

Massachusetts Department of Transportation - Highway Division

Agreement

Amount Range: \$500,000 and up

Originating Office: Chief Engineer **Agreement #:** 65456
Agreement Type: Other: Subsidy Agreement **Project ID:** _____
Project/Location: Boston - Greenway Conservancy
Vendor/Party Name: Rose Fitzgerald Kennedy Greenway Conservancy
Vendor/Party Address: 185 Kneeland Street, 7th Fl.,
Boston, MA 02116
Original Max. Obligation: \$1786500.00 **Completion Date/Duration:** 6/30/2011
NTP Date: _____ **Federal Aid Number:** _____

Description:

MassDOT's legal obligation is to fund the Conservancy through interest earnings accrued in the Central Artery & Statewide Road & Bridge Infrastructure Fund (TIF). The TIF does not have sufficient interest earnings and balance to pay 50% of the Conservancy's projected fiscal year 2011 budget and in light of this, MassDOT is committed to a partnership with Conservancy by meeting a portion of its budgetary needs through other funding sources. MassDOT will support its obligation to fund a portion of the approved budget through cash contributions and in-kind services for next year as required by Section 12 of Chapter 306 of the Acts of 2008.

With these conditions in effect, MassDOT is prepared to provide to the Conservancy \$2,230,000.00 (\$1,786,500 in cash; \$443,500 in-kind contributions). Due to the funding constraints imposed by the balance in the TIF and the need to use other MassDOT funds, MassDOT proposes to allocate its contribution on a biannual basis. The first payment will be made in August and the second in January.

Submitted By:

Approved By:

Sergio J. Barros 8/17/10

 Date

Frank A. Tranter 8/24/2010

 Chief Engineer Date

G. O'Fallon 8/18/10

 Date

Chadwick 8/23/10

 General Counsel Date

Michael J. Wilson 8/17/10

 Budget/C.E.P.O. Date

Frank A. Tranter 8/24/2010

 Highway Administrator Date

Sergio J. Barros 8/24/10

 Director of Contracts & Records Date

N/R _____
 Secretary/CEO Date

DOT AWARD 03-25-2010

Item Number: 38
 Date: AUG 25 2010



**COMMONWEALTH OF MASSACHUSETTS
SUBSIDY AGREEMENT**

[This Subsidy Agreement has been issued by the Office of the Comptroller for subsidies or other legislatively authorized payments to a named Recipient under 815 CMR 2.00.]

Commonwealth Of Massachusetts - Department: Dept. of Transportation
 Address: 10 Park Plaza, Suite 3170 Boston, MA
 Contact Person: Frank Tramontozzi Telephone: (617) 973-7000
 Recipient Name: Rose Fitzgerald-Kennedy Greenway Conservancy
 Address: 185 Kneeland Street, 7th Floor Boston, MA
 Contact Person: Ms. Nancy Brennan Telephone: (617) 292-0020
 Total Amount Of Subsidy Payment(s) \$ \$1,786,500
 Number Of Payments To Be Made : 2 Payment(s). Attach details of multiple payment amounts, if applicable.
 Amount of First Payment: \$ 893,250
 Anticipated Date of First Payment: 8/20/2010. Attach schedule of additional payments, if applicable.
 Termination Date Of Subsidy Agreement (Payments can not be made after the expiration date of the account funding this Subsidy Agreement.): June 30, 2011, 19 .

1. The Department and the Recipient understand and agree that pursuant to: [Indicate citation for Legislative Authorization for Subsidy] Ch. 306 of the Acts of 2008, the Department is legislatively authorized to initiate a payment(s) of funds to the Recipient. Payments are subject to any conditions required by law as a prerequisite to payment, including any restrictions or conditions specified by the Department in this Subsidy Agreement. Payments can not be made to the Recipient prior to the date that this Subsidy Agreement, including all relevant attachments, has been properly executed by authorized signatories of both parties in accordance with all relevant general or special laws and regulations, and filed with the Office of the Comptroller. Notwithstanding the termination date of this Subsidy Agreement, the Recipient's obligations under Sections 2. and 3. shall survive the termination of this Subsidy Agreement.

2. The Recipient agrees to expend funds provided under this Subsidy Agreement in accordance with all applicable federal and state general and special laws and regulations and any restrictions or conditions specified by the Department by attachment to this Subsidy Agreement. Any actions arising out of this Subsidy Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The Recipient may not use any funds provided or paid under this Subsidy Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

3. The Recipient understands and agrees that the Department, the State Auditor and the Comptroller shall be entitled to copies of any programmatic or fiscal reports that verify compliance with, or are required as a condition to, receiving funds under this Subsidy Agreement, or that are specified by attachment to this Subsidy Agreement.

IN WITNESS WHEREOF, the Department and the Recipient have caused this Subsidy Agreement to be executed by their respective authorized officers, as of the last date specified below:

DEPARTMENT:
 X: *Frank A. Tramontozzi*
 Signature
 FRANK A TRAMONTOZZI, P.E.
 CHIEF ENGINEER

 Title

 Date 8-24-2010

RECIPIENT:
 X: *Nancy Brennan*
 Signature
 NANCY BRENNAN
 Print Signatory Name
 Executive Director

 Title

 Date 8/19/10

Massachusetts Department of Transportation

Schedule of Payments to the Rose Fitzgerald Kennedy Greenway Conservancy

Payment #1	Due August 20, 2010	\$ 893,250
Payment #2	Due January 3, 2011	\$ 893,250
Total payments		\$1,786,500

Notes:

MassDOT's legal obligation is to fund the Conservancy through interest earnings accrued in the Central Artery and Statewide Road and Bridge Infrastructure Fund (TIF). As discussed with Conservancy, the TIF does not have sufficient interest earnings and balance to pay fifty percent (50%) of the Conservancy's projected fiscal year 2011 budget and in light of this, MassDOT is committed to a partnership with the Conservancy by meeting a portion of its budgetary needs through other funding sources. MassDOT will support its obligation to fund a portion of the approved budget through cash contributions and in-kind services for next year as required by Section 12 of Chapter 306 of the Acts of 2008, as amended.

As stipulated in our June 18th letter, the funding to be provided by MassDOT will be conditioned on the Conservancy's written commitment to the following conditions:

1. The Conservancy must eliminate any attempt to recover its costs through the use of the land itself. Costs recovered must be actual and reasonable.
2. Subject to reasonable restrictions on opening and closing consistent with City of Boston and Department of Conservation and Recreation (DCR) urban parks, all spaces must be open to all people at all times. There should be no need for free speech zones with public parks open to everyone.
3. To the extent that it is discussing the use of MassDOT or other public funds, the Conservancy must comply with the Commonwealth's open meeting law, and to the extent materials are addressing the use of public funds, the Conservancy must comply with the requirements of the Commonwealth's public records law.
4. MassDOT will require a full accounting of all sources and uses of revenue received from the use of the Greenway so as to ensure compliance with 23 USC 126 and other applicable Federal and state law. In particular, MassDOT will require a full reporting on the use of MassDOT and state funds used to operate the park, including the salaries of staff, payments to vendors and copies of all contractual documents for vendors funded through state funds. MassDOT will require revised financial reporting from the Conservancy that clearly segregates the use of state funds from non-state funds. A reporting schedule will be developed and agreed upon by our respective staffs.

5. In fiscal year 2011, the Conservancy must agree to share responsibility in areas where MassDOT can provide services to support Conservancy operations.

With these conditions in effect, MassDOT is prepared to provide to the Conservancy \$2,230,000 (\$1,786,500 in cash; \$443,500 in-kind contributions). These funds are to be used to support the following purposes:

- Funds allocated to the Conservancy may only be used for horticulture and maintenance programs. MassDOT funds may not be used for any other purpose.
- Funds allocated to the maintenance and horticultural program may be used to fund personnel salaries at a level comparable to that of equivalent DCR staff. For example, state funds can only be used to fund \$69,190 of the Conservancy's Director of Operations salary of \$108,000 as \$69,190 represents the equivalent salary of a comparable DCR title. The Conservancy will be required to fund the remaining salary from non-state funds. Attachment A to this letter notes the amount of salary that will be funded by MassDOT. All salaries funded from MassDOT funds shall be public record.
- MassDOT's allocation of funds will include \$1,786,500 in cash and \$443,500 of in-kind services, including the plumbing, electrical, rent, fuel and equipment services noted above. In future fiscal years, as additional opportunities arise for the Department to provide to provide additional in-kind services, the amount of cash allocated to the Conservancy may be reduced. MassDOT will commit the Highway Division District Six Director, Highway Division Chief Engineer, and other senior members of the division to work with your staff on schedules and service agreements necessary to provide these in-kind services.
- Due to the funding constraints imposed by the balance in the TIF and the need to use other MassDOT funds, MassDOT proposes to allocate its contribution on a biannual basis. The first payment will be made in August, the second in January.

Chapter 306 Acts of 2008

SECTION 12. To provide for the operation, management, improvement and maintenance of the greenway and the other open space parcels, the commonwealth shall provide financial assistance to the conservancy no later than 30 days prior to the beginning of each fiscal year in an amount equal to 50 per cent of the annual budgeted costs of operating, maintaining, improving and managing the greenway and the other open space parcels, as agreed between the conservancy, the secretary of energy and environmental affairs and the secretary of transportation and public works, for the next succeeding fiscal year, provided that the total annual amount of such financial assistance shall not exceed \$5,500,000, and shall be paid annually from interest earnings on the Central Artery and Statewide Road and Bridge Infrastructure Fund, established in section 63 of chapter 10 of the General Laws. Upon dissolution of the conservancy or termination of the lease, any funds then held by the conservancy shall be paid to the commonwealth.