

City of Newton



Setti D. Warren
Mayor

DEPARTMENT OF PUBLIC WORKS
OFFICE OF THE COMMISSIONER
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449

To: Newton City Council

From: Jim McGonagle, Commissioner DPW

Date: March 31, 2016

Dear Councilors,

I write to request acceptance of the agreement between the City of Newton and the Town of Needham for the Elliot Street – Central Avenue Bridge Improvements (City of Newton Contract No. L-6184).

The agreement has been reviewed and agreed to by the legal departments of Newton and Needham. The agreement is scheduled to be signed by Needham during the next meeting of the Needham Selectman on April 12th.

Sincerely,

Jim McGonagle
Commissioner of DPW

Jim McGonagle
Commissioner

Telephone: (617) 796-1009 • Fax: (617) 796-1050 • jmcgonagle@newtonma.gov

CITY OF NEWTON CONTRACT NO. L-6184

TOWN OF NEEDHAM CONTRACT NO. XX-XX-XX

AGREEMENT BETWEEN THE TOWN OF NEEDHAM, MASSACHUSETTS AND

THE CITY OF NEWTON, MASSACHUSETTS

FOR

ELLIOT STREET – CENTRAL AVENUE BRIDGE IMPROVEMENTS

This Agreement made this the ____ day of _____ 2016 by and between the Town of Needham, Massachusetts, acting through its Town Manager with the approval of its Board of Selectmen, hereinafter called the “Town,” and the City of Newton, Massachusetts, acting by and through its Mayor hereunto duly authorized by Order of its City Council, Order No. _____ and dated _____, but without personal liability to himself, hereinafter called the “City,”

WITNESSETH:

Whereas, Bridge #N-4-1/N-12-3 (the “Bridge”) is located over the Charles River at the Town/City line between Needham and Newton; and

Whereas, the Bridge links the City at Elliot Street, to the Town at Central Avenue; and

Whereas, ownership and maintenance of the Bridge is shared equally between the City and the Town; and

Whereas, the Bridge is in need of major rehabilitation; and

Whereas, the Town contracted with the BETA Group, Inc. for consulting engineering services for the investigation and design of repairs and rehabilitation of the Bridge, which work has been completed and paid for by the Town; and

Whereas, the City contracted with the BETA Group, Inc. for consulting engineering services for the investigation and design of repairs and rehabilitation of the Bridge, which work has been completed and paid for by the City; and

Whereas the City and the Town wish to provide for the repairs to the Bridge with the City being the lead community to award and supervise the contract for said repair;

Now therefore, for and in consideration of the promises, the mutual covenants herein recited and other good, valuable, and sufficient considerations, the parties hereto agree as follows:

1. The City shall prepare and put out invitations for bids for the repairs to the bridge in accordance with the plans and designs of BETA Group, Inc., receive and review said bids and award the Contract for the repairs to the bridge to a Contractor, all in accordance with G. L. Ch 30, sec. 39M and all other applicable provisions of law.
2. The City shall make progress payments for material and services to the Contractor awarded the contract, pursuant to the terms of the Contract.
3. The City shall invoice the Town for fifty (50%) percent of the amount approved for payment to the Contractor by the City.
4. Payment by the Town to the City shall be made within thirty (30) days of receipt of invoices from the City. With any request for payment, the City shall provide a copy of the invoice(s) from Contractor showing the total amount(s) billed to the City.
5. Within seven (7) days of receipt of invoices from the City, the Town shall have the opportunity to inspect the work and object to payments for work not completed according to the contract documents, whereupon the City and Town shall confer to agree as to what should be paid. If they do not agree, Beta Group, Inc. will determine what portion of the disputed amount will be paid and the Town shall pay the City fifty (50%) percent of that amount and the City shall pay the Contractor one hundred (100%) percent of that amount. With respect to an unpaid portion of a disputed amount which is subsequently determined to be owed to the Contractor in accordance with the Contract, the Town shall pay the City fifty (50%) percent of such amount and the City shall pay the Contractor one hundred (100%) percent of such amount.
6. Any undisputed amounts unpaid by the Town after thirty (30) days of receipt of invoices from the City are subject to interest at the same rate the City is required to pay for funds in order to make payments to the Contractor. The Town hereby agrees to pay any interest incurred by the City due to such late payment by the Town.
7. The total Contract amount shall not exceed \$4,000,000.00. The Town's total obligation to pay the City hereunder shall not exceed the lesser of fifty (50%) percent of the total amount invoiced to the City pursuant to the Contract, or \$2,000,000.00. In the event that unanticipated subsurface conditions necessitate change orders which would increase the total Contract amount to more than \$4,000,000.00, then it is understood and agreed that the City and the Town Manager shall each use best efforts to secure each party's (50%) percent portion of the additional funding needed to complete the unanticipated work and to amend this Agreement accordingly.
8. This Agreement shall be effective upon the action of the Board of Selectmen of the Town, and action by the Mayor of the City as authorized by the City Council.
9. It is mutually agreed and understood that this Agreement shall remain in full force as until completion of the services to be performed by the Contractor pursuant to the Contract or until such time as it may be amended or replaced by a new agreement, but in any event, not to exceed a total of three (3) years.

10. It is mutually agreed that construction cost associated with the additional scope of work, as required by vote of the Newton Upper Falls Historic Commission on January 14, 2016, shall be excluded from this agreement, and that this cost shall be borne exclusively by the City of Newton. This item is defined as follows:

“The concrete piers on the north side of the bridge will be faced with the rough-cut stone (and not with granite).”

11. BETA Group Inc. shall provide engineering services during construction, for the duration of the construction period. The City and Town shall each contract separately with BETA Group Inc. for these services, and shall each be responsible for fifty 50% of the cost of these services.

12. The City shall provide a full-time resident construction inspector for the duration of the Bridge construction. The cost of the salary of the resident construction inspector is included as part of this Agreement, and shall be shared equally by the City and the Town subject to a maximum of \$35,000 for each party, which is not to be included within the maximum set forth in paragraph 7 of this agreement.

The two parties have caused their legal corporate signatures and seals to be hereunto affixed by their proper officers, thereunto duly organized on the day of the year first above written.

THE TOWN OF NEEDHAM

THE CITY OF NEWTON

Kate Fitzpatrick
Town Manager

James McGonagle,
Commissioner of Public Works

Comptroller of Accounts:

Chairman

Approved as to form:

Selectman

City Solicitor

Selectman

Contract Approved:

Selectman

Setti D. Warren,
Mayor

Selectman

Approved as to form:

David S. Tobin
Needham Town Counsel

I hereby certify that there are funds available in account # _____ in an amount up to \$2,000,000.00 to fund this Agreement.

Title

Town of Needham