



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

January 19, 2023

City Council President Linda Morad and
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

RE: Order Authorizing the Mayor of the City of New Bedford to execute a Memorandum of Understanding between Massachusetts Bay Transportation Authority and New Bedford for a Pedestrian Bridge over Route 18

Dear Council President Morad and Honorable Members:

I am enclosing, for your approval, an ORDER authorizing me to execute a Memorandum of Understanding (MOU) between the Massachusetts Bay Transportation Authority (MBTA) and New Bedford for a Pedestrian Bridge. The Bridge will provide pedestrians a safe and attractive walkway over John F. Kennedy Blvd., between Purchase Street and the Whale's Tooth Parking Lot.

MBTA has designed and bid, and will build the Bridge, which will ensure safe pedestrian access to and from the forthcoming South Coast Rail station. Moreover, after consultation with the City, the MBTA has agreed to design and build the Bridge according to the City's preferences. These design improvements have increased the MBTA's construction costs by approximately eight million dollars to about \$21 million and will ensure that the Bridge becomes a city landmark, a signature gateway feature welcoming motorists into the downtown and points south. Once the Bridge is constructed, the City will own the Bridge outright and will be able to maintain the Bridge's appearance and condition without seeking clearance or permission from the Commonwealth.

Therefore, I am enclosing for your consideration an Order which will authorize execution of this MOU, as well as a copy of the intended MOU. The MBTA informed us last that week that it expects to issue a notice to proceed to the contractor by February 2nd, and has a contract award deadline of March 8th, and therefore requests your consideration as early as possible. Representatives from Planning, Solicitor's, and Public Infrastructure will be available to answer any questions you may have.

Sincerely,

Jonathan F. Mitchell
JFM/lm

cc: Jennifer Carloni, Director of Planning of the City of New Bedford
Eric Jaikes, City Solicitor of the City of New Bedford
Jamie Ponte, Commissioner of Public Infrastructure of the City of New Bedford



CITY OF NEW BEDFORD

CITY COUNCIL

January 26, 2023

Ordered, that the Mayor is authorized on behalf of the City of New Bedford to execute the Memorandum of Agreement between the Massachusetts Bay Transportation Authority and New Bedford for a Pedestrian Bridge over Route 18, a copy of which is attached hereto.

**NEW BEDFORD STATION PEDESTRIAN BRIDGE
SOUTH COAST RAIL PROJECT**

MEMORANDUM OF UNDERSTANDING

This **Memorandum of Understanding** ("MOU") is entered into and made effective as of the date last written on the signatures page ("**Effective Date**") by and between the Massachusetts Bay Transportation Authority ("**MBTA**"), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts ("**Commonwealth**") existing pursuant to Massachusetts General Laws, Chapter 161A, as amended, with offices at Ten Park Plaza, Boston, Massachusetts 02116, and the City of New Bedford ("**New Bedford**") a body politic and political subdivision of the Commonwealth, with offices at 133 William Street, New Bedford, Massachusetts 02740, acting by and through its Mayor, Jonathan F. Mitchell. MBTA and New Bedford are collectively referred to herein as the "Parties."

WHEREAS, MBTA is designing and constructing the South Coast Rail Program with a terminal station near the Whale's Tooth Parking Lot in downtown New Bedford ("**New Bedford Station**"), which will provide a passenger railroad service between the communities of the City of New Bedford and Boston; and

WHEREAS a safe, efficient, and direct connection for passengers walking to the new MBTA station across Route 18 to access commuter rail service is needed and the nearby MassDOT pedestrian bridge is deemed to have met its useful life and is scheduled in the South Coast Rail Program for demolition and replacement; and

WHEREAS, the New Bedford Station Pedestrian Bridge Project, as shown in **Exhibit A** and described in **Exhibit B** (the "Project" until Final Acceptance, the "Premises" upon Final Acceptance), is a key component of safe pedestrian access; and

WHEREAS, the MBTA does own, maintain, design, and construct the Project; and

WHEREAS, New Bedford will own, maintain and operate the Premises in accordance with the provisions set forth in this MOU; and

WHEREAS, the Parties wish to execute this MOU to set forth the guidelines, roles, and responsibilities of the Parties for the administration of the Project;

NOW, THEREFORE, in consideration of the obligations contained herein and the mutual covenants and agreements hereinafter contained, MBTA and New Bedford hereby agree, each with the other, as follows:

1. New Bedford Approval for Acceptance of Delivery

1.1 MBTA's obligation to commence performance of any and all obligations under this

MOU shall be expressly conditioned upon the City of New Bedford's City Council authorizing the Mayor to execute this MOU and the Mayor of the City of New Bedford executing this MOU.

2. Project Development, Design, and Construction

2.1 The Construction Contract is the contract between MBTA and its contractor, number K78CN06, expected to be awarded on or before March 8, 2023, for the purposes of constructing the New Bedford Station Pedestrian Bridge. Upon execution by the MBTA and its contractor, the Construction Contract will be attached hereto as **Exhibit B** and incorporated herein (hereinafter "Construction Contract"), though should there be any conflict or discrepancy between this MOU and the Construction Contract in **Exhibit B**, this MOU shall take precedence and shall govern. The other party to the Construction Contract, the contractor and his/her subcontractors, is hereinafter the "Contractor".

2.2 MBTA shall procure the Construction Contract for the Project in accordance with Massachusetts state procurement law and provide all necessary labor, materials, equipment, and other services to construct the Project in accordance with all applicable engineering and construction standards and the Construction Contract.

2.3 MBTA shall not substantially change the design or appearance of the Project, including but not limited to the bridge shape and color, lighting, visible materials, location, and orientation, without New Bedford's written agreement.

2.4 New Bedford shall support the Project by:

- (a) Providing to the MBTA any available site investigation including any required survey, utility inventory, mapping, subsurface investigations, and hazardous materials identification associated with the Project.
- (b) Coordinating with the MBTA on the necessary permits and approvals for the construction of the Project and related improvements associated with the Project.

3. Project Right of Way

3.1 At the commencement of construction, New Bedford shall provide or acquire in its name all rights-of-way for Project properties not owned by New Bedford. MBTA shall provide all paperwork for and shall support New Bedford in obtaining rights-of-way in DOT property.

3.2 For New Bedford and New Bedford's agencies' properties, and at no cost to MBTA, New Bedford shall provide the MBTA with appropriate temporary rights of entry, license agreements, or temporary easements as may become necessary for this Project.

4. Construction

4.1. MBTA shall be solely responsible for, and have control over, construction quality, means, methods, techniques, sequences, procedures, and site safety, and for coordinating all portions of the Project, and shall construct the Project in accordance with the Construction Contract, which shall include the Designer of Record's Quality Assurance Quality Control (QA/QC) protocols and established plans.

4.2 In accordance with paragraph 1.3 of Section 01700, Contract Closeout, of the Construction Contract, "Final Acceptance" shall be deemed to have occurred on the date MBTA issues a Certificate of Final Acceptance to the Contractor. MBTA shall coordinate the Closeout Plan in paragraph 1.5 of Section 01700, Contract Closeout, of the Construction Contract, between New Bedford and Contractor.

4.3 New Bedford shall participate in the design, construction, and inspection of the Project as follows, with turnover then occurring as follows:

I. DESIGN PHASE

- a. New Bedford participates in design meetings/workshops.
- b. New Bedford reviews and approves of design plans and specifications.

II. CONSTRUCTION PHASE

- a. MBTA is responsible for contract management of the Construction Contract, and Contractor.
- b. MBTA is responsible to ensure the Project is constructed in accordance with conformed design plans and specifications in the Construction Contract.
- c. New Bedford Building Inspector will be the authority having jurisdiction for issuance and compliance oversight of the building permit to the Contractor.
- d. New Bedford will be the authority having jurisdiction for issuance and compliance oversight of street opening permits to the Contractor on New Bedford owned roadways.
- e. New Bedford participates in regular construction coordination meetings.
- f. New Bedford performs timely reviews of limited Contractor submittals, such as:
 - i. Project Shop Drawings affecting aesthetics
 - ii. Shop drawings related to existing New Bedford infrastructure
 - iii. Shop drawings involving substitutions for "approved equals"
 - iv. Workplans related to traffic management
- g. New Bedford participates in construction inspections related to existing New Bedford infrastructure.
- h. New Bedford participates in limited construction inspections of the Project.

i. New Bedford participates in timely review of changes in conformed design plans or specifications such as:

1. Design Change Requests (DCRs)
2. Value Engineering Proposals

III. FINAL INSPECTION PHASE

- a. New Bedford participates in inspections for Substantial Completion and development of punch list.
- b. New Bedford participates in final inspection and review of punch list.

IV. TURNOVER FROM MBTA TO NEW BEDFORD

- a. MBTA provides the following documentation to New Bedford:
 - i. Design of Record affidavit that project was built per conformed plans and specifications.
 - ii. As-built Drawings
 - iii. Shop Drawings
 - iv. Warranties
 - v. Operating Manuals
 - vi. Construction photographs
 - vii. All other administrative and legal documentation pertinent for turnover to New Bedford

5. Division of Expenses

5.1 MBTA shall be responsible for all costs in the design and construction of the Project. New Bedford agrees and acknowledges that any costs for any additional improvements New Bedford desires beyond those in the Construction Contract will, if accepted by the MBTA, be the sole financial responsibility of New Bedford and may require an amendment to this MOU.

6. Term and Termination

6.1 MBTA's obligations and liabilities related to or arising from the Project shall terminate upon Final Acceptance of the Project, unless this MOU is otherwise terminated.

6.2 This MOU may be terminated by mutual agreement of the Parties, upon such terms and conditions as the Parties may mutually agree upon. Such termination shall be effective in accordance with a written agreement by the Parties. Termination under this Section shall not constitute a waiver of the rights of either Party to damages or other remedies related to this MOU, except to the extent that the mutual agreement for termination of this MOU so specifies.

7. Warranty

7.1 There are no representations, warranties, covenants, conditions, agreements, understandings or arrangements, oral or written, between or among the parties relating to this MOU which are not fully expressed herein; provided however, MBTA will list New Bedford as an assignee of warranties provided by MBTA's Contractor. No agent of any Party is authorized to make any representation, promise or warranty not contained in this MOU.

7.2 MBTA shall provide New Bedford all necessary documentation for New Bedford to apply for bonds after the expiration of Contractor's warranty(ies).

8. Operations and Maintenance of the Premises

8.1 Upon Final Acceptance, the Premises shall be owned, operated and maintained by New Bedford. New Bedford shall maintain the Premises at New Bedford's sole expense.

8.2 Upon Final Acceptance, MBTA shall have no obligations or liabilities relating to the Premises including but not limited to future operations, maintenance, or replacement.

9. Waiver of Consequential Damages

9.1 To the extent permitted by law, neither Party shall be liable to the other for punitive damages or indirect, incidental, or consequential damages, whether arising in contract, tort (including negligence), or any other theory of liability.

10. Notices

10.1 Whenever in this MOU it shall be required or permitted that notice or other communication be given or served by any Party to this MOU to or upon any other, such notice shall be deemed to have been duly given or served if sent by electronic mail or in writing and forwarded by certified or registered mail, return receipt requested, postage prepaid, addressed to the Party to whom it is to be given or served at its address as follows:

If to MBTA addressed to:

MBTA – South Coast Rail
1 Lakeshore Center
Bridgewater, Massachusetts 02324
Attention: Jennifer Tabakin

With a copy to:
General Counsel, MBTA
Ten Park Plaza, Suite 3510
Boston, MA 02116-3974;

If to the City of New Bedford, addressed to:

The City of New Bedford
133 William Street
New Bedford, MA 02740
Attention: Mayor's Office

With a copy to:
New Bedford City Solicitor
133 William Street, Room 203
New Bedford, MA 02740

10.2 Each Party may change its address for purposes of notices by giving notice to the other Party in the manner hereinbefore provided.

11. Amendments

11.1 This MOU and each of its provisions shall be binding upon the Parties and may not be waived, modified, amended, or altered except by a writing signed by MBTA and New Bedford.

12. Governing Law; Severability

12.1 This MOU shall be governed by the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of law or choice of laws. In the event that any term or provision of this MOU or the application thereof to any person or circumstance shall, to any extent, be declared to be invalid or unenforceable, then the remainder of this MOU or the application of such term or provision to other person or circumstances, other than those as to which it would become invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.

13. Third Party Beneficiaries and Assignment

13.1 This MOU shall not be construed to create any third-party beneficiary rights in favor of any other parties or any right or privilege for the benefit of any other parties.

13.2 The Parties acknowledge and agree that New Bedford is the third-party beneficiary of the Construction Contract and MBTA shall ensure that Contractor acknowledges New Bedford is the third-party beneficiary of the Construction Contract. To that end, MBTA shall assist, cooperate with, participate with, and join New Bedford, to the extent necessary and feasible to establish and prove New Bedford's interests, in any claims or causes of action made or filed by or against New Bedford about the Premises that may arise after the expiration of any applicable warranty periods. MBTA shall assist and cooperate with New

Bedford, to the extent necessary and feasible to establish and prove New Bedford's interests, in any claims or causes of action made or filed by or against New Bedford about the Premises that may arise during the term of any applicable warranty periods.

14. No Agency

14.1 In no event shall either Party to this MOU or any of its employees, agents, contractors, or subcontractors be considered agents or employees of the other Party. Neither Party is authorized to enter into any agreement on behalf of the other Party.

15. Counterparts

15.1 This MOU may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Parties have executed this MOU as an instrument under seal as of the date last written below.

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

By: _____

Jeffrey Gonneville

Title: Interim MBTA General Manager

Date: _____

CITY OF NEW BEDFORD

By: _____

Jonathan Mitchell

Title: Mayor

Date: _____



ACUSHNET AVE

NEW BEDFORD PEDESTRIAN
BRIDGE LICENSE AREA

EXHIBIT A

**EXHIBIT A - NEW BEDFORD
PEDESTRIAN BRIDGE
LICENSE AREA**

T Massachusetts Bay Transportation Authority

