. The Arlington Street Community Center needs multiple repairs and upgrades to be sustainable, more energy efficient and accessible. The project will fix damage, improve building accessibility and reduce future energy consumption. Of immediate concern is the structural damage to the rear of the exterior wall and stone foundation that will be addressed. Various ADA accessibility enhancements have been identified, such as adding a ramp at the entrance, and multiple ways to enhance energy efficiency, such as replacing windows, improving the building envelope, and upgrading the HVAC system.

The total project cost is estimated at \$1,150,000. The \$1,000,000 loan was appropriated in the FY2024 City Grant Budget. The required \$150,000 city match was appropriated as part of the FY2024 Capital Improvement Budget.

Section 3 of the loan agreement includes the following language:

“No interest on the Loan Amount shall be charged by Lender or payable by Borrower. The Loan shall be further subject to a lien in favor of Lender ensuring that the real property and improvements constituting the Project shall be used as a community center for at least ten (10) years from the date hereof. Such restriction shall automatically lapse upon compliance. Upon completion of the Project and issuance of a certificate of occupancy on or before August 31, 2025, adherence with the 10-year lien requirement, and satisfaction of all requirements of this Loan, Borrower’s obligation to repay the Loan Amount will be deemed satisfied and paid in full.”

RESOLUTION

R-23-172

RESOLVED FURTHER that the Mayor is authorized to enter into the required contracts therefore as well as any amendments to be made thereto or any other documentation necessary for the receipt of said funds.

LEGISLATIVE YEAR 2023

RESOLUTION:

R-23-172

PURPOSE:

Authorizing the City to enter into a Community Center Investment Program Loan Agreement with the Community Development Finance Authority and borrow an amount not to exceed one million dollars (\$1,000,000) for repairs and renovations of the Arlington Street Community Center

ENDORSERS:

Mayor Jim Donchess

**COMMITTEE
ASSIGNMENT:**

Budget Review Committee

FISCAL NOTE:

The City of Nashua will borrow \$1,000,000 for the needed repairs and renovations of the Arlington Street Community Center. This loan will be forgiven if the Center continues operations for a ten year period.

ANALYSIS

This resolution authorizes the City of Nashua to borrow up to \$1,000,000 through a Community Center Investment Program Loan for State Fiscal Recovery Funds offered through the Community Development Finance Authority for repairs and renovations of the Arlington Street Community Center. The agreement provides that if the real property and project improvements, which must be completed within the required timeframe, are used as a community center for at least ten years, Borrower's obligation to repay the Loan Amount will be deemed satisfied and paid in full.

This project is in the FY2024 Capital Improvements Program.

As this legislation is an authorization to borrow money, this resolution requires a "duly advertised public hearing" and a 2/3 vote of all the members.

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

Financial Services Division

By:



Approved as to form:

Office of Corporation Counsel

By:



Date:

