

SECOND ADDENDUM TO INTER-MUNICIPAL AGREEMENT

This Second Addendum (“Second Addendum”) to Inter-Municipal Agreement (“IMA”) for the advancement of Bruce Freeman Rail Trail (Phase 2A and 2C) is made and entered into this ____ day of _____, 2015, and executed in triplicate counterparts (each fully executed copy constituting an original) by, between and among the Town of Acton (“Acton”), a Massachusetts municipal corporation with a principal place of business at the Town Hall, 472 Main Street, Acton, MA 01720; the Town of Carlisle (“Carlisle”), a Massachusetts municipal corporation with a principal place of business at 66 Westford Street, Carlisle, MA 01741; and the Town of Westford (“Westford”), a Massachusetts municipal corporation with a principal place of business at 55 Main Street, Westford, MA 01886¹.

RECITALS

WHEREAS Acton, Carlisle and Westford are Parties to the IMA.

WHEREAS the IMA concerns the development of the Bruce Freeman Rail Trail (“BFRT”) (Phases 2A and 2C) through the Towns.

WHEREAS prior to issuance of a Notice to Proceed for the construction of the BFRT, the Massachusetts Department of Transportation (“MassDOT”) requires the execution of a “Municipality 110% Agreement” substantially in the form attached as Exhibit A (the “110% Agreement”).

WHEREAS the 110% Agreement provides in part that 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.”

¹ The Town of Concord is a party to the Inter-Municipal Agreement; however, the subject matter of this First Addendum does not concern the Town of Concord in any way and therefore the Town of Concord is not a party to this First Addendum.

WHEREAS the 110% Agreement provides further in part that in the event the “construction costs for the contract scope exceed the total participating contract bid price by more than ten percent (10%), the Municipality 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.”

WHEREAS the 110% Agreement provides that the Municipality is responsible for the costs of any “non-participating” work as therein defined.

WHEREAS the 110% Agreement provides certain procedures in the event of such an overrun or “non-participating” work; and that in the event that “the Municipality is responsible for additional costs and additional funds are not obtainable by the municipality, then the MassDOT Resident Engineer and the municipality shall identify items of work that can be eliminated from the Project to bring the contract within available funding”

WHEREAS MassDOT has requested that Acton, as the Lead Community under the IMA, execute the 110% Agreement for the BFRT Project.

WHEREAS Acton, Carlisle and Westford agree that each Town should only be responsible for such Project cost overruns and costs of any “non-participating” work that arise out of the construction of the BFRT within that Town’s geographic limits and not for such costs for work in the other two Towns.

WHEREAS Acton, Carlisle and Westford agree that each Town should be responsible for identifying items of work within its borders that can be eliminated from the Project to bring the contract within available funding.

NOW THEREFORE, in consideration of the above and mutual benefits to be derived by the parties hereto, pursuant to the authority contained in M.G.L. c. 40 § 4A, as amended, Acton, Carlisle and Westford do hereby mutually agree as follows:

1. **Consent.** Acton, Carlisle and Westford consent to Acton executing the 110% Agreement as the Lead Community under the IMA for the BFRT Project.
2. **Municipality Funded and Non-Participating Work.** In the event the 110% Agreement requires that the Municipality is responsible for any construction cost overruns over 110% of the Project costs or for the costs of other “non-participating” work as therein defined (collectively “Costs of Municipality Funded and Non-Participating Work”), Acton, Carlisle and Westford shall each be separately responsible for and shall pay, subject to appropriation, for the portion of those costs attributable to work on the Project within its borders and for identifying items of work within its borders that can be eliminated from the Project to bring the contract within available funding. The provisions of IMA Section 4.12 (Indemnification) shall apply to all Costs of Municipality Funded and Non-Participating Work under the 110% Agreement and to any claims, demands, suits and/or causes of action relating thereto.
3. **Notice.** In the event that MassDOT provides notification to the Municipality under the 110% Agreement or a proposed Resident Engineer's Report of Change (Form CSD 683) with respect to work on the BFRT, Acton shall notify the Westford Town Manager and Carlisle Town Administrator, and the Towns shall fully cooperate with each other to ensure that the rights and interests of the Towns under the 110% Agreement are protected and that the provisions of this Second Addendum are fulfilled.

IN WITNESS WHEREOF, Acton, Carlisle and Westford caused their duly authorized representative to execute this Second Addendum on the day and year above first written:

Signature Page

TOWN OF ACTON

By its Board of Selectmen:

Date:

Mike Gowing, Chair

Katie Green

Janet Adachi

Peter Berry

Franny Osman

By its Town Manager:

Date:

Steven L. Ledoux

WITNESS

Signature Page

TOWN OF CARLISLE

By its Board of Selectmen:

Date:

John Gorecki, Chair

Douglas A. G. Stevenson Green

Peter Scavongelli

Nathan C. Brown

Vanessa Hunnibell Moroney

By its Town Administrator:

Date:

Timothy D. Goddard

WITNESS

Signature Page

TOWN OF WESTFORD

By its Board of Selectmen:

Date:

Scott Hazelton, Chair

Jim Sullivan

Andrea Peraner-Sweet

Don Siriani

Kelly J. Ross

By its Town Manager:

Date:

Jodi Ross

WITNESS

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