



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, Secretary & CEO
Jonathan L. Gulliver, Highway Administrator



January 25, 2018

Mr. Anthony D. Pepe, Chairman
Board of Selectmen
Town of Spencer
Town Hall
157 Main Street
Spencer, MA 01562

Subject: MassDOT Highway Division Project 608873: Spencer – Roadway Rehabilitation on Meadow Road - Project Eligibility Notification

Dear Mr. Pepe:

On behalf of MassDOT, I am writing to inform you that the Highway Division's Project Review Committee (PRC) has evaluated the subject project and determined that it is eligible for Federal Aid highway funding. It is the PRC's understanding that the estimated Total Federal Participating Construction Cost (TFPCC) of this project is \$6,037,500. The TFPCC, which consists of the bid items, police details, construction engineering, contingencies and reimbursable utility relocation, must be fully programmed on the Transportation Improvement Program (TIP). As the project proponent, the municipality is responsible for costs associated with design, Right-of-Way acquisition and environmental permitting.

This eligibility determination by the PRC 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 Central Massachusetts Metropolitan Planning Organization (MPO) as part of their annual TIP development process. The Central Massachusetts MPO is comprised of 10 members, including the MassDOT Office of Transportation Planning, the Highway Division, the Worcester Regional Transit Authority (WRTA) Chairman, the Central Massachusetts Regional Planning Commission and six municipalities; and is the federally designated entity charged with developing transportation plans and programs for this region.

If within two years of the date of this letter, the Municipality has not accomplished the following three milestones, the project will be deactivated unless the project is resubmitted to the PRC for continued project eligibility: 1) received MassDOT approval of the project's Scope/Workhours; 2) secured a signed contract with their design consultant for the entire design process; and 3) identified design funding (please provide proof of Town vote/Chapter 90 approval/etc., indicating full funding has been secured). Resubmission to the PRC may also be required if there is a significant increase in cost or change in scope over the life of the project.

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 in accordance with Uniform Act requirements, and for preparing 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. There is a Highway Safety Improvement Program (HSIP) pedestrian, bicycle and/or total crashes cluster within the proposed project limits. A Road Safety Audit must

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Tel: 857-368-4636, TTY: 857-368-0655
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be conducted prior to the 25% submission. It is expected that the findings of the RSA will be incorporated into the project design whenever feasible.

The following sections of this letter discuss other requirements in more detail:

PROGRAMMING REQUIREMENTS

1. In order to be advertised for construction 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 five federal fiscal years. Please work with the District 3 Office and the Central Mass Regional Planning Staff, which serves as staff to the Central Mass 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. 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 (TEC) 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 Central Mass MPO, or if you believe the evaluation needs to be updated, please contact this office and the Central Mass MPO.
5. The municipality and its project designer should be aware that the Total Federal Participating Construction Cost, as listed in the TIP, must include an amount for contingencies, construction engineering, reimbursable utility costs and traffic control, and that MassDOT will include an inflationary adjustment based upon the estimated year of advertising.
6. Cost estimates shall be reviewed at major design milestones, including every review submission. In addition, in preparation for annual TIP development, detailed cost estimates (showing TFPCCC as well as a breakdown of different funding categories, if applicable) must be submitted to the MassDOT District Office during the second week of January every year.

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*, Engineering Directives, SOPs, 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. 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.
https://hwy.massdot.state.ma.us/webapps/MHDConsultants/MHD_Consultants.asp
3. When soliciting services from Surveyors or Design Consultants, the Highway Division requires 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.

<http://www.massdot.state.ma.us/highway/DoingBusinessWithUs/LocalAidPrograms/MunicipalProjectSummaryGuide.aspx>

4. Municipalities shall use MassDOT's *Standardized Scope of Work and Work Hour Estimate Form for Design Services* as a template for municipal agreements with design consultants. These documents are available on the Highway Division website, and must be submitted to this District Office for review and approval.
<http://www.massdot.state.ma.us/highway/Departments/ProjectManagement/StandardizedScopeandEstimateForms.aspx>
5. All projects require some level of construction phase engineering services by the design consultant. The municipality is responsible for ensuring that any contracts with design consultants include appropriate consideration for these important services.
6. 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:
<http://www.massdot.state.ma.us/highway/RoadFlaggers.aspx>.
7. Prior to the beginning of preliminary survey work, the project designer shall contact the District 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*. Layout needs to be located by an instrument survey and suitable to develop a recordable plan in accordance with the applicable sections of 250 CMR 6.01 & 6.02.
8. The municipality is responsible for acquiring the necessary rights, including temporary and permanent easements, on private and public property in accordance with the Federal Uniform Act Requirements. The Right-of-Way process is time consuming and expensive. The municipality will need to perform title exams on all parcels needed for the project. They will need to allocate significant staffing resources to work with impacted property owners. Property owners are entitled to an appraisal and an appraisal review. Property owners are entitled to receive Just Compensation. Your municipality is responsible for all Right-of-Way acquisition expenses including recording fees at the Registry of Deeds. Your municipality will be assigned a MassDOT Community Compliance Officer to oversee the process and ensure compliance to state and federal regulations. Right-of-Way requirements, guidelines and checklists 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. The preparation of Right-of-Way plans are required at every stage of design submission based on an instrument survey that meets 250 CMR 6.01 and 6.02. Recordable plans and instrument will be required.
9. 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 *MassDOT 2006 Project Development and Design Guide*. 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. The latest version of the EECC is available on our website:
<http://www.massdot.state.ma.us/highway/Departments/EnvironmentalServices/FormsPublicationsDocuments/ProjectDevelopment.aspx>
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

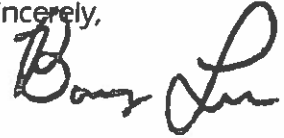
permitting entities, as directed to do so. The Highway Division reserves the right to assume the role of permit applicant on any project it will advertise.

11. For all roadway projects, the project designer must submit the Pavement Design Checklist 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 District Office and Highway Division Project Manager prior to the 25% design submission.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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).
17. 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.
18. 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.

Thank you for your anticipated compliance to the requirements contained in this letter. Failure to carefully follow the above requirements may jeopardize your project's success and eventual advertisement for construction. We look forward to working with you as this project progresses. If you have any questions or need additional information, please contact Ann Sullivan, District 3 Assistant Projects Engineer at (508) 928-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Lorion". The signature is fluid and cursive, with a large initial "B" and "L".

Barry Lorion
Acting District 3 Highway Director

Encl: Attachment A, Municipal Signature page
Municipal Guidelines for Right-of-Way Acquisitions
cc: Arthur Frost, District 3 Project Development Engineer
Jonathan Gulliver, Highway Administrator
Patricia A. Leavenworth, P.E., Chief Engineer
Sujatha Mohanakrishnan, CMRPC
Steven J. Tyler, P.E., Spencer Highway Department Superintendent
Honorable State Senator Anne M. Gobi
Honorable State Representative Donald R. Berthiaume
Ecc: Nicole Tishler, Office of Transportation Planning
Marie Rose, P.E., Director of Roadway Project Management

ATTACHMENT A

Municipality's Acknowledgement of Project Eligibility Notification

**MassDOT - Highway Division Project 608873 – Spencer – Roadway Rehabilitation on
Meadow Road**

Town of Spencer

(Signature)

(Name-Printed)

(Title)

*This signed form should be mailed to:
District 3 Highway Director, 403 Belmont Street, Worcester, MA 01604*

Massachusetts Department of Transportation /Right of Way Bureau
Municipal Guidelines for Right of Way Acquisitions on Federal Aid and State Aid 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 Right of Way 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 Massachusetts licensed Certified General Appraiser and Certified General Review Appraiser. Use the LPA (local public agency) Appraisal Function Job Aid which discusses appraisal scope of work, selecting an appraiser and review appraiser, responsibilities and check list. The 6 page LPA Appraisal Function Job Aid and the review appraisal checklist must be part of the appraisal report and review appraisal documents. *(Updated requirements 02.10.16)*
6. The just compensation is established by the acquiring agency (municipality) and must be established prior to the municipality providing the property owners with a written summary statement (Written Offer.) The **Written Offer** cannot be less than the just compensation. The property owner must be provided a minimum of *30 days to consider the offer without coercive actions by the municipality*. The **Federal Aid Acquisition Guide for Property Owners** must be included in the Written Offer.
7. Prepare, vote and 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, Board of Selectmen or Redevelopment Authority.**
8. **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.**
9. Gain physical and legal possession of the parcel(s)/structure(s).
10. 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.