

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
USE AND OCCUPANCY AGREEMENT
TRANSIT PROPERTIES
BOSTON, MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY**

1. Use and Occupancy Agreement

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 (hereinafter referred to as "MBTA"), hereby grants to the Boston Redevelopment Authority with a usual place of business at 1 City Hall Plaza, Boston, Massachusetts 02201, its employees, consultants and contractors (hereinafter referred to as "OCCUPANT"), the right and privilege to enter upon, use and occupy a portion of certain property of the MBTA identified as the North Plaza, between the Dudley Station and 17-19 Warren Street in Boston, Massachusetts as shown on Exhibit A attached hereto, and incorporated herein, (hereinafter referred to as the "Premises") for the purposes described in the Scope of Use and Occupancy below. Such use and occupancy may be conducted only during the Term.

2. General Conditions

- 2.1 Date:** October 15, 2007
- 2.2 OCCUPANT:** Boston Redevelopment Authority
- 2.3 Term:** One year beginning October 15, 2007; except that the MBTA may terminate this Agreement at any time with thirty (30) days written notice.
- 2.4 Occupancy Fee:** Waived
- 2.5 Administrative Fee:** Waived
- 2.6 Premises:** A certain parcel of land, known as the North Plaza, across from the Dudley Street Station, and adjacent to 17-19 Warren Street in Boston, Massachusetts as shown in Exhibit A attached hereto.

2.7 Scope of Use and Occupancy Agreement:

To use and occupy the Premises solely for purpose of

temporarily installing a construction fence around the plaza to facilitate OCCUPANT's demolition and construction projects adjacent to the Premises, while keeping the existing fence in place, and for no other purpose, subject to the remainder of this Agreement Including, Exhibit B, attached hereto and incorporated herein and made a part herein.

OCCUPANT understands and agrees to the following conditions:

- That OCCUPANT shall protect the MBTA bus Shelter during demolition and construction.
- That OCCUPANT shall deny access to the public to the plaza and keep the existing fence in place. OCCUPANT shall install a temporary fence around the plaza restricting access during the Term and shall provide signage as may be required in the sole discretion of the MBTA, both on the fencing and on MBTA property to prohibit public access during construction and to facilitate pedestrian traffic.
- Construction vehicles entering the construction area from the Washington Street side shall not be permitted on MBTA property.
- That flagging services may be required at the sole discretion of the MBTA Bus Operations Department, by contacting Jim Monahan at 617-222-4741.

2.8 Notices:

MBTA:

Real Estate Department
Massachusetts Bay Transportation Authority
10 Park Plaza, Room 5720
Boston, Massachusetts 02116
Attn: Director of Real Estate

and

MBTA Bus Operations Department
45 High Street
Boston, Massachusetts 02111
Attn: Director

and

DESIGNATED REPRESENTATIVE:
Transit Realty Associates, LLC
20 Winthrop Square
Boston, Massachusetts 02110
Attn: General Counsel

and,

OCCUPANT:

Boston Redevelopment Authority
1 City Hall Plaza
Boston, Massachusetts 02201
Attn: Director

Boston Redevelopment Authority
1 City Hall Plaza
Boston, Massachusetts 02201
Attn: General Counsel

3. Fee

The rights contained in this Agreement are granted for good and valuable consideration, including, without limitation, the Occupancy Fee and Administrative Fee.

4. Terms and Conditions of Agreement

This Agreement is subject to the following terms and conditions:

4.1 Scope of Use and Occupancy

(a) Scope of Use and Occupancy

Subject to the terms and conditions in this Agreement, the OCCUPANT, its agents, employees, contractors, subcontractors and/or representatives are hereby granted the right to enter upon, use and occupy the Premises for the purposes more fully described in Paragraph 2.7.

(b) Utilities

OCCUPANT acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of any activity. OCCUPANT shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also know 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, the MBTA, or parties acting on its behalf, locate and mark utilities in the rights of way and appurtenant thereto, OCCUPANT 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 or used in connection with services or operations of the MBTA. Any damage to any utilities on or near the Premises caused by OCCUPANT shall be the sole responsibility of OCCUPANT including facilities and appurtenances thereto, caused by OCCUPANT shall be the sole responsibility of OCCUPANT. The

MBTA, without being under any obligation to do so and without waiving the OCCUPANT's obligation hereunder, may repair any utilities damaged by the OCCUPANT immediately and without notice in case of emergency. In the event the MBTA exercises such right, the OCCUPANT shall pay to the MBTA immediately upon demand all of the MBTA's cost of performing such repairs plus a fee equal to twenty-five percent of the MBTA's cost of performing such repairs to reimburse the MBTA for its administrative costs.

(c) Subordination to MBTA's Operating Requirements

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

(d) Environmental Cooperation

If, as a result of OCCUPANT's activities permitted hereunder, "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") (collectively, "Hazardous Materials") are discovered on the Premises and pursuant to the remainder of this Agreement, the OCCUPANT is not responsible for the remediation of the Hazardous Materials that were discovered, then OCCUPANT agrees to cooperate with the MBTA 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 OCCUPANT hereunder. The MBTA shall not be responsible for any damages incurred by the OCCUPANT as a result of said temporary adjustment.

(e) Remediation Obligation of the OCCUPANT

Whenever OCCUPANT is liable for remediation costs for Hazardous Materials on the Premises (or on MBTA owned land abutting the Premises) pursuant to this Agreement (including, but not limited to, obligations that stem from the indemnifications herein stated below in Section 4.2) or pursuant to State or Federal law, then upon written demand of the MBTA, OCCUPANT shall conduct, at OCCUPANT's sole cost and expense (or, at the MBTA's election, reimburse the MBTA for the cost and expense incurred by the MBTA in connection with the MBTA'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) discovered on the Premises or on MBTA owned land abutting the Premises. Any such response action, if performed by OCCUPANT, shall be performed in accordance with Chapter 21E, the MCP, any other

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applicable statutes and regulations, and in accordance with plans and specifications approved by the MBTA, shall be completed in a timely manner to the reasonable satisfaction of the MBTA, and shall allow the MBTA to use the Premises, and/or adjacent or contiguous property, for its present use and for any future transportation use. OCCUPANT shall also be responsible for the reasonable costs incurred by the MBTA in hiring consultants to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results.

4.2 Indemnification and Release of MBTA

- (a) OCCUPANT shall indemnify, defend (at the option of the MBTA) and save the MBTA, 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 by reason of any of the following occurrences:
- (1) the activities of the OCCUPANT hereunder or the exercise by the OCCUPANT of any rights or privileges hereby granted; or
 - (2) the placement or accidental release of any Hazardous Materials onto the Premises (or other property of the MBTA adjacent to the Premises) by OCCUPANT or its employees, agents, contractors or consultants or by the employees, agents, or consultants of OCCUPANT's contractors or subcontractors (whether prior to or subsequent to the Term hereof) or the presence of Hazardous Materials as a result of the migration from land now or previously owned, leased, occupied or operated by OCCUPANT or for which the OCCUPANT is a potentially responsible party as defined under Chapter 21E; or
 - (3) the discovery of Hazardous Materials arising from the activities of OCCUPANT during the Term hereof (and all extensions thereof) on the Premises or on land owned by the MBTA adjacent to the Premises; or
 - (4) any use, condition or occupation of the Premises or any part thereof by OCCUPANT; or
 - (5) any failure of OCCUPANT 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.

- (b) OCCUPANT has inspected the Premises and decided that the Premises are suitable for the uses OCCUPANT contemplates. OCCUPANT assumes all the risk of entry on to the Premises.
- (c) OCCUPANT hereby releases the MBTA from any responsibility for OCCUPANT's losses or damages related to the condition of the Premises, and OCCUPANT 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 fourth-party claim, or any other claim) (hereinafter "Claims") against the MBTA, 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.
- (d) In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, OCCUPANT shall indemnify, defend (at the option of the MBTA) and save the MBTA 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 OCCUPANT or of an employee of OCCUPANT's contractors or consultants; except if the "Claim" arose because of the MBTA's grossly negligent or willful misconduct. It shall not be grossly negligent to allow access to the Premises that are in substantially the condition they were in when OCCUPANT inspected the Premises before accepting this Agreement.

OCCUPANT shall obtain a written release of liability similar to the one in this Section 4.2(d) [and including the language of Section 4.2(c)] in favor of the MBTA from each of OCCUPANT's consultants and contractors before they enter onto the Premises for purposes of construction or repair, if such use is allowed.

- (e) OCCUPANT shall be notified, in writing, by the MBTA within a reasonable time from the MBTA's receipt of the assertion of any claim against the MBTA of the assertion of any claim against it that OCCUPANT has agreed to indemnify above (the "Indemnified Claim").

- (1) If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, OCCUPANT shall reimburse the MBTA for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the MBTA in connection with the MBTA'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.
- (2) If the MBTA decides to have OCCUPANT defend the Indemnified Claim or handle the response action, the MBTA shall notify OCCUPANT of that decision in writing and the OCCUPANT 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 is fully indemnified by the OCCUPANT 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 OCCUPANT on behalf of the MBTA or any other action that would materially prejudice the rights of the MBTA without the MBTA's express written approval. The MBTA shall cooperate with the OCCUPANT in the defense of any Indemnified Claim.

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

(f) For purposes of this Section 4, the MBTA shall include the MBTA and its directors, officers, employees, agents, successors and assigns.

The provisions of Sections 4.1 and 4.2 shall survive the termination or expiration of this Agreement.

4.3 Insurance

Prior to entry hereunder, OCCUPANT and its consultants and contractors shall provide the MBTA 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 OCCUPANT's covenant of indemnification hereinabove, with companies that are reasonably acceptable to the MBTA, as stated below, in which OCCUPANT 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 the OCCUPANT, the MBTA, the Premises and all activities allowed hereunder as well as OCCUPANT's indemnification obligations contained in Section 4 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate. Umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA as an additional insured.
- (b) Worker's Compensation Insurance
Insuring all persons employed by OCCUPANT 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 or the Premises with limits of liability of not less than those required by Massachusetts General Laws Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. Each of OCCUPANT's subcontractors and consultants shall have similar policies covering their employees.
- (d) Automobile Liability Insurance
Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of OCCUPANT and its consultants and contractors that are used in the activities permitted hereunder.
- (e) Builder's All-Risk Insurance
Builder's All-Risk insurance with limits of not less than the full amount of each contract covering OCCUPANT and its consultants, contractors and subcontractors that are engaged in construction activities contemplated hereunder.

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 B+ or better, shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance, with the possible exception of Pollution Liability

Insurance, shall be written on an occurrence basis form, as opposed to a claim made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Umbrella, , and Builder's Risk Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA which precludes these insurers from being able to make any subrogation claims against the MBTA. All such required insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. All such insurance as is required of the Contractor shall be provided by or on behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required.

4.4 Compliance with Laws

OCCUPANT shall comply with, and shall cause all activity performed on the Premises to comply with all applicable Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances.

OCCUPANT 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.

4.5 Non-Exclusive Use

The MBTA makes no representations or warranty, express or implied, that the OCCUPANT shall have sole or exclusive use of the Premises under this Agreement. In the event other leases, licenses or easements have been or are granted, the OCCUPANT shall be responsible for coordinating its work and activities with that of other occupants; except that no new license or easement shall substantially negatively impact OCCUPANT'S operations. Notwithstanding the preceding, if the MBTA grants a license or easement to install a utility or telecommunications conduit, OCCUPANT'S operations may be temporarily impacted and OCCUPANT may either terminate this Agreement or negotiate a fair adjustment. The MBTA shall not be liable for delays, obstructions, or like occurrences affecting the OCCUPANT, arising out of the work of the MBTA or other occupants.

OCCUPANT's rights herein are granted subject to easements and rights of record and existing leases and agreements.

4.6 No Warranty

OCCUPANT accepts the Premises "As Is" and the MBTA makes no warranty, express or implied, as to the condition of the Premises.

4.7 Termination

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

4.8 Assignment

OCCUPANT shall not, without the prior written consent of the MBTA, transfer or assign this Agreement or any part hereof. Such consent may be withheld in the sole discretion of the MBTA.

5. Notices

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (hereinafter "Notice"), shall be in writing and shall be deemed to have been properly given when deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described in Section 2.8 or when delivered by first class mail, messenger or overnight mail service to the correct addressee. 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.

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

6. Default and Termination

(a) Termination for Non-Payment

In the event that OCCUPANT shall neglect or fail to pay the Agreement Fee, Administrative Fee or any other sum herein specified to be paid upon the

due date hereunder, OCCUPANT shall be in default and the MBTA shall have the right at any time thereafter to terminate this Agreement by giving OCCUPANT two (2) weeks written notice of the MBTA's decision to terminate for non-payment ("Termination Notice"). OCCUPANT shall not be entitled to cure any such default by tendering payment after the expiration of the two (2) week grace period which starts upon OCCUPANT or OCCUPANT's servants, agents or employee's receipt of (or refusal to accept) the MBTA's Termination Notice.

(b) Default of Terms and Conditions

OCCUPANT shall also be in default if OCCUPANT:

- (1) fails to perform or observe any of the other covenants or agreements contained in this instrument and on its part to be performed or observed, 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 to OCCUPANT to cure, the MBTA may terminate this Agreement by written notice to Occupant and/or deny access to the Premises and expel OCCUPANT and those claiming through or under OCCUPANT and remove OCCUPANT'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 OCCUPANT created by this Agreement shall terminate. OCCUPANT agrees to pay any expense including reasonable attorneys' fees incurred by the MBTA in enforcing any of OCCUPANT's obligations hereunder.

In the event this Agreement is terminated pursuant to this Paragraph 6, the MBTA shall retain the Agreement Fee as partial damages, without prejudice to its right to claim additional damages as a result of the breach.

7. Holding Over

If OCCUPANT desires to continue to use and occupy the Premises as defined in the Scope of Use and Occupancy after the end of the Term of this Agreement, the resulting Agreement shall be on a month-to-month basis. Such Agreement may be terminated by either Party at any time by providing the other Party with thirty (30) days prior written notice of termination. During such extended term, OCCUPANT shall be bound by all applicable provisions of this Agreement.

8. **Work in Harmony**

OCCUPANT agrees that in any work performed in or about the Premises, it will employ only labor that can work in harmony with all elements of labor being employed by the MBTA.

9. **Promotional Material**

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

10. **Nondiscrimination**

With respect to its exercise of all rights and privileges herein granted, OCCUPANT 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. OCCUPANT 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.

OCCUPANT shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era 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.

OCCUPANT shall use reasonable efforts to contact, encourage and utilize minority and female business enterprises in the procurement of materials and service under this Agreement.

11. **Taxes**

OCCUPANT 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, which may be assessed against OCCUPANT or the MBTA which are directly attributable to OCCUPANT'S installations in, or use of, the Premises, or any personal property or fixtures of OCCUPANT located thereon (collectively referred to as "Taxes"). OCCUPANT 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 Agreement Fee hereunder.

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

12. **No Third Party Beneficiaries**

This Agreement shall not be construed to create any third party beneficiary rights in favor of any other parties or any right or privilege for the benefit of any other parties.

13. **Entire Agreement**

This Agreement contains 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.

14. **Governing Law**

This Agreement 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.

15. **Successors and Assigns**

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

16. **Limitation On Damages**

The MBTA shall not be liable to OCCUPANT for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits unless specified herein.

17. **Termination of Prior Agreements**


The execution of this Agreement shall terminate any prior agreements that may exist between the parties.

18. **Special Provisions**

Special Provisions to this Agreement, if any, are attached as Exhibit D hereto and incorporated herein. In any instances where any Special Provision shall conflict with preceding provisions of the Agreement or Exhibits attached hereto; the Special Provisions shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 11 day of 1/08.

**OWNER:
MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

By: 
Mark Boyle
Director of Real Estate

**OCCUPANT:
BOSTON REDEVELOPMENT
AUTHORITY**

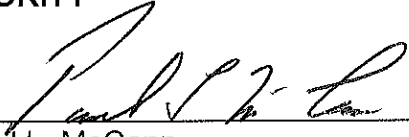
By: 
Paul L. McCann
Acting Director

EXHIBIT A

PLAN OF PROPERTY

EXHIBIT B

SCOPE OF USE AND OCCUPANCY

(1) Use of the Premises.

The Premises shall be used solely for the purposes described in Paragraph 2.7.

OCCUPANT shall have control of the Premises; except that the MBTA may enter the Premises at any time with forty-eight (48) hours notice to OCCUPANT (except in case of emergency when the MBTA shall give whatever notice is feasible.)

OCCUPANT shall operate and maintain the Premises and its installations thereon in a safe manner and immediately notify the MBTA if any problem occurs which may result in a safety hazard. If any unsafe situation should occur, OCCUPANT 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, and in all such unsafe situations, as well as MBTA Safety Procedures for Subway Operations as may be applicable depending on the location of the safety hazard.

(2) Special Requirements for Construction, Repairs and Maintenance of Premises.

In the event that OCCUPANT is entitled to construct anything on the Premises, OCCUPANT shall provide at least ten (10) days prior written notice of its intent to enter the Premises for such purpose to the MBTA'S Bus Operations Department by contacting Jim Monahan currently at 617-222-4741.

In addition, prior to beginning the construction, installation, repair or maintenance, OCCUPANT shall submit a plan and detailed specifications (including the materials to be used) and the proposed methods of performing the work, or any part thereof (the "Plan") to the MBTA. OCCUPANT shall not begin construction until the Plan has been approved by the MBTA. Such approval may be withheld in the MBTA's sole discretion. The Scope of Use and Occupancy for said construction, repairs, maintenance, operation and/or replacement will be more fully defined in the approved Plan, which approved Plan will automatically be incorporated herein by reference and made part of this Agreement. The OCCUPANT shall also provide the MBTA with a detailed schedule of times when OCCUPANT, its employees, contractors, subcontractors, or agents would like to be on the Premises to undertake the Scope of Use and Occupancy (the "Access Plan"). The MBTA, must have full power to make a final determination of when OCCUPANT may be on the Premises as it is necessary to coordinate the work of all those desiring or having the right to access to the Premises.

Unless entry is made pursuant to an Access Plan approved by both the MBTA, OCCUPANT agrees to give each time it desires entry, at least seven (7) days' prior written notification to the MBTA (except in cases of emergency when notice shall be given to the MBTA as quickly as possible) of its need to access the Premises for all work to be performed under this Agreement by contacting the MBTA Bus Operations

Department, of its desire for access. OCCUPANT understands that the more notice given to the MBTA, the more likely it will be that OCCUPANT can gain access at the times requested. OCCUPANT shall present evidence of the required insurance coverage before each entry. In the case of an emergency, OCCUPANT shall as soon as possible contact the MBTA Bus Operations Department.

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

If at any time during the work of repairs and maintenance, the MBTA 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, the MBTA shall upon notice to OCCUPANT (where such notice is feasible) have the right to place such personnel, including personnel of the MBTA's agents or to take such measures, at the sole cost and expense of OCCUPANT. 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. OCCUPANT hereby covenants and agrees to bear the full cost and expense thereof and to reimburse the MBTA within thirty (30) days of receiving an itemized, written invoice for such reimbursement. The MBTA's failure to furnish such personnel or take such measures shall not relieve OCCUPANT of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to OCCUPANT on the part of the MBTA. Upon being notified that the personnel or measures referred to in the first sentence of this Paragraph have been deemed desirable or necessary by the MBTA, OCCUPANT shall not commence or continue construction or repair measures, as the case may be, unless and until such personnel or measures are in place.

If OCCUPANT shall deem any requirement for flagging or the like by the MBTA or one of their agents for supervision of the activity hereunder as unreasonable, OCCUPANT shall nevertheless pay for such flagging and the like, but shall 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 may deem appropriate. This reimbursement is in addition to the Agreement Fee and Administrative Fee required hereunder.

OCCUPANT shall comply with all applicable "MBTA Special Instructions", dated April 1, 2003," attached hereto as Exhibit C and made a part of this Use and Occupancy Agreement, all of which documents are incorporated by reference herein and made a part of this Use and Occupancy Agreement. To the extent that there is an irreconcilable conflict between the aforementioned requirements and this Agreement, the terms and conditions contained in the MBTA Special Instructions shall control unless the requirements in this Agreement are more strict.

No individual, including representatives and employees of OCCUPANT, may enter onto the Premises unless that individual has first attended Amtrak's or its successor MBCR's Safety Orientation/RWP Class (for scheduling call 617-629-0541).

(3) Other Uses of the Premises.

If other uses are permitted herein, then OCCUPANT shall either (a) follow the requirements in Section (2) above, or (b) meet all requirements of the MBTA and the affected Railroad Companies to place barriers between the Premises and the Right of Way.

EXHIBIT C
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
RAILROAD OPERATIONS DIRECTORATE
SPECIFICATIONS, MAY 1994

- I. Guidelines and Procedures for Construction on MBTA Railroad Property
- II. Maintenance and Protection of Railroad Traffic
- III. Insurance Specifications
- IV. Pipeline Occupancy Specifications
- V. Specifications for Wire, Conduit, and Cable Occupations
- VI. Bridge Erection, Demolition and Hoisting Operations
- VII. Temporary Sheeting and Shoring
- VIII. Blasting Specifications
- IX. Temporary Protection Shields for Demolition and Construction
- X. Industrial Sidetrack Specifications
- XI. Right of Way Fencing Specifications
- XII. Test Boring Specifications
- XIII. Fiber Optic Cable Specifications

Occupant shall comply with all relevant portions of the above specifications.

Study of

**MBTA SPECIAL INSTRUCTIONS
APRIL 2003**

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LETTER OF TRANSMITTAL REGARDING SPECIAL INSTRUCTIONS

The Subway Operations, Bus Operations, Safety, Systemwide Maintenance & Improvements, Operations Support, and the Design and Construction Departments of the MBTA have determined that certain limitations regarding Contractor's activities are required while working on a construction project.

These Supplementary Conditions are included herein to augment the MBTA Standard Specifications, Division 1 – General Requirements, Section 00700 - General Conditions, Article 6 – Prosecution and Progress, Paragraph 6.04 - Limitations of Operations with additional information, which is applicable to construction projects.

However, for non-MBTA construction projects where Division I does not apply; such as in the case of rights to construct on MBTA property granted under a lease or license agreement, the enclosed Special Instructions are still applicable unless otherwise directed.

Contract drawings and specifications for non-MBTA construction projects, relative to all work that will be performed within or directly adjacent to MBTA property, must be submitted to the Authority's Chief Engineer of Design and Construction, Director of Subway Operations, Director of Bus Operations, Director of Systemwide Maintenance & Improvements, Director of Operations Support, Director of Safety, and the Director of Real Estate. The addresses and phone numbers are listed on the next page. The special instructions contain information to be complied with by the owner, contractors, and others associated with the project.

Applicable provisions of the special instructions plus additional requirements from other MBTA departments must be included in the contract specifications as instructions to the contractor when performing work on or adjacent to MBTA property. Permission to perform work on MBTA property will be granted by the Director of Real Estate only when contract plans and specifications are approved by the MBTA.

The enforcement of any of the following conditions shall not be construed as waiving any of the rights of the Authority in any of the other conditions of an MBTA contract.

A meeting to further discuss MBTA requirements may be arranged by contacting the offices of those listed in Article 1.a. and/or b. herein.

1. ACCESS TO AUTHORITY PROPERTY

- A. For MBTA Contractors Only: An owner or Contractor who wishes permission to enter upon or perform work over, on, under or adjacent to Authority property shall submit to the offices of the Authority's Chief Engineer of Design and Construction, the Director of Bus Operations, the Director of Subway Operations, Director of Systemwide

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Maintenance & Improvements, Director of Safety and the Director of Operations Support, a request in writing, a minimum of forty-two (42) days prior to the owner or the Contractor's planned commencement of any of the above stated activities. Addresses of the above are as follows:

MBTA's Chief Engineer of Design and Construction
6th Floor
10 Park Plaza
Boston, MA 02116
617 222-3116

Director of Systemwide Maintenance & Improvements
500 Arborway
Jamaica Plain, MA 02130
617 222-5454

Director of Subway Operations
10th Floor
45 High Street
Boston, MA 02110
617 222-4554

Director of Bus Operations
10th Floor
45 High Street
Boston, MA 02110
617 222-3368

Director of Operations Support
10th Floor
45 High Street
Boston, MA 02110
617 222-5460

Director of Safety
2nd Floor
21 Arlington Avenue
Charlestown, MA 02129
617 222-4244

- B. Non-MBTA Construction Contractors For Lessees or Licenses of the MBTA Only: An owner or Contractor who wishes permission to enter upon or perform work over, on, under or adjacent to Authority property shall submit to the offices of the MBTA's designated representative for real estate listed below, a request in writing, a minimum of forty-two (42) days prior to the owner or the Contractor's planned commencement of any of the above stated activities. The designated representative will distribute plan sets to

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the above MBTA departments and will coordinate departmental approvals. Application forms and instructions for obtaining access to MBTA property can be obtained by visiting the designated representative's website listed below and selecting "MBTA" and "Licensing."

License Administrator
Transit Realty Associates, L.L.C.
20 Winthrop Square
Boston, MA 02110
617 482-2525
www.transitrealty.com

The designated representative reports directly to:

MBTA Director of Real Estate
5th Floor
10 Park Plaza
Boston, MA 02116
617 222-3255

- C. Requests shall specify the name of the owner or the contractor, the reasons for entering the property, where the property will be entered, each individual location where work of a different nature is to be performed, the nature of such work, and the number of days, including time schedule, the owner or the contractor intends to remain on the property at each location. The Authority will process such requests and meet with the owner or contractor to work out a schedule and phasing for the work plus other arrangements including financial. The Authority shall request a list of the names of each individual who will enter upon or perform work on Authority property.
- D. The owner or contractor shall notify the representative of the Design and Construction Department and the appropriate Operations Director at least seventy-two (72) hours prior to entering the property as agreed upon earlier with the Authority. The owner or contractor shall notify the Design and Construction, and Operations Departments immediately if the job is to be closed down unexpectedly and shall again notify the Authority as specified above when work will commence.
- E. The owner or contractor shall make all necessary arrangements with the Authority before entering upon the property and perform the work in accordance with an MBTA approved work schedule. The owner or contractor shall not enter MBTA property or perform any work on Authority property without the presence of an assigned MBTA representative from the Design and Construction Department or the Operations Department who is responsible for monitoring the work of that owner or contractor for the Authority. Working on Authority property without an assigned MBTA representative present shall be cause for immediate eviction from the property.

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- F. The owner or contractor must have in place a method of payment for all Authority support services such as flagging, training, work trains, power shut offs, etc., prior to commencement of any work. This will be processed through a written force account agreement between the Authority and the owner or contractor prior to commencement of work. Direct billing to contractors for Authority support services requires the contractor's authorized representative to agree in writing that the company will reimburse the Authority for those support services, including overhead and fringe benefits. Once the Authority receives the signed statement from the contractor, the General Accounting Office will open a reimbursable account for specific Authority department(s) to charge costs, and the contractor will be billed directly.
- G. The work associated with this project, except as hereinafter expressly provided, will be done without interruption of or change in the regular work or operation of vehicles of the Authority. No work shall be done affecting the operations of vehicles or operations of stations until the contractor has submitted details of his procedures to the Design and Construction and the applicable Operations representatives thirty (30) working days prior to start of work and has secured written permission to proceed.
- H. The Authority reserves the right to require work affecting the safety of the operations to be performed at prescheduled non-operating periods from approximately 1:30 a.m. to 5:00 a.m. daily (1:30 a.m. – 4:30 a.m. effective); 1:30 a.m. to 6:00 a.m. Sunday (1:30 a.m.-5:30 a.m. effective). The contractor will not be permitted to remain within the track right-of-way after 5:00 a.m. (6:00 a.m. Sunday). The Authority may, during emergencies or at times when the Authority work forces are required to work in the area of the contractors work, order the contractor to cease work and remove his work forces and equipment from the property leaving the right-of-way in a safe operating condition. The Authority also reserves the right to stop or postpone any contractor's previously approved work if, in the Authority's opinion, such work is being performed in a manner that will endanger and/or delay the Authority's regular work or operations or compromise the health and safety of personnel working on the project.
- I. The owner or contractor shall make their own provisions for electric power, compressed air, water, ventilation, and disposal of seepage water. No use of existing MBTA utilities will be permitted unless approved in advance by the Authority.
- J. The owner or the contractor's attention is directed to other projects that will be ongoing simultaneously in the work area. The Authority will determine priorities for site access between this project and others.
- K. The Authority reserves the right to deny the contractor access to the right of way because of operational requirements, adverse weather conditions or emergency track, signal, and power repairs. The contractor shall reasonably expect to be denied access to the site a total of 10 (ten) days per calendar year, this does not include the following holidays; New Year's Day, President's Day, Patriot's Day, Memorial Day, Bunker Hill Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day. In addition, right of way access may be denied on days when various

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Special Events impact service as well as during Red Sox home games on the Green Line. Furthermore, the contractor shall also expect to have his access to the site delayed a total of 4 (four) times per month. Each delay shall be 60 (sixty) minutes or less. The contractor shall make allowances for these possible events in their bid. Due to increased stopping distances associated with slippery rail conditions, non-emergency access will not be allowed within ten (10) feet of the centerline of the track under adverse weather conditions.

- L. The contractor shall perform his work at all times so as to cause no interruption of service during operating hours and shall at all times after performing work during either operating hours or non-operating hours leave the Authority's property in a clean and safe operating condition.
- M. On occasion, the Authority will operate work cars, test trains, security trains, and/or hi-rail vehicles in the area of the work. At no time during these occurrences will the contractor be allowed to work on the right-of-way, except with the approval of the Authority or the Authority personnel providing protection services as defined in Protection Services.

2. INSURANCE REQUIREMENTS

- A. The owner or Contractor's for MBTA Construction Contracts insurance requirements shall conform to the latest version of MBTA Standard Specifications, Division 1 – General Requirements, Section 00700 - General Conditions, Article 5 - Legal Relations and Responsibility to the Public, Paragraph 5.04 - Insurance Requirements. Owners or Contractors under a lease or license agreement with the MBTA shall provide insurance in accordance with the requirements of said agreement.

3. SUBMITTAL OF SPECIFICATIONS, DRAWINGS, DESIGN AND METHODS OF CONSTRUCTION

(Applies to non-MBTA Construction Contracts. MBTA Construction Contracts are covered under Division I)

- A. An owner or contractor or others performing a non-MBTA construction contract that requires performing construction over, on, under or adjacent to the Authority's property shall submit to the Safety Department (one set), Design and Construction Department, and to the appropriate Operations Department two (2) sets each of contract drawings and specifications at the 30%, 60%, 90% and 100% phases of design of the project. 100% drawings and specifications must be submitted forty-two (42) days prior to the planned commencement of any work.
- B. The contractor's drawings and specifications shall define the work in detail and a Professional Engineer registered in the Commonwealth of Massachusetts shall stamp the final drawings. The contractor or owner shall also submit a crane or heavy equipment location, if used, with dimensions to the face of abutments and structures and calculations of crane equipment loading on Authority structures showing no adverse effect on any

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structures. All calculations shall be stamped by a Professional Engineer registered in the Commonwealth of Massachusetts. The drawings must include any excavation support systems, shoring, underpinning, protective shielding, or any work required for the protection of MBTA property. This notification must be presented to the Safety Department at least 48 hours prior to the arrival of any heavy equipment.

- C. Unless otherwise agreed to in advance, the owner or contractor's structures shall not attach to, be placed against, pass through, or impose any loads upon any structures or facilities owned by the MBTA.
- D. All construction work shall be performed in strict conformity with final plans and specifications that have been reviewed and approved by the MBTA. Any changes requested by the owner or contractor which affect MBTA property or operations must be submitted to the MBTA for review and approval at least 30 days prior to the planned commencement of the work. Approvals or rejections shall be submitted by the MBTA within thirty (30) days following submission to the MBTA for review.
- E. The owner or the contractor performing construction work over, on, under, or adjacent to Authority property shall submit to the Director of Design four (4) sets each of the design, drawings and specifications of any earth support system, shoring, underpinning, protective shielding, or any work required for the protection of the Authority's facilities and property, a minimum of forty-two (42) working days prior to the planned commencement of any of the above work. The design, drawings and specifications shall define in detail the methods of construction and materials to be used. The design and drawings shall be stamped and signed by a Professional Engineer registered in the Commonwealth of Massachusetts.
- F. Unless otherwise agreed to in advance, earth support structures or shoring systems shall not be attached to any structure owned by the MBTA, nor shall MBTA structures be used to support loadings or be used for excavation support.
- G. Engineering drawings of MBTA structures are available for reference or duplication at the MBTA Plan Room, 500 Arborway, Jamaica Plain, MA 02130. For information call the Technical Librarian at 617-222-5285.

4. OPERATIONAL RESTRICTIONS

- A. The owner or contractor is made aware that the work will be performed adjacent to or over operating tracks, signal lines, communication lines, power lines, cables and other facilities belonging to the Authority. The owner or contractor is to take all due precautions to protect the Authority's facilities, utilities, and operations during the course of his work. When in the opinion of the Authority's Chief Engineer of Design and Construction, Director of Safety, Director of Subway Operations, Director of Systemwide Maintenance & Improvements, Director of Operations Support, or their representatives, the contractor's work would cause hazard to the Authority's facilities, infrastructure, or to the safe operation of the transit system, the Authority will assign qualified personnel

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deemed necessary to protect the property, facilities and operations, all at the expense of the contractor.

- B. The contractor is specifically prohibited from conducting any operations next to or over the right-of-way that have the potential to adversely impact the operations of Authority revenue service during normal operating hours (approximately 5:00 a.m. to 1:30 a.m.). Certain work adjacent to the right-of-way, described below as hazardous work, may take place during restricted revenue hours at the discretion of the Chief of Orange, Red, Green, or Blue Line Operations as applicable and require flagmen present.
- C. Access to the MBTA right-of-way, which encompasses all MBTA property (fence to fence, wall to wall, and property line to property line over which Authority vehicles operate, including sidings and yards), is contingent upon Owner or Contractor compliance with the "MBTA Right-of-Way Safety Rulebook" that outlines Right-of-Way Safe Practices for Access on or Near the Right-Of-Way.

As specified in the Right of Way Safety Rulebook, all persons who access the MBTA right of way must attend a one-day, eight-hour training class conducted by Subway Operations Training and the Safety Department. Attendees must successfully complete the Right of Way Safety Training in order to receive a Right of Way license. The license is valid for a two-year period after which the person must attend the Authority's Right of Way re-certification class. To register for the "Right of Way Safety" class, contact:

Supervisor and Chief Rules Examiner of Training
Cabot RTL Training
275 Dorchester Avenue, 2nd floor
South Boston, MA 02127
Telephone: (617) 222-5377

In addition to this training, all contractors and subcontractors will attend a four-hour Contractor Safety Awareness Class provided by the Safety Department at a location to be determined by the Authority. Recipients of the Contractor Safety Awareness Class will receive a certificate of completion along with a sticker for their hardhat and will be valid for three years from the time of receipt. The cost of this class will be \$50. To register for this class, contact:

Assistant Director of Safety
21 Arlington Avenue, Building 2
Charlestown, MA 02129
Telephone: 617-222-1978

- D. The Authority will consider the property; facilities and operations fouled or subject to hazard when the following occurs:
1. When any object or operation is or can be brought nearer than ten (10) feet to the centerline of an operating track.

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2. When an object or excavation is brought nearer than four (4) feet to a signal or communication line.
3. When an object or excavation is brought nearer than ten (10) feet to a power line or cable.
4. When explosives are used in the vicinity of the premises. Explosives shall not be used on or adjacent to the Authority's property or facilities without written consent of the Authority's Chief Engineer of Design and Construction and then shall be used only by a licensed blaster, licensed in the Commonwealth of Massachusetts, at times and under conditions acceptable to the Authority.
5. When cranes, trucks, power shovels, pile driver or any other equipment are working in positions that failure with or without load could occur nearer than 10 feet to the centerline of an operating track.

It shall be the responsibility of the contractor to inform the Director of Safety, Chief of Orange, Red, Green, or Blue Line Operations as applicable in writing thirty (30) working days prior to all times when they intend to perform hazardous work as described above. Submittal must include a site plan, the reasons for entering the property, where the property will be entered, each individual location where work of a different nature is to be performed, the nature of such work, and number of days, including time schedule, the contractor intends to remain on the property at each location. Failure of the contractor to provide the appropriate Line Chief with the specified advanced notice of hazardous work will result in the stoppage of work by the Authority.

- D. The Contractor will be allowed on the right-of-way only after normal revenue service (approximately 1:30 a.m. to 5:00 a.m.). On occasion, the Authority will operate work cars in the area of the project work during non-revenue hours. At no time during these occurrences will the contractor be allowed to work on the right-of-way except with the approval of the Authority. The contractor shall coordinate their schedule at least twenty-four (24) hours in advance with the Authority.
- E. No weekday/weekend transit service interruptions will be allowed on this project. The contractor must schedule all work requiring a shutdown of revenue service and/or station and/or platform operations during non-revenue hours.
- F. Prior to the contractor leaving any work site, at the completion of each workday, the contractor shall ensure that the site is in proper condition to permit normal transit operations to resume. If, in the opinion of the Authority, the site is not suitable for normal transit operations due to conditions caused by the contractor, the Authority will allocate a suitable number of personnel to rectify the site. The owner or his contractor shall be charged full costs of such personnel and necessary equipment, including the full cost of replacement services during the cleanup period.
- G. In the event that the contractor does not adhere to the work period limitations of the special conditions and causes delay in returning the right-of-way to revenue service at the end of any work period, the owner or his contractor shall pay the Authority for substitute bus service a sum not to exceed \$120.00 per hour per bus for the entire duration of the delay

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and including mobilization and demobilization of the bus service. The minimum charge shall be (3) hours per bus per delay. The owner or the contractor will reimburse the Authority for the hourly costs of personnel used during such delays (e.g., supervisors, officials, gatepersons, flagpersons, and automotive). The required number of buses to adequately accommodate all Authority customers who are inconvenienced by the delay shall be at the sole discretion of the Authority's Bus Operations Department. Whatever sum of money may become due and payable to the Authority by the owner or his contractor under this article may be retained out of money belonging to the contractor in the hand and possession of the Authority. This article shall be construed and treated by the parties to the contract not as imposing a penalty upon the contractor for failing fully to complete the work within the periods as specified herein, but as liquidation damages to compensate the Authority for additional costs incurred by the Authority because of the failure of the contractor to fully complete said work within the work periods specified.

- H. The contractor shall assume full responsibility for the safety of all their work. They shall perform the work in a manner that will ensure the safety of both personnel and property. The contractor shall prevent against safety hazards, and the exposure of persons and equipment to hazardous and/or potentially hazardous conditions. All work in the construction of the project shall comply with the requirements of the Authority, Department of Labor, Occupational Safety and Health Administration (OSHA) provisions, as well as those of state and local regulations. Safe breathing levels must conform to the Massachusetts Department of Environmental Protection (DEP) standards. In the case of conflict of regulations, the most stringent will apply. If the standards are not met, the Authority has the right to stop the work until such time as the contractor is in compliance with standards.

5. PROTECTION SERVICES

- A. When the contractor is performing work in the vicinity of Authority rights-of-way or public areas, the Authority will require the contractor to have at the site such authorized and qualified personnel as may be required to adequately protect the Authority's customers, employees, property, facilities and operations from hazardous conditions.
- B. The need for protection services is outlined and described in the Authority's Right-of-Way Safety Rulebook. The appropriate Line Chief, or their representative, shall determine what protection services are required and assign flagging personnel, officials, supervisors, coordinators or any other such personnel as may be required to ensure the safety of the Authority's operations. Personnel shall be provided from the Authority's workforce in such numbers as the Line Chief determines. Costs for all protection services and supplies shall be the responsibility of the owner or contractor. No work will be allowed if flagmen are required, but not on duty.
- C. When it is determined that protection services are required, the contractor must notify the Authority twenty-four (24) hours in advance and before 10.00 a.m. on the workday preceding the day that protection services will be required. Requests for protection services

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for weekends and/or holidays, must be made on the preceding Friday before 10.00 a.m., or before 10.00 a.m. on the workday preceding the holiday.

Requests for protection services for Non-Operating hours 1.30 a.m.–5.00 a.m. and in order for the work to be included on the Night Orders you must contact the:

Planning and Scheduling Coordinator
Maintenance of Way
617-222-5419.

Requests for protection services for Operating hours 5.00 a.m.-1.30 a.m. and in order for the work to be included on the Day Orders, you must contact:

Orange, Red, Green, or Blue Line Superintendent as applicable.
617-222-5085 (Orange); 617-222-5099(Red);
617-222-5982 (Green); 617-222-5532 (Blue).

It will be at the sole discretion of the Authority whether the contractor will be allowed to perform work on any particular day or night.

- D. The contractor will be required to provide each flagperson on duty with properly functioning safety equipment as approved by the Authority's Safety Department. This equipment includes but is not limited to: orange safety cones, red, yellow, and green flags, airhorns, hardhats, safety goggles, and hearing protection. The contractor will not be allowed on or adjacent to the right-of-way if flagging personnel are not equipped with required safety personal protective equipment.
- E. The contractor will supply properly functioning Authority-frequency portable radios to each flagperson on duty on a daily basis. The contractor will be responsible for storing and maintaining radios throughout the life of the contract.
- F. All workers employed by the contractor who are to work within the Authority's stations, track area, right-of-way or adjacent to the traction power system or any high voltage electrical cables, shall be required to attend a safety awareness course at the Authority's Subway Operations Training School. The course is to make the contractor's personnel aware of the particular hazards related to the Authority's operations.
- G. All personnel working on the project site in the immediate vicinity of, or within the right-of-way, are required to wear orange reflective safety vests, similar to standard Authority equipment as specified in the Right-of-Way safety Rulebook.
- H. Work activities necessitating the traction power system (third rail and catenary) de-energization will require the services of an Authority power lineperson on site at all times and the contractor is responsible for any costs incurred by the Authority as a result of this action.
- I. Prior to the implementation of the contracted work, and throughout the life of the contract, the contractor will be required to supply professionally rendered signs, as directed by the

January 11, 2008

Eileen Brophy, Esq.
Boston Redevelopment Authority
Legal Department
One City Hall Square, 9th floor
Boston, Massachusetts 02201

BRA
JOB NO. 5076A
CD _____ CO _____
CF _____ CT
MR _____ R _____
OTHER _____

RE: Use & Occupancy Agreement
BRA/MBTA – Dudley Square

Dear Attorney Brophy,

Enclosed please find three (3) original fully executed Use & Occupancy agreements to facilitate the demolition work at the North Plaza area of Warren Street in Dudley Square. Please note that before you or your contractor enters onto the property of the MBTA, you must notify Jim Monahan at MBTA Bus Operations (617-222-4741) and coordinate all of your activities with his department, all as is set forth in Section 2.7 and in Exhibit B of the Use & Occupancy Agreement.

If you have any questions, please don't hesitate to contact me at 617-482-2525.

Sincerely,



Steven C. Zeller, Esq.
TRA as Designated Representative of MBTA Real Estate Department

Enclosures: 3

cc: Jim Monahan, MBTA Bus Operations