



LEGAL NOTICE
Town of Merrimack
Public Hearing



Residents of Merrimack are hereby advised that the Town Council will conduct a public hearing to consider the acceptance and expenditure of Transportation Alternatives Program (TAP) funds in the amount of \$436,000 and a withdrawal from the Infrastructure CRF of \$109,000 to design and construct the Souhegan River Trail between Watson Park and the pedestrian bridge adjacent to the Merrill's Marauders Bridge. All interested parties are invited to attend. The public hearing will be held on **Thursday, May 14, 2015 at 7:00 PM** in the Matthew Thornton Room located at 8 Baboosic Lake Road in Merrimack.

For Town of Merrimack Use:

Posted: May 5, 2015

To Be Published: May 5, 2015 (*Union Leader*)

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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



JEFF BRILLHART, P.E.
ACTING COMMISSIONER

January 22, 2015

Town of Merrimack
Kyle Fox, P.E.
6 Baboosic Lake Road
Merrimack, NH 03054

Re: Transportation Alternatives Program Application Number: 14-15TAP

Dear Mr. Fox:

The New Hampshire Department of Transportation (NHDOT) is pleased to inform you that your application 14-15TAP (Construct approximately 2,500' of non-motorized multi-use path.) has been approved by the Commissioner to use Transportation Alternatives Program (TAP) funds in the amount of \$436,000.00.

Your application selection was based on recommendations submitted by the Transportation Alternatives Program Scoring Committee, as well as staff consideration of budget constraints (4 funding categories by population) as required by FHWA, and equity to top regional priorities.

The total cost of your project is \$545,000.00 and the Town of Merrimack will be responsible for a match in the amount of \$109,000.00.

All funded TAP projects will be submitted to Governor and Council for approval in spring of, 2015. After Governor and Council approval the Department will send you a municipal agreement that will need to be signed by the Local Public Agency (LPA) sponsor prior to starting work on the project. The Department expects that your project will begin by summer of 2015. Upon signing the municipal agreement the first step will be to contact your Department Project Manager and set up a project scoping meeting. This is all detailed in the Department's LPA Manual and can be downloaded from our main web page at <http://www.nh.gov/dot/>.

Congratulations on being selected for Transportation Alternatives Program funding. We look forward to working with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Jameson".

Thomas Jameson, P.E.
TAP Program Manager

Cc. William Cass, P.E. Director of Project Development
Regional Planning Commissions

From: Kyle Fox
Sent: Friday, January 23, 2015 10:12 AM
To: Eileen Cabanel
Cc: Rick Seymour
Subject: RE: TAP final list of funded projects

Eileen,

This project will create a 2500' walking trail that connects Watson Park to the pedestrian bridge adjacent to the Merrill's Marauders Bridge (F.E.E.T). Specifics of the project are as follows:

- Phase I
 - The trail will start in Watson Park at the paved arc sidewalk that currently exists. A paved trail will head toward the concrete pens adjacent to DW Highway leading to the Chamberlain Bridge (see attached pdf) and lead under the bridge through the sluiceway.
 - To accomplish the above, the concrete beams that hold up the existing cantilever sidewalk on DW Highway will need to be removed and a retaining wall installed. A new paved sidewalk will be installed along DW where the existing one is removed. Much of the remaining concrete pens will also be removed as shown in the attached pdf. New fencing will be added to separate the path area from the remaining hazardous material stockpiles and the uncleaned portion of the park leading down to the river.
 - The phase I technical design was completed last summer by the interns.
 - Although it probably won't be a participating cost for the Feds, the mortar joint improvements to Chamberlain Bridge and the addition of the wording in the granite block will be accomplished as part of this project.
- Phase II
 - The path will continue through the sluiceway to the pens adjacent to the fire station. We will try to develop a plan that minimizes disruption to the FD parcel but will allow for access from the trail heading south/west and from the north side of DW Highway (ie Woodbury Street pedestrians).
 - The path will take a left hand turn to cross the brook that runs into the Souhegan (where the water impoundment was before the dam removal) with a culvert or small bridge. Once across, the trail will become a stonedust surface through the woods until it meets up with the pedestrian bridge.
- Project Design
 - Because federal funds are being utilized, the complications in the design phase are magnified greatly. Once I speak with the DOT program manager I will get a better feel but I expect that the amount of work required for all the permitting will require us to use a consultant to coordinate the design process. The consultant would be able to utilize the work we did for phase I and the survey performed by KNA for phase II (I will attempt to convince the program manager to let us use those as part of our matching funds but as we did them prior to the grant application, I would not expect that it would be allowed).
 - Some of the permitting that needs to be completed is:
 - Historical Properties review
 - Natural Heritage review (endangered/threatened species)
 - Soil management plan (because we will be digging deeper than 2')
 - Shoreland protection permit
 - Wetland permit application
 - Archeological study

I expect the design process will take all of this year and we would be ready for construction next year. Currently the phase I project was scheduled in the latest CIP for FY18. We will want to ask the Town Council to move this to FY17 in order to construct next summer. The expectation on funding in the CIP is that we would receive 80% reimbursement

from FHWA/DOT up to \$436,000. We programmed \$200,000 for the town's share and costs of the non-participating work.

As soon as we receive the official notice from NHDOT, I can begin the process of moving forward with consultant selection and design. This is a great opportunity for the Town! The Town Center Committee should be commended for their work in establishing this plan and the execution it took to gain ownership of the land by the dam and from the school district.

Hope this helps. Let me know if you have any questions,
Kyle

Kyle Fox, PE

Deputy Director/Town Engineer

Public Works Department

6 Baboosic Lake Road

Merrimack, NH 03054

(603) 424-5137

<https://www.facebook.com/MerrimackDPW>

From: Eileen Cabanel

Sent: Friday, January 23, 2015 9:05 AM

To: Kyle Fox

Subject: Re: TAP final list of funded projects

Importance: High

Hi again.

Once again this is really fantastic. Thank you so much for taking the initiative to explore this grant opportunity and take the time to prepare this application!

Will you please send me the detailed narrative on what this grant project includes with costs and timelines associated with each. You are a VERY good egg!

Eileen

Sent from my Verizon 4G LTE Smartphone

----- Original message-----

From: Kyle Fox

Date: Fri, Jan 23, 2015 7:25 AM

To: Eileen Cabanel;

Cc: Rick Seymour; Nelson Disco (ndisco3@yahoo.com); BJ Starkey;

Subject: FW: TAP final list of funded projects

Good morning Eileen,

NHDOT has finalized their review of the projects submitted for the Transportation Alternatives Program. In all there were 43 projects submitted with a request of \$17,629,000 federal funds; only \$5,353,000 is available. I'm happy to report that Merrimack was chosen to receive funding for the Souhegan River Trail project!! The project is estimated at a total cost of \$545,000 with \$436,000 being federal funds (\$109,000 in Town funds).

Nelson – Thank you and the Town Center Committee for your help in preparing the application and for all the hard work in previous years that led to this project being selected. Please extend my thanks to Deb and Peter for their time as well.

Kyle

Kyle Fox, PE

Deputy Director/Town Engineer

Public Works Department

6 Baboosic Lake Road

Merrimack, NH 03054

(603) 424-5137

<https://www.facebook.com/MerrimackDPW>

From: Tim Roache [<mailto:TimR@nashuarpc.org>]

Sent: Thursday, January 22, 2015 4:41 PM

To: Marchant, Sarah; Tad Putney (tputney@brookline.nh.us); Kyle Fox

Subject: FW: TAP final list of funded projects

Importance: High

This is fantastic news! Three of the four TAP projects submitted to NRPC were selected for funding. Congratulations!

From: Tom Jameson [<mailto:TJameson@dot.state.nh.us>]

Sent: Thursday, January 22, 2015 3:11 PM

To: Kerrie Diers; 'tjohnson@healthynh.com'; 'Chris.Gamache@dred.state.nh.us'; 'tim@bwanh.org'; 'Felice.Janelle@des.nh.gov'; 'debra.a.samaha@dartmouth.edu'; 'mcooney@dhhs.state.nh.us'; Erik Paddleford; 'mtardiff@cnhrpc.org'

Cc: Bill Cass; Bill Watson; Nancy Mayville; 'Dpreece@snhpc.org'; 'jhayes@lakesrpc.org'; 'nmiller@uvlsrpc.org'; 'Cynthia Copeland'; 'tmurphy@swrpc.org'; 'nccinc@nccouncil.org'; 'csinnott@rpc-nh.org'; 'TMJones@dhhs.state.nh.us'; 'mpoesse@nccouncil.org'; John Corrigan

Subject: TAP final list of funded projects

Importance: High

Hi,

Attached is the final list of Transportation Alternative Program projects. The first page shows the funded projects and the second and third pages are the approved but unfunded projects. We are going to have a reserve list of projects just like we did with TE. If additional TA funds are available we will go down the reserve list in order looking at funding amount and population regions to get the one that best fits the available funding.

You will notice that the last project listed is not on the approved list. This is because after reviewing the application with FHWA it was found to be ineligible for TAP funding as presented. They planned on designing the entire trail but only building a small portion under this application which is not eligible for FHWA funding.

I am in the process of sending out letters to all the applicants in the next few days. You can share this list with any of your towns as you see fit.

Call or email if you have any questions.

Tom

Thomas Jameson, P.E.

Project Manager

Bureau of Planning & Community Assistance

NH Department of Transportation

Phone: (603)271-3462

tjameson@dot.state.nh.us

DRAFT

TRANSPORTATION ALTERNATIVES PROGRAM
PROJECT AGREEMENT
FOR

DRAFT

TOWN OF MERRIMACK

STATE VENDOR #: _____

STATE PROJECT #: _____

FEDERAL PROJECT #: _____

THIS AGREEMENT, executed in *triplicate*, is made and entered into this ____ day of _____, 20__, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the “DEPARTMENT”, and the TOWN OF MERRIMACK, hereinafter called the “PROJECT SPONSOR”.

WITNESSETH that,

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to construct a 2500 foot non-motorized multi-use path in the Town of Merrimack is an eligible project for funding under the Transportation Alternatives Program (TAP) created by the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA); and

WHEREAS, the DEPARTMENT has established TAP Project #_____ (the “Project”) for the aforesaid project in the amount of Five hundred forty-five thousand dollars (\$545,000.00) with eighty percent (80%) of that cost coming from Federal Highway funds, such amount being Four hundred thirty-six thousand dollars (\$436,000.00), and the remaining twenty percent (20%) of that cost coming from the PROJECT SPONSOR, such amount being One hundred nine thousand dollars (\$109,000.00); and

WHEREAS, the PROJECT SPONSOR has submitted an Application (14-15TAP) 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; 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 agreements 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. **[Unless agreed otherwise at Project completion, the DEPARTMENT's maintenance responsibility shall be no greater than that which exists within the proposed Project limits on ____ prior to the start of construction.] (This section needed if State has current maintenance responsibility** 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.
- 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 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, "Non-discrimination 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 PROJECT SPONSOR receives Federal financial assistance extended by the State of New Hampshire. 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, national origin, sex, age, or disability in consideration for an award.*
 - c. That the PROJECT SPONSOR shall not discriminate on the basis of race, color, national origin, or sex 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, 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 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>.
- H. If there is a default of any nature to 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 paragraph 4 of 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 three (3) months after the date of this AGREEMENT and substantially complete the Project within _____ () years after the date of the first notice to proceed date given by the DEPARTMENT, unless earlier terminated as provided herein. The PROJECT SPONSOR may apply to the DEPARTMENT 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 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. 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.

**NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION**

TOWN OF MERRIMACK

By: _____
Commissioner
Department of Transportation

By: _____
Title:
Project Sponsor Name

Authorized to enter into Agreement as
approved by Governor & Council on
_____.

