

MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES ARMY CORPS OF ENGINEERS
AND
THE COMMONWEALTH OF MASSACHUSETTS
THE BOURNE BRIDGE AND THE SAGAMORE BRIDGE

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made as of the date of the final signature below by and among the following parties: the United States Department of the Army, acting by and through the Assistant Secretary of the Army (Civil Works); and the Commonwealth of Massachusetts.

RECITALS:

WHEREAS, the New England District of the United States Army Corp of Engineers (USACE) owns, operates and maintains the Bourne Bridge in Bourne, MA and the Sagamore Bridge in Sagamore, MA (Bridges) as a part of the Cape Cod Canal Federal Navigation Project;

WHEREAS, Massachusetts is responsible for operating and maintaining the state highway system pursuant to M.G.L. c.6C, including the highways and infrastructure approaching the Bridges (Approaches);

WHEREAS, the USACE and Massachusetts (Parties) are engaged in a collaborative approach to future project development concerning the Bridges and Approaches;

WHEREAS, both Parties are committed to a fully functional, cost efficient, resilient, and safe transportation corridor across the Cape Cod Canal;

WHEREAS, the Bridges are nearing the end of their useful lifespan and need to be repaired or replaced to ensure the continued passage of goods, services, and people across the Cape Cod Canal;

WHEREAS, the Parties have a mutual interest in the conveyance of the rights, titles and interests to the Bridges from the USACE to Massachusetts after their replacement;

WHEREAS, the Parties have determined, subject to the availability of adequate funding, to implement the project in phases beginning with the replacement of the Sagamore Bridge, with the replacement of the Bourne Bridge immediately thereafter;

WHEREAS, in furtherance of that mutual interest, the Parties submitted a joint application to U.S. Department of Transportation (DOT) under the Multimodal Project Discretionary Grant Program on August 21, 2023, and submitted a joint application under the Bridge Investment Program on December 4, 2023; and

WHEREAS, this MOU outlines a strategy and the commitments of the Parties to develop and implement a plan for the replacement of the Bourne and Sagamore Bridges with funding secured from USACE, Massachusetts, and available grants from other federal sources.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I: STATEMENT OF WORK

A. As to the two-bridge project, the USACE will:

1. Own, operate and maintain the existing Bridges until they are until demolished by Massachusetts;
2. Partner with MassDOT on the funding, design, and construction of the replacement Bridges, including being a co-applicant on all discretionary grants where the USACE is an eligible applicant;
3. Expedite design reviews, permit processing, and permission requests within the USACE's jurisdiction for construction of replacement Bridges;
4. Assist MassDOT in completing the National Environmental Policy Act (NEPA) process and obtaining necessary permits for the replacement Bridges;
5. Work with MassDOT to ensure that the replacement Bridges have the type, size and location to reasonably meet the structural, functional and other requirements, state or federal, as established by MassDOT and the USACE;
6. Under appropriate authority, transfer the USACE's property interests to Massachusetts for the replacement Bridges and Approaches as necessary; and.
7. Provide technical assistance and legislative drafting services in response to

Congressional requests for development of legislation to revise ownership of the highway bridge crossings, including provisions that allow the USACE to transfer funds to the Commonwealth of Massachusetts and a revision of paragraph (p) of 33 CFR § 207.20.

B. As to each phase of the two-bridge project, the USACE will:

1. Partner with MassDOT on the funding, design, and construction of each replacement Bridge, including being a co-applicant on all discretionary grants where the USACE is an eligible applicant;
2. Expedite design reviews, permit reviews, and permission requests within the USACE's jurisdiction for construction of each replacement Bridge;
3. Maintain and operate the existing Sagamore and Bourne Bridges during the construction of the Sagamore replacement Bridge to minimize any diminution of traffic capacity across the Canal during construction;
4. Maintain and operate the existing Bourne Bridge and, if necessary, the existing Sagamore Bridge during the construction of the Bourne replacement Bridge to minimize any diminution of traffic capacity across the Canal during construction;
5. Work with Massachusetts to develop a construction schedule that minimizes the overall construction duration for the two-bridge project; and.
6. Upon satisfactory completion of each replacement Bridge, take all actions necessary to vest the Commonwealth of Massachusetts with ownership of the replacement Bridge.

C. As to the two-bridge project, Massachusetts will:

1. Own, operate, and maintain the existing Approaches before, during, and after the replacement of the Bridges;
2. Complete the feasibility study and alternatives analysis to reasonably meet the structural, functional and other requirements as established by MassDOT and the USACE;

3. Prepare all documents necessary for a review of the project under the National Environmental Policy Act (NEPA), and apply for all necessary permits for replacement Bridges; Massachusetts will prepare a single Environmental Impact Statement for the two-bridge project, the construction of which will be implemented in phases;
4. Partner with the USACE on the funding, design, and construction of the replacement Bridges, including being the lead co-applicant on discretionary grants and accepting any awarded grants;
5. Comply with all design and construction timelines, and all other requirements as applicable, for any discretionary grant awarded;
6. Once permitting and funding is secure, construct replacement Bridges for the Bourne and Sagamore Bridges, and demolish existing Bridges;
7. Own, operate, and maintain the completed Bridges and Approaches as part of the systems of state highways to be maintained by MassDOT; Mass DOT will accept and/or secure all property interests necessary to allow MassDOT to own, operate, and maintain the completed Bridges and Approaches;
8. Develop and pursue legislative, regulatory, or administrative actions, if any, that might be required to support the purposes of this MOU; and
9. Conduct proactive community engagement.

D. As to each phase of the two-bridge project, Massachusetts will:

1. Partner with the USACE on the funding, design, and construction of each replacement Bridge, including being the lead co-applicant on all discretionary grants;
2. Obtain all necessary permits for each replacement Bridge project;
3. Complete 25% designs and sketch plans sufficient to bid each replacement bridge project as a standalone design/build project; and
4. Procure a design/build entity for each bridge replacement project and oversee and manage all construction and construction-related activities.

ARTICLE III: TERM

This MOU takes effect beginning on the day after the last Party signs. This MOU will expire after the replacement Bridges are operational and existing Bridges are demolished, unless extended by mutual agreement of the Parties or terminated in accordance with Article VIII below.

ARTICLE IV: FUNDING

1. Subject to the availability of appropriations, the parties agree that the USACE contribution for the entire replacement Bridges project will be \$600 million. The President's 2024 Budget includes an initial \$350 million contribution toward this funding commitment.
2. Massachusetts will provide \$700 million for the replacement Bridges and has programmed \$262 million in cash flows expected to occur during state fiscal years 2024 through 2028 based on construction schedule estimates, with the balance of the Commonwealth's \$700 million contribution expected to occur after fiscal year 2028. These schedule and cash flow estimates will be adjusted as needed. The Commonwealth's entire \$700 million contribution is available without any further legislative authorization required.
3. The Parties acknowledge that they each bear responsibility for technical and financial capability on this project to ensure a fully functional, cost efficient, resilient, and safe transportation corridor across the Cape Cod Canal Federal Navigation Project. To that end, the project budget includes a significant contingency and the Parties commit to working together to (i) seek funding sources to address possible cost increases; and (ii) reach agreement in the future on a reasonable allocation of financial responsibility for possible cost increases.

ARTICLE V: EXCLUSIONS

Nothing in this MOU shall be construed to extend or affect the jurisdiction or decision-making authority of either Party to this MOU beyond that which exists under current laws and regulations. Nothing in this MOU is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this MOU.

ARTICLE VI: TRANSFERABILITY

This MOU is not transferable except with the written consent of the Parties.

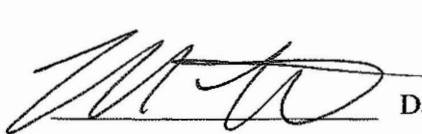
ARTICLE VII: DISPUTES

Any disputes relating to this MOU will, subject to any applicable law, Executive order, directive, or instruction, be resolved by consultation between the Parties or in accordance with DODI 4000.19.

ARTICLE VIII: MODIFICATION AND TERMINATION

This MOU may only be modified by the written agreement of the Parties, duly signed by their authorized representatives. This MOU may be terminated in writing at will by either Party at any time before the date of expiration, with 30 days' notice to the other Party.

IN WITNESS WHEREOF, and intending to be bound by this MOU as a legally binding agreement, the Parties hereto have executed this MOU.



Date 3/21/2024



Date 21-March 2024

Monica Tibbits-Nutt
Secretary and CEO
Massachusetts Department
of Transportation

Michael L. Connor
Assistant Secretary of the Army
(Civil Works)
Department of the Army