



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO

massDOT
Massachusetts Department of Transportation

May 5, 2015

Mr. Charles Woodard, Chairman
Board of Selectmen
Town of Sudbury
Flynn Building
278 Old Sudbury Road
Sudbury, MA 01776

Subject: MassDOT Highway Division Project 608164: Bruce Freeman Rail Trail Biker Path
Construction – Project Eligibility Notification.

Dear Mr. Woodard:

On behalf of MassDOT, I am writing to inform you that the Highway Division's Project Review Committee has evaluated the subject project and determined that it is eligible for Federal Aid highway funding. It is the Project Review Committee's understanding that the estimated construction cost of this project is \$6,000,000; the total project cost will therefore consist of this estimated construction cost plus additional costs for project design, construction engineering, construction contingencies, police details, and any costs associated with right-of-way procurement and environmental permitting and mitigation.

This eligibility determination by the Project Review Committee is not a commitment of state or federal funding to the project, nor is the decision to commit funding solely MassDOT's. The decision to program funding for this project is made by the Boston Metropolitan Planning Organization as part of their annual Transportation Improvement Program (TIP) development process. The Boston MPO is comprised of members including the MassDOT Secretary of Transportation, the MassDOT – Highway Division, the Metropolitan Area Planning Council (MAPC), the Massachusetts Bay Transportation Authority (MBTA), MBTA Advisory Board, Massachusetts Port Authority (MassPort), the City of Boston and six other municipalities. The Boston MPO is the federally designated entity charged with developing transportation plans and programs for this region. This project is not programmed on the current Boston Region TIP.

The eventual implementation of this project is also contingent on successful completion of the project design and review process, securing all necessary right-of-way, and receipt of all appropriate permits. The traffic control measures developed for this project must be prepared consistent with 701 CMR 7.00 (Use of Road Flaggers and Police Details on Public Works Projects). The Highway Division will only advertise for construction projects that have been developed consistent with the Road Flagger and Police Detail Guidelines that are found at our website. The municipality will be responsible for funding and administering the project design (with Highway Division review and approval), securing and providing documentation for all necessary right-of-way, and for preparing and submitting all environmental permit applications. The Highway Division will be responsible for administering the environmental permitting process necessary to obtain the required permits and for overseeing the project construction.

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The following sections of this letter discuss programming and project development requirements in more detail:

Programming Requirements

1. In order to be advertised for bids, all federal aid projects must be listed in the annual element, or first year, of the regional MPO's approved Transportation Improvement Program which covers four federal fiscal years. This project is not programmed on the TIP. Please work with the District 3 Office and CTPS (Central Transportation Planning Staff) which serves as staff to the Boston Region MPO, to discuss the appropriate programming approach for this project.
2. All projects, even though listed in the TIP, are subject to the availability of state and federal funding. Please understand that considerably more projects are eligible for federal aid in the MPO region than can be programmed in the TIP.
3. Since the TIP is financially constrained by the anticipated federal funding available each year, any request for amendments (such as a revision to the project year, total project cost, or project-funding category) should be coordinated through the MPO. It is expected, however, that the proponent will attempt to constrain project costs to available funding.
4. The MPO considers Transportation Evaluation Criteria in establishing priorities for programming TIP projects. You should consider both the Highway Division's and the MPO's evaluation in relation to other similar projects in your region to determine the level of commitment, and schedule, of your community's resources for this project. If this project has not already been evaluated by the MPO, or if you believe the evaluation needs to be updated, please contact this office and the MPO.
5. The municipality and its project designer should be aware that the total estimated construction cost, as listed in the TIP, should include an amount for contingencies, construction engineering, participating utility relocation costs (refer to Engineering Directive E-11-008) and traffic police (where appropriate under 701 CMR 7.00), and that MassDOT will include an inflationary adjustment based upon the estimated year of advertising.

Project Development Requirements

1. The municipality is responsible for the completion of the project design in accordance with the 2006 Massachusetts Highway Department *Project Development and Design Guide* and other relevant Highway Division standards and criteria. The Highway Division requires formal approval of design exceptions when any of the controlling design criteria identified in the *Project Development and Design Guide* (Chapter 2 Section 11) and Engineering Directive E-14-006 cannot be met.

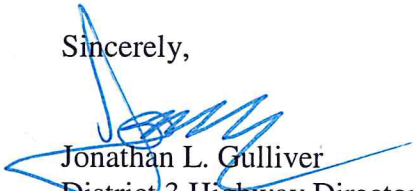
2. Providing safe and convenient walking and bicycling accommodations in all transportation projects is a goal of MassDOT. The municipality is responsible for developing this project in accordance with relevant multimodal guidance in the *Project Development Design Guide* and MassDOT Policy and Engineering Directives, most notably the Healthy Transportation Policy Directive, P-13-0001, and Engineering Directive E-14-006.
3. If the municipality requires the services of a Surveyor or Design Consultant, it must hire a firm that is currently pre-qualified for the appropriate type of work by the Highway Division's Architects and Engineers Review Board. Lists of pre-qualified firms are available on the Highway Division website.
4. When soliciting services from Surveyors or Design Consultants, the Highway Division recommends that the municipality use a qualifications-based selection process. In addition, the municipality shall refer to the Municipal Project Guide during the project development and contract negotiation process. This document is available on the Highway Division website.
5. Municipalities shall use the Standardized Scope of Work and Work Hour Estimate Form for Design Services as a template for municipal agreements with design consultants. This document is available in spreadsheet format on the Highway Division website at <http://www.mhd.state.ma.us/default.asp?pgid=content/publicationwKHR&sid=about>. Please provide the draft design consultant work scope to the District Office for review.
6. Cost estimates shall be reviewed at major design milestones, and at least annually.
7. The municipality shall be responsible for all construction costs under two conditions:
 - When the construction costs for the contract scope exceed the total participating contract bid price by more than ten percent (10%), the City/Town shall be responsible for the amount over 110% of the total participating contract bid price unless the municipality submits sufficient documentation to MassDOT showing that the work was necessary solely due to MassDOT's construction oversight, as determined solely by MassDOT.
 - When the City/Town requests work that FHWA and/or MassDOT determine is unnecessary to complete the Project, the work shall be deemed "non-participating" and the City/Town shall pay the full cost of that work.
8. To improve the quality of its design and construction projects, the Highway Division employs a Cost Recovery Procedure for construction extra work orders determined to be caused by designer errors. The municipality and/or its Design Consultant are responsible for addressing all Cost Recovery inquiries and for making Cost Recovery restitution payments to the Commonwealth, if determined to be warranted. Any and all approvals made by MassDOT during the Project's design review shall not relieve the municipality's responsibilities for such errors and omissions.

9. The municipality is responsible for securing the necessary right-of-way required to complete the project. Right-of-way guidelines are enclosed for your reference. Please ensure that sufficient work-hours are provided in the design contract for the Design Consultant to prepare all necessary right-of-way plans and documents.
10. The municipality shall be named as the applicant on all required environmental permits. The municipality shall prepare all required environmental permit applications and submit them to the Highway Division for review. After making any edits required by the Highway Division, the municipality shall submit the permit applications to the appropriate environmental permitting entities. The Highway Division reserves the right to assume the role of permit applicant on any project it will advertise.
11. This project is subject to Early Environmental Coordination as described in the Thresholds, Timelines, and Submission Requirements that appear in Appendices 2-A-6 and 2-A-7 of the *Project Development and Design Guide*. These requirements must be met in order to expedite project design acceptance and regulatory clearances, and to ensure the inclusion of essential information at the 25% design stage. Submissions for this project shall include documentation of any coordination that has been completed by the municipality. The Highway Division will not initiate the 25% design submission review until the Early Environmental Coordination checklist has been submitted to the Highway Division.
12. For all roadway projects, the project designer must submit the pavement design to the Highway Division Pavement Management Section for approval. If this was not done during the project initiation phase, then the project designer shall submit a pavement design through the Highway Division Project Manager prior to the 25% design submission.
13. Prior to the beginning of preliminary survey work, the project designer shall contact the District 3 Survey Engineer to coordinate the establishment of horizontal and vertical control points near the beginning and end of the project. All survey work must be prepared in accordance with the MassDOT *Survey Manual*.
14. All projects require some level of construction phase engineering services by the design engineer. The municipality is responsible for ensuring that any contracts with Design Consultants include appropriate consideration for these important services.
15. The municipality shall coordinate the design of the project with all municipal departments and with any applicable public or private utilities such as gas, electric, cable, and telephone, to determine if there are any potential utility projects that would disturb the completed roadway work. Any proposed utility construction must be completed before the project can begin. Please be aware that Highway Division policy restricts highway surface openings for a period of at least five years after the new surface is placed, except for emergencies. Justification of surface opening requires the approval of the District Highway Director. In addition, the community is responsible for obtaining any required waivers.

16. Any water and sewer work in the area will be the responsibility of the municipality and shall be completed prior to the start of project construction, unless MassDOT authorizes such work to be part of project construction.
17. All Highway Division projects must be designed, constructed and maintained in compliance with the Americans with Disabilities Act (ADA) and with the specifications set forth in the Massachusetts Architectural Access Board (AAB) regulations at 521 CMR. The municipality is responsible for ensuring that any right-of-way necessary for construction complies with AAB specifications and that completed projects are maintained in accordance with ADA and AAB regulations.
18. The municipality will be required to enter into a Municipal Project Agreement with the Highway Division, similar to the enclosed sample, when the actual construction project bid has been determined. If the municipality will not be able to comply with the terms of the agreement, which include making reasonable efforts to remove snow and ice to allow only temporary and isolated interruptions in accessibility, it should not advance this project for advertising by the Highway Division. This requirement is in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.; 28 CFR § 35.133, and 23 U.S.C. § 116 (Maintenance).

When available, please provide the draft Design Consultant work scope to the District for review. Thank you for your attention to the information in this letter, and for your support of transportation system improvements in the Commonwealth of Massachusetts. If you have any questions or need additional information, please contact me or Ann Sullivan, District 3 Projects Engineer, at (508) 929-3868. We look forward to working with you.

Sincerely,



Jonathan L. Gulliver
District 3 Highway Director

Attachments: Right-of-Way Guidelines
Sample Municipal Project Agreement

cc: Maryanne Bilodeau, Interim Sudbury Town Manager
William Place, P.E., Sudbury DPW Director

ec: Thomas Tinlin, P.E., MassDOT Acting Highway Administrator
Patricia A. Leavenworth, P.E., MassDOT Chief Engineer
Sean Pfalzer, CTPS
Eric Bourassa, MAPC
Brian Pounds, MPO Liaison, MassDOT Office of Transportation Planning
Marie Rose, P.E., MassDOT Director of Project Manager

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION/HIGHWAY
RIGHT OF WAY BUREAU

MUNICIPAL GUIDELINES FOR RIGHT OF WAY ACQUISITION ON FEDERAL & STATE PROJECTS

1. Contact your MassDOT Community Compliance Officer to review acquisition procedures. Steps to be followed are outlined in the **Federal Aid Acquisition Guide for Property Owners**. Forms and documents will be provided by the MassDOT, Right of Way (ROW) Bureau. The forms have been updated as of *September, 2014* and updated forms must be used. These requirements are for ROW Certification and are not legal advice. Please consult your legal counsel.
2. Submittal of acceptable ROW plans that follow Chapter 18 of the Design Guide Book is required. Recordable plans and instruments will most likely be required.
3. Title examinations of properties must be performed and reviewed to determine ownerships and/or rights in the parcel(s) to be acquired. If determined by MassDOT that the municipality has not acquired all required land or rights therein, the municipality shall be responsible for all damages resulting there from, including compensation to private land owners, and contractor claims of any nature. In such event, MassDOT has the option to withdraw its participation from the project.
4. Interview property owner(s) or their representatives and discuss the issues and impacts regarding the property to be acquired. Property owners must be given the **Federal Aid Acquisition Guide for Property Owners**. Retain notes of the interview for future reference and fill out the Property Owner Contact Diary which is required for ROW Certification. Also retain notes for potential appraisal of the property. Severance damage, cost to cure items, and uneconomic remainders may be indicated.
5. Assign a competent licensed appraiser and review appraiser. A list of approved MassDOT Highway Division FEE appraisers is available upon request. Use the LPA Appraisal Function Job Aid which discusses appraisal scope of work, selecting an appraiser and review appraiser, responsibilities and check list. The timing of the appraisal and review appraisal is critical as a Written Offer must be performed expeditiously after the appraisals have been reviewed by the acquiring agency.
6. The acquiring agency's (municipality) Written Offer of Just Compensation must be sent to the property owner *30 days prior* to the date of the meeting to vote the award, which will be followed by recording at the Registry of Deeds, and will consist of a written summary. A written format is available. **The Federal Aid Acquisition Guide for Property Owners** must be included in the Written Offer.
7. Prepare and vote the Order of Taking and the Award of Damages.
8. Record the Order of Taking, deed grants or easements and plan(s), if required, with the appropriate Registry of Deeds. **NOTE: This must be accomplished within thirty (30) days of the vote by City Council or Board of Selectmen.**
9. Notify owner(s) in writing of the acquisition(s) and the award of damages.
10. **Payment of the award must be tendered to the affected property owners immediately after the recording at the Registry of Deeds. Payment must be tendered to the property owner in order to issue the Federal Aid Right of Way Certificate.**
11. Gain physical and legal possession of the parcel(s)/structure(s).
12. Complete and submit the required affidavits and supporting paperwork. Completed Property Owner Contact Diaries are required for ROW Certification. Forward Municipal Document Requirement Checklist based on method of acquisition to MassDOT Community Compliance Officer as soon as possible.

Note: The Eminent Domain procedure is as unique and varied as the Municipality that implements the process. Your procedures are regulated by the Massachusetts General Laws. Most towns require town meeting approval in order to exercise their eminent domain authority.

**MUNICIPAL PROJECT AGREEMENT
MUNICIPALLY-FUNDED DESIGN**

Agreement By and Between
The Massachusetts Department of Transportation
And The
City/Town of _____

Agreement Number _____

Agreement made this ___ day of _____, 2014 by and between the Massachusetts Department of Transportation, established pursuant to Chapter 6C of the General Laws, having its principal place of business in the State Transportation Building at 10 Park Plaza, Boston Massachusetts 02116 (hereinafter referred to as the "MassDOT") and the City/Town of _____, (hereinafter referred to as the "City/Town").

WHEREAS, the City/Town desires MassDOT to perform roadway reconstruction on _____, (hereinafter referred to as the "Project"), and where the said roadway is under the jurisdiction of the City/Town of _____, in the County of _____, in said Commonwealth, and

WHEREAS, in accordance with Chapter 81 of the General Laws, MassDOT may at its discretion and subject to appropriation by the Legislature expend monies to improve and upgrade local roads under local jurisdiction, and

WHEREAS, the City/Town has procured the services of the consulting firm of _____, for the Project, in accordance with the terms and provisions of the MassDOT Highway Division Project Eligibility Notification dated ____ ("Project Eligibility Notification"), and the consulting firm has prepared a complete set of plans, specifications, and estimates for the Project in accordance with the terms and provisions of the Project Eligibility Notification, and

WHEREAS, MassDOT advertised and awarded the Project, and

WHEREAS, the parties hereto have reached an agreement as to the apportionment of the work necessary for the construction of the Project, including the expenses thereof,

NOW, THEREFORE, in consideration thereof, MassDOT and the City/Town hereby agree each with the other, as follows:

DIVISION OF WORK

MassDOT shall execute the construction contract and issue the Notice to Proceed upon the execution of this Municipal Project Agreement.

MassDOT shall provide construction oversight of the Project.

The City/Town is responsible for any and all design required for the Project, including construction phase services, in accordance with terms and provisions of the Project Eligibility Notification.

The City/Town is responsible for any and all maintenance of the facilities included in the Project, after completion of the Project.

DIVISION OF EXPENSE

MASSDOT FUNDED (“PARTICIPATING”) WORK

MassDOT shall be responsible for the total participating contract bid price plus Project costs up to and including ten percent (10%) for additional work necessary to complete the original scope of the participating work (as shown on “Exhibit A, Contract Estimate” attached hereto).

MassDOT shall also be responsible for all construction costs that exceed the total participating contract bid price plus ten percent (10%) if the City/Town submits sufficient documentation to MassDOT showing that the work was necessary solely due to MassDOT’s construction oversight, as determined solely by MassDOT.

CITY/TOWN FUNDED (“NON-PARTICIPATING”) WORK

The City/Town shall be responsible for all construction costs under two conditions:

1. When the construction costs for the contract scope exceed the total participating contract bid price by more than ten percent (10%), the City/Town shall be responsible for the amount over 110% of the total participating contract bid price unless the City/Town submits sufficient documentation to MassDOT showing that the work was necessary solely due to MassDOT’s construction oversight, as determined solely by MassDOT.
2. When the City/Town requests work that FHWA and/or MassDOT determine is unnecessary to complete the Project, the work shall be deemed “non-participating” and the City/Town shall pay the full cost of that work.

If the determination of “non-participating” was made before the construction Project was bid, the work is identified as “Non-Participating” in the bid documents and a separate “Non-Participating Agreement” executed by the City/Town and MassDOT.

Types of non-participating construction costs that may arise after the construction contract is executed includes, but is not limited, to the following:

1. Bid item overruns and additional work over 110% of the total participating contract bid price necessitated by design errors and omissions. (See "Project Scope – Extra Work/Reduction in Scope" below.)
2. Bid item overruns and additional work requested by the City/Town. (See "Project Scope – Extra Work/Reduction in Scope" below.)
3. Costs due to the design being out of compliance with MassDOT regulations and policies.
4. Additional traffic control assigned by MassDOT at the request of the City/Town.
5. Interest charges on late contractor payments, levied pursuant to M.G.L. c. 30, § 39G, when the payments are the responsibility of the City/Town.
6. Work necessitated by changed conditions, pursuant to M.G.L. c. 30, § 39N. (See "Project Scope – Additional Costs/Reduction in Scope" below.)

The City/Town shall be responsible for all maintenance costs upon completion of the Project.

MASSDOT NOTIFICATION TO CITY/TOWN

The MassDOT District office shall promptly provide written notification to the City/Town of the following:

1. Alleged design errors and omissions.
2. Contractor claims for "changed conditions" pursuant to M.G.L. c. 30, § 39N.

PROJECT SCOPE – ADDITIONAL COSTS/REDUCTION IN SCOPE

If a bid item overrun or underrun occurs or if extra work is proposed during construction then the MassDOT Resident Engineer shall provide the City/Town representative with the proposed Resident Engineer's Report of Change (Form CSD 683), and advise the representative of the impacts to the overall construction costs. MassDOT will not authorize any Extra Work until the City/Town representative signs Form CSD 683.

In the event that the City/Town is responsible for additional costs and additional funds are not obtainable by the City/Town, then the MassDOT Resident Engineer and the City/Town shall identify items of work that can be eliminated from the Project to bring the contract within available funding. Once the items to be eliminated have been identified by the MassDOT Resident Engineer and the City/Town, these shall be forwarded to the MassDOT Construction Engineer for concurrence by the Highway Division Administrator, or other MassDOT staff as necessary. No items shall be eliminated until such concurrence is obtained. For FHWA oversight projects, additional concurrence shall be obtained from the FHWA Area Engineer. If items of work cannot be eliminated from the Project, the parties shall consider whether "Chapter 90" funds may be utilized for the Project.

PAYMENTS TO THE CONTRACTOR FOR CONSTRUCTION OVERRUNS

The payment process for work that is identified as "Non-Participating work" in the construction bid documents is set forth in the "Non-Participating Agreement" executed by and between the City/Town and MassDOT. If a Non-Participating Agreement exists and additional non-participating work is identified during construction, the payment for that work shall be added to the Non-Participating Agreement.

If the contract does not include a Non-Participating Agreement, and non-participating work is identified during construction, then the MassDOT Resident Engineer shall prepare and send to the City/Town a "zero estimate" and a "Town estimate," authorized by MassDOT for payment, and attach copies of all signed Resident Engineer's Reports of Change (Form CSD 683) to document the source of the costs. The Resident Engineer will also forward a printout of the Contract Quantity Estimate (CQE) for non-participating work to the City/Town, and the City/Town shall pay the Contractor directly. The Contractor shall not invoice the City/Town directly.

REVIEW OF PROJECT DOCUMENTS

The Governor or his designee, the Secretary of Administration and Finance, and the State Auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the City/Town which pertain to the performance of the provisions and requirements of this Agreement.

FINAL COMPLETION AND FUTURE MAINTENANCE

The City/Town's representative shall be made available to attend MassDOT's final inspection of the Project. When all punch list items identified as part of the final inspection are addressed to the satisfaction of MassDOT, MassDOT shall notify the City/Town in writing that the Project has been completed. Upon such date of notification, the City/Town shall be responsible thereafter for the maintenance of the facilities included in the Project. This obligation includes reasonable efforts to remove snow and ice to allow only temporary and isolated interruptions in accessibility, in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., 28 CFR § 35.133, and 23 U.S.C. § 116 (Maintenance).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first above written.

APPROVED

**MASSACHUSETTS
DEPARTMENT OF TRANSPORTATION**

FRANCIS DEPAOLA
HIGHWAY ADMINISTRATOR

CITY/TOWN OF _____

(Signature)

(Name-Printed)

(Title)