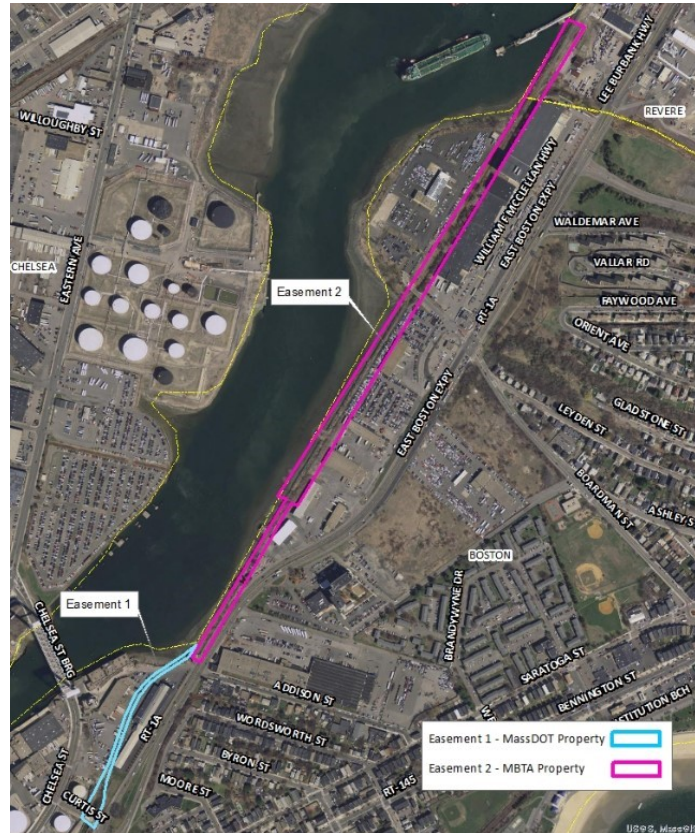


# INVITATION TO BID

JUNE 21, 2019



## Option to Purchase Easements

### Railroad Right-of-Way Off William F. McClellan Highway (Route 1A) Boston and Revere, MA

Massachusetts Bay Transportation Authority  
and  
Massachusetts Department of Transportation

File #16007

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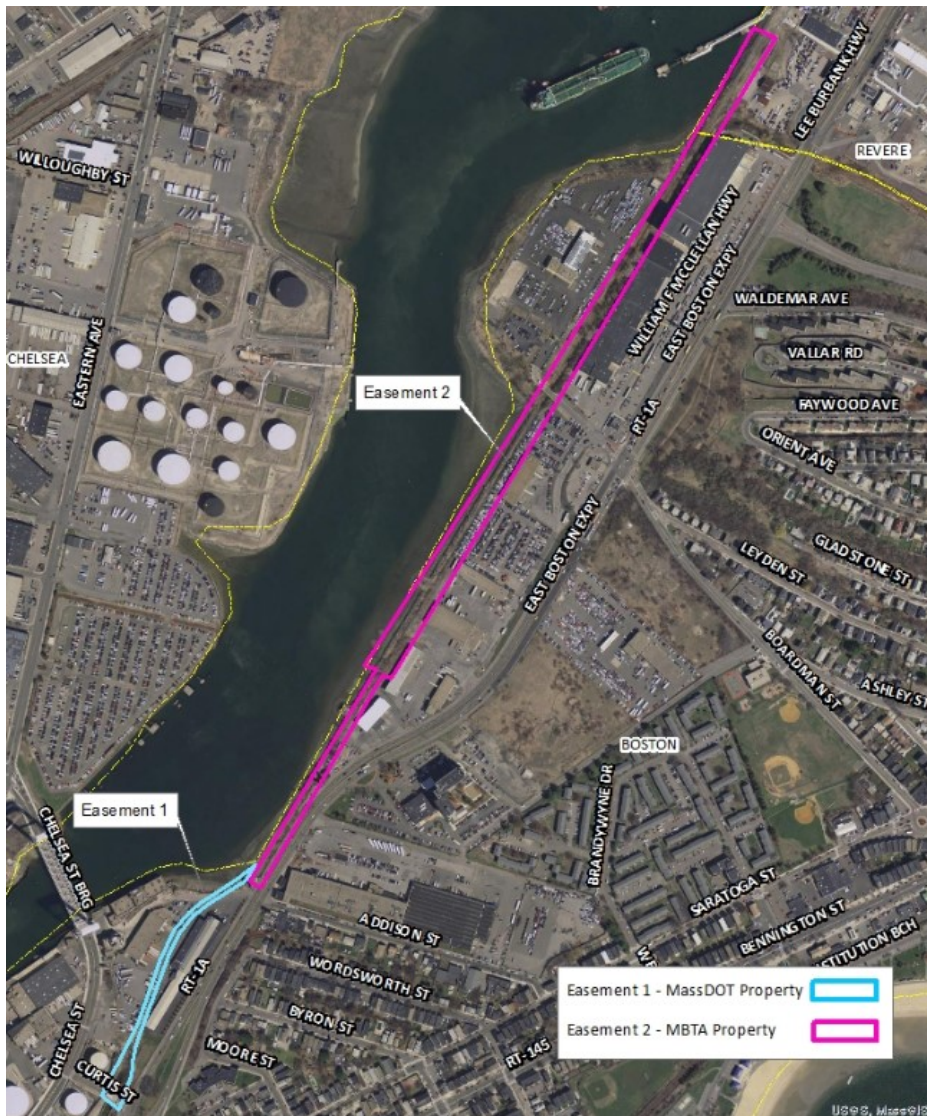
Appendix A – Property Plan

Appendix B – Model Option Agreement

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# I. INTRODUCTION

Pursuant to Massachusetts General Laws Chapter 161A and Massachusetts General Laws Chapter 6C, the Massachusetts Bay Transportation Authority (“MBTA”) and the Massachusetts Department of Transportation (“MassDOT”) invite interested parties to bid on an option to purchase non-exclusive easements in a disused railroad right-of-way situated off the northwesterly side of William F. McClellan Highway (Route 1A) in East Boston and Revere, Massachusetts. An option to purchase a non-exclusive easement is offered to allow interested parties sufficient time to obtain any and all local, state and federal permits required to implement their proposed use of the easement area. Interested parties may bid on an option to purchase easement rights in all or any portion of the land shown as “Easement 1” and “Easement 2” in the illustration below (collectively, the “Property”). The Property is comprised of approximately 374,806 square feet of land, including approximately 332,603 square feet of land owned by the MBTA and approximately 42,203 square feet of land owned by MassDOT. The Property has a length of approximately 6,092 linear feet, extending from Curtis Street, Boston to 36 Lee Burbank Highway, Revere.



The MBTA and MassDOT are seeking to grant an option to purchase a non-exclusive easement in the Property to the highest responsive and eligible bidder (the "Selected Bidder"). Bids are due at the offices of the MBTA and MassDOT by **10:30 A.M. on Tuesday, July 30, 2019**, in accordance with the submission requirements and selection process described below. The MBTA and MassDOT reserve the right to select finalists, to seek additional information or revised bids for one or more bidders, to select a highest responsible bidder or bidders, to reject any or all bids, to solicit best and final offers, to amend this Invitation to Bid ("ITB") in any way, or to discontinue the ITB selection process altogether.

A copy of the ITB may be obtained from the website of Massachusetts Realty Group, the MBTA and MassDOT's designated representative for this offering, [www.mbtarealty.com](http://www.mbtarealty.com), or by written request to:

Massachusetts Realty Group  
Attn: East Boston Easement  
20 Park Plaza, Suite 1120  
Boston, Massachusetts 02116  
E-mail: [Procurement@MBTArealty.com](mailto:Procurement@MBTArealty.com)

Should the MBTA amend or change any information in this ITB, the information will be distributed to registered bidders in the form of an addendum published on the Massachusetts Realty Group website. In order to register, bidders must obtain their bid forms either from the Massachusetts Realty Group website ([www.mbtarealty.com](http://www.mbtarealty.com)) or directly from Massachusetts Realty Group as provided above. Bidders are responsible for checking the Massachusetts Realty Group website to ensure receipt of all addenda to this ITB.

**Transaction Overview and Schedule:**

<b>Transaction Type:</b>	<b>Easement</b>
<b>*Property:</b>	<b>Approximately 374,806 square feet of land</b>
<b>Minimum Bid Amount:</b>	<b>\$2,529,183.77 (Present Value)</b>
<b>**Pre-Bid Meeting:</b>	<b>11:00 a.m. Tuesday, July 9, 2019</b>
<b>Written Questions Due Date:</b>	<b>5:00 p.m. Friday, July 12, 2019</b>
<b>Bid Due Date:</b>	<b>10:30 a.m. Tuesday, July 30, 2019</b>

*\*Bidders may elect to bid on only a portion of the Property. However, the MBTA and MassDOT will not evaluate bids based on the per square foot value to be paid to the MBTA and MassDOT; rather, the MBTA and MassDOT will evaluate the total value being offered.*

*\*\*The Pre-Bid Meeting will be held at the MBTA/MassDOT Office of Real Estate and Asset Development, 10 Park Plaza, Suite 5720, Boston, Massachusetts 02116. If any prospective bidder requests a meeting at the Property, the MBTA and MassDOT shall conduct such meeting at the Property for prospective bidders who wish to*

*attend. Any bidders registering after the on-Property meeting and at least ten (10) days before the Bid Due Date may request a site visit before the Bid Due Date. Notice of any such site visit will be sent to all registered bidders to provide an opportunity for any interested registered bidder to attend.*

The MBTA and MassDOT will designate the highest responsive and eligible bidder as “Selected Bidder” after completion of due diligence on all the bids and bidders, subject to the right of MBTA and MassDOT to reject all bids or solicit “best and final” offers.

**The MBTA and MassDOT make no representation or warranty as to the accuracy, completeness, currency and/or correctness of any of the information contained in or furnished pursuant to this ITB. All interested parties should carefully review this ITB, including, without limitation the Reservations and Conditions set forth in Sections VIII and IX below.**

## **II. BID SUBMISSION REQUIREMENTS**

### **Minimum Bid**

The MBTA and MassDOT will not accept any bid with a present value less than \$2,529,183.77. Bidders may propose either payment in full at closing of the easement transaction or payment in equal annual installments over a period not to exceed twenty (20) years. The easement fee stated in each bid offer will be evaluated based on a discount rate of six percent (6%). The high bid will be based upon the total value of the bidder’s financial offer for the easement rights to the Property. See Section V below for additional clarification.

### **Bid Submission Requirements**

Please describe your project plan, your development team and plan of finance as detailed in the following forms:

- Cover letter by an officer authorized to submit a bid
- Form A: Bid Proposal Requirements and Organization
- Form B: Bid Offer
- Form C: Bidder’s Affirmation
- Form D: Bank/Financial References
- Form E: Conflict of Interest Certification
- Form F: Addendum Acknowledgement
- Certificate of Good Standing (corporate bidders only) or Certificates of Existence for partnerships
- Bid Deposit - Certified bank or cashier’s check made payable to the MBTA.

All bids must be submitted in the following manner:

- All items above, with the exception of Form B and the Bid Deposit, shall be submitted in a sealed envelope marked “Bid Submission for Easement, East Boston and Revere.” Envelopes must also show the date, name, address, and telephone number of the company/person(s) submitting the Bid. Bidder must provide three (3) hard copies and one (1) digital copy (flash drive) of all documents, with the exception of the Bid Deposit.



- Form B shall be submitted in a **separate** sealed envelope marked “Financial Bid Submission for Easement, East Boston and Revere.” Envelopes must also show the date, name, address, and telephone number of the company/person(s) submitting the Bid. Bidder must provide three (3) hard copies of Form B, one (1) digital copy (flash drive) of Form B, one (1) deposit check and two (2) sets of financials stamped confidential.

All completed bid form packages shall be submitted to the following address:

**MBTA and MassDOT  
Office of Real Estate and Asset Development  
Attention: Bid Package - East Boston and Revere Easement  
10 Park Plaza, Suite 5720  
Boston, Massachusetts 02116**

Bids must be submitted on the bid forms provided in this ITB and contain no alterations, additional terms or conditions.

Any bid submitted that substantially alters any material terms herein so as not to be in conformance with the provisions contained herein will be deemed unresponsive.

### **III. BACKGROUND**

**Neighborhood Characteristics:** The Property is in a commercial area consisting of mostly industrial uses. The Property is partially bordered by the Chelsea Creek to the northwest. Photographs of the Property are included below.



Photograph of the Property taken from Curtis Street, facing northeasterly.



Photograph of the Property taken from Boardman Street, facing southwesterly.

**Zoning:** The portion of the Property situated in Boston is located in the Upper Chelsea Creek Waterfront Manufacturing sub-district of the Waterfront Manufacturing sub-district. The portion of the Property situated in Revere is located in the Technology Enterprise District. The portion of the Property situated in Revere is not a conforming lot on its own. Bidders are responsible for examining all aspects of the Property themselves, including applicable federal and state laws and regulations, and local zoning regulations and bylaws. Bidders are responsible for verification and identification of all applicable federal, state and local zoning and other regulations and plans that may apply to the Property. The MBTA and MassDOT make no representations nor offers any opinions concerning the ability of the Selected Bidder to develop or use the Property for any proposed use or of the suitability of the Property for such use.

**Ownership Information; Freight Rights:** MassDOT is the current fee owner of the land shown as “Easement 1” on the plan attached as Exhibit A. For MassDOT’s title, see (i) Release Deed from CSX Transportation, Inc. dated June 11, 2010 and recorded with the Suffolk County Registry of Deeds (the “Registry”) in Book 46515, Page 1 (the “CSX Deed”) and (ii) Confirmatory Order of Taking dated March 2, 2011 and recorded with the Registry in Book 47667, Page 228. The land shown as “Easement 1” on the plan attached as Exhibit A is subject to a freight rights easement retained by CSX Transportation, Inc. in the CSX Deed. The MBTA is the current fee owner of the land shown as “Easement 2” on the plan attached as Exhibit A. For the MBTA’s title, see Indenture of the Trustees of the Property of Boston and Maine Corporation dated December 24, 1976 and recorded with the Registry in Book 8923, Page 22 (the “Boston and Maine Deed”), and (ii) Confirmatory Order of Taking dated February 16, 1977 and recorded with the Registry in Book 8938, Page 654. The land shown as “Easement 2” on the plan attached as Exhibit A is subject to a freight rights easement retained by Boston and Maine Corporation in the Boston and Maine Deed. Pan Am Railways is the successor to Boston and Maine Corporation.

**Access:** Curtis Street, Boston overpasses the Property. The Property has no legal frontage.



**Available Utilities, Environmental and Subsurface Conditions:** Prospective bidders are responsible for determining the adequacy and availability of utilities which exist within or serve the Property, subsurface conditions that exist on the Property (including active and inactive utilities whether documented or not), and environmental conditions or hazardous materials.

#### **IV. DEVELOPMENT AND USE REQUIREMENTS**

**MBTA and MassDOT Transportation Uses:** In no event may the Selected Bidder's use of the easement area interfere with MBTA and MassDOT transportation operations or infrastructure. The MBTA and MassDOT shall retain the right to use portions of the easement area as laydown area for maintenance and construction projects. In addition, the MBTA and MassDOT shall retain the right to use any roadway, walkway and other transportation improvements constructed on the easement area. If at any time activity within the easement area is deemed unsafe by the MBTA or MassDOT, then MBTA or MassDOT, as applicable, may immediately order such activities to cease until conditions are corrected to the satisfaction of the MBTA and MassDOT. The MBTA and MassDOT shall also retain the rights described in Section V below.

**Shared Use Path:** The MBTA easement shall be subject to the requirement that the Selected Bidder designate, for the benefit of the City of Boston, a portion of the Property that could be used as a shared use path measuring not less than 20 feet in width and extending over the entire length of any MBTA-owned portion of the Property for which the Selected Bidder is acquiring easement rights. If a bidder owns property abutting the Property, the bidder may satisfy the minimum width requirement by utilizing portions of their property abutting the Property. The MBTA shall retain the right to grant a lease or easement to the City of Boston for the maintenance and use of the shared use path. The easement plan recorded at closing shall describe the area designated for the shared use path.

**MBTA and MassDOT Design Review; Engineering Force Accounts:** The Selected Bidder must obtain MBTA and MassDOT approval of design and construction plans prior to making any improvements to the Property. The Selected Bidder shall be required to enter into one or more force account agreements no later than the first submittal to the MBTA or MassDOT of design plans for any improvements on the Property. Such force account agreements will provide for an initial funding amount to be paid by the Selected Bidder to the MBTA and/or MassDOT and applied by the MBTA and/or MassDOT toward costs associated with the review of the design plans and oversight/support of construction. Whenever the balance in the force account is less than half the initial funding amount, the Selected Bidder will be required to replenish the account to its initial funding level. The force account(s) will remain in effect until thirty (30) days after the MBTA and MassDOT determine all open items are closed. The Selected Bidder is responsible for reimbursement of these expenses to the MBTA and MassDOT whether or not a force account is established.

**Maritime Uses:** The Selected Bidder shall not be allowed to conduct any maritime uses on the Property without the written approval of the MBTA and MassDOT, which consent may be withheld in the sole discretion of MBTA and MassDOT. The MBTA and MassDOT may condition their approval of maritime uses on the payment of additional easement fees.

## **V. EASEMENT TERMS**

### **Easement Fee, Option Fee and Payment Guaranty**

The easement fees due to the MBTA and MassDOT shall be in the amounts set forth in the Selected Bidder's bid, which bid shall specify the timing of payments (either payment in full at closing of the easement transaction or payment in equal annual installments over a period not to exceed twenty (20) years). In the event that the Selected Bidder elects to pay the easement fees in installments, the Selected Bidder shall be required to provide the MBTA and MassDOT with an enforceable guaranty of payment of all easement fee obligations and/or other assurance satisfactory to the MBTA and MassDOT. The entity providing the guarantee must be acceptable to the MBTA and MassDOT, in the sole discretion of the MBTA and MassDOT.

The annual option fee due to the MBTA and MassDOT shall be equal to ten percent (10%) of the present value of the easement fees payable to the MBTA and MassDOT by the Selected Bidder. The annual option fee shall be due annually in advance, commencing on the Option Start Date (as defined below), and shall be non-refundable. The annual option fee shall be credited toward the easement fees due to the MBTA and MassDOT under the easement agreements.

### **Option Agreement**

The Option Agreement, in substantially the same form as provided in Appendix B, shall be executed by the Selected Bidder no later than the date specified in the Closing Schedule. Failure to execute the Option Agreement and pay the option fee due on the Option Start Date in a timely manner shall be treated as a withdrawal of the bid and all Deposits (defined below) shall be forfeited.

Additionally, the Selected Bidder shall execute a License of Entry that describes the due diligence work program for review and approval in substantially the same form as provided in Appendix C.

The effective period of the option shall extend from the date of execution of the Option Agreement ("Option Start Date") to the day prior to the fifth (5<sup>th</sup>) anniversary of the Option Start Date. The MBTA and MassDOT reserve the right, in their sole discretion, to extend the effective period of the option. The option may be exercised by written notice from the Selected Bidder to the MBTA and MassDOT prior to the expiration of the effective period of the option. The closing of the easement transaction will be on a date specified in the Selected Bidder's option exercise notice, but in no event earlier than sixty (60) days after such notice or later than one hundred eighty (180) days after such notice, unless otherwise agreed by the MBTA and MassDOT.

Notwithstanding any provision of the Option Agreement to the contrary, the MBTA and MassDOT shall have no obligation to grant the easements to the Selected Bidder unless and until all filings required by the Massachusetts Environmental Policy Act ("MEPA") and its implementing regulations have been made and all applicable appeals periods have passed following the issuance of any MEPA certificate for the Selected Bidder's proposed use of the Property.

In the event the closing of the easement transaction does not occur for any reason, Selected Bidder agrees that, if requested by the MBTA or MassDOT, all permits and approvals obtained by Selected Bidder and all application materials and development plans and surveys shall be assigned by Selected Bidder to the MBTA and MassDOT at no cost to the MBTA and MassDOT.

Bidders are encouraged to have their attorney review the form of Option Agreement provided in Appendix B and to submit questions to Massachusetts Realty Group in writing by the deadline for written questions date.

### **Non-Exclusive; Retained Rights**

The rights granted to be granted to the Selected Bidder shall be non-exclusive, with the MBTA and MassDOT reserving to themselves all rights not explicitly granted in the easements. The MBTA and MassDOT have previously granted rights to third parties to use portions of the Property and the MBTA and MassDOT shall reserve the right to continue to grant rights in the Property to third parties, provided that such future grants do not materially interfere with Grantee's allowed use of the Property. The MBTA and MassDOT shall be entitled to retain all revenues generated by such grants of rights to third parties.

### **Selected Bidder Pre-Closing Expenses**

Any and all expenses incurred by the Selected Bidder prior to closing of the easement transaction will be the responsibility of the Selected Bidder and entirely at its own risk.

### **Condition of the Property**

The Selected Bidder shall accept the Property in "as is" condition and with "all faults," without any warranty or representation by the MBTA or MassDOT, or their respective agents or representatives whatsoever relating to the Property. The Selected Bidder acknowledges and confirms that Selected Bidder is not relying on any representation or inducement which was or may have been made or implied by the MBTA or MassDOT or any other party acting on behalf of the MBTA or MassDOT with respect to the Property, including, without limitation, the fitness of the Property for any proposed use, the suitability of the Property for any particular purpose, or the ability of the Selected Bidder to obtain any necessary permits or approvals.

The MBTA and MassDOT hereby expressly disclaim any warranties of any nature, express or implied or otherwise, except as expressly set forth herein, including without limitation, anything related to the presence of "oil", "hazardous materials" or "hazardous wastes" as those terms are defined in Massachusetts General Laws Chapter 21E ("Chapter 21E"), as from time to time amended, and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP") (collectively, "Hazardous Materials"), and as further defined in all other applicable state and Federal laws regarding Hazardous Materials on, in, at, over, under, from, through or associated with the Property.

### **Investigation of the Property**

The Selected Bidder, at Selected Bidder's expense, may complete investigations of the Property, including environmental investigation. Any site investigation, including without limitation, environmental investigation, if conducted, must be completed within the time specified in the Closing Schedule. The Selected Bidder shall waive its rights to conduct or complete such investigation if it is not completed within said time period. If requested to do so in writing, Selected Bidder shall submit all investigatory test results and reports obtained by the Selected Bidder to the MBTA and MassDOT.

The Selected Bidder will indemnify the MBTA and MassDOT and agree to defend the MBTA and MassDOT and save the MBTA and MassDOT harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever including, without limitation, those related to personal injuries or death, that may be imposed upon, incurred by, or asserted against the MBTA or MassDOT because of the condition of the Property as a result of the Selected Bidder or its employees, contractors or consultants being on the Property to conduct any investigation.

Prior to entry on the Property to conduct investigations, the Selected Bidder (or its consultants) shall execute a License for Entry in form substantially similar to the form of license provided in Appendix C and provide the MBTA with a certificate or certificates of insurance covering all days that Selected Bidder and Selected Bidder's consultants and contractors will be on the Property before closing, evidencing the insurance of the activities permitted under the License for Entry, with companies that are reasonably acceptable to the MBTA, in which Selected Bidder, MBTA and others specified in the License for Entry are additional insureds as their interests may appear and which provides coverage required under the License of Entry. In addition, the MBTA and MassDOT may require a guaranty be provided to the MBTA and MassDOT to guaranty the performance of the Selected Bidder's indemnification obligations under the License for Entry. The entity providing such guaranty must be acceptable to the MBTA and MassDOT in their sole discretion.

### **Indemnification and Release**

Upon and after delivery of the easements, the Selected Bidder for itself, its successors and assigns, shall indemnify, defend (at the option of the MBTA and MassDOT) and save the MBTA and MassDOT harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever including, without limitation, those related to personal injuries or death, that may be imposed upon, incurred by, or asserted against the MBTA and MassDOT related to (a) the condition of the Property at closing of the easement transaction (including, without limitation, pre-existing Hazardous Materials and (b) those related to any negative impacts that occur as a direct or indirect result of the operation of the MBTA and MassDOT transportation systems, including, without limitation, noise, odor, vibrations, particles, pollution, fumes and electromagnetic fields (collectively, "Negative Impacts"). The indemnification for Hazardous Materials includes indemnification for the presence of Hazardous Materials on, in, at, over, under, from, through or associated with the Property and for any Hazardous Materials on abutting property not owned by the MBTA or MassDOT caused by migration of such Hazardous Materials from the Property and such indemnification includes, without limitation, third party claims for property damages and decreases in land values.

In addition, the Selected Bidder, for itself, its successors and assigns shall agree not to sue or commence action, claim, counterclaim or cross-claim, or otherwise seek affirmative relief against the MBTA and MassDOT arising out of (a) the condition of the Property at closing of the easement transaction, including, but not limited to, the presence of Hazardous Materials on, in, at, over, under, from, through or associated with the Property or on any other property not owned by the MBTA or MassDOT because of migration of such Hazardous Materials from the Property, and (b) the fact that the Property is subject at all times to the Negative Impacts and other negative conditions associated with the current and future operation of the transportation systems of the MBTA and MassDOT.

Any required response action related to the Property required by a governmental authority shall be performed by Selected Bidder at Selected Bidder's sole cost and shall be performed in accordance with Chapter 21E, the MCP, and any other applicable statutes and regulations. These provisions of indemnity and release shall be incorporated into the easement agreement and shall be binding on the Selected Bidder's successors and assigns.

The Selected Bidder agrees to design and construct all project improvements so as to minimize the impact of Negative Impacts upon all project improvements and any tenant, subtenant, licensee, occupant or purchaser thereof. This provision shall be incorporated into the easement agreement.

### **Title**

It is the Selected Bidder's responsibility to determine and verify all title information pertaining to the Property. The Selected Bidder shall review title to the Property at its sole cost within the time specified in the Closing Schedule. A copy of said title report shall immediately be given to the MBTA and MassDOT along with a cover letter listing all specific title problems and referencing the specific recorded documents. Any and all title defects not specifically listed as problematic in the cover letter to said title report shall be deemed waived. If the title search is not completed and delivered to the MBTA and MassDOT within this time, all title defects shall be deemed waived. The MBTA and MassDOT shall have sixty (60) days to respond or cure defects.

The MBTA and MassDOT will deliver the Property free from all encumbrances, except:

- (a) Provisions of existing building and local zoning laws;
- (b) Such taxes for the current tax year as are not due and payable, and any liens for municipal betterments assessed after the date of this ITB;
- (c) Easements, restrictions, reservations, and eminent domain takings by third parties of record;
- (d) Any encroachments, parties-in-possession, leases, licenses and occupancies
  - (1) that can be seen by inspecting the Property, or
  - (2) are shown on the plan attached hereto as Appendix A;
- (e) Any other easement, license, restriction or encroachment, unless such easement, license, restriction, or encroachment makes it impossible to use the Property for any of the uses permitted as of right pursuant to the applicable zoning code;
- (f) Rights retained by the MBTA and described in Sections IV and V of this ITB;
- (g) Covenants and restrictions described in Sections IV and V of this ITB; and
- (h) All title defects waived by the Selected Bidder;

The grant of easements by the MBTA and MassDOT to the Selected Bidder shall be subject to all encumbrances and encroachments and without any encroachments having been cured, and the Selected Bidder may resolve any and all remaining encroachments to its satisfaction after the closing



of the easement transaction at Selected Bidder's sole expense and there shall be no further obligations by the MBTA or MassDOT to cure any encroachments.

### **Survey Plan of Easement Areas**

The Selected Bidder will be responsible for completing, at its own expense, a recordable survey of the Property. This survey must include bearings and distances for relevant parcel and easement boundaries. The survey must distinguish the "Public Use Area" to be reserved for the required public shared use path from the "Private Use Area" for the Selected Bidder's proposed private use. The survey must be completed by the time specified in the Closing Schedule. The survey is subject to MBTA and MassDOT approval. Any modifications to the survey shall be at the expense of the Selected Bidder. The Selected Bidder is also responsible for the cost of recording the survey.

### **Regulatory and Permitting Approvals**

The Selected Bidder will be responsible for all necessary regulatory and permitting approvals associated with the use of the Property. Each bidder must include in its bid package a list of all federal, state, public utility commission, local and/or other governmental authority permits and/or approvals necessary to carry out the bidder's proposed use of the Property. Prior to making any filings for governmental permits and approvals, the Selected Bidder must furnish drafts of such filings to the MBTA and MassDOT for review and incorporate any comments received from the MBTA and MassDOT into the final filings. The Selected Bidder's use of the Property must be in compliance with all applicable laws.

### **Termination Rights**

In the event that the Selected Bidder's continued use of the easement area would interfere with MBTA and/or MassDOT transportation operations or infrastructure, the MBTA and MassDOT may terminate all or any portion of easements upon giving the Selected Bidder at least twenty-four (24) months' advance written notice. In the event of such termination, the Selected Bidder would not be entitled to any refund of any consideration paid nor shall the Selected Bidder be entitled to any damages including pursuant to Massachusetts General Laws Chapter 79. Upon any such termination or partial termination, if requested to do so by the MBTA or MassDOT, the Selected Bidder shall at its sole cost and expense restore the easement area or applicable portion thereof to the condition it was in prior to the grant of the easement.

If a party holding railroad freight rights in the easement areas implements freight service in a manner that is inconsistent with the Selected Bidder's continued use and enjoyment of the easements, the Selected Bidder may terminate all or any portion of the easements upon twelve (12) months' advance written notice to the MBTA and MassDOT. Upon any such termination or partial termination, the Selected Bidder shall at its sole cost and expense restore the easement area or applicable portion thereof to the condition it was in prior to the grant of the easement.

### **Legal Expense Reimbursement**

The Selected Bidder will reimburse the MBTA and MassDOT for all legal fees for outside counsel incurred to perfect the easement transaction. The "Legal Force Account" will be used to cover such legal expenses. This Legal Force Account, with initial funding of \$25,000.00, shall be available to the MBTA and MassDOT for reimbursement of legal expenses directly related to the grant of easement rights in the

Property. Whenever the balance in the Legal Force Account is less than \$12,500.00, the Selected Bidder will be required to replenish the account to \$25,000.00. This Legal Force Account will remain in effect until ninety (90) days after the closing of the easement transaction. The Selected Bidder shall be responsible for reimbursement of all legal fees for outside counsel incurred to perfect the easement transaction whether or not the Legal Force Account is established.

**Labor**

The easement agreements shall require that the Selected Bidder furnish labor that can work in harmony with all other elements of labor employed by the MBTA and MassDOT.

**THESE AND OTHER ESSENTIAL TERMS AND CONDITIONS OF THE BID ARE DESCRIBED IN THE FORM OF OPTION AGREEMENT ATTACHED HERETO AS APPENDIX B. BIDDERS ARE STRONGLY ADVISED TO READ, UNDERSTAND AND SEEK CLARIFICATION OF ANY QUESTIONS CONCERNING THE OPTION AGREEMENT PRIOR TO THE BID DUE DATE.**

**VI. BID AND CLOSING SCHEDULE**

The following schedule is intended as a guide and is subject to change at the discretion of the MBTA and MassDOT.

Event	Description	Date
Pre-Bid Meeting	A pre-bid meeting will be held at 10 Park Plaza, Suite 5720, Boston, MA 02116.	11:00 a.m. Tuesday, July 9, 2019
Deadline for Written Questions	Potential bidders are to submit, in writing, all questions and requests for clarifications or changes. Questions should be addressed to <a href="mailto:Procurement@mbtarealty.com">Procurement@mbtarealty.com</a> . Questions must reference “East Boston and Revere Easement.” Potential bidders are reminded that only formal written responses to questions, provided in an addendum, should be considered definitive. Verbal responses, including those at the pre-bid conference should not be regarded as official or definitive.	5 p.m. Friday, July 12, 2019
Bid Due Date and Time	Completed bid submissions must be submitted to the MBTA and MassDOT as described in Form A.	No later than 10:30 a.m. Tuesday, July 30, 2019
Designation of Selected Bidder	The MBTA and MassDOT will conduct due diligence on the bids received and determine whether and who to designate as the Selected Bidder.	Friday, August 30, 2019 (approximate)

Execution and Delivery of Option Agreement by Selected Bidder	The Selected Bidder must deliver an Option Agreement and License of Entry executed by Selected Bidder to the MBTA and MassDOT, along with a check for the annual option fee.	No later than 60 days from designation of the Selected Bidder
Selected Bidder Due Diligence	The Selected Bidder shall be responsible for conducting its own due diligence (title, survey and site investigation) at its sole expense	No later than 12 months from expiration of the option period
Closing Date	The closing of the easement transaction shall occur on the date specified in the Selected Bidder's option exercise notice (not earlier than 60 days from such notice and not later than 180 days after such notice)	No later than the expiration of the option period

## VII. BID DEPOSIT AND PAYMENT SCHEDULE

The bid package must include a bid deposit ("Bid Deposit") in the form of a certified bank or cashier's check made payable to the MBTA in the amount of \$10,000.00 and placed in the sealed bid envelope.

The Bid Deposit of the Selected Bidder will be credited to the easement fees due upon closing of the easement transaction. The Bid Deposit is non-refundable if the Selected Bidder fails to execute the Option Agreement as described in Section V.

The MBTA will retain the Bid Deposits submitted by the second and third highest bidders until the earlier of a) the date the Selected Bidder executes the Option Agreement or b) ninety (90) days from designation of the Selected Bidder. All other Bid Deposits will be returned upon designation of the Selected Bidder.

The Selected Bidder is required to make deposits according to the schedule as outlined below and in accordance with the following schedule:

Milestone	Description	Amount	Date
Bid Deposit	To be paid to the MBTA upon submission of bid.	\$10,000.00	July 30, 2019
Legal Force Account Deposit	To be funded in order to assure reimbursement to the MBTA and MassDOT of expenses for outside legal counsel engaged to assist with the Option Agreement and the easement transaction. The Legal Force Account will remain open until	\$25,000.00	Within 10 days of written request from the MBTA and/or MassDOT

	90 days following the closing of the easement transaction.		
Annual Option Fee	To be paid to the MBTA upon execution of the Option Agreement. The Annual Option Fee will be credited to the purchase price of the Property at closing.	10% of the present value of the easement fee	Upon execution of the Option Agreement and on each anniversary thereof during the effective period of the Option Agreement
Engineering Force Account Deposit(s)	To be funded in order to assure reimbursement to the MBTA and MassDOT of expenses for engineering review, safety, and other services in conjunction with the Selected Bidder's proposed improvements to the Property.  The Force Account will remain in effect until 30 days after the MBTA and MassDOT determine all open items are closed.	To be determined based upon development program	No later than the time of the first submittal to the MBTA or MassDOT of design plans or other such submittals

## VIII. BID TERMS AND CONDITIONS

### Evaluation and Acceptance of Bids

Bids shall be evaluated on the basis of the **highest bid** from among the responsive and eligible bidders. The highest bid will be based upon the present value of the terms of payment for the easement rights in the Property. **Bids cannot be less than the Minimum Bid.** In addition, each bidder may submit no more than one (1) bid. A bid cannot be withdrawn without forfeiting the Bid Deposit.

A Bidder shall be deemed responsive and eligible if:

- (1) The bid package submittal is complete and not conditioned;
- (2) The bidder is in good standing with the MBTA, MassDOT and the Commonwealth of Massachusetts; and
- (3) The bidder provides sufficient information regarding experience, program compatibility with MBTA and MassDOT transportation operations, and financial feasibility as provided in the Bid Forms.

The MBTA and MassDOT will designate the highest responsive and eligible bidder as “Selected Bidder” after completion of due diligence of all the bids and bidders, and reserve the right to reject all bids or issue a best and final offer request. Acceptance of a bid may be subject to the approval of the MBTA’s Fiscal Management and Control Board and General Manager and the approval of MassDOT’s Board and Secretary/CEO.

If the Selected Bidder fails to timely countersign the designation letter, execute the Option Agreement or make the annual option fee payment, then the MBTA and MassDOT have the right to retain the Bid Deposit, all obligations of the MBTA and MassDOT due to the Selected Bidder shall cease, and the MBTA and MassDOT may award the bid to the next highest responsive and eligible bidder or re-advertise the Property or otherwise deal with the Property at the sole discretion of the MBTA and MassDOT.

### **Best and Final Offer**

The MBTA and MassDOT may determine that it is in their best interest to solicit a second round of bids as best and final offers (“BAFO”) from bidders with responsive bids. These bidders would be notified and provided BAFO forms and instructions. In the event an invited bidder does not submit a new bid, the MBTA and MassDOT will consider that as a restatement of the bid already received. The bidder who submits the highest BAFO bid will be deemed the Selected Bidder, subject to the MBTA’s right to reject all bids.

Potential bidders should not assume that the MBTA and MassDOT will solicit a second round of bids.

### **Right to Reject Bids**

The MBTA and MassDOT reserve the right to reject any and all bids and responses, in whole or in part, and then to advertise for new proposals or to otherwise deal with the Property, as may be in the best interest of the MBTA and MassDOT. The MBTA and MassDOT also reserve the right to waive any informalities, minor deviations, insignificant mistakes and matters of form rather than substance and to seek clarification of the proposal or contract document, which can be waived or corrected without prejudice to other bidders, potential bidders, the MBTA or MassDOT. No officer or agent of the MBTA or MassDOT is authorized to waive this reservation.

## **IX. RESERVATIONS AND CONDITIONS**

1. All of the terms, conditions, specifications, appendices and information included in this ITB shall constitute the entire ITB package and shall be incorporated by reference into each bid submission. No conditions, other than those specified in this ITB will be accepted and conditional bids may be disqualified except as specified in this ITB.
2. The MBTA and MassDOT make no representation or warranty as to the accuracy, currency, and/or completeness of any or all of the information provided in this ITB, or that such information accurately represents the conditions that would be encountered on or in the vicinity of any of the Property, now or in the future. The furnishing of information by the MBTA, MassDOT and Massachusetts Realty Group (comprised of Greystone & Co., Inc. and Jones Lang LaSalle Americas, Inc.) shall not create or be deemed to create any obligation or liability upon it for any reasons whatsoever, and each bidder, by submitting a bid to the



MBTA or MassDOT in response to this ITB, expressly agrees that it shall not hold the MBTA, MassDOT, Massachusetts Realty Group or any of their respective officers, agents, contractors, consultants, or any third party liable or responsible therefore in any manner whatsoever.

3. If any matter or circumstance under this ITB requires the consent or approval of the MBTA or MassDOT or that such matter be satisfactory to the MBTA or MassDOT, then the same may be granted, withheld, denied or conditioned by the MBTA and MassDOT in the exercise of their sole discretion unless otherwise specified.
4. If the outside date for the execution of the Option Agreement or any other agreement contemplated under the ITB shall not fall on a "Business Day" (a "Business Day" being defined as any day other than a Saturday, Sunday, or day on which commercial banks in Boston, Massachusetts are authorized or required by law to remain closed or legal holiday recognized by the MBTA and MassDOT), then such date shall be extended to the next succeeding Business Day.
5. Awards shall be made in strict compliance with Massachusetts General Laws Chapter 161A, Section 5 and Massachusetts General Laws Chapter 6C, Section 20. The MBTA and MassDOT shall not discriminate on the basis of race, creed, color, sex, national origin, disability, or sexual orientation in consideration for an award.
6. Appeals/Protests relative to this ITB will be reviewed and adjudicated in accordance with the MBTA's Appeals/Protest Procedures – Goods & Services. A copy of this procedure is available by contacting the MBTA Materials Department.
7. The MBTA and MassDOT reserve the right to waive or decline to waive any irregularities, informalities, minor deviations, mistakes, and matters of form rather than substance in any bid when it determines that it is in the best interest of the MBTA and MassDOT to do so, and to waive any defects in the ITB submission process when it determines such defects are insubstantial or non-substantive. No officer, employee, agent or consultant of the MBTA or MassDOT is authorized to waive this reservation. The MBTA and MassDOT reserve the right to accept, reject or negotiate at their sole and absolute discretion any bidder-proposed changes to the model Option Agreement attached hereto.
8. Any notice or other communication by bidders in connection with this ITB shall be deemed given when received or when delivered by messenger or overnight mail or upon attempted delivery if delivery is not accepted. Such notices shall be in writing and shall be deemed to have been properly given when delivered by messenger or overnight mail addressed as follows: If to the Selected Bidder at the address provided in the bid; if to the MBTA at MBTA Real Estate Department, 10 Park Plaza, Suite 5720, Boston, Massachusetts 02116, Attn: Deputy Chief Real Estate Officer, and if to MassDOT at Massachusetts Department of Transportation, Office of Real Estate and Asset Development, 10 Park Plaza, Suite 5720, Boston, Massachusetts 02116, Attn: Warren Zimmer. In addition, a duplicate notice from the Selected Bidder shall be sent in the same manner as the notices to the MBTA and MassDOT to the MBTA's representative, Massachusetts Realty Group, 20 Park Plaza, Suite 1120, Boston, Massachusetts 02116, Attn: Counsel. Notice of any addendum or other change to this ITB by the MBTA and MassDOT to registered bidders shall be sent electronically.

9. Bidders should assume that all material submitted in response to the ITB will be open to the public. To the extent allowed by Massachusetts public records laws, the MBTA and MassDOT will use commercially reasonable efforts not to disclose or make public any pages of a bid on which the respondent has stamped or imprinted “confidential.” Confidential data will be limited to confidential financial information concerning the bidder’s organization. The MBTA, MassDOT and Massachusetts Realty Group assume no liability for disclosure or use of any information or data.
10. All bidders shall thoroughly familiarize themselves with the provisions of the ITB, including appendices, amendments, development requirements and associated materials. Upon receipt of the ITB, each bidder shall examine the ITB for missing or partially blank pages due to mechanical printing collating, or other publication errors. It shall be the bidder’s responsibility to identify and procure any missing pages or information.
11. Bidders shall be entirely responsible for verifying permitting requirements, zoning, environmental requirements, and any other regulatory requirements applying to the proposed installation(s) and uses. Bidders shall be solely responsible for verifying any and all physical or other site conditions of the Property. Copies and summaries of physical or other site conditions of the subject property, if any, are included in this ITB only as a convenience. The MBTA, MassDOT, Massachusetts Realty Group and any of their respective officers, agents, contractors, or consultants shall not be liable for any mistakes, damages, costs, or other consequences arising from any use of or reliance upon any such provided information.
12. Bidders shall be entirely responsible for any and all expenses incurred in preparing and/or submitting any bid(s) in response to this ITB, including any costs or expenses resulting from the issuance, extension, supplementation, withdrawal, or amendment of this ITB or the process initiated hereby.
13. Bidders must complete each and every bid form contained herein, if applicable.
14. No broker commissions or fees whatsoever shall be due or payable by MBTA, MassDOT, their respective contractors or employees. Notwithstanding the foregoing, the MBTA and MassDOT shall be solely responsible for any commission due and owing to Massachusetts Realty Group.

## **X. BID FORMS**

**Forms Begin on Next Page**

## FORM A – Bid Proposal Requirements and Organization

Please organize your bid proposal in the format listed below. Please insert the referenced Section and Page number in your narrative to locate this information. Also please use the question number in your narrative text to assist us in assuring that your submission is complete. If you believe additional information is needed to understand your bid, please make reference to it. It is recommended that a copy of this form is included at the beginning of the bid proposal to help us navigate the proposal.

Section	Description	Pages
Section 1: Bid Forms	<p>All Bid Forms A-H*, Certificate of Good Standing or Certificate of Existence fully executed and completed.</p> <p>*Bid Form B should be in a separate envelope with a flash drive, the deposit check, and two sets of financials stamped confidential.</p>	All forms
Section 2: Cover letter and Bid Officer and Owner information	<ol style="list-style-type: none"> <li>1. Cover letter introducing the bidder(s) and signed by a principal with full contact information (name, address, phone, email, etc.).</li> <li>2. Form of business of bidder and attach certificate of incorporation or equivalent document based on the organization.</li> <li>3. Federal Tax Identification Number.</li> <li>4. In the event that the bidder is not a Massachusetts entity, said bidder must include a statement agreeing to make all necessary filings to qualify to conduct business in the Commonwealth of Massachusetts prior to execution of the Option Agreement.</li> <li>5. List the officers and others with an interest in the bid:               <ol style="list-style-type: none"> <li>a. For-Profit Corporation. If the bidder is a corporation, list all officers, directors, and owners of ten percent (10%) or more of the capital stock.</li> <li>b. Non-Profit Corporation. If the bidder is a non-profit corporation, list all officers, and directors or board members. List any other entities that control or are controlled by the bidder.</li> <li>c. Non-corporation. If the bidder is other than a corporation, list all persons or entities with an interest of ten percent (10%) or more in the operations of the bidder, including the title and percentage of the interest for each.</li> </ol> </li> </ol>	Up to 5 pages (Including forms and letters)
Section 3: Company Vendor Contacts	<ol style="list-style-type: none"> <li>1. Bank Information – Provide the name, address and contact person and telephone numbers at each bidder’s primary bank;</li> <li>2. Insurance Information - Provide the name, address and contact person and telephone numbers at each bidder’s insurance company;</li> </ol>	Up to 3 pages.

Bid Form A

Bidder’s Initials \_\_\_\_\_

Section 4: Experience	<ol style="list-style-type: none"> <li>1) Describe the company, owners and employees real estate experience. If development is proposed at the Property, include examples of at least two projects of similar size, scope, and complexity as the project proposed at the Property. Please include the dates, locations, concepts, system details, costs, financial structure, and outcomes for these projects.</li> <li>2) Describe the company, owners and employees prior contractual relationships with the MBTA, MassDOT or the Commonwealth.</li> <li>3) Provide resumes for each of the principals and key personnel.</li> </ol>	Up to 15 pages (not including resumes)
Section 5: Financial Questions	<ol style="list-style-type: none"> <li>1. Each bidder must provide answers to the following questions in the bid package. Note that for purposes of these questions, “the bidder” shall include: The bidder; any director, principal officer, partner, or owner of ten percent (10%) or more of stock or with an interest of ten percent (10%) or more in the bidder; or any partnership, corporation, or other entity with which the foregoing are or have been affiliated. If “yes” is answered to any of these questions, describe the circumstances in detail. <ol style="list-style-type: none"> <li>a. Bankruptcy. In the past ten (10) years, has the bidder filed for bankruptcy or been declared bankrupt?</li> <li>b. Foreclosure. In the past ten (10) years, has the bidder been the subject of a foreclosure proceeding?</li> <li>c. Loan default. In the past ten (10) years, has the bidder defaulted on a loan?</li> <li>d. Real Estate Contract default. In the past ten (10) years, has the bidder been in default of a purchase and sale agreement, a ground lease, any other lease, or a contract or agreement for the purchase or lease of real estate, or had such a lease, contract, or agreement terminated due to the bidder’s failure to comply with the terms of the lease, contract, or agreement?</li> <li>e. Prohibition. Has the bidder ever been prohibited from doing business with any government agency?</li> <li>f. Felony. Has the bidder ever been indicted for or convicted of a felony?</li> <li>g. Illegal purpose. Has the bidder ever been involved, affiliated, or in known contact with any entity intending to utilize the subject property for an illegal purpose or with any entity, individual, or member of any organized crime group or similar criminal enterprise?</li> </ol> </li> </ol>	Up to 10 pages
Section 6: Easement Characteristics, Use	<ol style="list-style-type: none"> <li>1. Indicate whether the bidder is seeking an appurtenant easement or an easement in gross</li> <li>2. Indicate whether the bidder is seeking an easement in all or only a portion of the Property</li> <li>3. Describe the bidder’s desired use of the easement area, development plan and community engagement program. <ul style="list-style-type: none"> <li>• Specify proposed uses and associated square footages</li> <li>• Discuss briefly compatibility with local zoning including recent zoning amendments and any other applicable local plans and guidelines.</li> <li>• Discuss public benefits, community uses or community benefits included in the program</li> </ul> </li> </ol>	Up to 15 pages

	<p>The information should also contain any renderings and/or schematics that would be relevant to the MBTA and MassDOT.</p> <p>4. List all governmental permits and approvals anticipated to be required to conduct the bidder's proposed use of the Property.</p>	
<p>Section 7: Development Program and Financial Feasibility</p>	<p>1. Development Budget. The development budget must detail all development costs, including, without limitation: site preparation; building construction; parking and landscaping; utilities; design, engineering, and other consulting; permitting and fees; insurance; legal and other professional fees; construction financing costs. The development budget must detail all off-site costs, including any provisions for providing any community uses or benefits. All costs must be expressed both as a total and per gross building square foot.</p> <p>2. Pro-Forma. Provide details of costs and revenues of each component of the development program including soft and hard costs, as well as revenue projections, absorption and financing. Include funds for economic development programs and off-site improvements. The Pro-Forma may be submitted in a separate envelope if desired.</p> <p>3. Development financing. State all sources of private or public debt and equity expected to be used to finance the development and the anticipated amounts from each source. Any interest from investors, lenders, tenants, or others must be indicated, and actual letter of interest should be included.</p>	



**FORM B – Bid Offer**

**BID OF:**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP \_\_\_\_\_

CONTACT PERSON NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

The undersigned hereby offers to enter into an Option Agreement for the purchase of easement rights from the Massachusetts Bay Transportation Authority (“MBTA”) and the Massachusetts Department of Transportation (“MassDOT”), subject to the provisions contained in a certain “Invitation To Bid, Option to Purchase Easements, Disused Railroad Right-of-Way, Off William F. McClellan Highway (Route 1A), Boston and Revere, MA” dated June 21, 2019 (together with any addenda issued in connection therewith, the “ITB”), providing for payment of the easement fees set forth below.

**OPTION 1: LUMP SUM PAYMENT UPON EXECUTION OF EASEMENT AGREEMENT** *(Note: If the undersigned intends to pay the easement fees in equal installments over a period not to exceed 20 years, please leave this section blank):*

\$ \_\_\_\_\_

\_\_\_\_\_  
**Write out lump sum amount**

**Not less than \$2,529,183.77**

**OPTION 2: INSTALLMENT PAYMENTS** *(Note: If the undersigned intends to pay all easement fees in full upon execution of the easement agreement, please leave this section blank):*

**Payment Period (not longer than 20 years):** \_\_\_\_\_

**Annual Payment Amount (Year 1):** \$ \_\_\_\_\_

\_\_\_\_\_  
**Write out Annual Payment Amount (Year 1)**

**Escalation of Annual Payment Amount:** \_\_\_\_\_ percent ( \_\_\_\_\_ %) per year

**Present Value of Payments\*\*:** \$ \_\_\_\_\_

\_\_\_\_\_  
**Write Present Value**

**Not less than \$2,529,183.77**

**\*\*Present value must be calculated using a discount rate of six percent (6%).**

Bid Form B

Bidder’s Initials \_\_\_\_\_

The undersigned hereby agrees that:

- a) I/we have submitted with this Bid Offer a deposit in the amount of Ten Thousand Dollars (\$10,000.00) in the form of a bank or cashier's check made payable to the MBTA (the "Bid Deposit");
- b) If I/we are designated the high bidder (the "Selected Bidder"), the Bid Deposit is non-refundable and may be retained by the MBTA as liquidated damages;
- c) If the MBTA and MassDOT are unable to deliver the easement in the Property in accordance with the terms of the ITB or Option Agreement (as defined in the ITB), the Bid Deposit and other deposits will be returned and all obligations of the MBTA and MassDOT to the Selected Bidder shall cease;
- d) Interest earned on the Bid Deposit, if any, prior to closing of the easement transaction shall be the property of the MBTA;
- e) The Bid Deposit may be retained by the MBTA for up to ninety (90) days after designation of the Selected Bidder if the undersigned is declared the second or third highest bidder;
- f) If I/we are designated as the Selected Bidder, I/we will pay an option fee payment in the amount of ten percent (10%) of the bid amount at the time of execution of the Option Agreement and annually throughout the effective period of the Option Agreement (such option fee payments, collectively, the "Agreement Deposit");
- g) The Bid Deposit and the Agreement Deposit shall be credited against the easement fees due to the MBTA and MassDOT from the Selected Bidder.
- h) If I/we are declared the Selected Bidder, I/we agree to execute and fund the force account agreements as described in this ITB;
- i) If I/we are declared the Selected Bidder, I/we will enter into the Option Agreement substantially in the form provided in the ITB and in the time period specified in the ITB;
- j) If I/we are declared the Selected Bidder and fail to execute the Option Agreement and/or otherwise perform as defined in the ITB, I/we understand the MBTA and MassDOT may de-designate me/us and all deposits, fees and any other payments made shall become **non-refundable** and may be retained by the MBTA and MassDOT as liquidated damages;
- k) The Selected Bidder assumes all risk of the liability for any and all injuries arising out of or in connection with, directly or indirectly, the inspection of the Property by the Selected Bidder or its agents or representatives and Selected Bidder hereby releases the MBTA, MassDOT and Massachusetts Realty Group from and against all liability for any such damages.
- l) The Selected Bidder hereby indemnifies the MBTA, MassDOT and Massachusetts Realty Group from any claim (whether or not resulting or likely to result in litigation), arising out of or due to, directly or indirectly, out of any information provided in this ITB.
- m) The Selected Bidder acknowledges that the MBTA and MassDOT operates public transportation systems proximate to the Property and that the Property is subject at all times to

Bid Form B

Bidder's Initials \_\_\_\_\_

negative impacts associated with such transportation operations, including without limitation, noise, odor, vibrations, particles, electromagnetic fields, pollution, fumes and other station operations (“Negative Impacts”). The Selected Bidder hereby waives any claim for damages to its property or business arising out of such Negative Impacts.

n) The Selected Bidder agrees to accept the Property in its “as-is, where-is” condition and with all faults including but not limited to, any environmental conditions existing on or affecting the Property. The MBTA and MassDOT do not represent that the Property is in conformance with applicable laws, regulations or codes. The MBTA and MassDOT do not represent that Selected Bidder will be able to obtain any permits, approvals, adjustments, variation or rezoning to permit any particular uses.

o) Time is of the essence of this Bid Offer and the transaction contemplated by the ITB.

p) This Bid Offer along with the ITB (including all attachments) constitutes the entire understanding of the parties hereto and, unless specified herein, no representation, inducement, promises or prior agreements, oral or written, between the parties or made by any agent on behalf of the parties or otherwise shall be of any force and effect.

q) No official, employee or agent of the MBTA or MassDOT shall be charged personally by the Selected Bidder with any liability or expense of defense or be held personally liable under any term or provision of this Bid Offer because of any breach.

r) The MBTA and MassDOT reserve the right to reject any and all bids and responses in whole or in part, and then to advertise for new bids or to otherwise deal with the Property as may be in the best interest of the MBTA and MassDOT.

This Bid Form B survives execution of the Option Agreement.

The undersigned hereby declares that its bid is submitted directly to the MBTA and MassDOT through their designated representative, Massachusetts Realty Group, and involves no real estate broker's commission to be paid by the MBTA or MassDOT.

The undersigned declares under the penalties of perjury provided for in the General Laws of the Commonwealth of Massachusetts, and hereby certifies that all of the information and statements contained the bid forms and other materials submitted to the MBTA and MassDOT in connection with this bid are true, accurate and complete. The undersigned agrees that in the event that circumstances, reflected in the information and statements made in such bid forms and materials, change, the undersigned will promptly notify Massachusetts Realty Group in writing by certified mail or hand delivery. The undersigned also understands that a misstatement, omission and/or failure to update information may be cause for the MBTA and MassDOT to reject the undersigned’s bid and may have the effect of precluding the applicant from doing business with the MBTA and MassDOT in the future.

The undersigned hereby authorizes and requests any person(s), firm(s), financial institution(s) or corporation(s) to furnish any information requested by the MBTA, MassDOT or their representatives in verification of the recitals regarding the bidder's submission to the MBTA and MassDOT.

The undersigned hereby certifies that the undersigned is authorized to sign this Bid Offer on behalf of the bidder and in accordance with attached signed and sealed corporate authorization\*.

The undersigned hereby agrees to share the commitment of the MBTA and MassDOT to Equal Employment

Bid Form B

Bidder’s Initials \_\_\_\_\_

Opportunity (EEO), and Affirmative Action (AA), and is willing to encourage the Utilization of Disadvantaged Business Enterprises (DBE's). Furthermore, the undersigned agrees not to discriminate upon the basis of race, color, religion, sex, age, ancestry, sexual orientation, veteran status, disability, or national origin in the development and use of the Property.

The undersigned hereby acknowledges that I/we have received and read the ITB and have acquainted myself/ourselves with matters therein referred to and understand that in making this Bid Offer, all rights to plead misunderstanding regarding the same have been waived in connection to the proposal.

The undersigned states under the pain and penalties of perjury, that he/she is submitting this Bid Offer for an option to purchase easement rights in the Property and the undersigned certifies that the undersigned is authorized to sign on behalf of the bidder and that the information provided by bidder is true and accurate to the best of the undersigned's knowledge.

Bid Form B

Bidder's Initials \_\_\_\_\_

**SIGNED AND SEALED:**

**By:**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT SIGNER'S NAME SIGNER'S TITLE

\_\_\_\_\_  
COMPANY NAME TELEPHONE

\_\_\_\_\_  
STREET ADDRESS DATE

\_\_\_\_\_  
CITY STATE ZIP CODE

**COMMONWEALTH OF MASSACHUSETTS**

County of \_\_\_\_\_, \_\_\_\_\_, 2019  
Date

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

\_\_\_\_\_  
Notary Public Seal

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

\* If the bidding entity (the "Bidder") is other than an individual, Bidder should include a signed and sealed statement that the signer is authorized by the Bidder to sign on behalf of the Bidder.

Bidder's Initials \_\_\_\_\_



**FORM C – Buyer’s Affirmation**

**STATEMENT OF BENEFICIAL INTEREST**

I hereby state, under the penalties of perjury, that the true names and addresses of all persons, who have or will have a direct or indirect beneficial interest in the land of the Massachusetts Bay Transportation Authority (“MBTA”) and the Massachusetts Department of Transportation (“MassDOT”) described in a certain “Invitation To Bid, Option to Purchase Easements, Disused Railroad Right-of-Way, Off William F. McClellan Highway (Route 1A), Boston and Revere, MA,” dated June 21, 2019, are listed below in compliance with the provisions of Section 38 of Chapter 7C (formerly Section 40J of Chapter 7) of the Massachusetts General Laws and I further state that I am in position to know the names of all those with a beneficial interest. Name, and residence and phone number of all persons\* with said beneficial interest.

<b>Name</b>	<b>Residence Address</b>	<b>Telephone Number</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____

[Attach additional sheet if more space needed]

The undersigned also acknowledges and states that none of the above listed individuals is (1) an official elected to public office in the Commonwealth of Massachusetts or (2) an employee of the Massachusetts Bay Transportation Authority or the Massachusetts Department of Transportation.

The undersigned acknowledges that an update of this bid form, in the format preferred by the Massachusetts Division of Capital Asset Management and Maintenance, shall be required at the closing of any easement transaction with the MBTA or MassDOT.

**SIGNED** under the penalties of perjury.

**Print Bidder Name:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Print Signer’s Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\* If “persons” are publicly traded corporations, only owners of ten percent (10%) or more of the stock of companies traded on a national exchange need to be used.

**I hereby certify, under penalties of perjury, that:**

A. Non Collusion Statement

This bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this section, the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

B. Revenue Enforcement Certificate

Pursuant to M.G.L. Ch. 62C, Sec. 49A, that I (my company), to the best of my knowledge and belief, have (has) filed all state tax returns and paid all state taxes required under law.

\_\_\_\_\_  
Social Security Number or  
Federal Identification Number

C. Employer's Certificate of Compliance with Massachusetts Employment and Training Law

Pursuant to G. L. C. 151A, Sec. 19A(b), \_\_\_\_\_  
(Name of Employer)  
has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions<sup>1</sup>.

<sup>1</sup> The employer may certify its compliance if it has entered into and is complying with a repayment agreement satisfactory to the Commissioner or there is a pending adjudicatory proceeding or court action contesting the amount due pursuant to G. L. C. 151A, Sec. 19A(c).

**Print Bidder Name:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Print Signer's Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**FORM D – Bank / Financial References**

1. All bidders must provide 2 bank or other financial institution references.

Name of Bank or Financial Institution \_\_\_\_\_

Address \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone # \_\_\_\_\_

Name on the Account \_\_\_\_\_

Account # \_\_\_\_\_

Name of Bank or Financial Institution \_\_\_\_\_

Address \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone # \_\_\_\_\_

Name on the Account \_\_\_\_\_

Account # \_\_\_\_\_

**2. Corporate or other entity bidders must include a Certificate of Good Standing from the Massachusetts Secretary of State’s Office and Certificate of Legal Existence as part of the bid submission.**

**3. All bidders must provide a financial reference used for a project of similar size, scope and complexity as the project proposed in response to this ITB.**

To Whom It May Concern:

I, \_\_\_\_\_ the undersigned, hereby authorize release, to the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Department of Transportation (MassDOT) and Massachusetts Realty Group of any and all credit and bank account information concerning the individual, business or organization listed below.

I understand that this information is to be used solely for the purpose of evaluating my suitability to enter into an option agreement for the purchase of easement rights from the MBTA and MassDOT.

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
PRINTED NAME OF APPLICANT

\_\_\_\_\_  
TITLE OF APPLICANT

\_\_\_\_\_  
PRINT COMPANY NAME

**FORM E – Conflict of Interest Certification**

The undersigned hereby certifies that the Bidder (i) shall comply with Massachusetts Conflict of Interest Laws, G.L. c. 268A, and (ii) has no real or perceived conflict of interest in relation to the sale of the property described in a certain “Invitation To Bid, Option to Purchase Easements, Disused Railroad Right-of-Way, Off William F. McClellan Highway (Route 1A), Boston and Revere, MA” dated June 21, 2019.

BIDDER'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**FORM F– Addendum Acknowledgement**

Bidder acknowledges receipt of the following addenda to ITB in a certain “Invitation To Bid, Option to Purchase Easements, Disused Railroad Right-of-Way, Off William F. McClellan Highway (Route 1A), Boston and Revere, MA” dated June 21, 2019:

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

BIDDER'S NAME: \_\_\_\_\_

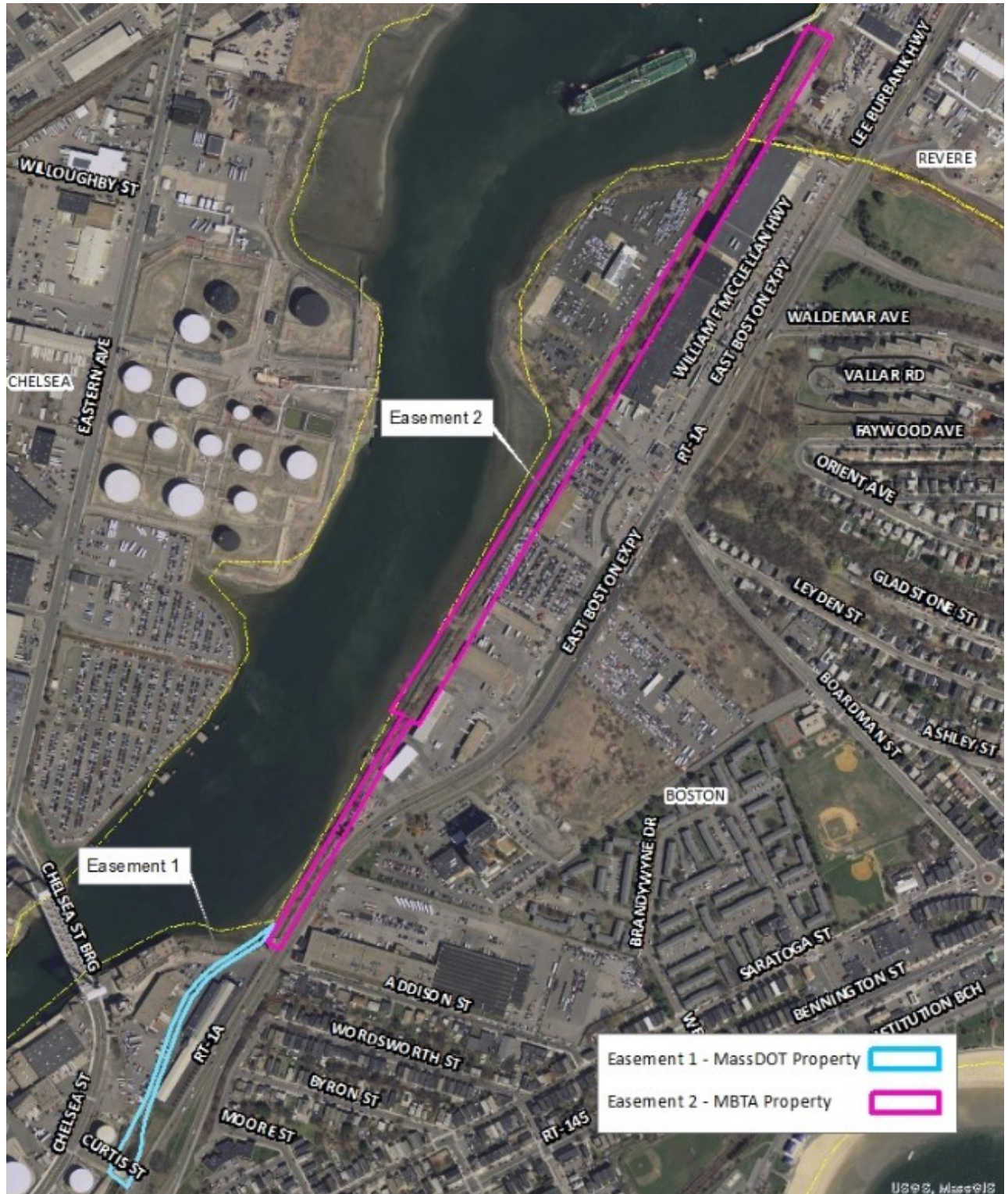
AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **X.APPENDICES**

# APPENDIX A – Property Plan





**EXHIBIT B**  
**FORM OF EASEMENT**

[see attached]

## AGREEMENT AND GRANT OF EASEMENT

[**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts existing pursuant to Massachusetts General Laws Chapter 161A, with an address of Ten Park Plaza, Boston, Massachusetts 02116] [**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION**, a body politic and corporate and public instrumentality of the Commonwealth of Massachusetts created pursuant to, and acting under the authority of, Chapter 6C of the Massachusetts General Laws, as amended, with a principal place of business at Ten Park Plaza, Boston, Massachusetts 02116] (together with its successors and assigns, "Grantor"), in consideration of [\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) paid] [the payments set forth in Section 3 below] and the mutual covenants and agreements set forth herein, grants, **WITHOUT COVENANTS**, to \_\_\_\_\_, a \_\_\_\_\_, with a mailing address of \_\_\_\_\_ ("Grantee"), subject to all matters currently of record, a non-exclusive easement for the purposes set forth herein on a portion of land owned by Grantor located on the northwesterly side of William F. McClellan Highway, Boston, Massachusetts, consisting of approximately \_\_\_\_\_ square feet of land (the "Easement Area") shown as "\_\_\_\_\_" on a plan of land entitled "\_\_\_\_\_", dated \_\_\_\_\_, and prepared by \_\_\_\_\_ (the "Easement Plan"), recorded herewith with the Suffolk County Registry of Deeds (the "Registry") in Plan Book \_\_\_\_\_, Page \_\_\_\_\_, a reduced-size copy of which is attached hereto and made a part hereof as **Exhibit A**, subject to the terms and conditions set forth herein.

For Grantor's title to the Easement Area, see \_\_\_\_\_.

[The easement rights granted hereby (the "Easement") shall be appurtenant to property of Grantee, as described in \_\_\_\_\_ recorded with the Registry in Book \_\_\_\_\_ at Page \_\_\_\_\_, (the "Grantee's Property").] [The easement rights granted hereby (the "Easement") shall be held by Grantee and its successors and assigns as an easement in gross.]

Grantee and Grantor hereby covenant and agree as follows:

1. Use. The Easement Area may be used by Grantee, each of their respective agents, contractors, employees, tenants, invitees and successors and assigns, subject to the terms of this Easement Agreement solely for \_\_\_\_\_. The [description of improvements Grantee is permitted to construct within the Easement Area] are referred to collectively herein as "Grantee's Improvements." Grantee shall, at Grantee's sole cost and expense, in accordance with a schedule approved by Grantor, make application for, and from and after making such application, use diligent good faith efforts to obtain, all permits, licenses,

approvals, consents, reviews and the like as may be necessary from any governmental body under applicable law in connection with the design, construction and operation of Grantee's Improvements. Grantee shall be strictly prohibited from constructing, erecting or maintaining any structures or buildings on the Easement Area.

The use of the Easement Area shall be divided between portions, the first portion being designated on the Easement Plan as "Private Use Area" for the sole use of the Grantee, subject only to the rights of Grantor and to existing agreements, easements, and covenants of record (the "Private Use Area") and the second portion being designated on the Easement Plan as "Public Use Area" for use by the public (the "Public Use Area"). Notwithstanding the foregoing, this Easement Agreement is not intended to transfer easements for purposes protected by or to create a perpetual right to any use that may be subject to protection by Article XCVII (97), as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts or by legislation enacted to pursuant thereto. The Private Use Area shall consist of approximately \_\_\_\_\_ square feet of land and the Public Use Area shall consist of approximately \_\_\_\_\_ square feet of land, as shown on the Easement Plan. The parties acknowledge and agree that as the proposed Grantee's Improvements are constructed and evolve the makeup of the Private Use Area and the Public Use Area may change. In the event of any such change, Grantee, at the sole cost and expense of Grantee, shall prepare for Grantor's review and approval an updated Easement Plan reflecting such changes and a proposed amendment to this Easement Agreement replacing the Easement Plan with such updated plan. Grantee shall pay Grantor a fee of Fifteen Thousand Dollars (\$15,000.00) in connection with each such amendment and also reimburse Grantor on demand for all of Grantor's costs and expenses related to the review of the updated plan and the negotiation of the amendment.

Grantor shall be permitted to grant utility easements within the Easement Area which do not materially interfere with the uses of the Easement Area granted hereunder and to retain all revenues therefrom. So long as the instruments granting such utility easements require the grantees to covenant and agree not to materially interfere with Grantee's rights hereunder, no further written consent of Grantee is required for such easements to be effective.

2. Compliance with Terms and Conditions. By acceptance and recording of this Easement, Grantee acknowledges and agrees that this Easement is conditioned upon Grantee continuing to comply with all of the terms and conditions set forth herein. In addition to all other terms and conditions set forth herein, Grantee: (a) shall not interfere with the City of Boston's construction, maintenance, replacement, repair and use of a proposed shared use path within the Public Use Area, and (b) shall conduct only such uses within the Easement Area as are approved by the Massachusetts Office of Coastal Zone Management and the Boston Redevelopment Authority d/b/a Boston Planning & Development Agency.

3. [Additional] Consideration. [Grantee shall pay on an annual basis for the first \_\_\_\_\_ ( ) years that this Easement Agreement is effective, an amount equal to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Annual Payment"), which Annual Payment shall be increased by \_\_\_\_\_ ( ) percent per year. Annual Payments shall be made in advance and without demand. On the date hereof, Grantee has delivered to Grantor a guaranty from \_\_\_\_\_, guaranteeing Grantee's payment of the Annual Payment (the "Guaranty"). Grantee shall maintain the Guaranty (or a replacement guaranty acceptable to Grantor in Grantor's sole discretion) until such time as all Annual Payments have been paid.]

Without limiting Grantor's reserved rights pursuant to Section 14 below, Grantee agrees, as additional consideration for Grantor's grant of the Easement, to reasonably accommodate use of any roadways constructed within the Private Use Area by vehicles associated with the transportation operations of Grantor and/or the Railroad Companies (as hereinafter defined), at no cost to Grantor and the Railroad Companies.

4. Maintenance and Repair. Grantee shall have the sole obligation to maintain and repair the Easement Area and Grantee's Improvements during the term of this Easement Agreement, and to maintain the same in good and safe order and repair and in compliance with all applicable laws. From the effective date of this Easement Agreement and until the termination of this Easement Agreement, Grantor has no responsibility to make any repairs, replacements, alterations, or improvements to the Easement Area and Grantee's Improvements; provided, however, that if Grantee refuses or neglects to undertake such maintenance and repairs, Grantor, if it so elects, by written notice to Grantee (provided that no such notice shall be required in the event of an emergency), may make or cause to be made such maintenance and repairs at the sole cost and expense of Grantee.

5. Subordination to Grantor's Operating Requirements. The Easement is subject and subordinate at all times to the requirements of Grantor to maintain public safety and to maintain and operate a transportation system. Grantee's use of the Easement Area may not obstruct, delay, or prevent Grantor's continuance or expansion of its transportation services. Grantee understands and agrees that any occupation, work, use, or activity permitted hereunder may be stopped or delayed at any time in response to such requirements. In the event requested to do so by Grantor, as a result of Grantor's transportation system requirements necessitating such removal, Grantee shall, at its sole cost and expense, remove any or all portion(s) of Grantee's Improvements, if any, and Grantor shall not be responsible or liable for any direct, indirect, or consequential costs or damages incurred by Grantee as a result of any such interruption, delay, or required removal. Grantor shall have twenty-four (24) hour uninterrupted access to the Easement Area if desired.

6. License for Entry. For any and all proposed construction work by Grantee within the Easement Area and before Grantee commences any work within the Easement Area, Grantor shall have the right to require Grantee to sign an Grantor License for Entry (the "License for Entry") in a form that contains the standard requirements of Grantor that are in effect at that time and said License for Entry may include, among other things, indemnities, releases, insurance requirements, notice requirements, and agreements to pay for any required safety personnel. Grantee agrees to pay Grantor such license and administrative fees as are then in effect in connection with the issuance of each License for Entry under the terms hereof.

7. Work Plan and Access Plan. For each proposed construction project and before commencing any work within the Easement Area, Grantee shall submit a full set of contract documents (the "Contract Documents") and a set of full-sized plans and detailed specifications including, but not limited to, the materials to be used, the equipment and proposed methods of performing the work, or any part thereof, and a site safety and health plan for the construction project (collectively, the "Work Plan") to Grantor at the departments listed in Section 10 herein and such other information as may be reasonably required by Grantor. Grantee shall not enter onto the Easement Area for any construction project until the Contract Documents and the Work Plan for said construction project have been approved in writing by Grantor, in its sole discretion. The permitted work shall be fully

defined in the approved Contract Documents and Work Plan. After completion of a construction project on, under, within or above the Easement Area, Grantee shall promptly return the Easement Area to substantially the same condition it was in prior to such work, except that installations permitted hereunder may remain in place. Furthermore, at the end of each day of Grantee's entry, Grantee shall ensure the Easement Area is left in a safe condition.

8. Safety Precautions. During the performance of any work within the Easement Area by Grantee pursuant to an approved Work Plan, or otherwise, should Grantor deem Grantor personnel and/or other measures reasonably desirable or necessary to protect its operations, property or employees, Grantor shall have the right to place such personnel of Grantor or to take such measures as Grantor deems appropriate in its sole discretion and at the sole cost and expense of Grantee. Such costs and expenses shall include the current wages and fringe benefits due and owing to such personnel in and for the performance of such measures. Grantee hereby covenant and agree to bear the full cost and expense thereof and to reimburse Grantor within thirty (30) days' of receiving an itemized, written invoice for such reimbursement. Grantor's failure to provide such personnel or to take such measures shall not relieve Grantee of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability on the part of Grantor to Grantee and its successors and/or assigns. Upon being notified that such personnel or measures have been deemed necessary or desirable by Grantor, Grantee shall not commence or continue the work permitted under the Work Plan or otherwise, unless and until such personnel or measures are in place.

9. Dig Safe. Grantee acknowledges that there may be surface and subsurface utilities on, under, over, and adjacent to the Easement Area and agrees to exercise extreme caution in performance of each permitted activity. Grantee shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto, including, but not limited to, 220 CMR 99.00, et seq. If, in connection with an Grantor consented to work project, Grantor or parties acting on behalf of Grantor, shall locate and mark railroad utilities in the Easement Area and land appurtenant thereto, if any, Grantee shall be responsible for payment to such parties for such services which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the railroad and transit line(s) and/or used in connection with services or operations of Grantor and/or the Railroad Companies (as hereinafter defined). Any damage to such utilities caused by Grantee or those claiming by, through, or under Grantee shall be the sole responsibility of Grantee. If Grantee does not immediately repair any utilities it has damaged, Grantor and/or parties acting on behalf of Grantor, without being under any obligation to do so and without waiving Grantee's obligations hereunder, may repair any utilities damaged by Grantee immediately and without notice in case of emergency. In the event Grantor exercises such right, Grantee shall pay to Grantor: (i) all out-of-pocket costs and expenses actually incurred by Grantor in performing such repairs provided that any such out-of-pocket costs and expenses are evidenced by invoices and other documentation provided by Grantor; plus (ii) a fee equal to fifteen (15%) percent of such out-of-pocket costs and expenses, to reimburse Grantor for its administrative costs. Such payment shall be made within sixty (60) days after Grantee' receipt of evidence of such costs and expenses, including third-party bills, daily logs, cash disbursements, and the like; in addition, in the event Grantor is not paid within sixty (60) days of Grantor's invoice for payment as aforesaid, interest on such amount shall be paid at the rate of three percent (3%) over the prime rate used by the largest bank in Boston, Massachusetts per annum. Nothing in this Section 9 shall be interpreted to mean that Grantee has the right to dig or otherwise disturb the soil on the Easement Area except as provided for herein or in the applicable approved Work Plan. In addition, Grantor may exercise all

available remedies at law or in equity to achieve the purposes or enforce the provisions of this Section 9.

10. Completion of Work. For each construction project performed by Grantee hereunder, including without limitation the original construction and installation of Grantee's Improvements, upon commencement and completion of its work, Grantee shall provide written notice of the date of project commencement and project completion ("Notice of Project Commencement" and "Notice of Project Completion") to Grantor. Grantee shall also provide Grantor and all Railroad Companies specified by Grantor with a reproducible "as-built" copy of each approved construction drawing marked to indicate all changes and deviations from the original approved Work Plan and indicating the final conditions of the Easement Area upon completion of the work authorized pursuant to that Work Plan (collectively, "Record Drawings"). All Record Drawings shall be received and accepted by Grantor and the Railroad Companies prior to final inspection. The Notice of Project Commencement, Notice of Project Completion and the Record Drawings shall be delivered to:

Massachusetts Department of Transportation  
Rail & Transit Division  
10 Park Plaza  
Boston, MA 02116  
Attn: Rail and Transit Administrator

and

Massachusetts Bay Transportation Authority  
Railroad Operations Department  
32 Cobble Hill Road  
Somerville, Massachusetts 02143  
Attn: Director of Engineering

11. Compliance with Applicable Laws and Permits. In exercising its rights hereunder, Grantee shall comply with, and shall cause all work by or on behalf of Grantee hereunder to comply with all state and/or federal laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, of all governments, departments, offices or any board of fire underwriters (or other body exercising similar functions), or any recorded restrictive covenant or deed restriction applicable to the Easement Area, including, but not limited to, the Americans with Disabilities Act, all applicable zoning ordinances, building codes, flood disaster laws and health laws and regulations that now or at any time hereafter may be applicable (collectively, "Applicable Laws"), at Grantee's sole cost and expense. Grantee shall also be responsible, at their sole cost and expense, for obtaining, complying with and maintaining any and all federal, state, public utility commission, local and/or other governmental authority permits and/or approvals necessary to carry out the activities performed by or on behalf of Grantee hereunder.

12. Standards. In compliance with the [Massachusetts Bay Transportation Authority ("MBTA")] [Grantor's] Special Instructions dated April, 2003, as may be amended from time to time, Grantee shall ensure at all times that the installation, operation, maintenance, repair, replacement, relocation, and removal of Grantee's Improvements comply with sound construction and engineering practices; with the engineering and safety rules and regulations imposed by any

governmental authority having jurisdiction over Grantee or Grantor; with appropriate standards of recognized industry and professional associations, including, but not limited to, applicable building codes; and with [Grantor's] [MBTA's] standards for engineering and safety referenced in [Grantor's] [MBTA's] Railroad Operations Directorate, as it may be updated from time to time.

13. Indemnification and Release. Grantee shall protect, indemnify, defend (at the option of Grantor), and save Grantor, [the MBTA] [the Massachusetts Department of Transportation] and any other company operating on the Premises (collectively, except for Grantor, the "Railroad Companies") harmless from and against any and all liabilities, losses, damages, costs, expenses, (including reasonable attorneys' or other professionals' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever (including, without limitation, damages to real estate or personal property, or the illness, injury or death of a person) including, without limitation, those related to any environmental condition or to oil and hazardous materials as those terms are defined in Massachusetts General Laws Chapter 21E ("Chapter 21E") and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP"), (collectively, "Hazardous Materials"), that may be imposed upon or incurred by or asserted against Grantor or the Railroad Companies and which occur or arise as a result of any of the following activities or occurrences in the Easement Area:

- a. the activities of Grantee or those claiming by, through or under Grantee hereunder or the exercise by Grantee or those claiming by, through or under Grantee of any rights or privileges hereby granted;
- b. any use, condition or occupation of the Easement Area or any part thereof by Grantee, Grantee's employees, invitees, trespassers, customers, agents, contractors or consultants or by the employees, agents, or consultants of Grantee's contractors or subcontractors, including Grantee's prior use of the Easement Area;
- c. the placement of or accidental release of any Hazardous Materials on, in, at, under, over or through the Easement Area (or other property of Grantor adjacent to the Easement) by Grantee or its employees, invitees, customers, agents, contractors or consultants or by the employees, agents, or consultants of Grantee's contractors or subcontractors;
- d. any failure of Grantee or its employees, invitees, customers, agents, contractors or consultants or by the employees, agents, or consultants of Grantee's contractors or subcontractors to perform or comply with any of the terms hereof, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the allowed activities or any part thereof;
- e. any noise, odor, vibrations, particles, pollution, fumes, compaction and electromagnetic fields (collectively referred to as "Negative Impacts") that occur to Grantee or anyone claiming by, through or under Grantee, as a result of the present or future transportation activities of Grantor and/or the Railroad Companies; or
- f. the presence, discovery or revealing of any pre-existing Hazardous Materials in, on, over or under the Easement Area (or other property of Grantor or the Railroad Companies adjacent to the Premises) which pre-existing Hazardous Materials migrated from land now or previously owned, leased, occupied or operated by Grantee.

Grantee' covenant to indemnify, defend and save Grantor and the Railroad Companies harmless from claims related to Hazardous Materials solely arising from Grantee's work or activities and/or work or activities performed on behalf of Grantee, in the Easement Area includes indemnifying, defending and saving Grantor and the Railroad Companies harmless from claims arising from such presence and/or releases of Hazardous Materials within the Easement Area. Further, such indemnification includes the obligation of Grantee to perform any required response action related to such presence and/or releases required by a governmental authority at the sole cost and expense of Grantee and in accordance with Chapter 21E, the MCP and any other Applicable Laws. For the purpose of this Easement, the term "Applicable Laws" with regard to environmental laws, means, without limitation, all state and/or federal laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, of all governments, departments and offices, relating in any way to the control and/or abatement of environmental pollution and environmental hazards that now or at any time hereafter may be applicable.

Grantee accepts the Easement Area "as is, where is and with all faults." Subject to the terms and conditions hereof, Grantee assumes all the risk of entry onto and use of the Easement Area and Grantee hereby releases Grantor and the Railroad Companies from any responsibility for Grantee's losses or damages related to the condition of the Easement Area (including, but not limited to, the presence of pre-existing Hazardous Materials), and Grantee covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim, or any other claim) against Grantor or the Railroad Companies, including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by the Massachusetts Department of Environmental Protection, fines or penalties, permit and annual compliance fees, reasonable attorneys' and other professionals' expenses and fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's death relating to, or arising from, the condition of the Easement Area, Grantee's use of the Easement Area or the Negative Impacts. Grantee shall obtain a written release of liability similar to the one in this paragraph and in the next paragraph in favor of Grantor and the Railroad Companies from each of Grantee's consultants and contractors before they enter onto the Easement Area.

In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, Grantee shall indemnify, defend (at the option of Grantor) and save Grantor and the Railroad Companies harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' and other professionals' expenses and fees), causes of action, suits, claims, demands or judgments related to the injury, illness or death of any employee of Grantee, or an employee of Grantee's contractors or consultants. Grantee acknowledges it shall not be considered a negligent act for Grantor to allow third parties access to the Easement Area.

The provisions of this Section 13 shall survive the termination of this Easement Agreement.

14. Non-Exclusive. The rights granted to Grantee hereunder are Non-Exclusive, and Grantor reserves to itself all rights not explicitly granted herein. The term "Non-Exclusive," as used herein, shall mean that Grantee does not have exclusive rights in, on, over, under or through the Easement Area. In particular, and not in limitation of the foregoing, Grantor may have previously



granted licenses, leases or easements to third parties, and Grantor reserves the right for Grantor and such licensees, lessees and easement holders to enter onto the Easement Area. In addition, Grantor reserves the right to continue to license and/or to grant easements to third parties within the Easement Area (whether surface, subsurface or aerial), so long as such grants do not materially interfere with Grantee's enjoyment of the rights granted in this Easement Agreement; except that temporary interference shall be allowed during periods of installation and/or repair, and Grantor shall require such licensees/easement holders to minimize their impact on Grantee and to return the Easement Area to substantially the same condition it was previously in prior to such installation and/or repair as quickly as possible. Grantor shall not be liable for delays, obstructions or like occurrences affecting Grantee, arising out of the customary use of the Easement Area by Grantor or by others so authorized by Grantor. Grantee shall take such steps as may be necessary to prevent material interference caused by the work and rights authorized hereunder to any component of Grantor's transportation system, utility, communication systems, parks or bike paths located in, on, under, adjacent to or above the Easement Area, and any such interference shall be corrected promptly and at the sole cost and expense of Grantee. Notwithstanding the foregoing, Grantor acknowledges and agrees that it is the intention of the parties that Grantee have exclusive rights in, over, under and through the Private Use Area, subject only to the rights of Grantor and to existing agreements, easements, and covenants of record, and that the Annual Payment is to be made in consideration of such exclusive rights.

15. Termination Rights. (a) Grantor may terminate all or any portion of this Easement upon giving Grantee at least twenty-four (24) months' advance written notice (the "Notice Period"). Any such termination of the Easement shall be effective upon the recording with the Registry of a Notice of Termination by Grantor after the expiration of the Notice Period. Grantor acknowledges and agrees that it shall exercise this right only in the event that Grantee's continued use of the Easement Area would interfere with Grantor's use of the Easement Area in connection with transportation, transit and/or rail-related purposes. Grantee shall not be entitled to any refund of any consideration paid on account of Grantor's exercise of its termination rights pursuant to this Section 15 nor shall Grantee be entitled to any damages including pursuant to MGL, Chapter 79. Upon any such termination or partial termination as provided above, if requested to do so by Grantor, Grantee shall at their sole cost and expense remove any or all portion(s) of Grantee's Improvements in the Easement Area and restore the Easement Area to the condition it was in prior to the grant of the Easement. Grantor shall not be responsible or liable for any direct, indirect or consequential costs or damages incurred by Grantee as a result of any such termination or required removal.

(b) Grantee may terminate all or any portion of this Easement if a party holding railroad freight rights in the Easement Area implements freight service in a manner that is inconsistent with Grantee's continued use and enjoyment of the rights granted by this Easement Agreement. Such termination of the right of Grantee to use the Easement Area or a portion thereof shall be effective upon the recording at the Registry of a Notice of Termination by the Grantee after giving Grantor such twelve (12) months' advance written notice. Grantor shall not be entitled to any consideration paid on account of Grantee's exercise of its termination rights pursuant to this Section 15(b) nor shall Grantor be entitled to any damages, but nothing herein shall impair or affect Grantor's rights with respect to then accrued Annual Payments or obligations of Grantee and Grantee that survive termination of this Easement Agreement. Upon any such termination or partial termination as provided above, Grantee shall at its sole cost and expense remove any or all portion(s) of Grantee's Improvements and restore the Easement Area or applicable portion thereof to the condition it

was in prior to the grant of the Easement.

16. Liens. Grantee shall not encumber or voluntarily cause a lien to be placed upon the Easement Area and shall take all steps necessary to immediately remove any such encumbrances or liens at Grantee's sole cost and expense.

17. Removal of Installations/Improvements. At such time as Grantee ceases to use the Easement Area or in the event of the termination of the Easement, then upon written request of Grantor, Grantee and Grantor shall, at their sole cost and expense, remove any and all personal property, improvements, installations or structures installed by Grantee on the Easement Area, and restore the Easement Area to the condition it was in prior to any installation or construction work conducted by Grantee thereon. Any personal property, improvements, installations or structures not so removed shall, at the option of Grantor, either become the property of Grantor or be removed by Grantor and disposed of without any liability to Grantor for such removal and disposition, all at the sole cost and expense of Grantee.

18. Non-Discrimination. With respect to the exercise of all rights and privileges herein granted, Grantee shall undertake affirmative action as required by federal and state laws, rules and regulations pertinent to civil rights and equal opportunity unless otherwise exempted therefrom. Grantee agrees that it shall comply with any and all required affirmative action plans submitted pursuant to the directives of any federal agency and in accordance with applicable federal law and applicable state laws, rules and regulations.

Grantee shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or veteran status in its activities on the Easement Area, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors or subcontractors.

Grantee shall use reasonable efforts to contact, encourage and utilize minority and woman business enterprises in the procurement of materials and services related to the Easement Area.

19. Work in Harmony. Grantee agrees that in any work performed in, on, or about the Easement Area, Grantee will employ only labor which can work in harmony with labor then working for or on behalf of Grantor and/or the Railroad Companies.

20. Taxes. Grantee shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable during the time during which the Easement continues to exist, which may be assessed against Grantee or Grantor which are directly attributable to Grantee's installations on, improvements to or use of, the Easement Area, or any personal property, buildings or fixtures of Grantee located thereon (collectively referred to as "Taxes"). Grantee shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

Grantee may contest in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided Grantee shall indemnify Grantor against any resulting loss, cost and expense. Grantee shall not permit a lien or encumbrance to be placed on the Easement Area by

reason of its failure to pay any Taxes and shall cause the same to be released promptly after notice thereof.

21. Insurance. Grantee (and any consultants and contractors who may perform work on the Easement Area) shall at all times that the Easement is in effect maintain the following insurance policies and shall provide Grantor with a certificate or certificates of insurance, at the inception of this Agreement and annually thereafter throughout the term of the Easement, in which Grantor and the Railroad Companies are listed as additional insureds and which provide minimum liability coverage as follows:

- a. Commercial General Liability Insurance:  
Insuring Grantee, Grantor, the Railroad Companies, the Easement Area, and all activities of Grantee permitted pursuant to this Easement Agreement, as well as Grantee's indemnification obligations contained herein, with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). This policy shall name Grantor and the Railroad Companies as additional insureds. This policy shall provide coverage on a primary and non-contributory basis for Grantor and the Railroad Companies. The policy shall contain a clause waiving the right of subrogation in favor of Grantor and the Railroad Companies.
- b. Workers' Compensation Insurance and Employers' Liability Insurance:  
Insuring all persons employed by Grantee in connection with any work done on or about the Easement Area with respect to which claims for death or bodily injury could be asserted against Grantor, including (i) Workers' Compensation Insurance providing statutory coverage as required by the Commonwealth of Massachusetts, and (ii) Employers' Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000) per accident. Each of Grantee's contractors, subcontractors, and consultants performing work on or about the Easement Area shall have similar policies covering their employees. All policies of insurance required by this Section 21(b) must contain a clause waiving the right of subrogation in favor of the MBTA and the Railroad Companies.
- c. Automobile Liability Insurance:  
Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) covering all owned, non-owned, hired, rented or leased vehicles of Grantee and its subcontractors and consultants that are used in the activities permitted hereunder. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). This policy shall name Grantor and the Railroad Companies as additional insureds. This policy shall provide coverage on a primary and non-contributory basis for Grantor and the Railroad Companies.
- d. Umbrella Liability Insurance:

Umbrella liability insurance with limits of not less than Ten Million Dollars (\$10,000,000) providing excess coverage over all limits and coverage noted in paragraph (a) and paragraph (c) above. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). This policy shall name Grantor and the Railroad Companies as additional insureds. This policy shall provide coverage on a primary and non-contributory basis for Grantor and the Railroad Companies. The policy shall contain a clause waiving the right of subrogation in favor of Grantor and the Railroad Companies.

e. Insurance during Construction and Installation:

Grantee shall procure or cause to be procured builder's all risk insurance during any period when a construction project is being undertaken by or on behalf of Grantee on the Easement Area.

Grantor may require reasonable increases in limits of the above insurance coverages from time to time. The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having an AM Best's rating of A- or better, shall be kept in full force and effect at all times, shall be primary and non-contributory to any insurance or self-insurance maintained by Grantor and the Railroad Companies, and shall require that Grantor be given at least thirty (30) days' advance written notice in the event of any cancellation or non-renewal in coverage. All required policies of insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism. All such insurance as is required of Grantee shall be provided by or on behalf of all contractors, subcontractors and consultants to cover their operations performed. At the inception date of this Easement Agreement and throughout the term of this Easement Agreement, Grantor shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required. Grantee shall be held responsible for any modifications, deviations, or omissions in the compliance with these requirements by any contractor, subcontractor or consultant of Grantee.

22. Notices. All notices to be given pursuant to the terms hereof shall either be delivered in hand by messenger with signed receipt or by recognized overnight courier services with signed receipt, or shall be mailed by certified or registered mail, return receipt requested, postage prepaid, to the party entitled to receive such notice addressed as described below. Notices shall be deemed given when delivered by messenger or overnight courier service on the date of the delivery as aforesaid or when deposited in certified or registered United States mail, postage prepaid, return receipt requested.

**IF TO GRANTOR:**

[\_\_\_\_\_]

Ten Park Plaza

Boston, MA 02116

Attn: \_\_\_\_\_

**WITH A COPY TO:**

[\_\_\_\_\_]

Office of the General Counsel  
10 Park Plaza  
Boston, MA 02116  
Attn: General Counsel

**IF TO GRANTEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITH A COPY TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grantee and Grantor shall, at any time and from time to time, have the right to specify as their proper addresses for purposes of this Easement any other address or addresses by giving fifteen (15) days' written notice thereof to the other party in accordance with the provisions herein.

23. Event of Default. In the event Grantee shall fail to comply with any term or condition herein (an "Event of Default"), and such Event of Default shall continue after thirty (30) days from Grantee's receipt of written notice from Grantor specifying such Event of Default (except that in the case of an Event of Default which cannot with due diligence be cured within such period, then so long as Grantee proceeds with due diligence to commence to cure the Event of Default within the aforesaid thirty (30) day period and thereafter prosecutes the curing of such Event of Default with due diligence to completion, the time of Grantee within which to cure the same shall be extended for such period as may be reasonably necessary to complete the same with due diligence in the reasonable opinion of Grantor), then Grantor shall have the right to terminate the Easement upon notice to Grantee, and Grantor may proceed to exercise any and all rights and remedies set forth in this Easement Agreement or which Grantor may otherwise have at law or in equity. Notwithstanding the preceding, if the Event of Default is one that threatens the safety of the public or the ability of Grantor or a Railroad Company to operate the transportation system and/or conduct any of its daily business functions, then it shall be considered an emergency default and if Grantee does not affect an immediate cure, Grantor may use self-help at the expense of Grantee and Grantee shall be responsible for such expenses as well as for a fifteen percent (15%) administrative fee above the expenses. In the event this Easement is terminated pursuant to this Section 23, Grantor shall retain all consideration paid by Grantee hereunder as partial damages, without prejudice to its right to claim additional damages as a result of the breach.

24. Governing Law. This Easement shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

25. Bind and Inure. The obligations and benefits created pursuant hereto shall run with the land and be binding upon and inure to the benefit of the respective parties, their heirs, executors, administrators, successors and assigns.

26. Due Authority. Grantor represents to Grantee that Grantor has the full power and authority to enter into and perform its obligations under this Easement Agreement and that this Easement Agreement constitutes a valid, legal and binding obligation of Grantor enforceable against Grantor in accordance with its terms. Grantee represents to Grantor that Grantee has the full power and authority to enter into and perform its obligations under this Easement Agreement and that this Easement Agreement constitutes a valid, legal and binding obligation of Grantee enforceable against Grantee in accordance with its terms.

27. Waiver. No consent or waiver, express or implied by Grantee or Grantor to or for any breach of any covenant, condition or duty of the other party hereunder shall be construed as a consent or waiver to or for any other breach of the same or any other covenant, condition or duty hereunder.

28. Counterparts. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire agreement between the parties and may be modified or amended only by a written instrument executed by both Grantor and Grantee.

29. Liability. In no event shall any member, officer, manager, partner, trustee, principal, officer, director, shareholder, employee or agent of Grantor have or incur any personal liability for any of the liabilities or obligations of Grantor or Grantee, as applicable, hereunder and no personal judgment shall be sought, levied or enforced against any such person individually.

30. Severability. If any provision hereof shall to any extent be invalid or unenforceable, the remainder hereof (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected, and each provision hereof shall be valid and enforceable to the fullest extent permitted by Applicable Laws.

31. Advertisements; Signage. No advertising signs, boards, billboards or banners of any nature may be affixed to the Easement Area or Grantee's Improvements by Grantee or those claiming through Grantee, without the prior written consent of Grantor, which consent may be withheld in its sole discretion.

**[Signatures on the following page]**

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hand and seal  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

[\_\_\_\_\_]

By: \_\_\_\_\_

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public,  
personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of  
identification, which was my personal knowledge, to be the person whose name is signed on  
the preceding document, and acknowledged to me that s/he signed it voluntarily for its stated  
purpose as \_\_\_\_\_ of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My commission expires: \_\_\_\_\_

**[Additional signatures on the following page]**

**GRANTEE:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was my personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that s/he signed it voluntarily for its stated purpose as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My commission expires: \_\_\_\_\_



**EXHIBIT C**

**FORM OF LICENSE FOR ENTRY**

[see Appendix C of this Invitation to Bid]

## **APPENDIX C – Model License of Entry**

APPENDIX C

MODEL

LICENSE FOR ENTRY

BOSTON AND REVERE, MASSACHUSETTS

MBTA/MASSDOT # 16007

1. *License for Entry*

The Massachusetts Bay Transportation Authority, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, established and existing pursuant to Chapter 161A of the Massachusetts General Laws, with a usual place of business at 10 Park Plaza, Boston, Massachusetts (the "MBTA") and the Massachusetts Department of Transportation, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, established and existing pursuant to Chapter 6C of the Massachusetts General Laws, with a usual place of business at 10 Park Plaza, Boston, Massachusetts ("MassDOT") have designated \_\_\_\_\_, with a usual place of business at \_\_\_\_\_ ("Licensee") as the Successful Bidder for an option to purchase an easement in a disused railroad right-of-way off William F. McClellan Highway (Route 1A), Boston and Revere, Massachusetts (the "Designation"), and hereby grants to Licensee, its employees, consultants and contractors, the right and privilege to enter upon the property identified below and shown as "Easement 1" and "Easement 2" on Exhibit A (the "Premises"), subject to the terms and conditions of this License for Entry ("License").

2. *General Conditions*

Among the terms and conditions of this License are included the following conditions (collectively, the "General Conditions"):

- 2.1 Effective Date: \_\_\_\_\_, 2019
- 2.2 Licensee: \_\_\_\_\_
- 2.3 Term: From the Effective Date hereof until closing of the grant of easement contemplated in the Option Agreement between the parties hereto of even date herewith (the "Agreement"), unless earlier terminated as provided in this License.
- 2.4 License Fee: Waived
- 2.5 Administrative Fee: Waived

2.6 Premises: The Premises consist of approximately 374,806 square feet of land (including approximately 332,603 square feet of land owned by the MBTA and approximately 42,203 square feet of land owned by MassDOT) situated off William F. McClellan Highway, Boston and Revere, Massachusetts, as shown on Exhibit A.

2.7 Scope of License: To conduct physical examination of the Premises, including, without limitation, land surveying and visual and photographic observations of the Premises; conduct sound, vibration and electromagnetic measurements at any above-ground locations; conduct Geotechnical Studies (as defined below) and environmental testing, all as more fully described herein and in Exhibit B, subject to all of the terms and conditions of this License.

2.8 Notices: MBTA:  
Massachusetts Bay Transportation Authority  
Real Estate Department  
10 Park Plaza, Room 5720  
Boston, Massachusetts 02116  
Attn: Deputy Chief Real Estate Officer

and

Massachusetts Bay Transportation Authority  
Railroad Operations Department  
32 Cobble Hill Road  
Somerville, MA 02143  
Attn: Director of Railroad Engineering

and

Massachusetts Department of Transportation  
Rail Division  
10 Park Plaza, Room 3170  
Boston, Massachusetts 02116  
Attn: Deputy Administrator

and

with a copy to:

Massachusetts Realty Group  
20 Park Plaza, Suite 1120  
Boston, MA 02116  
Attn: Counsel

Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. Consideration**

The rights contained in this License are granted for good and valuable consideration, the sufficiency of which is hereby acknowledged.

Licensee agrees to reimburse the MBTA and MassDOT for accommodations made by the MBTA and MassDOT in facilitating Licensee's rights hereunder, including but not limited to the cost of reviewers, inspectors, supervisors and flagmen.

**4. Terms and Conditions of License**

This License is subject to the following terms and conditions:

**4.1 Due Diligence**

- (a) Survey Matters. The Licensee may have an ALTA Survey prepared by a registered land surveyor, at the Licensee's sole expense (the "Survey"). Such Survey shall be completed after completion of the Safety Class (as hereinafter defined), and during those hours as designated by Licensee, after reasonable advance notice to the MBTA and MassDOT, and the Licensee shall have a copy of the Survey delivered to the MBTA and MassDOT promptly upon receipt thereof but no later than when a copy of the Title Report is sent to the MBTA and MassDOT by Licensee pursuant to the Agreement.
  
- (b) Geotechnical Matters. Upon approval of the Plan and Access Plan for Geotechnical Testing, both defined in Exhibit B, the Licensee shall have the right to have geotechnical investigations of the Premises made, at the Licensee's sole expense, including, without limitation, inspections of the condition of the soils and subsurface of the land within the Premises (the "Geotechnical Studies") to determine whether the subsurface of the land within the Premises are sufficient to support the development project proposed by Licensee in accordance with its bid submitted to the MBTA and MassDOT on \_\_\_\_\_, 2019 as modified through the permit and approval process. Such Geotechnical Studies shall be completed after completion of the Safety Class and during those hours as designated by Licensee, after reasonable advance notice to the MBTA and MassDOT.

- (c) Sound, Vibration and Electromagnetic Measurements. The Licensee shall have the right to conduct sound and vibration measurements on the Premises. If such measurements are subsurface, they shall be completed after completion of the Safety Class. All measurements shall be completed during those hours as designated by Licensee, after reasonable advance notice to the MBTA and MassDOT.
- (d) Environmental Testing. Upon approval of the Plan Access Plan for Environmental Testing, both defined in Exhibit B, the Licensee shall have the right to conduct an environmental investigation at the Premises. Such environmental investigation shall be completed after completion of the Safety Class and during those hours as designated by Licensee, after reasonable advance notice to the MBTA and MassDOT.
- (e) Restoration of Premises. In exercising its rights under this Section 4.1, the Licensee shall not interfere with the MBTA's or MassDOT's right to continue to have full use of the Premises ("MBTA's and MassDOT's Use Rights"). During the conducting of any due diligence, and prior to the daily commencement of the MBTA's or MassDOT's Transportation Activities (as hereinafter defined), the Licensee shall restore the Premises to the condition that they were in immediately prior to the Effective Date. Should Licensee need to drill any holes or remove any vegetation or make any physical changes and/or penetrations to the Premises during the Term, Licensee shall request the MBTA's and MassDOT's permission to undertake the same, which permission may be subject to certain terms and conditions including the restoration of the Premises to a condition reasonably satisfactory to the MBTA and MassDOT immediately following the completion of the testing. In no event shall the due diligence in any way interfere with MBTA's and MassDOT's Transportation Activities. Licensee shall provide evidence of insurance coverage in the amounts set forth in Section 4.4 hereof for Licensee's consultants and contractors selected to perform the due diligence prior to any entry onto the Premises or the commencement of due diligence. The "MBTA's and MassDOT's Transportation Activities" means the operation of the MBTA and MassDOT of private railroad, transit, bus, garage, maintenance, power and other facilities on and along the commuter rail right-of-way as well as the installation, construction, reconstruction, use, maintenance, repair, inspection, replacement, relocation and/or removal of any of the facilities on the Premises or under the Premises, and the use of the Premises by the MBTA's and MassDOT's agents, servants, employees, contractors, invitees, licensees and by commuters using the Premises.
- (f) Safety Class. Prior to any testing and investigations as set forth in Section 4.1(a), (b), (c) and (d), no representatives, consultants or employees of Licensee may enter onto the Premises unless that individual has first attended a Safety Orientation/RWP Class ("Safety Class") as required by MBTA and MassDOT. It is the Licensee's responsibility to assure that each

and every person entering the Premises has received the appropriate training.

- (g) Default. No due diligence may be performed if there is any default hereunder or under the Agreement beyond applicable notice and cure periods.
- (h) Reports. Except as specifically provided herein, Licensee shall deliver to the MBTA and MassDOT only those reports specifically required by the terms and provisions of this License unless the MBTA and MassDOT at their sole election shall request Licensee to deliver copies of any other reports.
- (i) Limitation on Invasive Procedures. Licensee shall be permitted to perform the non-invasive due diligence described in Sections 4.1(a) and 4.1(c) above upon the Effective Date hereof. Licensee shall NOT be permitted to perform the invasive due diligence described in Sections 4.1(b) and 4.1(d) above unless and until Licensee is satisfied that either (i) there are no outstanding title issues with regard to the Premises; or (ii) the MBTA and MassDOT have agreed to cure all outstanding title issues.

#### 4.2 Scope of Activity

- (a) Scope of Activity

The Scope of Activity is the Scope of License (Section 2.7) as modified by the terms of this License and Exhibit B. The Licensee shall minimize the disruption to and alteration of the Premises and, as soon as possible after each entry onto the Premises, shall return the Premises to the condition existing immediately prior to the initiation of the Scope of Activity and entry hereunder.

Except in accordance with an approved Access Plan or in case of emergency, Licensee shall provide at least seven (7) days' prior written notice of its desire to enter the Premises to [\_\_\_\_\_]. The MBTA and MassDOT may have an observer present at all times when Licensee is present on the Premises. See Exhibit B for required notice from Licensee when Licensee needs access because of an emergency. Licensee shall do all work in accordance with the Plans described in Exhibit B.

- (b) Utilities

Licensee acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of the Scope of Activity. Licensee shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts

Regulations, more particularly, 220 CMR 99.00 et seq. To the extent a Railroad Company (as defined in Section 4.3(a) below), the MBTA, MassDOT, or parties acting on behalf of any of them, locate and mark utilities in the railroad rights of way and appurtenant thereto to facilitate Licensee's activities hereunder, Licensee shall be responsible for payment to such parties for such services which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the railroad and transit line(s) or used in connection with services or operations of the MBTA, MassDOT and/or the Railroad Companies. Any damage to any utilities caused by Licensee shall be the sole responsibility of Licensee. If Licensee does not immediately repair any utilities it has damaged, the MBTA and MassDOT, without being under any obligation to do so and without waiving the Licensee's obligation hereunder, may repair any utilities damaged by the Licensee immediately and without notice in case of emergency. In the event the MBTA or MassDOT exercises such right, the Licensee shall pay to the MBTA or MassDOT immediately upon demand all of the MBTA's or MassDOT's cost of performing such repairs plus a fee equal to twenty-five percent (25%) of the MBTA's or MassDOT's cost of performing such repairs to reimburse the MBTA or MassDOT for their administrative costs.

(c) Subordination to MBTA's and MassDOT's Operating Requirements

The work permitted hereby shall be subordinate to the requirements of the MBTA and MassDOT in maintaining and operating a transportation system and may be stopped or delayed, at any time, in response to each requirement. The MBTA and MassDOT shall not be responsible for any damages incurred by Licensee as a result of any such work stoppage, delay or required relocation.

(d) Environmental Cooperation

If for any reason Licensee is not responsible for Hazardous Materials, defined below, on the Premises then Licensee agrees to cooperate with the MBTA and MassDOT in the determination of the party liable for the remediation of the Premises under applicable federal and/or state law. Such cooperation may include the temporary adjustment of the rights granted to Licensee hereunder. The MBTA and MassDOT shall not be responsible for any damages incurred by the Licensee as a result of such temporary adjustment. "Hazardous Materials" shall mean "oil" or "hazardous materials", as those terms are defined in Massachusetts General Laws Chapter 21E ("Chapter 21E") and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP"), as amended from time to time.



(e) Remediation Obligation of the Licensee

Whenever by law or the terms of this License, Licensee is responsible for remediation of Hazardous Materials on MBTA or MassDOT property, Licensee, upon written demand of the MBTA or MassDOT, shall conduct, at Licensee's sole cost and expense (or, at the MBTA's or MassDOT's election, reimburse the MBTA or MassDOT for the cost and expense incurred by the MBTA or MassDOT in connection with the MBTA's or MassDOT's conduct of), all response actions required by Chapter 21E and the MCP with respect to the Hazardous Materials (including the hiring of a Licensed Site Professional). Any such response action, if performed by Licensee, shall be performed in accordance with Chapter 21E, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by the MBTA and MassDOT, shall be completed in a timely manner to the reasonable satisfaction of the MBTA and MassDOT, and shall allow the MBTA and MassDOT to use the Premises, and/or MBTA and MassDOT owned adjacent or contiguous property, for their present use and for any future transportation use. Licensee shall also be responsible for the reasonable costs incurred by the MBTA and MassDOT in hiring consultants (including a Licensed Site Professional) to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results.

(f) Notice of Project Completion

Upon completion of its work described within this License, Licensee shall provide written notice of the date of work completion to the MBTA and MassDOT at each address listed in Section 2.8.

4.3 Indemnification and Release of MBTA and MassDOT

- (a) Licensee shall indemnify, defend (at the option of the MBTA or MassDOT) and hold the MBTA, MassDOT and each and every entity authorized now or during the term of this License to operate transportation operations on property adjacent to the Premises (collectively, with the exception of the MBTA and MassDOT, the "Railroad Companies") harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever including, without limitation, those related to Hazardous Materials that may be imposed upon, incurred by, or asserted against the MBTA, MassDOT, or the Railroad Companies by reason of any of the following occurrences:
- (1) the activities of the Licensee hereunder or the exercise by the Licensee of any rights or privileges hereby granted; or
  - (2) the presence, discovery or revealing of any pre-existing Hazardous Materials on the Premises (or other property of the MBTA and

MassDOT adjacent to the Premises) (i) which discovery is a result of the Licensee's activities hereunder; (ii) where said Hazardous Materials are present because of Licensee's previous occupancies of the Premises, whether those occupancies were unauthorized or permitted pursuant to prior agreements between the parties; or (iii) where those pre-existing Hazardous Materials migrated from land now or previously owned, leased, occupied or operated by the Licensee or for which the Licensee is a potentially responsible party as defined under Chapter 21E; or the placement or accidental release of any Hazardous Materials onto the Premises (or other property of the MBTA and MassDOT adjacent to the Premises) by Licensee or its employees, agents, contractors or consultants or by the employees, agents, or consultants of Licensee's contractors or subcontractors;

- (3) any use, condition or occupation of the Premises or any part thereof by Licensee; or
- (4) any failure of Licensee to perform or comply with any of the terms hereof, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the activities or any part thereof.

In subsection (2) above, Licensee's previous occupancies of the Premises includes occupancies by the predecessors in interest of Licensee.

The foregoing indemnification shall be limited to the extent of the gross negligence or willful misconduct of the MBTA, MassDOT the Railroad Companies and their respective agents and employees.

- (b) Licensee has inspected the Premises and decided that the Premises are suitable for the uses Licensee contemplates. Licensee assumes all the risk of entry on to the Premises.
- (c) Licensee hereby releases the MBTA, MassDOT, and the Railroad Companies from any responsibility for Licensee's losses or damages related to the condition of the Premises, and Licensee covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or any other claim) (hereinafter "Claims") against the MBTA, MassDOT, or the Railroad Companies, including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal

injury damages and damages related to a person's death relating to, or arising from, the condition of the Premises except to the extent caused by such released party's negligence.

- (d) In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, Licensee shall indemnify, defend (at the option of the MBTA and MassDOT) and save the MBTA, MassDOT, and the Railroad Companies harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments related to the injury, illness or death of any employee of Licensee or of an employee of Licensee's contractors or consultants; except if the Claim arose because of the MBTA's, MassDOT's, or the Railroad Companies' gross negligence or willful misconduct. It shall not be negligent to allow access to the Premises that are in substantially the condition they were in when Licensee inspected the Premises before accepting this License. It shall not be negligent to allow access to the Premises during normal transportation operations.

Licensee shall obtain a written release of liability similar to the one in this Section 4.3(d) (and including the language of Section 4.3(c)) in favor of the MBTA, MassDOT, and the Railroad Companies from each of Licensee's consultants and contractors before they enter onto the Premises.

- (e) Licensee shall be notified, in writing, by the MBTA, MassDOT, and by the Railroad Companies of the assertion of any claim against it that Licensee has agreed to indemnify above (the "Indemnified Claim").
- (1) If the MBTA or MassDOT decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, Licensee shall reimburse the MBTA and/or MassDOT for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the MBTA and/or MassDOT in connection with the MBTA's and/or MassDOT's defense of the Indemnified Claim against it and/or the conduct of all response actions, including, without limitation, those required by Chapter 21E and the MCP. The settlement or compromise of any Indemnified Claim shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the MBTA or MassDOT on behalf of the Licensee or any other action that would materially prejudice the rights of the Licensee without the Licensee's express written approval. The Licensee shall cooperate with the MBTA and MassDOT in the defense of any Indemnified Claim. This same right of self-defense and the right to Licensee

reimbursement shall apply to each of the Railroad Companies that has an Indemnified Claim against it.

- (2) If the MBTA or MassDOT decides to have Licensee defend the Indemnified Claim or handle the response action, the MBTA and MassDOT shall notify Licensee of that decision in writing and the Licensee shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA and MassDOT are fully indemnified by the Licensee and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the Licensee on behalf of the MBTA or MassDOT or any other action that would materially prejudice the rights of the MBTA or MassDOT without the MBTA's and MassDOT's express written approval. The MBTA and MassDOT shall cooperate with the Licensee in the defense of any Indemnified Claim. If any of the Railroad Companies wants the Licensee to defend it against an Indemnified Claim, then they must agree to this Section 4.2 (e)(2).

If any response action due to the presence of Hazardous Material or the threat of release of Hazardous Waste onto the Premises (or other property of the MBTA or MassDOT which abuts the Premises) is performed by Licensee, the response action shall be performed in accordance with Section 4.1 (e).

For purposes of this Section 4: (i) Licensee shall include Licensee and its directors, officers, employees, agents, successors and assigns; (ii) the MBTA shall include the MBTA and its directors, officers, employees, agents, successors and assigns; (iii) MassDOT shall include MassDOT and its directors, officers, employees, agents, successors and assigns.

The provisions of Sections 4.1, 4.2 and 4.3 shall survive the termination or expiration of this License.

#### 4.4 Insurance

Prior to entry hereunder, Licensee and its consultants and contractors shall provide the MBTA and MassDOT with a certificate or certificates of insurance and shall, during the Term hereof, renew and replace any expired certificate, evidencing the insurance of the activities permitted hereunder, and Licensee's covenant of indemnification hereinabove, with companies that are reasonably acceptable to the MBTA and MassDOT, as stated below, in which the MBTA, MassDOT, and others hereinafter specified are either additional insureds as their

interests may appear or named insureds and which provide minimum liability coverage as follows:

(a) Commercial General Liability Insurance

Insuring Licensee, the MBTA, MassDOT, the Premises, and all activities allowed hereunder as well as Licensee's indemnification obligations contained herein, with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). The policy shall name the MBTA, MassDOT, and the Railroad Companies as additional insureds. This policy shall provide coverage on a primary and non-contributory basis for the MBTA, MassDOT and the Railroad Companies. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA, MassDOT and the Railroad Companies.

(b) Worker's Compensation Insurance

Insuring all persons employed by Licensee in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against the MBTA, MassDOT, the Railroad Companies, or the Premises, including (i) Workers' Compensation Insurance providing statutory coverage as required by the Commonwealth of Massachusetts, and (ii) Employers' Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000) per accident. Each of Licensee's contractors, subcontractors, and consultants performing work on or about the Premises shall have similar policies covering their employees. All policies of insurance required by this Section 4.3 (b) must contain a clause waiving the right of subrogation in favor of the MBTA, MassDOT, and the Railroad Companies.

(c) Automobile Liability Insurance

Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) covering all owned, non-owned, hired, rented or leased vehicles of Licensee, its employees, officers, subcontractors and consultants that are used in the activities permitted hereunder. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). This policy shall name the MBTA, MassDOT and the Railroad Companies as additional insureds. This policy shall provide coverage on a primary and non-contributory basis for the MBTA, MassDOT and the Railroad Companies.

(a) Umbrella Liability Insurance:

Umbrella liability insurance with limits of not less than Ten Million Dollars (\$10,000,000) providing excess coverage over all limits and coverage noted in

paragraph (a) and paragraph (c) above. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). This policy shall name the MBTA, MassDOT and the Railroad Companies as additional insureds. This policy shall provide coverage on a primary and non-contributory basis for the MBTA, MassDOT and the Railroad Companies. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA, MassDOT and the Railroad Companies.

The MBTA and MassDOT may require reasonable increases in limits of the above insurance coverages from time to time. The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better, shall be kept in full force and effect at all times, shall be primary and non-contributory to any insurance or self-insurance maintained by the MBTA, MassDOT and the Railroad Companies, and shall require that the MBTA and MassDOT be given at least thirty (30) days' advance written notice in the event of any cancellation or non-renewal in coverage. All required policies of insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism. All such insurance as is required of Licensee shall be provided by or on behalf of all contractors, subcontractors and consultants to cover their operations performed. At the inception date of this License for Entry and throughout the Term of this License for Entry, the MBTA and MassDOT shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required. Licensee shall be held responsible for any modifications, deviations, or omissions in the compliance with these requirements by any contractor, subcontractor or consultant of Licensee.

ALL CERTIFICATES OF INSURANCE PERTAINING TO THIS REQUEST (AS WELL AS RENEWAL CERTIFICATES) SHOULD DESCRIBE THE SITE THAT IS COVERED.

#### 4.5 Compliance with Laws

Licensee shall comply with, and shall cause all work performed to comply with all Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances.

Licensee shall also be responsible for obtaining any and all Federal, state, and/or local permits and/or approvals necessary to carry out the activities permitted hereunder.

#### 4.6 Non-Exclusive Use

Neither the MBTA nor MassDOT makes any representations or warranty, express or implied, that the Licensee shall have sole or exclusive use of the Premises under this License. In the event other agreements, licenses or easements have been or are granted, the Licensee shall be responsible for coordinating its work and activities

with that of other licensees and parties in interest. Neither the MBTA nor MassDOT shall be liable for delays, obstructions, or like occurrences affecting the Licensee, arising out of the work of the MBTA, MassDOT, or other licensees or parties in interest.

Licensee's rights herein are granted subject to easements and rights of record, existing leases and licenses, and all MBTA or MassDOT ongoing transportation operations.

#### 4.7 No Warranty

Licensee accepts the Premises "As Is" and the MBTA and MassDOT make no warranty, express or implied, as to the condition of the Premises.

#### 4.8 Termination

At the expiration or termination of this License, Licensee agrees to restore the Premises to the condition it was in at the Effective Date, and to remove all of Licensee's personal property and debris from the Premises. Should Licensee not perform such restoration at the end of the term of this License, the MBTA and/or MassDOT may perform any and all necessary restoration at the sole expense of the Licensee. Any personal property not so removed shall, at the option of the MBTA and MassDOT, either become the property of the MBTA or MassDOT be removed by the MBTA or MassDOT and disposed of without any liability in the MBTA or MassDOT for such removal and disposition, all at the sole expense of Licensee.

#### 4.9 Assignment

Licensee shall not, without the prior written consent of the MBTA and MassDOT, transfer or assign this License or any part hereof. Such consent may be withheld in the sole and absolute discretion of the MBTA and MassDOT. Any assignment made by Licensee without the prior written consent of the MBTA and MassDOT shall be null, void and of no further force or effect.

### 5. Notices

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (each, a "Notice"), shall be in writing and shall be deemed to have been properly given when delivered by a nationally recognized overnight mail service to the correct addressee, as described in Section 2.8 hereof. Notice shall be deemed received when actually received or when the proffered Notice has been refused by the addressee. The signature of an employee, servant or agent of the Addressee shall be determinative on the issue of actual receipt.

Licensee, the MBTA, and MassDOT shall, at any time and from time to time, have the right to specify as their proper addresses for purposes of this License any other address or addresses giving fifteen (15) days' written notice thereof to the other parties.

6. Results

This License explicitly allows Licensee to conduct certain investigations on MBTA and MassDOT owned land. If asked to do so by the MBTA or MassDOT in writing, Licensee agrees to provide to the MBTA or MassDOT, at no cost, a copy of the results of such investigations (including data and analysis) and all other work conducted under this License in both hard copy form and in a digital format specified by the MBTA or MassDOT regardless of whether the report was prepared by Licensee, its agent, consultant or contractor, or prepared on behalf of the Licensee. All results and reports shall be provided to the MBTA and MassDOT within ten (10) days of receipt by Licensee of such written request. Except in the event of an emergency, Licensee agrees to consult with the MBTA and MassDOT prior to contacting any governmental entity, regarding any information, results of analysis or reports regarding the Premises. Licensee shall give the MBTA and MassDOT a copy of any reports or notifications, including but not limited to release notifications, prior to submitting the same to any governmental entity.

7. Default and Termination

- (a) Termination for Non-Payment. In the event that Licensee shall neglect or fail to pay the License Fee, Administrative Fee, or any other sum herein specified to be paid upon the due date hereunder, Licensee shall be in default and the MBTA and MassDOT shall have the right at any time thereafter to terminate this License by giving Licensee ten (10) business days written notice of the MBTA's or MassDOT's decision to terminate for non-payment ("Termination Notice"). Licensee shall be entitled to cure any such default by tendering payment within the expiration of the ten (10) business days grace period which starts upon Licensee's, or Licensee's servants, agents or employee's receipt of (or refusal to accept) the Termination Notice.
- (b) Termination for Loss of Designation. Upon the removal or revocation of the Designation of Licensee by the MBTA and MassDOT, this License shall terminate and be of no further force or effect. Licensee shall remain liable to the MBTA and MassDOT for any costs or damages incurred prior to such termination.
- (c) Termination upon Completion of Due Diligence. Upon notification from Licensee that Licensee's due diligence is complete, this License shall terminate and be of no further force or effect. Upon the sale of the Premises to Licensee, this License shall terminate and be of no further force or effect. In either case, Licensee shall remain liable to the MBTA and MassDOT for any costs or damages incurred prior to such termination.
- (d) Default of Terms and Conditions

Licensee shall also be in default if Licensee:



- (1) fails to perform or observe any of the other covenants or agreements contained in this License or the Agreement beyond applicable notice and cure periods, or
- (2) makes any assignment for the benefit of creditors or files petition for relief under bankruptcy law, or
- (3) has a bankruptcy petition filed against it that is not dismissed within sixty (60) days, or
- (4) has its estate taken by process of law, proceeding in bankruptcy or insolvency or otherwise,

and if such defaults continue after two (2) weeks' written notice given by the MBTA and MassDOT to Licensee to cure, the MBTA or MassDOT may terminate this License by written notice to Licensee and/or deny access to the Premises and expel Licensee and those claiming through or under Licensee and remove Licensee's effects from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant, and, upon entry as aforesaid, the rights of Licensee created by this License shall terminate. Notwithstanding the preceding, if Licensee begins to cure a default as soon as possible within said two-week period and thereafter continues to pursue a cure with all due diligence, then the MBTA and MassDOT shall not terminate this License until and unless Licensee ceases to pursue a cure with all due diligence and has not in fact cured said default. Licensee agrees to pay any expense including reasonable attorneys' fees incurred by the MBTA or MassDOT in enforcing any of Licensee's obligations hereunder.

Notwithstanding the preceding, if the default is one that threatens the safety of the public or the ability of the MBTA, MassDOT, or a Railroad Company to operate its transportation system, then it shall be considered an "Emergency Default" and if Licensee does not effect an immediate cure, the MBTA or MassDOT may use self-help at the expense of Licensee and Licensee shall be responsible for such expenses as well as for a twenty-five (25%) percent administrative fee above the expenses. In the event of an Emergency Default, the MBTA or MassDOT may terminate this License.

**8. Holding Over - Intentionally Omitted**

**9. Work in Harmony**

Licensee agrees that in any work performed in or about the Premises, it will employ only labor which can work in harmony with all elements of labor being employed by the MBTA, MassDOT, and the Railroad Companies.

**10. Promotional Material**

Licensee shall not, without the prior written approval of the MBTA and MassDOT, refer to the MBTA or MassDOT in any promotional matter or material, including, but not limited to advertising, letterheads, bills, invoices and brochures.

**11. Nondiscrimination**

With respect to its exercise of all rights and privileges herein granted, Licensee shall undertake affirmative action as required by Federal and state laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless otherwise exempted therefrom. Licensee agrees that it shall comply with any and all required affirmative action plans submitted pursuant to the directives of any Federal agency and in accordance with applicable Federal Law and applicable state laws, rules and regulations.

Licensee shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or military veteran status in its activities at the Premises, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors.

Consistent with the law, Licensee shall use reasonable efforts to contact, encourage and utilize minority and female business enterprises in the procurement of materials and service under this License.

**12. Taxes**

Licensee shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable during the term of this License, which may be assessed against Licensee, the MBTA, or MassDOT which are directly attributable to Licensee's installations in, or use of, the Premises, or any personal property or fixtures of Licensee located thereon (collectively, "Taxes"). Licensee shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment. Such payments shall constitute an additional License Fee hereunder.

Licensee may contest, in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided Licensee shall indemnify the MBTA and MassDOT against any resulting loss, cost and expense. Licensee shall not permit a lien or encumbrance on the Premises by reason of failure to pay any Taxes.

**13. No Third Party Beneficiaries**

This License shall not be construed to create any third party beneficiary rights in favor of any other parties (except the explicit rights granted to the Railroad Companies) or any right or privilege for the benefit of any other parties.

**14. Entire Agreement**

This License, the Designation and the Agreement contain the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties hereto with respect to the subject matter hereof not embodied herein shall be of any force or effect. All amendments to this License shall be in writing and signed by both parties hereto.

**15. Governing Law**

This License shall be construed and interpreted under and pursuant to the laws of the Commonwealth of Massachusetts, and the Massachusetts and Federal conflict of laws provisions shall not be applied if the result is that other than Massachusetts law shall govern.

**16. Successors and Assigns**

The provisions of this License shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**17. Limitation on Damages**

Neither the MBTA nor MassDOT shall be liable to Licensee for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits unless specified herein.

**18. No Waiver**

No failure by MBTA or MassDOT to insist upon strict performance of any term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any such term, covenant or condition.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this License to be executed as of the Effective Date.

**LICENSOR:**

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSOR:**

**MASSACHUSETTS DEPARTMENT  
OF TRANSPORTATION**

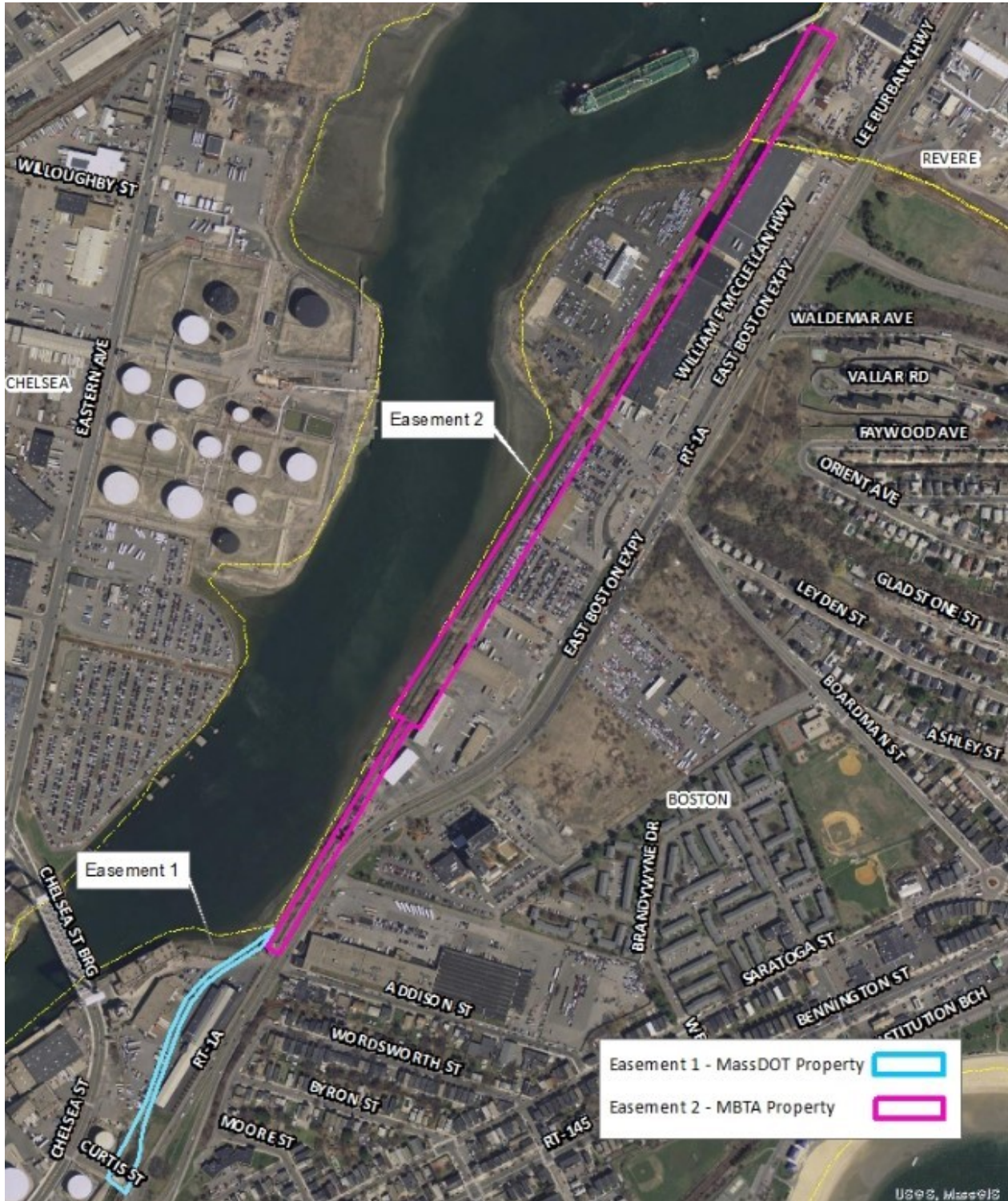
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A  
PLAN OF PREMISES

The Premises is shown as "Easement 1" and "Easement 2" in the illustration below.



## EXHIBIT B

### SCOPE OF ACTIVITY

Subject to the terms and conditions in this License, the Licensee, its agents, employees, contractors, subcontractors, and/or representatives are hereby granted a license to enter upon the Premises for the sole purpose of allowing Licensee to conduct land surveying and visual and photographic observations of the Premises and MBTA or MassDOT facilities and operations thereon; conduct sound, vibration and electromagnetic measurements on the Premises; conduct Geotechnical Studies and conduct Environmental Studies on the Premises. No other physical investigations of any kind may be performed on MBTA and MassDOT owned land.

Licensee may conduct the Scope of Activity in a safe manner and immediately notify the MBTA and MassDOT if any problem occurs which may result in a safety hazard. If any unsafe situation should occur, Licensee will correct the situation by eliminating any safety hazard immediately or, if the situation cannot be reasonably cured immediately, then in such longer time as is reasonably required.

Licensee shall submit plans for all desired access, including, but not limited to, the survey, the environmental and the geotechnical testing to the MBTA and MassDOT (the "Survey Plan," the "Environmental Plan" and the "Geotechnical Plan," respectively, or collectively the "Plan") as well as access plans, providing a detailed schedule of times when Licensee, its employees, contractors, subcontractors, or agents would like to be on the Premises to undertake each of the three kinds of work (the "Survey Access Plan," the "Environmental Access Plan" and the "Geotechnical Access Plan," respectively, or collectively the "Access Plan"), where the Plans include, without limitation, the location of the investigations and detailed specifications (including the materials to be used) and the proposed investigations, methods and tests of performing the work, or any part thereof, including plans for the ALTA survey, geotechnical and environmental testing. The MBTA and MassDOT shall approve the Plans or shall provide explicit comments which explain any unapproved items. Licensee shall not enter the Premises for the survey, environmental testing or the geotechnical testing until the Plan and the Access Plan for that work has been approved by the MBTA and MassDOT. Such approval may be withheld or conditioned in the MBTA's or MassDOT's sole discretion. The Scope of Activity for said surveying and testing will be more fully defined in the approved Plan and Access Plan, which approved Plan and Access Plan will automatically be incorporated herein by reference and made part of this License. The MBTA and MassDOT shall have full power to make a final determination of when Licensee may be on the Premises as it is necessary to coordinate the work of all those desiring or having the right to access the Premises.

Unless entry is made pursuant to an Access Plan approved by the MBTA and MassDOT, Licensee agrees to give at least seven (7) days' prior written notification to the MBTA and MassDOT (except in cases of emergency when notice shall be given to the MBTA and MassDOT as quickly as possible) of its need to access the Premises for all work to be performed under this License by contacting [\_\_\_\_\_]. Licensee understands that the more notice given to the MBTA and MassDOT the more likely it will be that Licensee can gain access at the times requested. **Licensee shall present evidence of the required insurance coverage before each entry. In the case of an emergency, Licensee shall as soon as possible contact the MBTA Control Center at (617) 222-5298.**

No activities permitted herein may be performed by Licensee except as approved in writing by the MBTA and MassDOT; and no method of testing shall be used by Licensee except with prior written approvals or written approvals received in the field from the MBTA's and MassDOT's representatives at the time the work is performed.

If at any time during the permitted work, the MBTA, MassDOT or a Railroad Company should, in its sole and absolute discretion, deem flagmen, watchmen, communications/signaling personnel, electric traction personnel, inspectors assigned to construction crews, and/or other measures, including but not limited to train re-routing, desirable or necessary to protect its operations, its property or its employees or other persons on or near the Premises (collectively, the "Safety Measures"), the MBTA, MassDOT, and/or the Railroad Company shall upon notice to Licensee (where such notice is feasible) have the right to place such personnel, including personnel of the agents of the MBTA, MassDOT, and/or the Railroad Company or to take such measures, at the sole cost and expense of Licensee. Such cost and expense shall include the current wages and fringe benefits due and owing to such personnel in and for the performance of such measures. Licensee hereby covenants and agrees to bear the full cost and expense thereof and to reimburse the MBTA, MassDOT, and the Railroad Companies within thirty (30) days of receiving an itemized, written invoice for such reimbursement. The failure of the MBTA, MassDOT, and the Railroad Companies to furnish such personnel or take such measures shall not relieve Licensee of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to Licensee on the part of the MBTA, MassDOT, or the Railroad Companies. Upon being notified that Safety Measures have been deemed desirable or necessary by the MBTA, MassDOT, or a Railroad Company, Licensee shall not commence or continue any work, unless and until such Safety Measures are in place.

If Licensee shall deem any Safety Measures by the MBTA, MassDOT, or a Railroad Company or their respective agents for supervision of the activity hereunder as unreasonable, Licensee shall nevertheless pay for such Safety Measures, but may take exception in writing thereto as an unreasonable requirement in each instance. The parties agree to review such exceptions at the times of billings for such services and attempt to adjust them as the MBTA, MassDOT, and the Railroad Company may deem appropriate. This reimbursement is in addition to the License Fee and Administrative Fee required hereunder.

Licensee shall comply with all applicable requirements of the MBTA Railroad Operations Directorate the MBTA Special Instructions, each as amended from time to time. To the extent that there is an irreconcilable conflict between the aforementioned requirements and this License, the terms and conditions contained in the MBTA Railroad Operations Directorate shall control unless the requirements in this License are stricter.

No individual, including representatives and employees of Licensee, may enter onto the Premises unless that individual has first attended a Safety Orientation/RWP Class as required by MBTA and/or MassDOT.