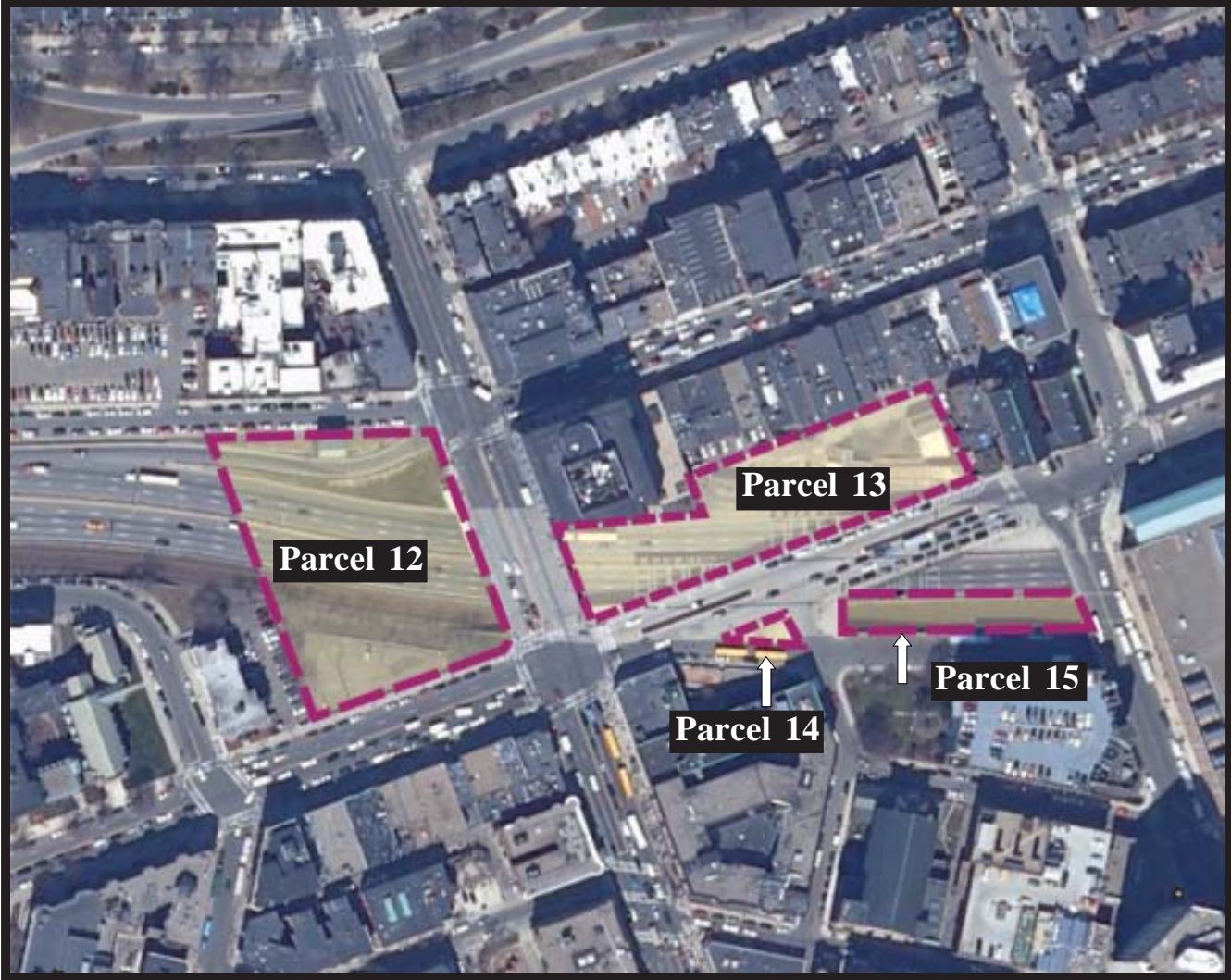


Request for Proposals

September 2008



Air Rights Parcels 12, 13, 14 and 15
Massachusetts Avenue/Boylston Street
Boston, MA

Massachusetts Turnpike Authority



1. Introduction

II. Planning and Commitments

III. Parcel Descriptions and Technical Issues

IV. Development Agreement and Lease Terms

V. Submission Requirements

VI. Selection

VII. Reservations and Conditions

Figures

Figure 1 Key Plan

Figure 2 Aerial Photograph – Parcels 12, 13, 14, & 15

Figure 3 Site/Context Plan

Figure 4 Cross Section

Figure 5 Turnpike Edge Condition

Figure 6 Adjacent Uses

Figure 7 Frontage

Figure 8 Surface Streets

Parcel Photographs

Appendices

- A Memorandum of Understanding between MassPike and the City of Boston**
- B Proposed Design Guidelines for Parcels 12 - 15 from “A Civic Vision for Turnpike Air Rights in Boston” (June 2000)**
- C Excerpts from “A Civic Vision for Turnpike Air Rights in Boston” (June 2000)**
- D List of Title Documents**
- E List of Turnpike Design Materials**
- F Executive Order 390, August 6, 1996**
- G Orders Relative to Affordable Housing and the Inclusionary Development Plan (February 29, 2000, May 16, 2006)**

Schedules

- 1 Proposal Form**
- 2 Rent Offer Form**
- 3 Section 40J Disclosure Statement**
- 4 Sample Clerk's Certificate Form**
- 5 Additional Certifications Form**

The Massachusetts Turnpike Authority (“MassPike”) is an independent state authority created under M.G.L. Chapter 81A *et. seq.* (the “Enabling Act”) to design, build and operate a toll highway and related appurtenances across the Commonwealth of Massachusetts between the town of Stockbridge and the City of Boston. The toll highway is divided geographically into two operating units known as the Metropolitan Highway System and the Turnpike (as each term is defined in the Enabling Act). Pursuant to Section 15 *et seq.* of the Enabling Act (“Section 15”), MassPike has the power to lease air rights over land owned or held by MassPike in connection with the Turnpike and the Boston extension portion of the Metropolitan Highway System.

Through the issuance of this Request for Proposals (“RFP”), MassPike is seeking proposals for the long-term lease and development of land within and air rights over Parcels 12, 13, 14, and 15 on the Massachusetts Turnpike, located in Boston west of Prudential Center and Hynes Convention Center along Boylston Street to west of the intersection of Boylston Street and Massachusetts Avenue (“Parcels 12, 13, 14, and 15” or the “Parcels”; each, individual a “Parcel”). MassPike will accept proposals with respect to any or all of the Parcels.

Parcels 12, 13, 14, and 15 offer important opportunities to fill in gaps in the public realm along both Boylston Street and Massachusetts Avenue; forging stronger connections between the Prudential Center and Copley Place, the Back Bay, the Fenway, the Kenmore Square and Massachusetts Avenue areas. MassPike is seeking proposals that include mixed use development such as office, residential, retail, institutional, entertainment, hotel, restaurant, and other commercial uses.

The Civic Vision. In June, 2000, Mayor Menino and the Boston Redevelopment Authority (the “BRA”) released “A Civic Vision for Turnpike Air Rights in Boston” (the “Civic Vision”) which fundamentally concludes that the principal urban design goal of development of the air rights Parcel is to knit the neighborhoods across the Turnpike together and to rebuild the City in those areas. Copies of the Civic Vision may be obtained at the BRA office; excerpts are included in Appendix B and C hereto.

Respondents to this RFP should be aware that development of any or all of the air rights Parcels 12, 13, 14, and 15 should be viewed in context with the development of all the Parcels and not in isolation, in order to maximize the benefits to the adjoining neighborhoods and MassPike, while minimizing the impacts of development on the neighborhoods, the Turnpike, and the public traveling on the Turnpike.

Air rights development is governed by Massachusetts General Laws, Chapter 81A, Section 15 *et seq.* and by a Memorandum of Understanding (“MOU”) between the City of Boston (the “City”) and MassPike. Respondents to this RFP should have a thorough knowledge of the Boston Zoning Code as well as the development review process in the City, and are responsible for verifying and interpreting all regulatory requirements.

Responses to this RFP are due to MassPike by December 5, 2008.

Pursuant to the provisions of the MOU and in order to ensure the full and adequate involvement of the most affected communities, it is anticipated that a Citizens Advisory Committee (“CAC”) will be appointed by the Mayor of Boston in connection with the proposed development of the Parcels.

MassPike reserves the right to reject any or all proposals.

Section I of this RFP contains introductory and general information. Sections II and III contain site information and development guidelines specific to the Parcels. Sections IV, V and VI contain development agreement and lease terms, submission process and requirements, and developer selection criteria. Section VII contains reservations and conditions.

MassPike makes no representation or warranty as to the accuracy and/or completeness of any of the information provided in or made available pursuant to this RFP. Proposers should carefully review the Reservations and Conditions set forth in Section VII below.

A. Background and Context

The Boston Extension of the Massachusetts Turnpike was built in the 1960's to connect the Turnpike to the center of the city. The Boston Extension has evolved into a strategic corridor running 2 1/2 miles through Boston and Brookline. The Turnpike crosses a variety of urban districts and neighborhoods with different land uses, creating a major barrier between these neighborhoods. Development of air rights Parcels creates opportunities to reconnect many of the city's neighborhoods and provide economic benefits for Boston's residents and businesses.

Efforts to deck over and develop the air rights created by the Turnpike began as early as the completion of the Boston Extension. The major concentration of these air rights developments are in the Back Bay: the Prudential Center and the Hynes Auditorium built in the 1960's, the John Hancock Tower Garage built in the 1970's and Copley Place built in the 1980's. These air rights developments cover the Turnpike and extend the urban fabric to either side of the highway, linking neighborhoods, creating clear paths to open spaces, and providing economic opportunity.

The Parcels have a strategic location near the convergence of three thriving and active Boston neighborhoods: the Back Bay, Fenway, and Kenmore Square. Nearby attractions include the Historic Back Bay, the Newbury Street and Boylston Street retail areas, the Prudential Center and Copley Place mixed-use developments, the Hynes Convention Center, the Massachusetts Avenue corridor, Berklee College of Music, Fenway Park, and the Lansdowne Street entertainment area. A variety of land uses surround the site. Public transportation is available at Hynes Convention Center Green Line MBTA station at the Massachusetts Avenue/Newbury Street intersection, with an exit within Parcel 13 at Boylston Street. There is significant pedestrian activity around the Parcels generated by adjacent activities along Boylston Street and Massachusetts Avenue. Besides offering a unique opportunity to develop a "signature" project for Boston approaching from the west, the ease of access, high visibility, and diverse population living in the area will contribute to a successful development.

Location. MassPike organized air rights into 23 Parcels - generally defined by bridges or natural boundaries. These Parcels are grouped into five "districts" that correspond to the traditional neighborhoods that line the Turnpike. The Parcels fall in the district of Back Bay, Fenway, and Kenmore Square.

Parcels 12, 13, 14, and 15. The Parcels are described generally below, and in more detail in Section III of this RFP. The Parcels in the aggregate contain approximately 146,000 sq. ft. (3.35 acres).

Parcel 12 is located at the intersection of Massachusetts Avenue and Boylston Street west of Massachusetts Avenue and contains approximately 78,000 sq.ft. consisting of (i) air rights over the Turnpike, (ii) air rights over rail (iii) a land area on the southeastern side of the Parcel and (iv) a land area to the north of the Parcel.

Parcel 13 is located at the intersection of Massachusetts Avenue and Boylston Street, east of Massachusetts Avenue and contains approximately 54,500 sq.ft. consisting of (i) air rights over the Turnpike, (ii) air rights over rail and (iii) air rights over the MBTA Green Line

Parcel 14 is located on the south side of Boylston Street and contains approximately 520 sq.ft.

Parcel 15 is located on the south side of Boylston Street and west of Dalton Street and contains approximately 12,520 sq.ft. of air rights over the rail. **The air rights over the Turnpike roadway adjacent to Parcel 15 are not owned by MassPike.**

Proposers should be aware that MassPike reserves the right to reconfigure the boundaries of the Parcels in its sole discretion in order to allow for better alignment with existing roadways, to improve pedestrian connections, or to otherwise improve the overall design of any proposed development on the Parcels.

B. Disposition of the Parcels

As described in more detail in Section V below, MassPike will accept Proposals to lease and develop any or all the Parcels. MassPike is seeking Proposals that will balance a wide range of criteria for the development of the Parcels. Successful Proposals must fulfill any planning commitments, respond to applicable requirements and the design and development guidelines included in the Civic Vision, create a design that is compatible with the surrounding areas and parks, and be physically and financially feasible. Those submitting Proposals (each, a “Proposer”) must demonstrate: (i) the experience and capacity necessary to carry out development projects of a similar scale involving significant community interest and involvement; (ii) the ability to work effectively with a wide range of public agencies and community groups; (iii) the ability to respond to applicable development and design guidelines; (iv) the ability to address structural and other design issues; and (v) the expertise to conceive, execute, and operate a development that will benefit the Back Bay, Fenway, and Kenmore Square communities, the City of Boston, MassPike, and the Commonwealth of Massachusetts.

Proposers who respond to this RFP may include any individual, entity, or joint venture, including, but not limited to, for-profit and not-for-profit developers, institutions, businesses, and government agencies. Each Proposal must be in the format and include all of the elements prescribed in Section V of this RFP, Submission Requirements, including a building program and schematic building design, as well as a complete financial proposal.

Once MassPike designates a developer or developers (the “Selected Developer(s)”), the Selected Developer(s) will refine the proposed program and design, working closely with MassPike staff, the BRA, and the CAC. The BRA provides staff support to the CAC. The Parcels will be developed under a development agreement and long-term lease with MassPike.

The Parcels, currently owned by MassPike, are subject to all easements and restrictions of record, including, without limitation, (i) an easement for the railroad in a portion of the Parcels (and any subsequent easements that might have been granted by the railroad), (ii) a wall easement in the northwestern portion of Parcel 13, (iii) an easement granted by Masspike to the MBTA for use of the platform, bus shelter, and an underground passageway at Massachusetts Avenue Bridge western portion, (iv) certain reserved easement rights for the benefit of the MBTA for the operation and maintenance of the Green Line on Parcel 13, and (v) various easement or lease agreements for telecommunications purposes. In addition, part of Parcel 12 may be licensed by MassPike to third-parties for parking uses prior to the execution of a Lease for Parcel 12 and an area on the easterly side of Massachusetts Avenue has been licensed to the MBTA for the purpose of using and maintaining eight (8) active subsurface utility conduit lines.

C. Schedule for Submissions/Selection Process

Proposals for the development of any or all of the Parcels are due at MassPike's main office (the address and additional information is provided in Section V, Submission Requirements) by 12:00 noon, local time, on December 5, 2008. The Proposals will be evaluated by MassPike. In addition, non-financial components of the Proposal(s) will be distributed to City and state agencies, as well as to the CAC. Proposers will be required to present their Proposals and answer questions at public meetings of the CAC. Comments from other agencies will be taken into consideration in MassPike's designation of a developer or developers for the Parcels. MassPike reserves the right to select finalists, to seek additional information or revised Proposals, to enter into negotiations with one or more Proposers, to select a single developer, to seek a joint venture among more than one developer, to reject any or all Proposals, to amend this RFP in any way, or to discontinue the developer selection process altogether.

MassPike makes no representation or warranty as to the accuracy, currency, or completeness of any of the information provided in or made available pursuant to this RFP. Proposers should carefully review the Reservations and Conditions set forth in Section VII.

II. PLANNING AND COMMITMENTS

City of Boston Planning

1. **Memorandum of Understanding with City of Boston.** A Memorandum of Understanding (“MOU”) between the City of Boston and MassPike governing air rights development was entered into as of June 1, 1997. The MOU is attached as **Appendix A**. Respondents are advised to carefully review the MOU.
2. **Zoning.** Air rights development is governed by Massachusetts General Laws, Chapter 81A, Section 15 et seq. and by the MOU. Respondents should have a thorough knowledge of the Boston Zoning Code as well as the development process in the City of Boston. It is anticipated that the BRA will require the Selected Developer(s) to voluntarily submit the project to zoning review and approval.
3. **BRA Design Review.** Any development project proposed for the Parcels must undergo review by the BRA in accordance with the MOU and Article 80 of the Boston Zoning Code (“Article 80”). As a general matter, the BRA’s review involves a comprehensive public review of a proposed project to evaluate its design, environmental impacts, community impacts, and land use impacts, and to determine appropriate measures to mitigate those impacts. The BRA’s review processes are described in the MOU and in Article 80 procedures for Large Project and Planned Development Area (PDA) review. The Selected Developer(s) will be required to initiate review by filing a Project Notification Form describing the major elements of the proposed development project. The BRA’s review is intended to facilitate input from appropriate City agencies, the CAC, the Boston Civic Design Commission (the BCDC), and the community relative to the proposed project’s impact on the neighborhood and the City as a whole. Under the terms of the MOU, the review process will include the active participation of the CAC. The Selected Developer(s) will be responsible for participation in any CAC process established by the City. Under the terms of the MOU, MassPike may not approve the final design of a proposed project or enter into a lease with a Selected Developer(s) until the BRA has issued its design review certification of a proposed project.
 - a. **Sustainable design.** As recommended by the Mayor’s Green Building Task Force, the City will be revising Article 80 to require that all large projects undergoing Article 80 review be planned, designed, and built to meet the level of “certifiable” according to the US Green Building Council’s Leadership in Energy and Environmental Design (“LEED”) Green Building Rating System. A copy of the Mayor’s Green Building Task Force report is available at www.bostongreenbuilding.org. Future development at the Parcels will conform to the City’s Green Building and Sustainable Development guidelines in place at the time the project undergoes BRA review and as follows:

New development and buildings shall be planned, designed, and constructed to minimize any adverse environmental and health impacts of the project by integrating sustainable development and green building principles and practices into all stages of project planning, design, and construction.

The project team must include LEED-accredited project design, engineering and/or construction planning professionals from the initial planning phase of the project.

Developer commitments to green building outcomes, including the applicable LEED Building Rating System score, will be considered in determining responsiveness of Proposals. A minimum goal of LEED “certifiable” design and construction is required.

New buildings should be ultra-energy efficient so as to reduce the occupant utility expenses and minimize demand impacts on existing utility infrastructure.

Additionally, the City of Boston's Environmental Department has developed High Performance Building and Sustainable Development guidelines that are available at:

www.cityofboston.gov/environment/pdfs/hpb-guidelines.pdf.

- b. **Housing policy.** The Selected Developer(s) must comply with the Mayor's "An Order Relative to the Inclusionary Development Policy" ("IDP") dated February 29, 2000, as most recently amended May 16, 2006. A copy of the original Order and the most recent amendment are included in Appendix G. The IDP requires that a number equal to 15% of the total market-rate units proposed be made affordable to middle-income households.
4. **Open Space Plan.** In September 2002, the City of Boston's Parks and Recreation Department adopted *Open Space Plan 2002-2006: Renewing the Legacy . . . Fulfilling the Vision*, setting forth its vision and priorities for the following five years. The Open Space Plan includes a description of the City of Boston's open space needs, identifies strategies to meet those needs, and sets forth a list of objectives for the future of open space in Boston.
5. **Strategic Development Study Planning Process.** In the Fall of 1998, Mayor Menino, in conjunction with MassPike, appointed the Strategic Development Study Committee ("SDSC"), a 25-member group of residents, business owners, and others, to facilitate community and neighborhood input into the planning process for the development of the MassPike air rights on the Boston Extension. Goody, Clancy & Associates acted as consultants to the BRA for the planning process with direct input from the SDSC. The SDSC studied building height and massing issues as well as issues of transportation capacity, public transit, pedestrian traffic, bicycle traffic, and regional connections. The final report called "A Civic Vision for Turnpike Air Rights in Boston" (the "Civic Vision") was issued in the summer of 2000. The Civic Vision establishes design guidelines, which are included in part as **Appendix B**. Respondents must obtain a complete copy of the Civic Vision from the BRA.
6. **Access Boston 2000-2010, Boston's Citywide Transportation Plan.** Access Boston 2000-2010 is Boston's citywide transportation plan, developed by the Boston Transportation Department. The plan addresses the various modes of travel – walking, automobiles, transit and bicycles – to benefit all users of transportation systems. The Public Transportation and Regional Connections Plan proposes an east-west rail link providing service between Allston Landing and South Station that should be considered as part of the planning for the Parcels.
7. **Transit-Oriented Development.** Proposers should maximize the opportunities arising from proximity to Green Line stations and easy transfer to shuttles and buses.
8. **Coordination with Executive Office of Transportation's Urban Ring, Phase II and III.** The Executive Office of Transportation has commenced the study of the Urban Ring. Any subsequent proposal, such as the development of Parcels 12, 13, 14, and 15, must avoid negative impacts on the Urban Ring Project.

9. **Coordination with Traffic Planning and Infrastructure Planning and Design.** Proposers should review the discussions regarding parking in the Civic Vision included in Appendix B and consider other infrastructure planning efforts in the design of any development.
10. **Coordination with the City's Traffic Model.** The Selected Developer(s) will utilize the City's traffic model for any traffic impact analysis. Copies of all traffic analyses performed, including all data collected to inform models, must be provided to the City in paper and electronic formats.
11. **Transportation Access Plan Agreement ("TAPA") and Construction Management Plan ("CMP").** The Selected Developer(s) will need to enter into a TAPA and a CMP with the Boston Transportation Department.
12. **Groundwater.** Development of the Parcels should include the installation of permanent monitoring wells where recommended to monitor groundwater levels, provide permanent easements for access to the wells installed for long-term monitoring by the Boston Groundwater Trust, and provide a mechanism for monitoring wells and reporting results to the Boston Groundwater Trust. Proposers should be prepared to conduct an evaluation to retain and replenish groundwater. Contact Elliott Laffer, Director of the Boston Groundwater Trust, at (617) 859-8439, to discuss groundwater issues.
13. **Boston Residents Jobs Policy ("the BRJP").** The project is subject to the BRJP and the standards contained in the Boston Residents Construction Employment Plan.
14. **BRA and CAC Consultants.** The Selected Developer(s) will be required to pay for the cost of hiring consultants to work with the BRA and the CAC, if needed. The BRA will be responsible for advertising the RFP for consultant services.
15. **Empowerment Zone.** The Parcels are located in an Empowerment Zone. For more information, see For general information: <http://www.cityofboston.gov/bra/bostonez/about/statistics.asp>
For the map: <http://www.cityofboston.gov/bra/bostonez/about/zone.asp>

Additional Requirements

1. **Metropolitan Highway System (MHS) Advisory Board.** The Enabling Act created the Metropolitan Highway System Advisory Board (the "Advisory Board") to review, prepare comments and make recommendations to MassPike on contracts and agreements submitted by MassPike relative to air rights plans associated with development on land owned by MassPike within the Metropolitan Highway System. Developer responses shall be provided to the Advisory Board.
2. **Air Rights Lease Terms.** MassPike has the authority to lease Turnpike real estate for up to 99 years, including land and any air rights over land owned or held by MassPike, pursuant to the applicable provisions of the Enabling Act. Under the Enabling Act, MassPike may not enter into a lease with the Selected Developer(s) until MassPike has found that the proposed project shall be in no way detrimental to the maintenance, use, and operation of the Turnpike and that the construction and use of the proposed project shall preserve and increase the amenities in the community. Under current regulations of MEPA, the development of the Parcels could include MEPA review which would include the Massachusetts Historic Commission's concurrent review of areas adjacent to eligible State Register of Historic Places properties or districts. MassPike may not enter into a lease with the Selected Developer(s) until the completion of any necessary MEPA review.

3. **MBTA Coordination.** The Selected Developer(s) will be required to coordinate development efforts with the Massachusetts Bay Transportation Authority (the “MBTA”) and to submit to the MBTA plans and specifications for the development to the extent it impacts MBTA infrastructure.
4. **Railroad Construction Coordination.** The Parcels are subject to an easement agreement between MassPike and New York Central Railroad Company (n/k/a CSX, the “Railroad”), dated December 27, 1962 (as amended, the “Railroad Easement”), obligating the developer of any air rights extending over the area subject to the Railroad Easement to obtain prior approval from the Railroad of construction plans and specifications, and to comply with the rules and regulations of the Railroad.
5. **Coordination with Development of Other Air Rights Parcels.** The Selected Developer(s) will be required to coordinate development efforts with the development of other air rights parcels in order to maximize the benefits to the adjoining neighborhoods while minimizing the impacts of any project. In addition, the Selected Developer(s) should consider other private development and institutional master plans to be submitted to the City by institutions in the area.

The discussion of applicable development controls set forth in this Section II and excerpted in the attached Appendices are included in this RFP only as a convenience to Proposers. Each Proposer is responsible for verifying and interpreting all regulatory requirements.

III. PARCEL DESCRIPTION AND TECHNICAL ISSUES

Without representation or warranty as to the accuracy of the information, MassPike includes below a summary description of site, location, area, topography, existing uses, subsurface, access, utilities, environmental, and special conditions for the Parcels. An excerpt of the Civic Vision defining the design guidelines for the Parcels are included in this RFP as **Appendix B**. Please note that documents and summaries are included in this RFP only as a convenience. All Proposers are responsible for their own review of and conformance with the Civic Vision design guidelines and any other applicable City, state and federal laws and regulations, as well as review and evaluation of all site conditions. The Selected Developer(s) shall be responsible for a thorough site evaluation, including, but not limited to, title and survey, review and evaluation of subsurface conditions, active and inactive utilities, and soil and other environmental conditions. Such review and evaluations shall be coordinated with MassPike, applicable utility companies, and other appropriate authorities, including, but not limited to, Dig Safe. The Parcels will be leased in an “as-is” condition with the costs of all improvements, approvals, required remediation or necessary infrastructure improvements, and permitting to be borne by the developer.

A. Context

The Parcels are located at or near the intersection of Massachusetts Avenue and Boylston Street, running from Parcel 15 on the west side of the Hynes Convention Center to Parcel 12 on the west side of Massachusetts Avenue

Access: Access to development on the Parcels is assumed to be primarily from Boylston Street and Massachusetts Avenue and secondarily from Newbury Street, Dalton Street and Cambria Street.

Pedestrian: Pedestrian activity is concentrated along Massachusetts Avenue and Boylston Street in the Back Bay area and Fenway.

Public transit: The Hynes Convention Center MBTA Green Line Station is located near or within part of Parcel 13, with a direct exit from the MBTA Green Line to Boylston Street.

Parking: There are on-street parking spaces in the area. Public off-street parking spaces exist within the Prudential Center garage and other public parking garages. Traffic congestion is an important issue in this area and should be considered carefully with any proposed development.

B. Site Conditions

Development of the air rights over the Parcels will require the Selected Developer(s) to address special site conditions and engineering challenges. Following its selection of developer, MassPike will make MassPike staff available as may be reasonably necessary to coordinate with the Selected Developer(s)'s team in developing the structural support and building design. MassPike will make available to the Selected Developer(s) information regarding the Parcels, including design and construction drawings, design criteria, specifications, studies, and reports.

All information regarding site conditions provided in this RFP is intended for preliminary planning purposes in the preparation of the Proposal in response to this RFP. It does not represent definitive information for use in actual building design and construction, and MassPike is not responsible for the accuracy, currency, or completeness of this information. The Selected Developer(s) will be required to prepare the actual building design in direct consultation with MassPike staff and consultants, to make its own determination as to the feasibility of all aspects of the proposed development project, and to demonstrate that feasibility to MassPike.

1. **Site Area.** The Parcels in the aggregate contain approximately 146,000 sq. ft. (3.35 acres).

Parcel 12 is located at the intersection of Massachusetts Avenue and Boylston Street west of Massachusetts Avenue and contains approximately 78,000 sq.ft. consisting of (i) air rights over the Turnpike, (ii) air rights over rail (iii) a land area on the southeastern side of the Parcel and (iv) a land area to the north of the Parcel.

Parcel 13 is located at the intersection of Massachusetts Avenue and Boylston Street, east of Massachusetts Avenue and contains approximately 54,500 sq.ft. consisting of (i) air rights over the Turnpike(ii) air rights over rail and (iii) air rights over the MBTA Green Line

Parcel 14 is located on the south side of Boylston Street and contains approximately 520 sq.ft.

Parcel 15 is located on the south side of Boylston Street and west of Dalton Street and contains approximately 12,520 sq.ft. of air rights over the rail. **The air rights over the turnpike roadway adjacent to Parcel 15 are not owned by MassPike.**

2. **Alignment.** The Parcels consist of air rights over the Eastbound and Westbound lanes of the Turnpike, railroad tracks, and the MBTA rails, and support structures to the north and south of the Parcels and some land portions abutting Parcel 12 and Parcel 13.

To the east of Parcel 12, the Massachusetts Avenue Bridge clearance from the bottom of steel to the roadway surface is 16'-0" (Min.) over the Westbound roadway and 14'-3" (Min.) over the Eastbound roadway. The bridge is 158 feet long and 92 feet wide, including a 35-foot wide roadway in each direction and 10-foot wide sidewalks on both sides.

To the east of Parcel 12 and south of Parcel 13, the Boylston Street Bridge clearance from the bottom of the steel to the roadway surface is 14'-6" over the Westbound roadway and 14'-6" over the Eastbound roadway. The Boylston Street Bridge over the Turnpike is 362 feet long, varies from 53.9' feet to 142' wide, including a 30'-31' Eastbound roadway and 22'-23' Westbound roadway, a 7-foot wide median, 11-foot wide sidewalks and bridge railings on both sides, and curbing. Due to the angle of Boylston

Street Bridge and the Turnpike alignment, at Parcels 13, 14, and 15, there is approximately 400 feet of street frontage on the north side and 330 feet of street frontage on the south side along the Boylston Street Bridge.

3. **Structural Conditions.** Various Turnpike, MBTA, and Railroad structures are located on the Parcels.

- a. **Developer responsibility.** The Selected Developer(s) will be responsible for demonstrating to MassPike that specific impacts of the proposed structure are in no way detrimental to the maintenance, use, and operation of the Turnpike, and do not impose unacceptable impacts to the MBTA and Railroad operations below. Furthermore, any construction shall be wholly at the Selected Developer(s)'s risk and the Selected Developer(s) shall indemnify MassPike against any and all claims or liabilities that arise related to such construction.

The Selected Developer(s) will be responsible for the design and construction of any foundations, including footings or transfer structures, and for their impacts on the Turnpike, the MBTA, and the Railroad. In addition, the Selected Developer(s) will be obligated to incur any and all additional costs to develop the Parcels including, but not limited to, costs incurred by MassPike for ventilation, lighting, and other life safety systems of the Turnpike and the railroad below the development.

4. **Utilities.**

- a. **Electric.** Potential electric utility service connections may be found on Massachusetts Avenue and Boylston Street.
- b. **Gas.** Potential gas service connections may be found on Massachusetts Avenue and Boylston Street.
- c. **Telephone.** Potential telephone service connections may be found on Massachusetts Avenue and Boylston Street.
- d. **Water.** Potential water service connections may be found on Massachusetts Avenue (20" main) and Boylston Street (12" main).
- e. **Sanitary Sewer.** Potential sanitary sewer service connections may be found on Boylston Street and Newbury Street.
- f. **Storm Drain.** Potential storm drain service connections may be found on Newbury Street and Boylston Street.

5. **Construction Phasing and Coordination**

- a. **Coordination with MassPike.** The Selected Developer(s) must coordinate construction with MassPike in order to maintain the safe and orderly flow of traffic on the Turnpike.
- b. **Coordination with MBTA.** The Selected Developer(s) must coordinate construction with the MBTA in order to maintain the safe and orderly flow of trains.

- c. Construction staging and laydown areas.** The Selected Developer(s) may need to plan for off-site laydown and/or storage areas. In doing so, the Selected Developer(s) will have to take into consideration transportation and other impacts on the adjacent neighborhoods.
- d. Developer(s) responsibility.** The Selected Developer(s) will be required to coordinate construction planning and all construction activities with MassPike and the MBTA. The Selected Developer(s) will be responsible for ensuring that building construction phasing will not interfere with MBTA or related construction activities. The Selected Developer(s) will be responsible for complying with noise, dust control, and pest management measures, as required by the City. The Selected Developer(s) also may be required to route deliveries or the removal of construction materials via specific haul routes designated by the City.

C. Available Property Information

Solely to facilitate interested respondents' independent investigations, examinations, due diligence reviews and analyses of the Parcels, MassPike makes the following information available to prospective Proposers. This information is available from MassPike at additional cost upon request by interested parties. As noted previously, MassPike makes no representation or warranty as to the accuracy, completeness, or currency of any of the information contained in or furnished pursuant to this RFP.

1. **Available Title Information.** Upon written request, MassPike will provide interested respondents with copies of available title information respecting the Parcels. A list of these title materials is included in this RFP as Appendix D. Requests for a copy set of these materials should be sent to Mr. Stephen J. Hines, Chief Development Officer, Massachusetts Turnpike Authority, Ten Park Plaza, Suite 4160, Boston, Massachusetts 02116, along with a separate check payable to the Massachusetts Turnpike Authority in the amount of Two Thousand Dollars (\$2,000).
2. **Turnpike Design Materials.** Upon written request, MassPike will provide interested respondents with copies of Turnpike design materials respecting the Turnpike under the Parcels. A list of the design materials that will be made available is included in this RFP as Appendix E. Requests for a copy set of these materials should be sent to Mr. Stephen J. Hines, Chief Development Officer, Massachusetts Turnpike Authority, Ten Park Plaza, Suite 4160, Boston, Massachusetts 02116, along with a separate check payable to the Massachusetts Turnpike Authority in the amount of Five Hundred Dollars (\$500).

IV. DEVELOPMENT AGREEMENT AND LEASE TERMS

A. Property Ownership

In general, the Parcels were acquired in fee by MassPike from The New York Central Railroad Company by virtue of Order of Taking B-50 and a subsequent confirmatory deed. Additional fee interests in the Parcels were acquired in Orders of Taking listed in Appendix D hereto. The Parcels are subject to an easement for the railroad in a portion of the Parcels (and any subsequent easements that might have been granted by the railroad), and subject to easements for the MBTA on Parcel 13 and at the western edge of Massachusetts Avenue, and any other easements and restrictions of record. The Selected Developer(s) will be responsible for verifying title to the Parcels.

B. Permitted Lease Proposals

Proposals may propose to lease any or all the Parcels. Close cooperation between the Selected Developer of any Parcel and the developer(s) of the other Parcels (Parcels 12, 13, 14 and/or 15) in terms of building, site program, and design may be required in order to maximize the benefits to the adjoining neighborhoods while minimizing the impacts of any project. Such benefits include, without limitation, harmonious project designs, coordinated permitting and construction schedules, shared open space, shared and/or coordinated parking and access, and joint community outreach.

C. Development Agreement

MassPike's authority to lease air rights over the Turnpike derives from and is subject to the Enabling Act. Under current regulations of MEPA, MassPike may not execute a lease until the completion of any necessary MEPA review. Under the terms of the MOU, MassPike may not approve the final design of a proposed project or execute a lease until the Selected Developer(s) has received design review certification from the BRA. The Selected Developer(s) must enter into a development agreement with MassPike which will govern the relationship between MassPike and the Selected Developer(s) until all conditions for execution of the lease are satisfied (the "Development Agreement," described in this Section IV.C). The Development Agreement will establish procedures under which the Selected Developer(s) will prepare a full development plan (the "Development Plan," described in Section IV.C.6 below) and seek all required permits and approvals for the Development Plan. The Development Agreement will require execution of a lease (the "Lease," described in Section IV.D below) upon successful completion of the MEPA review process (if applicable) and the receipt of any required approvals. Each Selected Developer(s) will have sixty (60) days from receiving notification of its selection within which to negotiate the Development Agreement. In accordance with the Enabling Act, the Development Agreement and Lease may be executed by MassPike after review and comment by the Advisory Board, and only upon approval of the Board of MassPike.

The Development Agreement will include, but not be limited to the following terms and conditions. In responding to this RFP, each Proposer acknowledges and agrees to accept these terms for the Parcels.

- 1. Term.** The Development Agreement will provide for the execution of the Lease after all required MEPA and other state environmental approvals, City of Boston approvals, as well as the satisfaction of any other conditions specified in the Development Agreement. The Development Agreement will provide for termination rights at the sole discretion of MassPike in the event of the failure of the Selected Developer(s) to obtain all the required approvals as noted above, or failure of the Selected Developer(s) to perform any other commitments under the Development Agreement within a specified time period.
- 2. Submission Deposit.** MassPike will require each Proposer to provide a Submission Deposit for each of the Parcels included in any Proposal(s), (the "Submission Deposit"). The Submission Deposit for Parcel 12 will be Seventy-Five Thousand Dollars (\$75,000); the Submission Deposit for Parcel 13 will be Seventy-Five Thousand Dollars (\$75,000); the Submission Deposit for Parcel 14 will be Twenty-Five Thousand Dollars (\$25,000); and the Submission Deposit for Parcel 15 will be Seventy-Five Thousand Dollars (\$75,000). A Submission Deposit shall be in the form of a bank, cashier's, or certified check drawn on a Massachusetts bank without intervening endorsement made payable to the "Massachusetts Turnpike Authority" and is due at the time that a Proposer submits its Proposal(s). Submission Deposits will be held by MassPike in escrow and will be refunded (without interest) to all Proposers whose Proposals are not selected. Upon selection, the Submission Deposit submitted by the Selected Developer(s) will be deemed fully earned and non-refundable by MassPike, except as otherwise provided herein. The Submission Deposit shall be applied by MassPike against any and all out-of-pocket expenses in connection with the preparation of this RFP and the negotiation and execution of the Development Agreement and Lease including, without limitation, survey, title, legal, and engineering costs (the "Third Party Costs"). If, at the time MassPike selects the Selected Developer(s), MassPike reasonably believes that the amount of the Submission Deposit will be insufficient to pay the Third Party Costs, then upon MassPike's request, the Selected Developer(s) shall supplement any Submission Deposit by the amount then requested by MassPike. Furthermore, if, at the time of execution of the Development Agreement and/or Lease, MassPike reasonably believes that the amount of the Submission Deposit will be insufficient to pay for all Third Party Costs, then upon MassPike's request, the Selected Developer(s) shall supplement

any Submission Deposit by the amount then requested by MassPike. The Submission Deposit will be deemed to be forfeited by a Selected Developer in the event that any Selected Developer withdraws its Proposal and/or fails to execute a Development Agreement and/or the Lease within the timeframes stipulated. Assuming the Submission Deposit is not forfeited, then any sum remaining unexpended in the Submission Deposit will, following payment of all outstanding Third Party Costs, be returned to the Selected Developer(s) (without interest) in the event that: (i) MassPike discontinues its selection of the Selected Developer(s) prior to the execution of the Development Agreement; or (ii) the Development Agreement is terminated through the fault of MassPike.

3. **Selection Deposit.** MassPike will require the Selected Developer(s) to provide a Selection Deposit of Two Hundred Thousand Dollars (\$200,000) at the time of selection (the “Selection Deposit”). Each Selection Deposit shall be in the form of a bank, cashier’s, or certified check drawn on a Massachusetts bank without intervening endorsement made payable to the “Massachusetts Turnpike Authority.” Upon receipt by MassPike, the Selection Deposit will be deemed fully earned and non-refundable by MassPike, except as otherwise provided herein. The Selection Deposit will be deemed to be forfeited by the Selected Developer(s) in the event that the Selected Developer(s) withdraws its Proposal and/or does not proceed diligently to obtain any approvals necessary for development of the Parcel, and/or if the Selected Developer(s) fails to execute the Development Agreement and/or the Lease. The Selection Deposit will be returned (without interest) to the Selected Developer(s) in the event that: (i) MassPike discontinues its selection of the Selected Developer(s), through no fault of the Selected Developer(s), prior to the execution of the Development Agreement; or (ii) the Development Agreement is terminated through the fault of MassPike. Upon execution of the Lease by MassPike and the Selected Developer(s), the Selection Deposit will be applied to rent.
4. **Development Deposit.** MassPike will require the Selected Developer(s) to provide a cash or cash equivalent deposit of up to One Million Dollars (\$1,000,000) in addition to the Selection Deposit, concurrently with the execution of the Development Agreement, to be held as a Development Deposit (the “Development Deposit”). Upon receipt by MassPike, the Development Deposit will be deemed fully earned and non-refundable by MassPike, except as otherwise provided herein. The Development Deposit will be deemed to be forfeited by a Selected Developer(s) in the event that such Selected Developer(s) withdraws its Proposal, does not proceed diligently to obtain any approvals necessary for the development of the Parcel, or fails to execute the Lease. The Development Deposit will be returned (without interest) to the Selected Developer(s) in the event that: (i) any required approvals are not secured through no fault of the Selected Developer(s); (ii) the Development Agreement is terminated through the fault of MassPike; or (iii) a Lease is executed by MassPike and the Selected Developer(s).
5. **Preconstruction Rent.** The Development Agreement will provide for preconstruction rent in an amount to be determined, commencing after the Selected Developer(s) has received required approvals for its proposed development project. Such preconstruction rent is to be paid in monthly installments until the later of Lease execution or rent commencement.
6. **Development Plan.** The Development Agreement will provide for a period during which the Selected Developer(s) will be required to produce a Development Plan subject to the approval of MassPike. This Development Plan will become the basis for seeking MEPA and other relevant approvals for the proposed project, and will be incorporated into the Lease. The Development Plan will include, at a minimum, a clear description of site uses, building massing and dimensions, significant building design features, access, parking, traffic improvements, permitting and development schedule, and a finance plan. The Selected Developer(s) may be required to produce physical and/or computer models of the Proposal to facilitate public and agency review.

7. **MassPike Review.** MassPike must review and approve all design and construction drawings for the development project to be located on the Parcels. The Selected Developer(s) will not be allowed to begin any construction without written prior approval by MassPike. MassPike will review the design for impacts to the Turnpike, its operations and security, and to ensure that every project will be visually and functionally compatible with the surrounding physical environment. Any future changes to or additional construction on the Parcels will be subject to the same requirements. MassPike reserves the right to approve, alter, or amend at any time any access to the Parcels that may have an impact on the Turnpike. Pursuant to Section 15, MassPike may not execute a Lease until it finds that any proposed development will be in no way detrimental to the maintenance, use, and operation of the Turnpike and that the construction and use of any development shall preserve and increase the amenities of the community.
8. **Community Review.** The Development Agreement will include requirements relating to the local permitting process and community participation in the development of the Parcels. These requirements shall include, without limitation, consultation by the Selected Developer(s) with the BRA and the CAC.
9. **BRA Review.** The Selected Developer(s) will be required to undergo design review certification by the BRA with respect to the design, environmental impacts, community and land use impacts of a proposed project. The design review certification process is detailed in the MOU. The Selected Developer(s) will be required to enter into one or more agreements with the BRA consistent with the BRA's certification of a proposed project. The Selected Developer(s) will be the project proponent for the BRA design review process for the Parcels. Pursuant to the MOU, MassPike may not approve the final design of any proposed project or execute a Lease until the receipt of design review certification from the BRA. In addition, it is anticipated that the BRA will require the Selected Developer(s) to voluntarily submit the project to zoning review and approval. It is therefore likely that any proposed project will undergo the BRA's review under Article 80.
10. **MEPA Review.** If required by MEPA Regulations, the Selected Developer(s) will be required to complete an Environmental Notification Form ("ENF") and, if necessary, an Environmental Impact Report ("EIR"), and file it with the Executive Office of Environmental Affairs ("EOEA"), initiating MEPA review. The Selected Developer(s) will be the project proponent for the MEPA process for the Parcels. Under MEPA regulations, MassPike may not execute a lease until the completion of any necessary MEPA review.
11. **Building Codes and other Regulations.** The Selected Developer(s) must ensure that the proposed project, as designed and constructed, complies fully with any and all applicable building codes and other regulations. The Selected Developer(s) will be solely responsible, including financially responsible, as the proponent of any and all building permit and other regulatory applications and/or reviews for the development of the Parcels.
12. **Metropolitan Highway System Advisory Board.** In order to fulfill the requirements of Sections 27 and 28 of the Enabling Act, MassPike will submit each Development Agreement and each form of Lease as contemplated by this RFP to the Advisory Board, for review prior to their final execution. By statute, the Advisory Board has a 30-day review period and may provide comments. In general practice, MassPike endeavors to keep the Advisory Board informed of upcoming activities in advance of the statutory 30-day review period.

- 13. Subsurface, Utilities and Environmental Due Diligence Period.** Each Selected Developer will have sixty (60) days from the date of execution of the Development Agreement within which to conduct its own subsurface, utilities, and environmental due diligence.
- 14. Survey and Plans.** Each Selected Developer will be required at its sole expense to have the applicable Parcel surveyed and to prepare plans suitable for recording and otherwise pursuant to MassPike's specifications.
- 15. Design, Construction, and Development Coordination with EOT, MBTA, and Railroad.** Each Selected Developer will be required to coordinate the design, construction and development of its proposed project with the Executive Office of Transportation, the MBTA, and the Railroad regarding impacts on the existing rail corridor, Green Line infrastructure, and proposed transportation improvements. Each Selected Developer shall consider the future electrification of the rail line in its proposed design.
- 16. Development Coordination Regarding Parcels 12, 13, 14 and 15.** Each Selected Developer(s) will be required to collaborate with any other developer(s) of Parcels 12, 13, 14 and 15 in order to maximize the benefits to the adjoining neighborhoods while minimizing the impacts of any project. Such benefits include, without limitation, harmonious project designs, coordinated permitting and construction schedules, shared open space, shared and/or coordinated parking and access, and joint community outreach.
- 17. Design and Construction Coordination.** The Selected Developer(s) will be required to coordinate design and construction activities with MassPike, the City, residents, and businesses in the immediate area. The Lease will require the Selected Developer(s) to adhere to specifications for noise control, dust control, pest management, maintenance of utilities, and the monitoring of movement in the Turnpike. Any construction activities that affect the Turnpike will be performed in accordance with MassPike design criteria, requirements and specifications.
- 18. Affirmative Action.** MassPike's policy is to further the goals of Executive Order 390, a copy of which is included in this RFP as **Appendix F**. Each Development Agreement and each Lease will include provisions consistent with Executive Order 390 with respect to use of the property, activities of the Selected Developer(s), and employment, as described below in Section V.E.3.

D. Lease Terms

In addition to applicable terms described above, each Lease will include, without limitation, the following terms and conditions.

1. **Term.** The Term of each Lease shall be up to 99 years; no options or extensions are permitted beyond 99 years. To the extent required, any Lease for more than 40 years must be approved by the Governor of Massachusetts. The Development Agreement and Lease will provide for termination rights at the sole discretion of MassPike in the event of the Selected Developer(s)'s failure to obtain the requisite regulatory approvals within a time period to be agreed upon in the Development Agreement and Lease.
2. **Rent.** The rent payment may be structured to maximize the economic return to MassPike by including (i) a single payment, (ii) multiple payments which may or may not extend over the full term of the Lease, (iii) base rent with escalations, and/or (iv) base rent with participation, percentage return, or other forms of predictable income stream. *Note: All Proposers must complete the Rent Offer Form described in Section V.D.1 and attached to this RFP as Schedule 2.*
3. **Local Real Estate Taxes.** Under the terms of the MOU, the Selected Developer(s) must agree to pay to the City real estate and personal property taxes or make payments in lieu of taxes for the period the Selected Developer(s) enters into a lease for the air rights with MassPike on any buildings or other improvements located on MassPike air rights. The Selected Developer(s) will be responsible for the payment of any and all such taxes or the payment of any amount in lieu of taxes, and MassPike shall assume no liability therefor.
4. **Maintenance and Utilities.** The Selected Developer(s) shall be solely responsible for inspection and maintenance, including all associated costs, of the development over the subsurface highway and MBTA structures, as well as the provision of utilities to the site.
5. **Insurance, Indemnification, and Hazardous Waste.** The Selected Developer(s) must provide insurance of types, in amounts, and with provisions to be specified by MassPike. Each Selected Developer(s) will indemnify MassPike and any parties identified by MassPike, including, without limitation, EOT and the MBTA, against all claims or liabilities that arise during the lease term, including any related to hazardous waste contamination.
6. **As Is.** Parcels 12, 13, 14, and 15 and any appurtenant rights or easements shall be leased on an "as is," "where is" and "with all defects" basis, subject to all liens, encumbrances, restrictions, and all other acts, matters or occurrences as of the effective date of the Lease, without representation, warranty, condition or covenant, express, implied or statutory, of any kind whatsoever.
7. **Mortgage, Assignment, and Sublease.** The Selected Developer(s) will not be allowed to mortgage, assign, or sublease interest in the Parcels, except with MassPike's prior written approval, which may be withheld or denied in MassPike's sole and absolute discretion, and only for the purposes and uses set forth in the Lease. In no event shall MassPike subordinate its interest in the Parcels, which interest shall be freely transferable by MassPike.
8. **Passage.** MassPike and MassHighway will retain the right to pass in, on, and over the Parcels for purposes of maintaining the Turnpike, for inspecting the property, and for ensuring the safe and efficient operation and security of the Turnpike.

9. **Reservation.** MassPike reserves the right to negotiate any and all aspects of any Proposal, including but not limited to the terms of each Development Agreement and the Lease, following selection of the Selected Developer(s).

V.

SUBMISSION REQUIREMENTS

A. Submission Process and Procedures

1. **Submission Schedule.** The schedule for the submission process under this RFP is shown below. MassPike reserves the right to change or amend this schedule at its sole discretion. Prior to the Proposal Due Date (as defined below), all parties who have requested a copy of the RFP in writing will be notified of any changes.

Pre-Submission Meeting and Site Tour	November 5, 2008
Written Questions Due Date	November 7, 2008
Proposal Due Date	December 5, 2008

2. **Submission Procedures.** Proposals must be received at MassPike's main office by the time and date shown above as the Proposal Due Date. Proposals must be submitted to the following address:

Stephen J. Hines
Chief Development Officer
Massachusetts Turnpike Authority
State Transportation Building
10 Park Plaza, Suite 4160
Boston, MA 02116

ATTN: AIR RIGHTS PARCELS 12, 13, 14, AND 15 PROPOSAL

Any Proposals received after the time and date shown above as the Proposal Due Date will be returned unopened. A Proposal will be deemed to have been received only if and at the time that it is delivered directly to MassPike's offices at Suite 4160 on the fourth floor of the State Transportation Building. Time-stamped receipts will be provided for any hand-delivered Proposals. Proposals may not be left at the main security desk of the State Transportation Building. Proposals will not be deemed to be received if delivered to any other MassPike office or facility, or any other state or other agency. In light of security measures in effect at the State Transportation Building, Proposers should allow extra time to sign into the building when delivering Proposals. Proposers are responsible for determining and complying with all current procedures for entering the State Transportation Building, including without limitation, providing necessary identification, prior to the Proposal Due Date.

All Proposals must be sealed to provide for confidentiality of the information contained therein and to ensure that the Proposals remain intact until MassPike opens them. Proposals submitted must contain all required forms and information, and must be in the format described in this Section V. Proposals must be complete, and must provide sufficient information for MassPike to evaluate them. No additions or supplements to Proposals will be accepted after a Proposal is submitted, unless specifically requested or allowed by MassPike. Once submitted to MassPike, all Proposals and accompanying materials are the sole property of MassPike. All Proposals are subject to the reservations and conditions specified in Section VII of this RFP.

3. **Pre-Submission Meeting and Site Tour**. A Pre-Submission Meeting and Site Tour has been scheduled for the Parcels on the date and time shown above in Section V.A.1. The Pre-Submission Meeting and Site Tour will be held at a location to be announced. Prospective Proposers must confirm their attendance of the Pre-Submission Meeting and Site Tour with Shirin Karanfiloglu, MassPike Director of Planning & Development, by e-mail at **Shirin.Karanfiloglu@masspike.com**. All prospective Proposers who confirm their attendance via e-mail will be informed via e-mail of the location of the Pre-Submission Meeting and Site Tour, as well as any changes to the schedule.
4. **Questions**. All questions regarding this RFP document or any matter relating to the RFP selection process must be submitted in writing to the address above on or before the Written Questions Due Date, shown above in Section V.A.1. All questions received will be responded to in writing to all parties who have requested this RFP in writing.
5. **Submission Deposit**. MassPike will require each Proposer to provide a Submission Deposit for each Parcel included in a Proposal. The Submission Deposit shall be in the form of a bank, cashier's, or certified check drawn on a Massachusetts bank without intervening endorsement made payable to the "Massachusetts Turnpike Authority" and is due at the time that a Proposer submits its Proposal(s). Submission Deposits will be held by MassPike in escrow and will be refunded (without interest) to all Proposers whose Proposals are not selected. See Section IV.C.2 for a complete discussion of the Submission Deposit.

B. Proposal Format

1. **General Proposal Format.** Each Proposal must address all of the submission requirements called for in this Section V, and must be in the format specified. Proposers are encouraged to keep their Proposals simple and to address the submission requirements straightforwardly and concisely. Proposals must be submitted in three components, as outlined and described in further detail below in subsections C, D, and E.
 - a. **Component I: Development Proposal**
 - i. Proposal form
 - ii. Development team description
 - iii. Development approach (including required drawings)
 - b. **Component II: Financial Proposal**
 - i. Rent Offer Form(s)
 - ii. Project financial projections
 - iii. Project financing
 - iv. Alternative financial proposals
 - c. **Component III: Additional Information**
 - i. Proposer officers and owners
 - ii. Certificates and forms
 - iii. Civil rights compliance
 - iv. Answers to financial questions
 - v. Proposer financial status
 - vi. Additional financial information
 - vii. Additional developer information
2. **Public Circulation.** It is MassPike's intent to circulate Component I of all Proposals to the BRA and other City agencies, members of the CAC, as well as any member of the general public requesting a copy of the Proposals. Copies will be made available at a public place for review. Copies of all Proposals will be available at the Boston Redevelopment Authority Secretary's Office, City Hall, Room 910. In order to maintain the integrity of the RFP process, to the extent allowed by law, MassPike will keep Components II and III of each Proposal confidential until a developer is selected. MassPike is subject to the laws of the Commonwealth with respect to disclosure of public records, and all materials submitted in connection with all Proposals may be made available to the public. For additional information, see Section VII below.
3. **Page Limits and Size.**
 - a. **Component I.** Component I may not exceed twenty-five (25) pages in length, including all text, forms, tables, and drawings.
 - b. **Component II.** Component II may not exceed fifteen (15) pages in length, including all text, forms, and tables.
 - c. **Component III.** Component III may be as long as necessary to provide the required information, however, it should be kept to the minimum information needed to evaluate the Proposal.

All pages shall be single-sided. All pages shall be 8½ by 11 inches in size, except for the required drawings, which must be 11 by 17 inches in size.

4. Copies.

- a. Component I.** Twenty (20) complete, separately bound copies of Component I must be submitted.
- b. Component II.** Ten (10) complete, separately bound copies of Component II must be submitted.
- c. Component III.** Six (6) complete, separately bound copies of Component III must be submitted.
- d. Photocopy original.** In addition, one *unbound*, black-and-white copy of Components I, II, and III, suitable for photocopying, must be submitted.
- e. PDF Form.** Design submissions should be provided in Adobe Portable Document Format (“PDF”).

5. Drawings. The plans and elevations to be submitted in the Proposals should be conceptual in nature. All plans and elevations included in the Proposals should be bound with the Proposals, and must be 11 by 17 inches in size. Larger drawings, physical models, or computer graphics or models may be used by Proposers at interviews and presentations, if desired, but are not required for the Proposals. Larger drawings and physical models should not be submitted with the Proposals. Each drawing must be labeled to indicate key features of the Proposals and must include a scale bar and north arrow where applicable. Each drawing must include the respondent’s name and must be dated.

6. Submission Forms. Proposers must complete all of the schedules included in this RFP section. All schedules must be bound with the appropriate components of the Proposals.

7. Multiple Options. Proposers may propose more than one development option for any or all Parcels, but each such option must be submitted as a separate Proposal that complies with all submission requirements of this RFP.

C. Proposal Content: Component I, Development Proposal

Component I of each Proposal must include the following information about the development team and proposed development. It should be organized clearly and in the order and with headings as presented below.

1. **Proposal Form.** The Proposal Form, included in this RFP as **RFP Schedule 1**, must be completed in its entirety, signed by an authorized officer of the Proposer, and bound at the beginning of Component I of the Proposal package.
2. **Section 40J Disclosure Statement.** The Section 40J Disclosure Statement form, included in this RFP as **RFP Schedule 3**, must be completed, signed by an authorized officer of the Proposer, and bound at the beginning of Component I of the Proposal package.
3. **Development Team.**
 - a. **Development entity.** Identify the specific entity that will enter into the Development Agreement and Lease with MassPike for the Parcel or Parcels and the precise nature or form of that entity (e.g., limited partnership, non-profit corporation, corporation, etc.). Identify any companies or organizations of which the development entity is a subsidiary or with which it is affiliated. Describe the Proposer, including, without limitation: all ongoing projects, past development experience, examples of similar projects, and the names of key individuals who will be assigned to this project (include resumes in Additional Developer Information in Component III). If the Proposer is a joint venture or partnership, identify each party to the joint venture or partnership and provide all of the information required above for each party. Describe in detail the provisions of the joint venture or partnership and each party's role in the joint venture or partnership agreement, including without limitation: financial interests, financial liabilities, operational responsibilities, role in decision-making, and authority to act on behalf of the joint venture or partnership.
 - b. **Other development team members.** Identify all other members of the development team known at this time. For each development team member that is known, describe the role that the team member will play, and provide a company profile including ongoing projects, experience, examples of similar projects, and the names of key individuals who will be assigned to this project (a limited number of resumes may be included in Additional Developer Information in Component III). Examples of other development team members may include, but are not limited to: developer, joint venture partner, development consultant, architect, landscape architect, engineer, legal counsel, construction manager, investor, lender, fundraising consultant, and any tenants. Limited additional materials relating to the other team members, such as photographs, extended descriptions, or promotional materials relating to past projects, if included in the Proposal at all, should be included in Additional Developer Information in Component III.
4. **Development Approach.** The Development Approach section of the Proposal must provide a clear, conceptual description of the proposed development and use of the Parcel(s). The Selected Developer(s) will be solely responsible for ensuring that the project, as designed and constructed, complies fully with any and all applicable local regulations, including but not limited to design review by the BRA and the guidelines detailed in the Civic Vision, parts of which are reproduced in Appendices B and C of this RFP. Proposers must obtain a complete copy of the Civic Vision from the BRA.

- a. Development program.** The Proposal should describe the proposed program for the development in detail, including without limitation:
- i. Program areas.* State the overall gross floor area of the proposed building(s). Provide a table listing all proposed building uses (including circulation, mechanical, and parking), and the net floor area for each use by building floor.
 - ii. Land uses.* Describe all proposed indoor and outdoor site uses and the location of each use within the building(s) or on the site. Describe the specific nature of each proposed use (e.g., specific types of community use or retail uses). If residential uses are proposed: (v) describe the number of units and sizes; (w) state whether units would be rental, condominium, or other; (x) state the percentage and number of proposed affordable units; (y) for all of the affordable units, describe the different levels of affordability; and (z) describe all external subsidies (if any) to be applied to the affordable units, including the number of units to which each subsidy program applies, the application and approval period for each program, and any special conditions of each program. Describe how these uses will relate programmatically to the surrounding land uses.
 - iii. Parking.* State the number of parking spaces that would be required for each use included in the building program. Describe any proposed on-site parking, including the location within the development, number of spaces, and whether and how many spaces will be dedicated to each program use. Describe any provisions for off-site parking, including the location, number of spaces, and any agreements ensuring availability of spaces.
- b. Community uses and benefits.** Describe in detail the extent, nature, and location of all community uses and benefits included in the Proposal(s), whether on- or off-site. Describe any programs or services currently provided by or proposed to be provided by the Proposer or its proposed tenants that would directly or indirectly benefit the Massachusetts Avenue/Boylston Street area or surrounding communities.
- c. Building and site design description.** Provide a concise description of the proposed building and site design, including: (i) building massing and height; (ii) building footprint and floor plates; (iii) pedestrian access to and circulation through the site and building; (iv) parking and vehicular access to, egress from, and circulation through the site; (v) provisions for building delivery or other services; (vi) vertical circulation through the building; (vii) proposed architectural treatment, materials, and features; (viii) the nature, size, and location of landscape areas on the Parcels and their relationship with adjacent parks, buildings, and areas; (ix) how the proposed buildings would impact the existing Turnpike; (x) how the proposed building will incorporate the MBTA Hynes Convention Center Green Line station; (xi) how the proposed building and site design would satisfy the design guidelines of the Civic Vision; and (xii) how the proposed building incorporates sustainable design principles, in particular, the sustainable design guidelines available from the City of Boston Environment Department, Boston City Hall, Room 805, described above in Section II.E.3.a of this RFP; and (xiii) how the development will be connected to local roadway systems and transit infrastructure.
- d. Design drawings.** The drawings required with the Proposal should be conceptual in nature rather than detailed designs. **It is expected that the Selected Developer(s)'s conceptual design will change following selection in response to City and neighborhood comments, and comments from MassPike.** Drawings are included in the page count for Component I.

Drawings must be bound with Component I, and must be 11 by 17 inches in size. Limited additional drawings may be included in the Additional Developer Information section of the Proposal. The drawings must depict the following for the Proposal as a whole.

- i. Design intent:* Provide one or more diagrams expressing the design intent of the building(s), including a conceptual public realm diagram, pedestrian and vehicular circulation, views to and from the site, and the relationship with adjacent areas.
 - ii. Site plan:* The site plan must show the location of all proposed building structures, the extent of Turnpike and railroad coverage, outdoor program areas, parking, vehicular and pedestrian access and circulation, and open space and landscaping.
 - iii. Ground floor plan:* The ground floor plan must show all ground floor uses, vehicular and pedestrian access, and vertical circulation through the building. The ground floor plan may be combined with the site plan.
 - iv. Upper floor plans:* The Proposal must include plans for all upper building floors or typical floors.
 - v. Building and site sections:* At least one transverse and one longitudinal section through the building and Turnpike below must be provided. The sections should illustrate the relationship of the proposed building to the Turnpike and railroad structures, the vertical arrangement of floors within the building, and vertical circulation through the building. Additional sections may be included.
 - vi. Overall building view or elevations:* An overall perspective or axonometric drawing or building elevations must be included to show potential building massing and architectural treatments in the context of surrounding buildings.
 - vii. Specific building views:* Every Proposal must include at least three to five different pedestrian level views toward the proposed development depicting how it would appear in the context of the surrounding areas.
 - viii. Contextual site plan:* The Proposal must show the proposed development with adjacent developments.
- e. Permits and approvals.** Identify all permits and approvals required for the proposed development. Explicitly identify any conditional or special permits, variances, rezoning, waivers, or other relief from any regulation or statute that will be required in order to develop the proposed project. Proposers are responsible for reviewing and understanding all the requirements of applicable City, state, and federal regulations and statutes. Proposers are advised to review not only the MOU but also Article 80 and BRA development review procedures, including review by the BCDC. Moreover, Proposers should independently confirm any applicable MEPA and/or zoning and BRA design review and approval requirements for the Parcels. The Selected Developer(s) will be responsible for obtaining all necessary approvals or relief prior to construction.

- f. Schedule.** Provide a graphic conceptual schedule for the proposed development, including start and finish times and duration for all development activities, including design, permitting, financing, construction, and occupancy. If development of the proposed project is to be phased, the conceptual schedule must include a phasing plan as to the development as a whole. The schedule should include the application and approval periods for any affordable housing subsidy programs included in the Proposal.

D. Proposal Content: Component II, Financial Proposal

Component II of each Proposal must include the following information about the financial aspects of the Proposal. It should be organized clearly and in the order and with headings as presented below.

1. **Rent Offer Form.** All applicable portions of the Rent Offer Form, included in this RFP as **RFP Schedule 2**, must be completed and the Form must be signed by an authorized officer of the Proposer. This form is intended to summarize the rent offer and related terms in a format that is comparable among all Proposals. Proposers are not to alter the format or structure of the Form in any way. Any alternative rent proposals should be provided in a separate section of the Proposal (see below). Instructions for completing this form are provided in the corresponding sections below. MassPike may structure rent as single or other non-recurring payments, regular annual payments, percentage or other performance-based rent, or some combination of payment types. The Form provides spaces for each possible type of rent.
 - a. **Proposer.** Enter the name of the Proposer (the entity that will enter into an agreement with MassPike), and the type of entity (e.g., limited partnership, non-profit corporation, corporation, etc.).
 - b. **Term.** State the proposed lease term. Describe any proposed extensions or options, including the number and term of the extensions and which party or parties have the option to extend. The lease term with all extensions cannot exceed 99 years.
 - c. **Non-recurring rent.** If any of the rent is to be paid as a single payment, up-front, or other non-recurring payment, enter the amounts and proposed schedule for payment. Enter the total amount of non-recurring rent where indicated.
 - d. **Annual Rent.** If regular, annual rental payments are proposed, enter:
 - i. *Initial Annual Rent.* Enter the amount of the initial annual rent to be paid under the Lease and the calendar year in which the first payment will be made.
 - ii. *Rent Escalation:* Enter either a fixed percentage by which Annual Rent will be increased or an index to which rent increases will be tied, with a minimum percentage increase. Enter the frequency with which these increases will occur.
 - iii. *Adjustment to Fair Market Value.* State the proposed frequency of periodic adjustments in Annual Rent to full fair market value. Periodic adjustments will be mandatory.
 - e. **Performance-based rent.** Describe in the space provided any proposed performance-based rent provisions, not including non-recurring or annual rent, including, the measure of performance on which the rent will be based, and what percentage or other factor will be applied to such measure.
 - e. **Projected rent payments.** Based on the information entered for “c,” “d,” and “e,” above, complete the table with the total non-recurring rent payments, annual rent payments, performance-based rent payments, and total projected payments to MassPike for the first ten (10) years of the development project. Please note that the Project Financial Projections described below

must include this information for thirty (30) years. On the Rent Offer Form, include each payment under the calendar year in which it is proposed or projected to occur. For annual rent, the amounts entered should include any escalation as provided in the answer to “d,” above. For performance-based rent, the amounts entered should be the rent that would result from the provisions described above in “e” given the financial projections required under Section V.D.2, below.

- f. Authorized signature.** An authorized officer of the Proposer must certify that the Proposer is offering to enter into a development agreement, lease, and/or other agreement to develop the Parcels on the terms shown on the Rent Offer Form and further described in the Proposal(s), subject to the terms and conditions of this RFP and further negotiations with MassPike. Sign, print the officer’s name, and enter the date in the appropriate boxes.
- 2. Project Financial Projections.** Provide financial projections sufficient to determine the financial feasibility of the proposed development. These projections must include:

 - a. Development budget.** The development budget must detail all development costs, including, without limitation: (i) site preparation; (ii) building construction; (iii) parking and landscaping; (iv) utilities; (v) design, engineering, and other consulting; (vi) permitting and fees; (vii) insurance; (viii) legal and other professional fees; (ix) construction financing costs; and (x) rent to MassPike. 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.
 - b. Operating pro-forma.** The operating pro-forma must include projections for a period of thirty (30) years. It must detail all operating income and expenses and assumptions, including (as applicable): (i) all sources of revenue to support building operations, including gross rental rates, rent concessions, lease-up schedules, tenant rent escalations, vacancies, fees, tuition, or memberships; (ii) annual fundraising; (iii) government funding or reimbursement; (iv) ongoing grants or other gifts; (v) operating expenses, including without limitation, utilities and maintenance; (vi) capital replacement reserve; (vii) real estate taxes; (viii) debt service for each source of permanent financing; and (ix) inflation assumptions. If the Proposer will be using the property for its own business operations or non-profit programs, the operating pro-forma should include projections of income and expenses for those operations or programs. The pro-forma must include separate line items for all types of proposed rent to MassPike for the full thirty (30) years. These rent projections must reflect escalation of annual rent, periodic adjustments of rent to fair market value, and projections for any participation or other performance-based rent as proposed in the Rent Offer Form. All assumptions and bases for performance-based rent projections should be stated clearly.
- 3. Project Equity/Financing.** Describe the project equity and financing of the planned development and future operation of the Parcel(s), including all sources of private or public debt to be used as construction and permanent financing, and all loan terms, including the security to be provided for each anticipated loan. Describe all sources of private or public equity to be used in the development during the construction and operations periods of the development, and the anticipated amounts from each source. Include as equity any grants or gifts. Indicate any interest from specific investors, lenders, tenants, or others, but include actual letters of interest in Component III.

4. **Alternative Financial Proposals.** Proposers may suggest alternative financial proposals or approaches that cannot be shown on the Rent Offer Form. If so, describe the alternative approach in detail and the reasons for proposing it. Proposers must make any alternative financial proposals *in addition* to a standard proposal using the Rent Offer Form as described above.

E. Proposal Content: Component III, Additional Information

1. **Proposer Officers and Owners.** The Proposal must list the officers and others with an interest in the Proposer:
 - a. **For-Profit Corporation.** If the Proposer is a corporation, list all officers, directors, and owners of five percent (5%) or more of the capital stock.
 - b. **Non-Profit Corporation.** If the Proposer is a non-profit corporation, list all officers, and directors or board members. List any other entities that control or are controlled by the Proposer.
 - c. **Non-corporation.** If the Proposer is other than a corporation, list all persons or entities with an interest of five percent (5%) or more in the operations of the development entity, including the title and percentage of the interest for each.
2. **Certificates and Forms.** Each Proposer must complete the following certificates and forms and include them in Component III of the Proposal. MassPike reserves the right to require additional certifications of the Selected Developer(s).
 - a. **Evidence of Authority.** Proposers must provide evidence of authority of the person signing the Proposal Form to submit the Proposal on behalf of the Proposer. If the Proposer is a corporation, said Proposer must include a duly executed resolution of its Board of Directors either approving the particular Proposal being submitted, or specifically authorizing and empowering a designated agent of said corporation to bind the corporation in all matters involving, related to, or incidental to the submission of a Proposal hereunder and, if accepted by MassPike, the corporation's full performance under the terms of the RFP. Included in this RFP as **RFP Schedule 4** is a sample Clerk's Certificate.
 - b. **Additional Certifications.** In order to substantiate compliance with: (i) Chapter 66A of the Massachusetts General Laws regarding confidentiality and privacy; (ii) Section 49A of Chapter 62C of the Massachusetts General Laws regarding taxes; and (iii) other matters deemed necessary or appropriate by MassPike, all of the certifications included in this RFP as **RFP Schedule 5** must be completed and signed by an authorized officer or agent of the Proposer.
3. **Civil Rights Compliance.** MassPike's policy is to further the goals of Executive Order 390, a copy of which is annexed to this RFP as **Appendix F**. Each Proposer shall indicate that its firm and designated subcontractors, if any, do not discriminate by segregation or otherwise against any person because of race, creed, color, national origin, age, disability, sex, sexual orientation or veteran status in providing or refusing to provide any person or persons the use of any facility including any and all services, privileges, accommodations, and activities of the Proposer. Each Proposer also shall indicate that it does not discriminate by segregation or otherwise against any employee or applicant for employment because of race, color, creed, national origin, age, handicap or sex. Each Selected Developer will be required to establish and develop civil rights policies and programs, consistent with those of MassPike, designed to prohibit discrimination, ensure equality of opportunity, and to implement appropriate narrowly tailored affirmative action in all operations, particularly in the areas of employment and public access in all matters related to its use of the Parcel(s). Consistent with MassPike's policy to further the goals of Executive Order 390, each Proposer shall indicate in its Proposal that it will utilize good faith efforts to employ minority and women owned businesses and

will maintain records illustrating that minority and women owned businesses have had an equal opportunity to participate in business relationships in all matters relating to its use of the Parcel.

4. **Financial Questions.** Each Proposer must answer the following questions. Note that for purposes of these questions, “the Proposer” shall include: (i) the development entity; (ii) any director, principal officer, partner, or owner of five percent (5%) or more of stock or with an interest of five percent (5%) or more in the development entity; or (iii) any partnership, corporation, or other entity with which any of the foregoing individuals or entities are or have been affiliated. If “yes” is answered to any of these questions, describe the circumstances in detail.
- a. **Bankruptcy.** In the past ten (10) years, has the Proposer (as that term is defined in the above Paragraph 4 of this Section V.E) filed for bankruptcy or been declared bankrupt?
 - b. **Foreclosure.** In the past ten (10) years, has the Proposer (as that term is defined in the above Paragraph 4 of this Section V.E) been the subject of a foreclosure proceeding?
 - c. **Loan default.** In the past ten (10) years, has the Proposer (as that term is defined in the above Paragraph 4 of this Section V.E) defaulted on a loan?
 - d. **Lease default.** In the past ten (10) years, has the Proposer (as that term is defined in the above Paragraph 4 of this Section V.E) been in default of a ground or other lease or had such a lease terminated due to such Proposer’s failure to comply with the terms of the lease or agreement?
 - e. **Prohibition.** Has the Proposer (as that term is defined in the above Paragraph 4 of this Section V.E) ever been prohibited from doing business with any government agency?
 - f. **Felony.** Has the Proposer (as that term is defined in the above Paragraph 4 of this Section V.E) ever been indicted for or convicted of a felony?
 - g. **Illegal purpose.** Has the Proposer (as that term is defined in the above Paragraph 4 of this Section V.E) 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?
5. **Proposer Financial Status.** Provide evidence of the Proposer’s current financial position and capacity to undertake and complete the proposed development. Every Proposer must provide the applicable information set forth in subsections (a) and (b) of this Paragraph 5. For Proposers that are single purpose entities (“SPE”) created specifically to submit a Proposal or Proposals for development of the Parcel(s) pursuant to this RFP, the information required to be provided as set forth in subsections (a) and (b) below must be provided for each such SPE and for each entity and individual holding a beneficial interest of 20% or more of such SPE. The information to be provided for each such Proposer, SPE, and other individual or entity must include:
- a. **Publicly held.** If the development entity or any part of the entity is a publicly-held corporation, this must include the following documents as filed with the Securities and Exchange Commission: Annual Reports on Form 10-K for the last two (2) fiscal years, including any consolidated financial statements filed therewith and any amendments thereto or restatements thereof; all Quarterly Reports on Form 10-Q filed since the most-recently filed 10-K; and, any Current Reports on Form 8-K filed since the last fiscal year.

- b. **Privately held.** If the development entity or any part of the entity is a privately-held organization, this must include: balance sheets for the last two (2) fiscal years (all financial statements provided in the Proposal should be certified); a statement of income for the last two (2) fiscal years; and a management discussion and analysis of the organization's financial condition for the last two (2) fiscal years indicating any changes in the organization's financial position since the financial statements were prepared.
6. **Additional Financial Information.** Include in this section any additional financial information, including, without limitation: letters of interest from prospective investors, lenders, or tenants; and any market data to support projected sales or rent figures.
7. **Additional Developer Information.** If desired, a Proposer may include any of the following information to supplement a Proposal. This information should be bound in Component III. Although there is no specific page limit for this additional information, Proposers should make every effort to limit the amount and nature of information included to only that which will assist in evaluating the Proposal.
 - a. **Resumes.** Resumes of all key development team members listed in Component I may be included here.
 - b. **Past projects and related experience.** Include any additional information, descriptions, or materials relating to past development projects by the Proposer or other Development Team members that is helpful in understanding the qualifications of the team members to undertake the development of the Parcel.
 - c. **Additional design drawings.** If a Proposer wishes to include any drawings and other graphics in addition to the required drawings included in Section 3(d) Component I, include them here.

A. Selection Process

MassPike reserves the right to change or amend this process at its sole discretion in order to further the purposes of the RFP. Prior to the Proposal Due Date, all parties who have requested a copy of this RFP in writing will be notified, in writing, of any changes. Subsequent to the Proposal Due Date, only Proposers who have submitted Proposals in accordance with the Submission Requirements described in Section V of this RFP will be notified, in writing, by telephone, or by fax, of any changes.

1. **Proposal Due Date.** All Proposals must be received by Stephen J. Hines, Chief Development Officer, Massachusetts Turnpike Authority, 10 Park Plaza, Suite 4160, Boston, MA 02116 by **12:00 noon local time, December 5, 2008**, in accordance with Section V of this RFP. Any Proposals received after that time and date will be returned unopened.
2. **Proposal Evaluation.** MassPike will review all the Proposals to determine if they contain the required forms and if submission requirements have been met. Failure to submit specified forms and follow submission requirements may result in a Proposal being rejected. The Proposals will be evaluated by MassPike to determine how well they meet the selection criteria. In addition to reviewing the Proposals, staff may review references and conduct visits to Proposers' other projects or operations, and use the results in evaluating the Proposals.
3. **City of Boston Review.** Component I of each Proposal will be distributed to the BRA and other City agencies. The BRA will review Component I and submit consolidated comments to MassPike on behalf of the City. MassPike will consider these comments in its evaluation of the Proposals.
4. **MBTA Review.** Component I of each Proposal will also be distributed to the MBTA for review and comment. MassPike will consider comments from the MBTA in its evaluation of the Proposals.
5. **Other Agency Review.** MassPike reserves the right to distribute Component I of each Proposal to any other City, state, or federal agencies for review and comment. MassPike may consider comments from these agencies in its evaluation of the Proposals.
6. **Public Review.** Component I of each Proposal will also be distributed to members of the CAC by the BRA. Proposers will be required to present their Proposals and answer questions at one or more public meetings of the CAC. The CAC will review the Proposals and provide comments. MassPike will consider these comments in its evaluation of the Proposals. In addition, Component I of each Proposal may be made available at a public place for review.
7. **Interviews.** At MassPike's discretion, oral presentations and interviews with MassPike personnel and/or consultants may be scheduled with all Proposers, some Proposers, or not at all.
8. **Additional Information.** MassPike reserves the right to select finalists; to request additional information, revised Proposals, or best and final Proposals; to hold additional interviews; and/or to conduct additional rounds of reviews and evaluations. If the Proposals are revised, Proposers may be required to make additional public presentations.
9. **Selection.** MassPike may select a developer(s), subject to the negotiation of a Development Agreement and Lease, and the approval of the Board of MassPike.

B. Selection Criteria

MassPike will select a developer for the potential lease of the Parcels based upon information contained in the Proposals, presentations by the Proposers, comments from the CAC, the City of Boston, the MBTA, and other agencies, references, interviews (if any), and MassPike's analysis and judgment.

MassPike reserves the right to request additional information of any or all Proposers in writing and to use that information in evaluating the Proposals.

In evaluating the Proposals, MassPike will consider the following criteria:

- 1. Development Approach.** Each proposed development program will be evaluated in light of several factors, including, without limitation: (a) land uses and program; (b) conceptual building and site design; (c) on- and off-site community uses or benefits; (d) impacts on the immediate neighborhood and surrounding areas; (e) traffic and parking approach and impacts; (f) permitting requirements; and (g) compatibility with planning for the development of adjacent Parcels 12, 13, 14, and 15. MassPike will also consider: the Proposal's responsiveness to the program, design, public benefits, sustainability, and development impact considerations established by the Civic Vision, parts of which are reproduced in Appendices B and C of this RFP; and the financial feasibility of the proposed project.
- 2. Experience.** MassPike will consider previous experience of firms and key development team members including, without limitation: (a) demonstrated development, urban design, architecture, and engineering experience; (b) completed projects; (c) references for similar work; and (d) resumes. Particular attention will be given to the Proposer's demonstrated experience working with strong, resourceful community groups and government agencies, as will the Proposer's ability to effectively address the concerns of such groups regarding complex, large-scale, urban development projects.
- 3. Community Input.** MassPike will consider comments from the BRA, the MBTA, other public agencies, and members of the public.
- 4. Financial Proposal.** MassPike will consider the rent proposal, including the Rent Offer Form and any alternative rent proposals.
- 5. Developer Financial Capacity.** MassPike will consider the financial capacity of the Proposer to undertake and complete the project, including each developer's financial position, proposed financing and lender interest, and proposed tenant interest (if any).
- 6. Responsiveness to the RFP.** MassPike will consider responsiveness of the Proposal to the requirements specified in the RFP, including the submission of the applicable Submission Deposit.
- 7. Civil Rights.** Mass Pike will consider Proposers' willingness to comply with the goals of Executive Order 390 in the implementation of their Proposals.

PURSUANT TO THE ENABLING ACT, MASSPIKE RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS.

VI. RESERVATIONS AND CONDITIONS

A. Reservations

1. MassPike makes no representation or warranty as to the accuracy, currency, and/or completeness of any or all of the information provided in or made available pursuant to this RFP, or that such information accurately represents the conditions that would be encountered on the Parcels and the vicinity, now or in the future. The furnishing of information by MassPike shall not create or be deemed to create any obligation or liability upon it for any reasons whatsoever, and each Proposer, by submitting a Proposal to MassPike in response to this RFP, expressly agrees that it shall not hold MassPike or any of their respective officers, agents, contractors, consultants, or any third party liable or responsible therefor in any manner whatsoever.
2. MassPike reserves the right to suspend, withdraw, or amend this RFP for any reason or for no reason at any time. MassPike reserves the right to change the selection process or any schedule with written notice to all Proposers or finalists, as appropriate, to address changes in conditions or the pool of Proposers.
3. MassPike reserves the right to seek additional information, revised Proposals, and/or best and final offers from Proposers at any time prior to selection of a developer through written notice to any or all Proposers.
4. MassPike reserves the right to reject, in its sole discretion, any Proposal not submitted in conformance with this RFP and any amendments hereto, or to reject any and all Proposals, in its sole discretion, for any reason or for no reason. MassPike further reserves the right to waive or decline to waive any irregularities in any Proposal when it determines that it is in MassPike's best interest to do so.
5. MassPike reserves the right to select a developer in any way and on any basis that it determines is in the best interest of MassPike or the development of the Parcel. MassPike reserves the right not to select a developer for the Parcels as a result of this RFP or any subsequent process. MassPike reserves the right not to develop or have any other party develop the Parcels if it determines that this is in the best interest of MassPike, the development of the Parcels, or the adjacent communities. MassPike reserves the right to discontinue its selection of any developer, or the entire RFP process for any reason whatsoever or for no reason. In such event, MassPike shall not be liable to any actual or potential Proposer for costs or expenses incurred by them as a result of the issuance and subsequent withdrawal of this RFP or the process initiated hereby.
6. MassPike reserves the right to negotiate any and all terms of any Development Agreement, Lease, or other agreement with a Selected Developer(s). If such negotiations cannot be concluded successfully with a Selected Developer(s), MassPike may choose to negotiate an agreement with the next Selected Developer(s) from the pool of Proposers, to terminate the selection process, or to begin a new selection process.
7. MassPike shall not be liable to any actual Proposer, potential Proposer, or Selected Developer(s) for costs or expenses incurred by them as a result of the issuance this RFP or the process initiated hereby.

B. Conflict of Interest, Collusion

1. By submitting a Proposal, a Proposer certifies that no relationship exists between the Proposer or any of its officers, employees, agents, or representatives and MassPike, or any officer, employee, or agent of MassPike that constitutes unfair competition or conflict of interest or that may be adverse to MassPike.
2. By submitting a Proposal, a Proposer certifies that it has not acted in collusion with any other Proposer or other entity doing business with MassPike in a way that would constitute unfair competition.

C. Confidentiality

1. Proposers should assume that all material submitted in response to the RFP will be open to the public. To the extent allowed by Massachusetts public records laws, MassPike will use best efforts not to disclose or make public any pages of a Proposal on which the respondent has stamped or imprinted “confidential.” Confidential data will be limited to confidential financial information concerning the Proposer’s organization. MassPike assumes no liability for disclosure or use of any information or data.
2. All information submitted in response to this RFP becomes the sole property of MassPike, with the exception of confidential financial information concerning the Proposer or its financial partners. MassPike reserves the right to share any and all ideas or information from any of the Proposals submitted with the Selected Developer(s), public agencies, or the affected communities. No Proposer has proprietary rights to any ideas or materials submitted in its Proposal to the RFP.

D. Proposers’ Responsibilities

1. All Proposers shall thoroughly familiarize themselves with the provisions of the RFP. Upon receipt of the RFP, each Proposer shall examine the RFP for missing or partially blank pages due to mechanical printing or collating errors. It shall be the Proposer’s responsibility to identify and procure any missing pages.
2. Proposers shall be entirely responsible for verifying any applicable environmental and other regulatory requirements. Proposers shall be entirely responsible for verifying any and all physical or other site conditions of the subject property. Copies and summaries of such information are included in this RFP only as a convenience. MassPike and any of its respective officers, agents, contractors, or consultants shall not be liable for any mistakes, damages, costs, or other consequences arising from use of this information.
3. Proposers shall be entirely responsible for any and all expenses incurred by Proposers with respect to this RFP or the process initiated hereby. MassPike shall not be responsible for or pay for any such expenses.
4. Proposers shall be entirely responsible for conducting thorough investigations of, and/or confirming the accuracy of prior investigations of, the subsurface conditions, utilities, and soil and other environmental conditions of the Parcel in accordance with applicable standards of care to confirm the presence of any subsurface structures, active and/or inactive utility lines, and/or recognized environmental conditions, as defined under ASTM Standard E 1527-97.

PHOTOGRAPHS



Parcel 12 - Boylston St. - Looking East



Parcel 12 - Looking East



Parcel 12 - Boylston St. - Looking East



Parcel 12 - Looking North



Parcel 12 - Looking West



Parcel 12 - Looking South



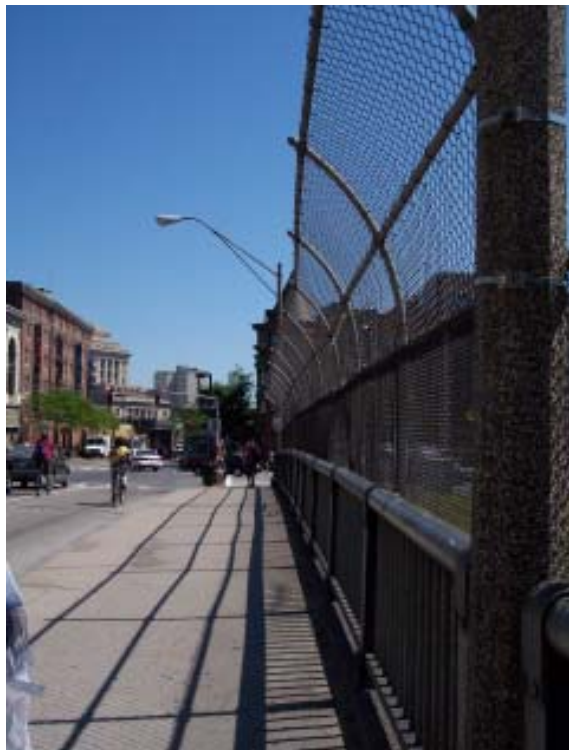
Parcel 12 - Looking South



Parcel 12 - Looking Northeast



Boylston St. - South of Parcel 12



Parcel 12 - Mass. Ave. - Looking South



Mass. Ave. - Looking South



Parcel 12 - Looking South



MBTA Vent Building at Parcel 12



Parcel 12 - Looking Northwest



Parcel 12 - Land portion; Looking North



Mass. Ave. - Looking North between Parcels 12 & 13



Boylston St. - Looking South



Mass. Ave. - Looking West towards Parcel 12



Parcel 13 - Intersection of Mass. Ave. & Boylston St. - Looking East



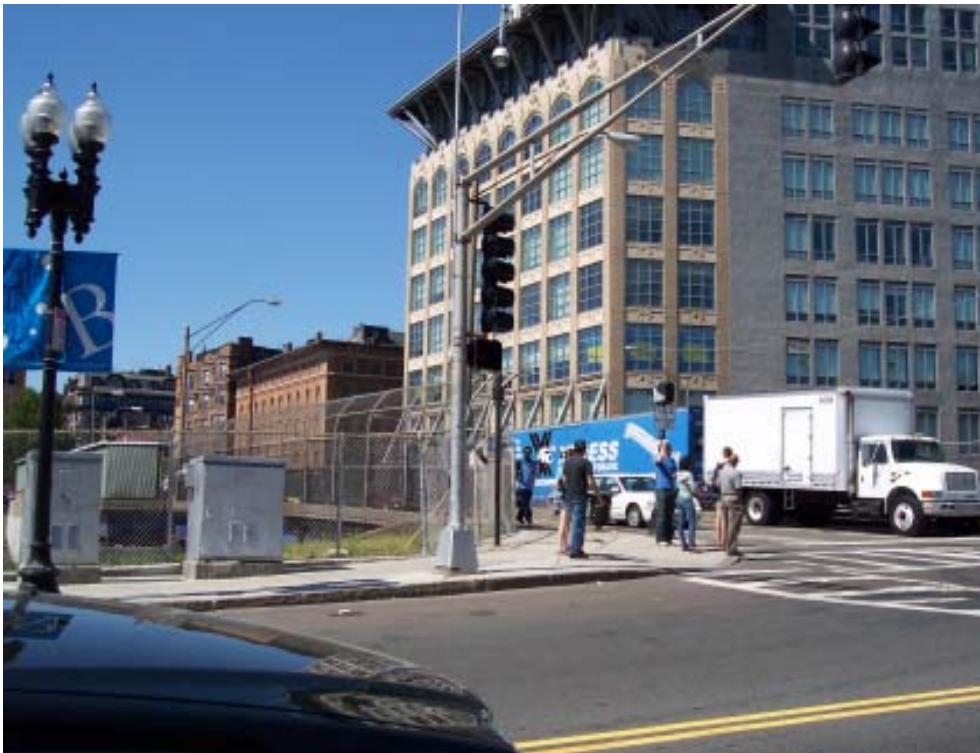
Parcel 13 - Along Mass. Ave.



Parcel 13 - Along Boylston St.



Parcel 13 - Looking East



Boylston St. & Mass. Ave. Intersection - Looking North



Parcel 13 - MBTA Station Exit



Parcel 13 - Looking North



Boylston St. - Looking East



Parcel 13 - Looking West



Parcel 13 - Looking West



Parcel 13 - Looking West



Parcel 13 - Looking West



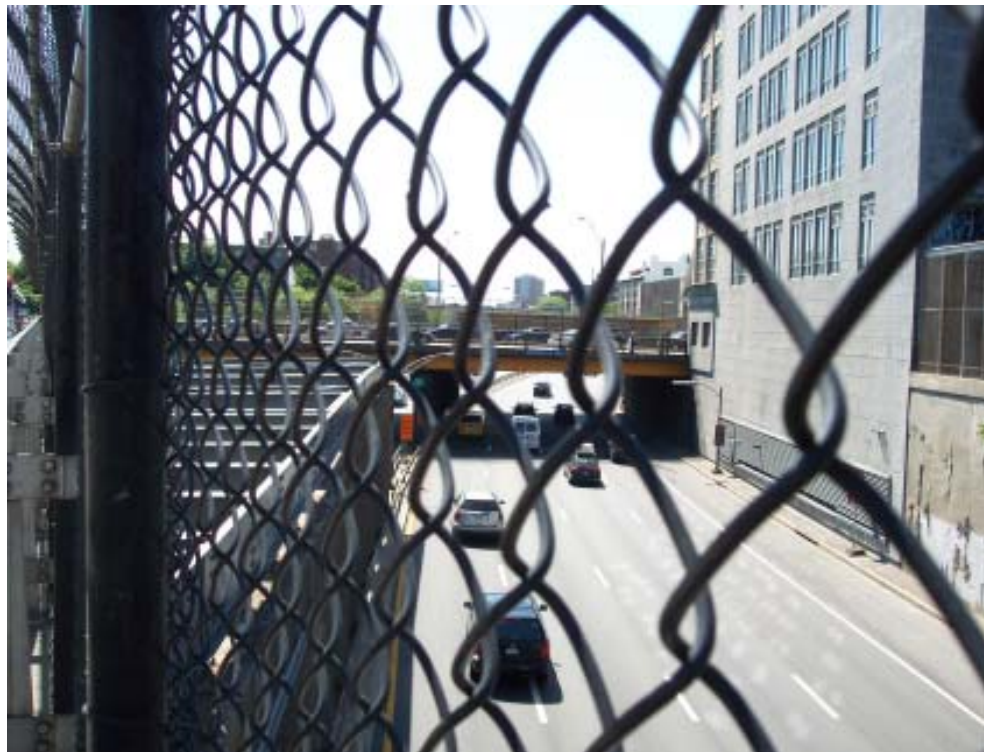
Parcel 13 - Looking North



Boylston St. - Looking East



Parcel 13 - Looking East



Parcel 13 - Looking West



Parcel 14 - Looking North



Parcel 14 - Looking North



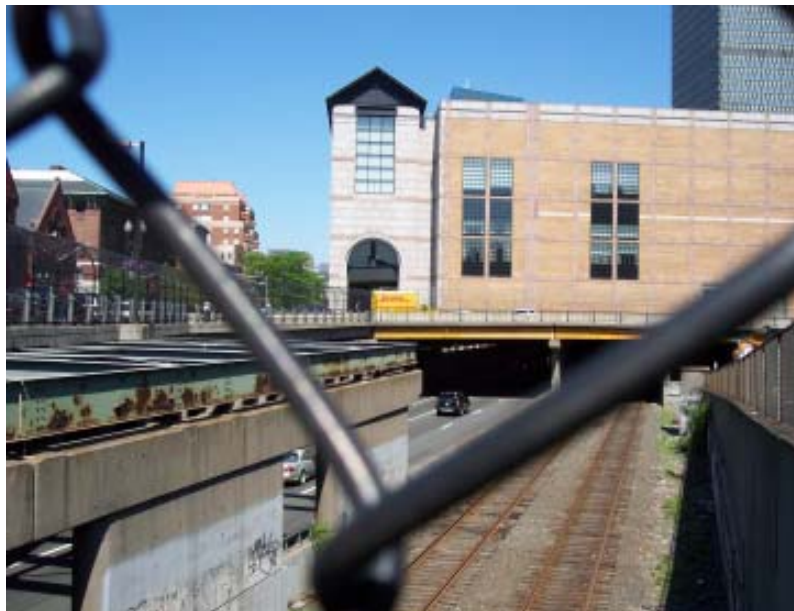
Parcel 14 - Looking South



Parcel 14 - Looking East



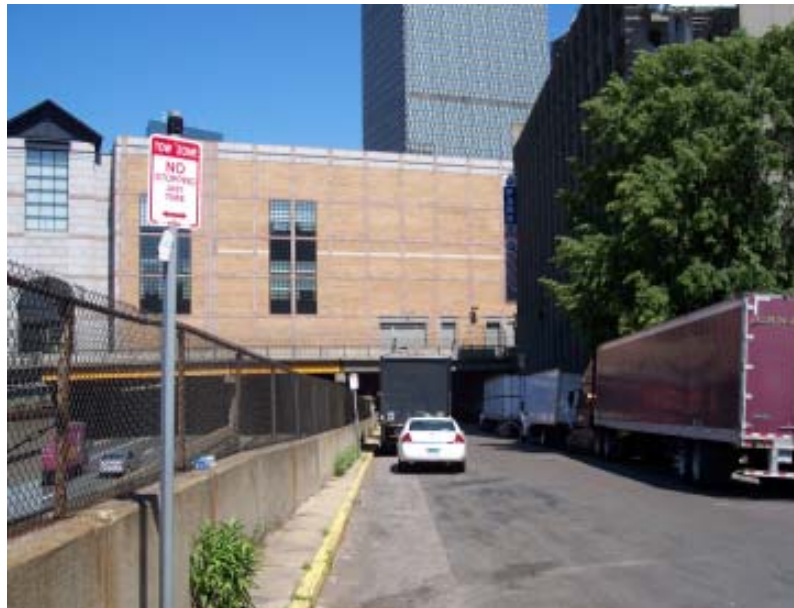
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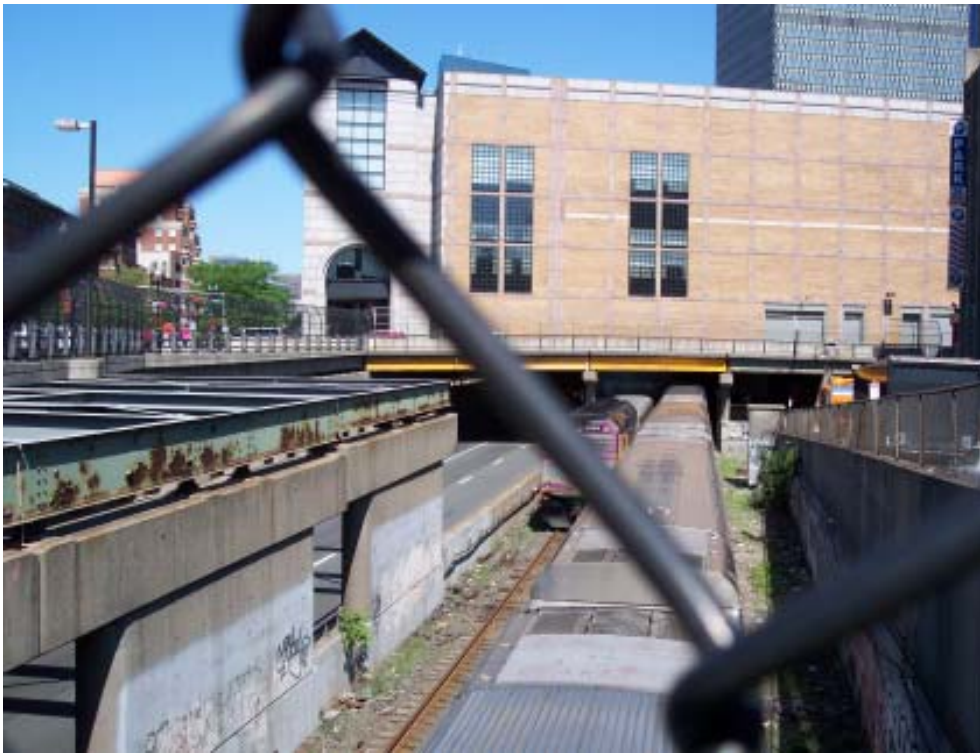
Parcel 15 - Looking East



Parcel 15 - Looking East



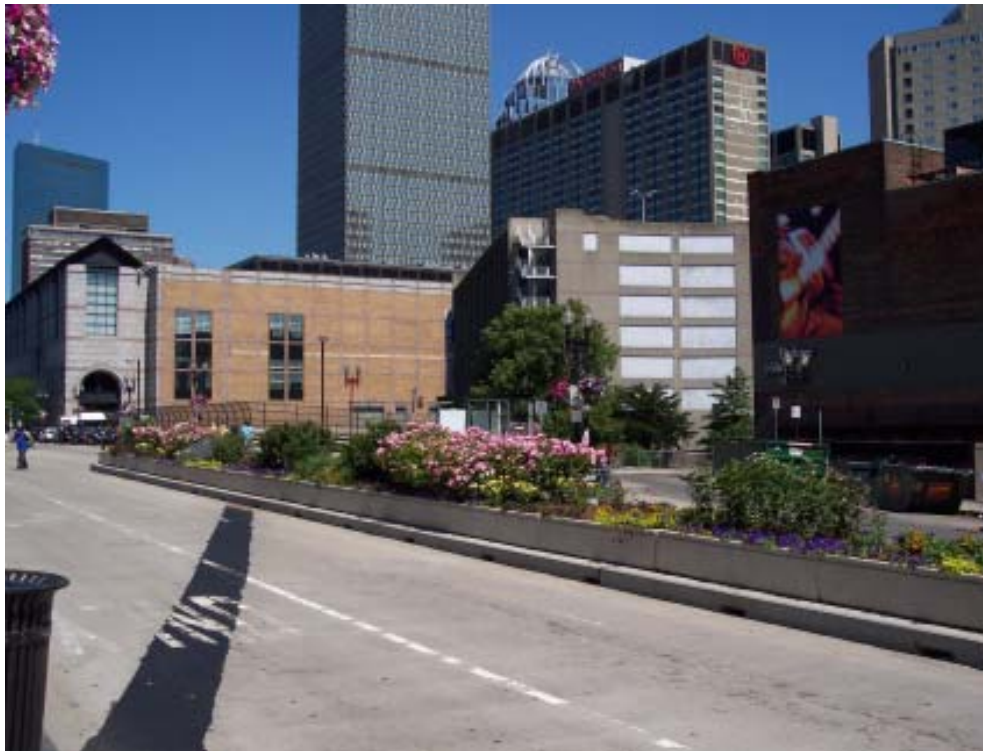
Parcel 15 - Along Cambria Street



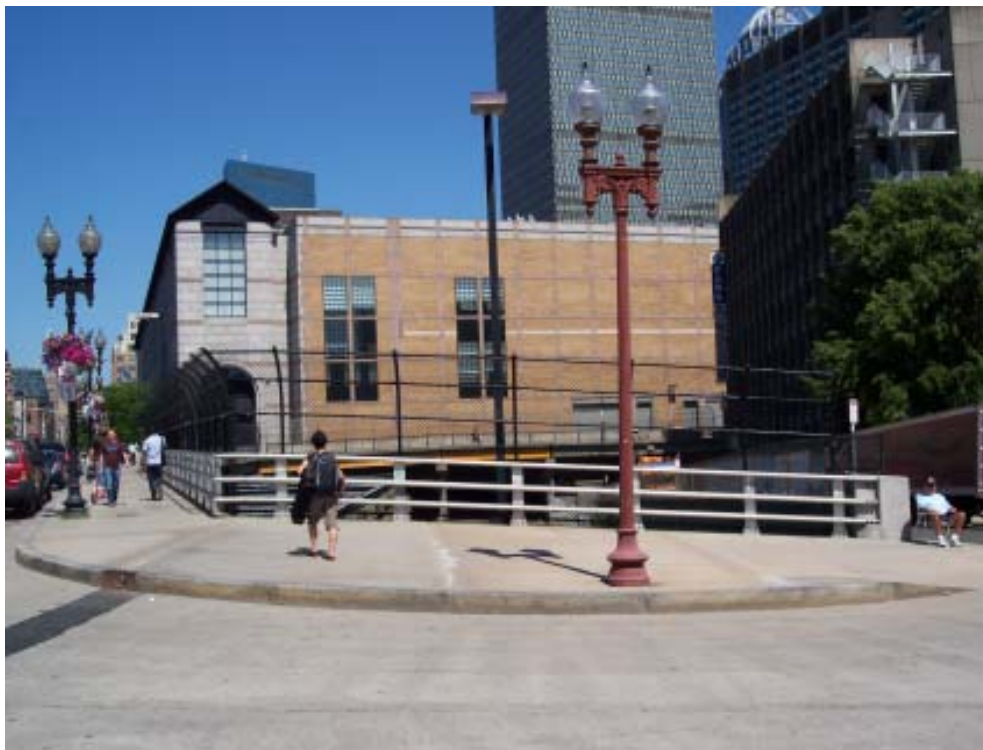
Parcel 15 - Looking East



Parcel 15 - Looking South



Parcel 15 - Looking Southeast



Parcel 15 - Looking East



Parcel 15 - Looking Northeast



Boylston St. - Looking East

FIGURES

Figure 1

Key Plan

Notes:

This plan is for illustrative and planning purposes only, and should not be used for survey, engineering, legal, or any other purposes. The Massachusetts Turnpike Authority does not warrant the accuracy of this plan for any use. RFP proposers and the Selected Developer(s) are responsible for verifying all site conditions.

Parcel boundaries shown on this plan are not final, and are subject to change. The Selected Developer(s) will be responsible for surveying parcels and preparing final survey plans.



— Massachusetts Turnpike

Air Rights Parcels
12, 13, 14 and 15

Request for Proposals



Massachusetts
Turnpike
Authority

Figure 2

Aerial Photo



Notes:
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Parcel boundaries shown on this plan are not final, and are subject to change. The Selected Developer(s) will be responsible for surveying parcels and preparing final survey plans.

Air Rights Parcels
12, 13, 14 and 15

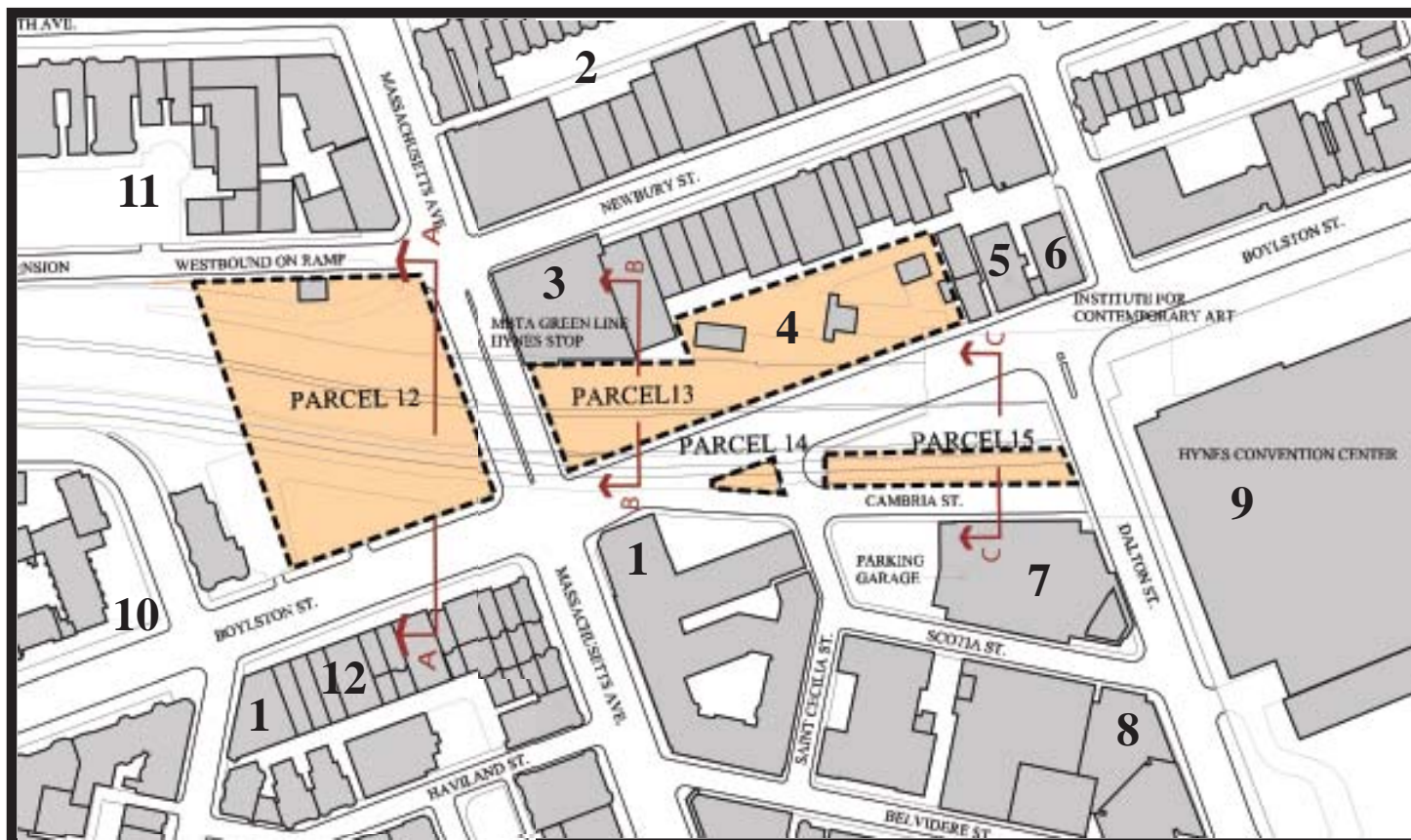
Request for Proposals



Massachusetts
Turnpike
Authority

Figure 3

Site/Context Plan



Notes:

This plan is for illustrative and planning purposes only, and should not be used for survey, engineering, legal, or any other purposes. The Massachusetts Turnpike Authority does not warrant the accuracy of this plan for any use. RFP proposers and the Selected Developer(s) are responsible for verifying all site conditions.

Parcel boundaries shown on this plan are not final, and are subject to change. The Selected Developer(s) will be responsible for surveying parcels and preparing final survey plans.

- 1. Berklee College of Music
- 2. Back Bay neighborhood
- 3. Mixed retail, (Tower Records, Newbury Street)
- 4. MBTA Hynes / ICA green line station
- 5. Institute of Contemporary Art
- 6. Fire Station

- 7. Auditorium Parking Garage
- 8. Cheri Movie theater
- 9. Hynes Convention Center
- 10. St. Clements Eucharistic Shrine
- 11. Harvard Club surface parking lot
- 12. Boylston Street Retail

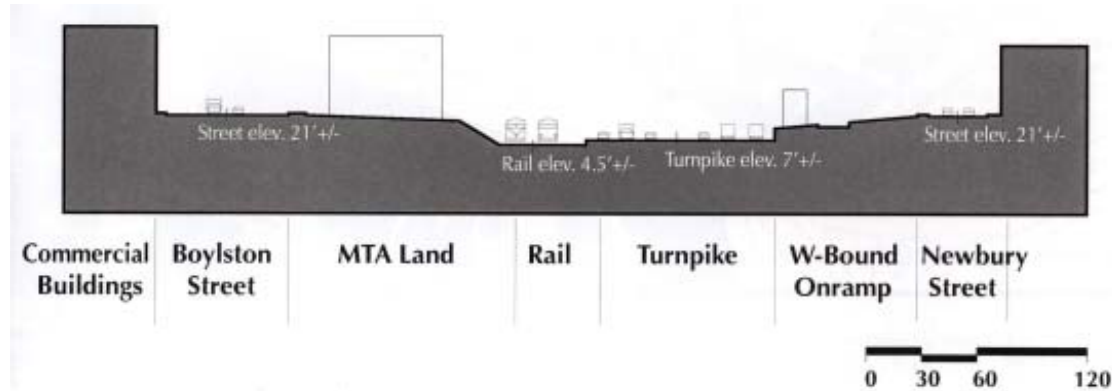
Air Rights Parcels
12, 13, 14 and 15

Request for Proposals

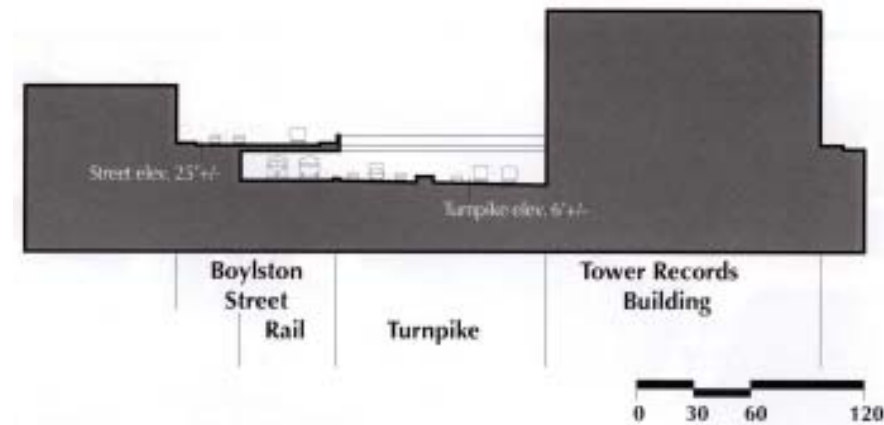


Massachusetts
Turnpike
Authority

Parcel 12
Cross Sections AA
Looking West



Parcel 13
Cross Sections BB
Looking West



Parcel 15
Cross Sections CC
Looking West

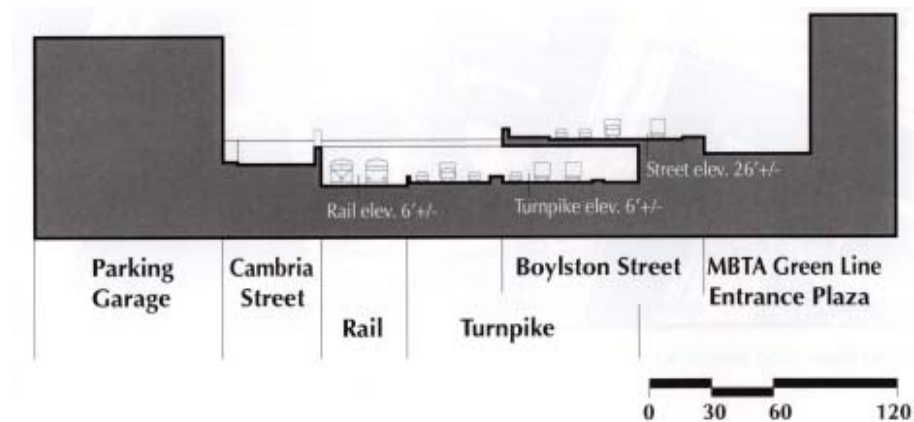


Figure 4

Cross Section

Notes:

This plan is for illustrative and planning purposes only, and should not be used for survey, engineering, legal, or any other purposes. The Massachusetts Turnpike Authority does not warrant the accuracy of this plan for any use. RFP proposers and the Selected Developer(s) are responsible for verifying all site conditions.

Parcel boundaries shown on this plan are not final, and are subject to change. The Selected Developer(s) will be responsible for surveying parcels and preparing final survey plans.

Air Rights Parcels
12, 13, 14 and 15

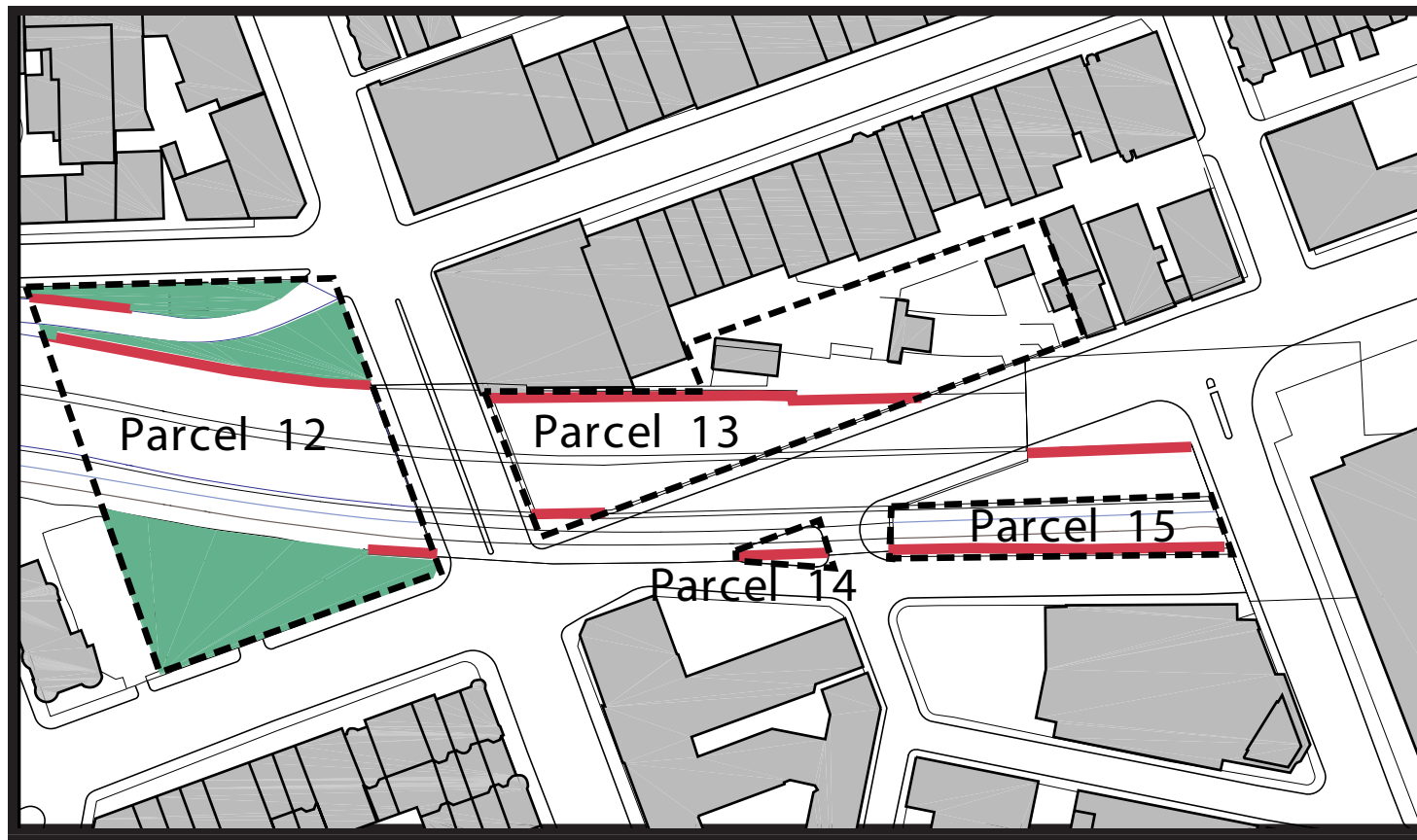
Request for Proposals



Massachusetts
Turnpike
Authority

Figure 5

Turnpike Edge Condition



Notes:

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Turnpike Parcel



Land



Retaining Wall

Air Rights Parcels
12, 13, 14 and 15

Request for Proposals



Massachusetts
Turnpike
Authority

Figure 6

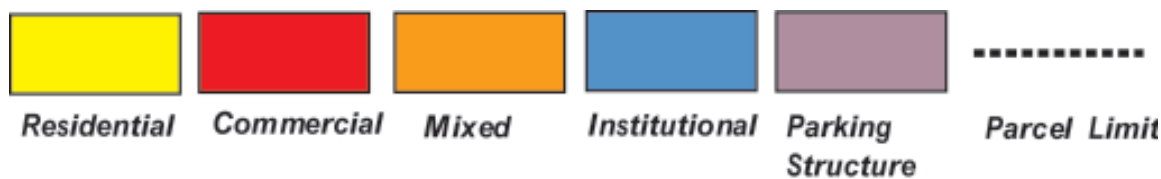
Adjacent Uses



Notes:

This plan is for illustrative and planning purposes only, and should not be used for survey, engineering, legal, or any other purposes. The Massachusetts Turnpike Authority does not warrant the accuracy of this plan for any use. RFP proposers and the Selected Developer(s) are responsible for verifying all site conditions.

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Air Rights Parcels
12, 13, 14 and 15

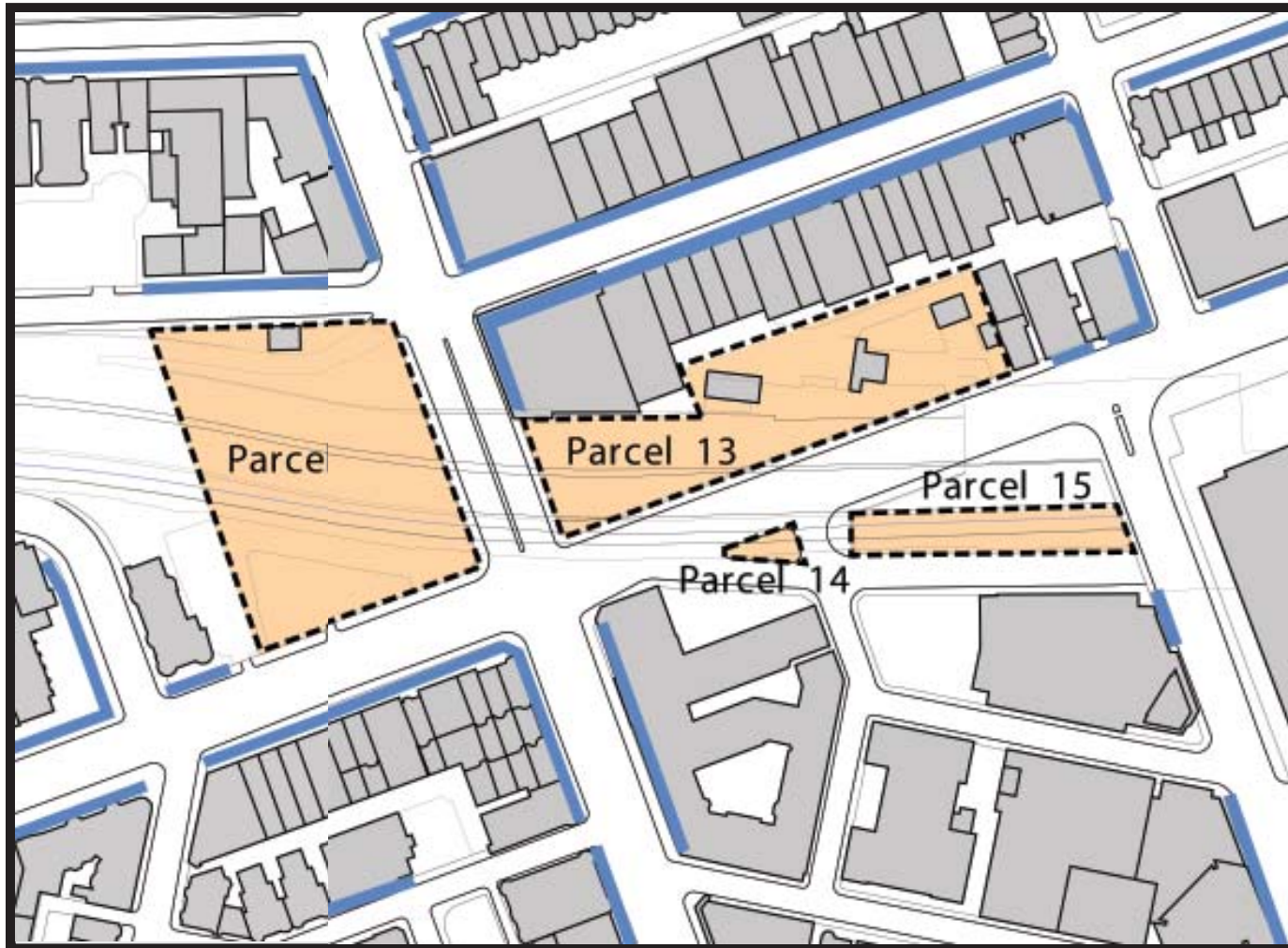
Request for Proposals



Massachusetts
Turnpike
Authority

Figure 7

Frontage



Notes:

This plan is for illustrative and planning purposes only, and should not be used for survey, engineering, legal, or any other purposes. The Massachusetts Turnpike Authority does not warrant the accuracy of this plan for any use. RFP proposers and the Selected Developer(s) are responsible for verifying all site conditions.

Parcel boundaries shown on this plan are not final, and are subject to change. The Selected Developer(s) will be responsible for surveying parcels and preparing final survey plans.

Air Rights Parcels
12, 13, 14 and 15

Request for Proposals



Turnpike Parcel



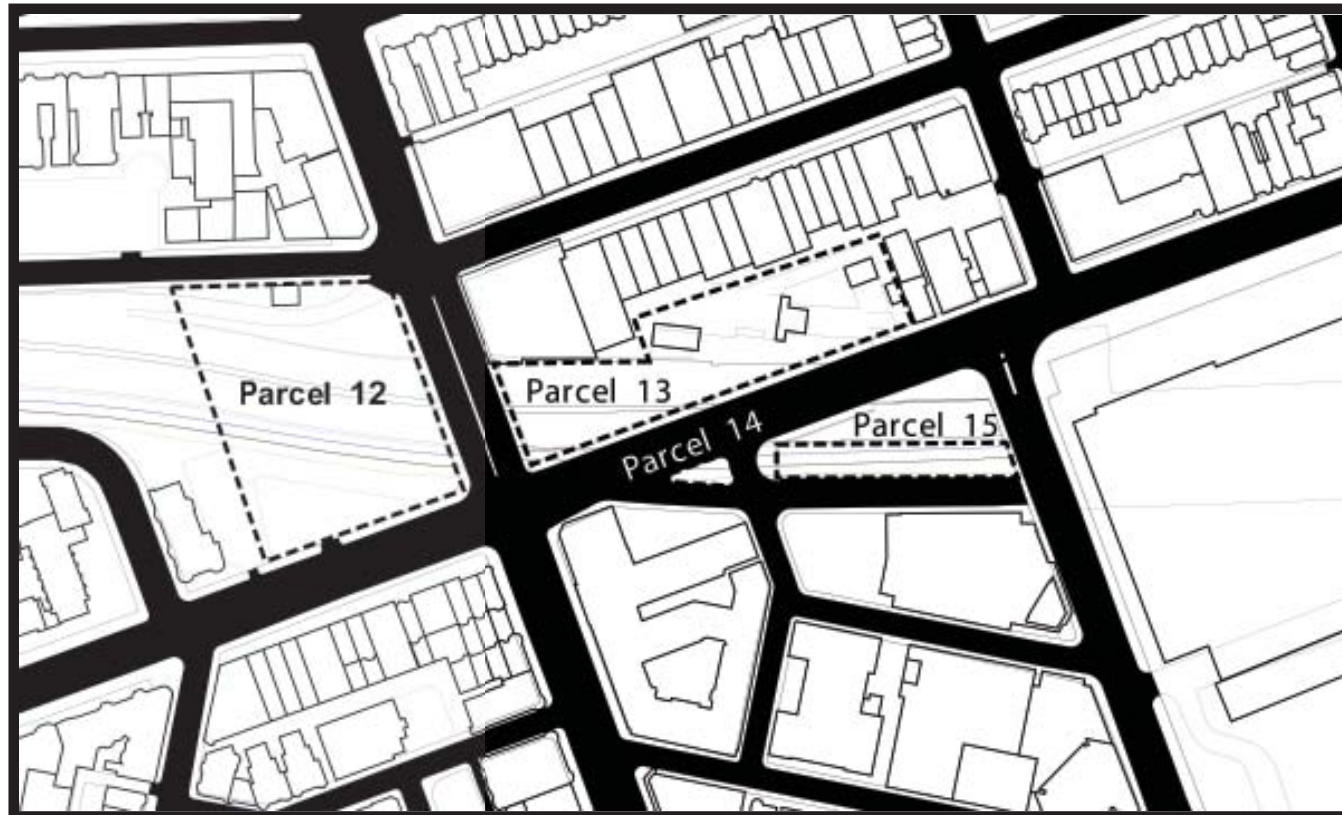
Building Frontage



Massachusetts
Turnpike
Authority

Figure 8

Surface Streets



Notes:

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Parcel boundaries shown on this plan are not final, and are subject to change. The Selected Developer(s) will be responsible for surveying parcels and preparing final survey plans.

Air Rights Parcels
12, 13, 14 and 15

Request for Proposals



Turnpike Parcel

Massachusetts
Turnpike
Authority



APPENDICES

APPENDIX A

**MEMORANDUM OF UNDERSTANDING BETWEEN
MASSPIKE AND THE CITY OF BOSTON**

MEMORANDUM OF UNDERSTANDING

between

MASSACHUSETTS TURNPIKE AUTHORITY

and

**THE CITY OF BOSTON, acting by and through the
BOSTON REDEVELOPMENT AUTHORITY**

Dated as of June 1, 1997

This Memorandum of Understanding (“MOU”) entered into as of June 1, 1997 by and between the **Massachusetts Turnpike Authority** (“MTA”) and **The City of Boston** (the “City”), acting by and through the **Boston Redevelopment Authority** (“BRA”), in accordance with Section 7 of Chapter 3 of the Acts of 1997 entitled “An Act Relative to the Massachusetts Turnpike Authority and the Metropolitan Highway System” (the “Act”).

WHEREAS, pursuant to Chapter 81A of the General Laws of Massachusetts (“M.G.L.”), the MTA owns and is responsible for the construction, maintenance, repair, reconstruction, improvement, rehabilitation, financing, use, policing, administering, control and operation of the “Metropolitan Highway System” (as defined in M.G.L. Chapter 81A, Section 3), including without limitation, the Boston extension, the Callahan Tunnel, the central artery, the central artery north, the Sumner Tunnel and the Ted Williams Tunnel (all as defined in M.G.L. Chapter 81A, Section 3), and further, owns certain sites and facilities abutting the Massachusetts Turnpike and the Metropolitan Highway System (the properties described herein are hereinafter collectively referred to as the “MTA Property”);

WHEREAS, the MTA has the power to lease and otherwise dispose of the MTA Property, including without limitation, (a) any land and any air rights over land owned or held by the MTA, or to be acquired by the MTA, in connection with that part of the Metropolitan Highway System within the territorial limits of the City (collectively, “MTA Air Rights”), and specifically (b) any land and any air rights over land owned or held by the MTA, or to be acquired by the MTA, in connection with the Boston extension (as defined in M.G.L. Chapter 81 A, Section 3) portion of the Massachusetts Turnpike within the territorial limits of the City (collectively, “Extension Air Rights”);

WHEREAS, pursuant to M.G.L. Chapter 81A, Section 15, the MTA is exempt from building, fire, garage, health and zoning laws, ordinances, rules and regulations in the use of the Extension Air Rights;

WHEREAS, in adopting the Act, the legislature acknowledged that the City has an interest in ensuring that the concerns and needs of the citizens of Boston and particularly the concerns and needs of the members of the communities in which any MTA Property, including any MTA Air Rights, is located, are adequately addressed prior to the occurrence of any project proposed by the MTA that would involve the use of, and/or the disposition of, and/or construction and/or development on, any such property and/or air rights located within the territorial limits of the City of Boston or associated with the Boston extension portion of the Metropolitan Highway System;

WHEREAS, Section 7 of the Act obligates the City to enter into a memorandum of understanding, not later than June 1, 1997, relative to “land use plans, air rights, zoning restrictions and environmental impacts associated with any development in connection with the Boston extension portion of the metropolitan highway system or respecting land within the territorial limits of said city of Boston”, and

WHEREAS, this MOU is being entered into in accordance with the requirements of Section 7 of the Act.

NOW, THEREFORE, the MTA and the City, acting by and through the BRA, agree to the following:

Article 1

General Requirements

1.1 Central Artery Projects. The MTA hereby agrees that the use of MTA Air Rights related to land or facilities associated with the central artery, the central artery north and the Ted Williams Tunnel, acquired by the MTA from the Metropolitan Highway Authority in accordance with M.G.L. Chapter 8 IA, Section 12, shall be subject to all building, fire, garage, health or zoning laws, ordinances, rules or regulations applicable in the City of Boston. Any written agreements to be entered into by the MTA in accordance with M.G.L. Chapter 81 A, Section 12(b) shall provide for the applicability of said laws, ordinances, rules and regulations as described above. Accordingly, the terms of this MOU shall not apply to the MTA Air Rights over the central artery, the central artery north and the Ted Williams Tunnel.

1.2 Extension Air Rights Projects. The City hereby agrees that the MTA is exempt from building, fire, garage, health and zoning laws, ordinances, rules and regulations in the use of the Extension Air Rights, except as specifically set forth in the Act and as hereinafter specifically set forth in this MOU.

1.3 Consultation with the Mayor.

(a) The MTA shall advise the Mayor of the City (“Mayor”), or any designee selected by the Mayor for that purpose, of any “Project” (as hereinafter defined), and regularly consult with the Mayor regarding any such Project until its completion.

(b) For purposes of this MOU, “Project” shall mean any project that is proposed by any entity for the development of MTA Property located within the territorial limits of the City of Boston, including without limitation the Extension Air Rights, other than projects (i) related to the construction, use, safety, maintenance, repair and operation of the Metropolitan Highway System, or (ii) proposed by the MTA substantially for the MTA’s own use.

1.4 BRA Design Review. All Projects shall be subject to design review certification by the BRA as provided herein in Article 3. The MTA shall not approve the final design of any Project until it has received the BRA’s certification pursuant to subsection 3.2(f)(2) hereof. In furtherance thereof, the MTA shall regularly consult with the Director of the BRA regarding any such Project.

Article 2

Citizen's Advisory Committees

2.1 Formation of CACs. With respect to any proposed Project, there shall be established a Citizen's Advisory Committee ("CAC") to review such proposed Project. The CAC shall be established at such time as the MTA determines that it has a viable development proposal from any person or entity regarding a proposed Project, or at such time as the MTA is prepared to issue a Request for Proposals for a proposed Project, or at such earlier time as the MTA may determine in order to ensure the full and adequate involvement of the affected community. Each CAC shall consist of no less than seven (7) members and no more than eleven (11) members, as the Mayor may determine, each member to be representative of any neighborhood and/or community that is to be affected by the proposed Project. The members of the CAC shall be appointed by the Mayor, provided, however, that with respect to each CAC, the Mayor shall consult with the MTA regarding the selection of the members of such CAC and shall appoint no less than three (3) members from a list of at least six (6) community persons recommended by the MTA to a seven (7) member CAC. In case of a CAC having more than seven (7) but fewer than twelve (12) members, the Mayor shall appoint one half, less one, of the total number of members from a list of persons recommended by the MTA. The MTA shall provide the Mayor with a list of recommendations double the number of members to be selected by the Mayor from the MTA's list. Reasonable costs and expenses directly incurred by any CAC in connection with its review of any proposed Project shall be paid for, in accordance with a budget to be mutually established by the CAC and the MTA ("Budget"), with funds provided to the CAC by the MTA; provided, however, that the MTA shall not be obligated to pay for any costs and expenses in excess of \$500 incurred by any CAC for any one line item described in the Budget, or for costs and expenses in excess of an aggregate amount of \$3,000 per Project. The MTA may, in its sole discretion, but shall not under any circumstances be obligated to, pay for consultant fees or any other costs incurred by consultants employed by a CAC to assist it in the review of a proposed Project.

2.2 Input From Community. The MTA shall advise the relevant CACs and the BRA of any such proposed Project, and the BRA shall advise members of any community in which a proposed Project is located and the members of any other affected communities, all as identified by the BRA, of any such proposed Project. The BRA shall receive input and comments from such CACs regarding the design of such Project and its effect on the surrounding community. The MTA shall not permit the development of any proposed Project unless it finds, after consultation with the relevant CAC, that such Project shall preserve and increase the amenities of the community.

Article 3

BRA Review Process

3.1 Review. Any proposed Project shall be subject to the design review certification of the BRA, as more particularly set forth in Section 3.2 hereof, with respect to the design, environmental impacts, community

3.2 Procedure.

(a) Any entity proposing a Project (“Proponent”) shall initiate the review required by this MOU by filing a project notification form with the BRA. A Proponent may file a project notification form at any time during the pre-schematic design phase of such Project but in no event later than the time when such Proponent is required to submit notice of such Project to the secretary of environmental affairs in accordance with M.G.L. Chapter 30, Section 62A. The form and content of the project notification form shall be substantially similar to the notification form required by Article 80 of the Boston Zoning Code (the “Code”). The BRA shall publish notice of the receipt of the project notification form in accordance with the notice requirements of Section 80A-2 of the Code. The Proponent shall deliver copies of the project notification form to (1) the relevant CAC, if one has been established, or if a CAC has not yet been created, to any existing community groups and neighborhood councils specified by the BRA as representing the community to be affected by the proposed Project, (2) the Boston Transportation Department, and (3) any other City agency specified by the BRA. The public and all City agencies receiving a copy of the project notification form shall have a period of twenty-one (21) days from the date of the publication of notice of the BRA’s receipt of the project notification form to submit written comments to the BRA regarding the proposed Project.

(b) Prior to the issuance of a Scoping Determination, as described in subsection 3.2(c) hereof, the BRA shall schedule a scoping session to determine whether an impact report will be required for the proposed Project and, if an impact report is required, to (i) identify the elements of the proposed Project that the BRA reasonably determines are likely to significantly and negatively impact the environment or the quality of life in the neighborhood surrounding the proposed Project thereby requiring study, analysis and mitigation, (ii) determine the form of such report and a reasonable level of details and alternatives to be studied and analyzed with respect to the elements of the Project identified as being likely significant and negative impacts, and (iii) establish reasonable procedures for the evaluation and review of the environmental impacts. Prior to such scoping session, the MTA shall transmit to the BRA any comments that it has received regarding such proposed Project from any agency of the Commonwealth of Massachusetts (the “State”) that has reviewed the proposed Project. At such scoping session, the BRA shall consider only such comments regarding such proposed Project that it has received from the MTA and any comments that it has received from the public and from any agency of the City that has reviewed the proposed Project.

(c) Within fifteen (15) days after the date (the “Final Comment Date”) on which all comments with respect to a proposed Project are required to be submitted to the BRA in accordance with subsection 3.2(a) hereof, the BRA shall issue a written Scoping Determination setting forth the determinations of the scoping session as to the required elements of an impact report and establishing a project specific review schedule for the review of the impact report to be prepared in connection with a proposed Project. The BRA shall deliver to the MTA its draft Scoping Determination no later than ten (10) days after the Final Comment Date. Such draft Scoping Determination shall be reviewed approved, which approval shall not be unreasonably withheld, by the MTA prior to the issuance thereof by the BRA; provided, however, that if the MTA fails to respond to the BRA’s Scoping Determination on or before the date which is fourteen (14) days after the Final Comment Date, the Scoping Determination shall be deemed approved by the MTA. If the BRA fails to deliver its Scoping Determination to the MTA within the above described fifteen (15) day period, the MTA may prepare its own Scoping Determination within ten (10) days after the expiration of said fifteen (15) day period, which Scoping Determination shall thereafter govern.

(d) In the event that the Scoping Determination requires the preparation of an impact report, the Proponent of the proposed Project shall prepare a draft and, if necessary, a final impact report in accordance with the requirements of the Scoping Determination. If, in addition to the environmental review required by this MOU, the proposed Project is subject to additional environmental review by any State agency or pursuant to any requirement of law, the Proponent may submit a single set of documents to satisfy the requirements of the applicable review procedures, provided that such documents satisfy the requirements of the Scoping Determination. All impact reports required to be prepared in accordance herewith shall be reviewed by the BRA, and the BRA must comment thereon in writing within forty (40) days after the BRA's receipt of such report from the Proponent. At such time as the BRA determines that an impact report is complete, the BRA shall issue a Project Determination in which the BRA shall certify the proposed Project, certify the proposed Project subject to the imposition of such reasonable conditions as the BRA reasonably determines are necessary to protect the interest of the public and mitigate the identified impacts in such a manner as will not render the implementation of the proposed Project impracticable or unfinanceable, or refuse to certify the proposed Project on the grounds that there are no forms of reasonable conditions that could be devised to address the concerns of the public and mitigate the identified impacts. Any certification or conditional certification of the proposed Project shall be subject to the BRA's final design review as described in subsection 3.2(e) hereof. Within five days after its determination with respect to a proposed Project, the BRA shall prepare, adopt and make open to public inspection a report ("Certification Report") that sets forth the reasons for the BRA's certification of, conditional certification of, or refusal to certify the proposed Project,

(e) If the Proponent has not already done so during the environmental review process described in subsection 3.2(d) above, after the BRA issues a Project Determination but prior to the time that an application for a building permit is filed with the Inspectional Services Department of the City, the Proponent shall submit to the BRA, for the BRA's design review, design development materials, including site plans, specifications and final working drawings. The BRA shall review and comment, in writing, on any such design materials within twenty (20) days after the BRA's receipt of any such design materials from the Proponent.

(f)(1) Any certification to be issued or denied by the BRA in accordance with this Section 3.2 shall not be unreasonably withheld, conditioned or delayed.

(f)(2) The MTA shall not lease any Air Rights for a Project except (a) in accordance with the BRA's certification under this Section 3.2, or (b) in the event of arbitration as hereinafter described in subsection 3.2(0)(3), in accordance with the arbitrators' decision.

(f)(3) In the event that a Proponent believes that the BRA has unreasonably withheld, conditioned or delayed its certification hereunder with respect to any particular Project, then, such dispute shall be arbitrated in accordance with this subsection 3.2(1)(3); provided, that at least sixty (60) days have elapsed since the date that the BRA issued its Certification Report in accordance with subsection 3.2(d) hereof. In such case, the Proponent shall send a written notice to the City, with a copy to the MTA and the BRA, specifying the reasons for the Proponent believing that the BRA has unreasonably withheld, conditioned or delayed its certification. Upon receipt of such arbitration demand notice from the Proponent, the MTA shall send a written notice to the City designating a member of the Massachusetts Conveyancers Association Dispute Resolution Register to serve as an arbitrator. The BRA shall respond on behalf of the City within seven (7) days of the City's receipt of the notice from the MTA by designating a second arbitrator from the same Register. The two designated arbitrators shall jointly select a third arbitrator from the same Register within seven (7) days of the designation of the second arbitrator. Thereafter the arbitrators shall proceed

generally in accordance with the Commercial Arbitration Rules of the American Arbitration Association, with the objective of rendering a decision within twenty-one (21) days after the appointment of the third arbitrator. Any decision of the arbitrators shall be by at least a two-thirds majority. The fees of the arbitrators shall be paid for by the Proponent seeking the arbitration. In the event that the arbitrators determine that the BRA has unreasonably withheld, conditioned or delayed its certification of the proposed Project, the BRA shall, within 10 days after such determination, make or revise its certification consistent with the decision of the arbitrators. The decision of the arbitrators shall not be subject to appeal.

(g) Nothing contained in this Section 3.2 of this MOU is intended to modify, amend, alter, abrogate or otherwise affect the Proponent's obligation to comply with any applicable state and federal laws, including without limitation M.G.L. Chapter 30, Sections 61-62H, regarding the review of the design and environmental impacts of a proposed Project.

3.3 Cooperation Among Agencies. The MTA shall review the proposed Project and any comments received from the various departments and agencies of the State and the City to ascertain whether any proposed Project will, in any manner, affect the use, safety, maintenance, repair and operation of the Boston extension portion of the Massachusetts Turnpike.

3.4 Commitment to Minimize Impacts. The parties agree to ensure that any Project is beneficial to the City and to the residents of the affected communities and minimizes, to a reasonable extent, adverse impacts upon the quality of life including, but not limited to, traffic, noise, light, density and air quality in the neighborhood surrounding any such Project.

Article 4

Developer Obligations

4.1 Developer Agreements. The MTA shall cause any Proponent to:

(a) enter into one or more agreements with the BRA consistent with the BRA's certification or conditional certification of the Project, including but not limited to, voluntary cooperation agreements, voluntary construction mitigation agreements, and voluntary transportation access plans, all in such form as the BRA and the Proponent may mutually determine;

(b) file for the appropriate building permits required by the City's Department of Inspectional Services or any other City agency and pay the applicable fee for such building permits in connection with the proposed Project; and

(c) agree to pay full M.G.L. Chapter 59 taxes on the buildings and/or other things erected or affixed on any interest in MTA Property, including MTA Air Rights, held by such Proponent within the territorial limits of the City of Boston (but not on the MTA Property, including the MTA Air Rights) or, if applicable, enter into payment in lieu of tax (PILOT) agreements for the payment of real property taxes on the buildings and/or other things erected or affixed on any interest in MTA Property, including MTA Air Rights, held by such Proponent within the territorial limits of the City of Boston Property (but not on the MTA Property, including the MTA Air Rights).

4.2 Compliance Determination. The Proponent shall not apply to the Inspectional Services Department of the City for a building permit for any proposed Project that is subject to design review pursuant to this MOU, unless the Proponent shall have transmitted to the BRA a copy of the proposed building permit application, including each plan, drawing and specification to be filed in connection therewith, and the BRA shall have reviewed such plans and the Director of the BRA shall have issued a certification stating that the proposed Project has been certified by the BRA pursuant to subsection 3.2t0(2) or subsection 3.2(0(3) hereof.

Article 5

Miscellaneous

5.1 Binding Effect. This MOU is a legally binding document having the full force and effect of the law between the parties and shall be enforceable by the signatories hereto in a court of law by equitable relief, but shall create no rights hereunder in any party not a signatory hereto nor shall it give rise to any rights or claims against any party not a signatory hereto, except the right of a Proponent to arbitrate certain disputes in accordance with subsection 3.2(f)(3) hereof.

5.2 Applicable Law. This MOU shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts.

5.3 Entire Agreement. This MOU sets forth the entire agreement of the parties hereto with respect to the subject matter contained herein, and no amendment of this MOU shall be effective unless it is in writing and signed by both parties to this MOU.

5.4 Notice. All notices or other communications-required or permitted to be given hereunder shall be in writing and shall be deemed delivered hereunder if mailed postage prepaid, by registered or certified mail, return receipt requested, or delivered by hand to the following address, or to such other address as may be specified by either of the parties in writing:

If to the City: The City of Boston
One City Hall Square, 5th Floor
Boston, MA 02201-1007
Attention: Mayor

with a copy to: Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201-1007
Attention: Director

If to the MTA: Massachusetts Turnpike Authority
State Transportation Building
10 Park Plaza, Suite 5170
Boston, MA 02116
Attention: Chairman

5.5 Paragraph Headings. The paragraph headings in this MOU are for convenience and reference only, and shall not be used to interpret, clarify, limit or amend the contents or meaning of any provision.


IN WITNESS WHEREOF, as of June 1, 1997, the Chairman of the Massachusetts Turnpike Authority, the Mayor of the City of Boston and the Director of the Boston Redevelopment Authority have executed this Memorandum of Understanding.

IN WITNESS WHEREOF, as of June 1, 1997, the Chairman of the Massachusetts Turnpike Authority, the Mayor of the City of Boston and the Director of the Boston Redevelopment Authority have executed this Memorandum of Understanding.


**MASSACHUSETTS TURNPIKE
AUTHORITY**


James J. Kerasiotes
Chairman

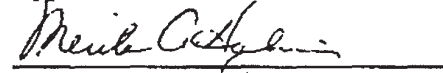
Approved as to Form:


Robert M. Ruzick
General Counsel
Massachusetts Turnpike Authority

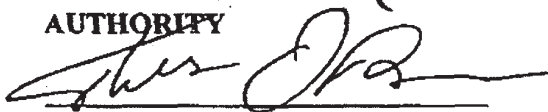
THE CITY OF BOSTON


Thomas M. Menino
Mayor


Approved as to Form:


Merita A. Hopkins
Corporation Counsel
City of Boston

**BOSTON REDEVELOPMENT
AUTHORITY**


Thomas N. O'Brien
Director

Approved as to Form:


Kevin Morrison
General Counsel
Boston Redevelopment Authority

APPENDIX B

PROPOSED GUIDELINES FROM “A CIVIC VISION FOR TURNPIKE AIR RIGHTS IN BOSTON”

N.B.: The following excerpts from “A Civic Vision for Turnpike Air Rights in Boston” (June 2000) are provided herein only for convenience. MassPike makes no representation or warranty as to the accuracy, currency, or completeness of these excerpts. Proposers should obtain a full copy of the Civic Vision from the BRA.



PARCELS 11-15 BACK BAY, FENWAY/KENMORE SQUARE

USES

■ **Parcel 11:** The first priority for this parcel is to preserve and protect the sunlight and natural northern exposure of the adjacent Fenway Studios artists' housing cooperative. As the only federally designated National Historic Landmark along the entire Turnpike, Fenway Studios should be protected from any negative impacts, and no development should be allowed on this parcel that would negatively impact the studios. *[Note: Before the City grants approval on adjacent air rights Parcels 12-15, the Turnpike Authority must provide a signed covenant stating that this natural northern exposure across Parcel 11 will be preserved in perpetuity.]*

■ **Parcels 12-15:** These air rights should be devoted to uses that foster a lively pedestrian-friendly public realm along Massachusetts Avenue and Boylston Street, draw diverse residents to the neighborhoods, and minimize traffic. Parcel 14 is too small to be developed on its own and should be included in any redevelopment of the Berklee College of Music site or in conjunction with development of Parcel 15.

Upper floors:

- A range of housing opportunities would be highly desirable for these parcels. Hotels, and other uses with equally low traffic-generation characteristics, would also be desirable.
- Developers should include on one or more of these parcels uses that would benefit the public, including but not limited to performance or other cultural facilities, affordable housing, facilities for seniors, assisted living, childcare, and facilities for children that are available to local schools.
- Offices, entertainment venues such as cinemas, or other uses that generate greater amounts of traffic (using customary urban traffic-planning assumptions) may be acceptable for these parcels only if these uses limit significant traffic generation. Any proponent of development on these parcels must conduct preliminary traffic studies (ahead of Article 80 requirements) to assist the CAC in evaluating whether the proposed mix of uses are acceptable.
- Parking should not face directly onto Massachusetts Avenue or Boylston Street at any level.

Street level:

- Shops and similar active uses that enliven the public realm are highly desirable along Massachusetts Avenue and Boylston Street. A diverse mix of independent businesses should predominate, rather than large chain businesses that are readily available elsewhere.
- Developers must seek input from the Neighborhood Association of Back Bay, the Newbury Street League, the Back Bay Association, the Fenway Civic Association, the Fenway Community Development Corporation, and similar organizations to identify potential desirable businesses for this unique location.
- A new public entry and lobby space for the Green Line station should face Massachusetts Avenue on Parcel 13.
- Active uses (including a Green Line entry) should occupy a substantial majority of the sidewalk frontage facing Massachusetts Avenue and Boylston Street. Building lobbies and other uses that do less to enliven the sidewalk should occupy limited frontage (in this location, it would be appropriate for active uses to occupy at least three-quarters of the street frontage). Internal malls should be avoided.
- A portion of this street frontage could be used for a public performance space or other cultural uses.



Development should not block Fenway Studios' natural light.



New construction on Parcels 12-15 should create a pedestrian-friendly public realm.



The Guidelines suggest a mix of housing, retail, and other uses that fill the gaps along Massachusetts Avenue and Boylston Street. Retail would take the form of a variety of shops and restaurants that line the street, not an internal mall. A performance center or other civic use should occupy a prominent location. A taller building could be located on Parcel 15 (left) or 12 (right).

- No blank walls or parking levels should face onto public sidewalks along Massachusetts Avenue and Boylston Street.
- Pedestrian-friendly use at the southwest corner of Newbury Street and Massachusetts Avenue is highly desirable; creating this use may require relocating the existing Turnpike access ramp further to the west along Newbury Street.
- Pedestrian-friendly use at the northwest corner of Boylston Street and Massachusetts Avenue is highly desirable.

TRANSPORTATION

■ Pedestrian circulation

- Air-rights development on Parcels 12-15 should accommodate and support the areas existing intense pedestrian activity. The configuration and design of sidewalks, location of building and parking entrances, and other aspects of development should accommodate unusually high pedestrian volumes with wide sidewalks and enhanced access to destinations such as the Hynes Convention Center, Tower Records (360 Newbury Street), Green Line station, Newbury Street, and local colleges (i.e., Berklee, MIT, Boston Architectural Center), as well as to Fenway Park and the Lansdowne entertainment district.

- New development should provide for enhanced pedestrian crossings, including bulb-outs and curb extensions, at the Massachusetts Avenue intersections with Boylston and Newbury Streets.
- Traffic signal timings and operations should be designed to give priority to pedestrians.

■ Parking

- Establish parking ratios that promote use of public transportation and encourage development of uses that generate less traffic.
- Parking ratio goals for these parcels are:
 - ◆ Residential- .75 to 1 space per unit
 - ◆ Hotel- .5 space per unit
 - ◆ Office- .75/1,000SF
 - ◆ Retail- None if possible.
 - ◆ Cinemas- to be determined through a parking study and the CAC; the goal is to minimize parking required for these uses.



Development should make the Green Line station and bus facilities more inviting.

A Civic Vision for Turnpike Air Rights in Boston



Relocating the Turnpike ramp would allow a pedestrian-friendly use at this strategic corner.



Existing sidewalks are narrow.

- To refine these goals, a proponent should conduct a parking study to determine the size of proposed parking facilities based on target levels of more than 30% transit use (the 2000 level is 20 to 30%) and less than 30% auto use (the 2000 level is 30 to 40%). This study should identify opportunities for shared parking. The number of spaces proposed in any new facility must reflect a detailed inventory of all public spaces within walking distance of the parcel and their availability to serve the project. The need for on-site parking should be further documented by studying adjacent developments, including incentives in use to promote non-auto access. Allocate a portion of new parking for use by the community. For these parcels, this study should consider the entire context, including other major traffic generators.
- Designate any on-street metered spaces for residential use after 6:00 PM.
- Locate garage access to minimize neighborhood impacts by promoting use of the Turnpike; consider an egress point from the garage directly to the Newbury Street ramp.
- Locate garage access points to avoid creating queues on public streets.
- Provide audible and visible warnings at garage exits to protect pedestrians.
- Locate all significant loading and servicing within buildings to avoid creating trucking queues on public streets.

■ Public transportation

- As described elsewhere in these guidelines, air rights development should accommodate facilities for bus patrons and a new entry and lobby for the Green Line station.

■ Traffic management

- In order to advance the City's goal of reducing automobile use, encourage proponents to participate in Neighborhood Transportation Management Associations (for example, the nearby BRA/BTD Neighborhood Transportation Management Association in the Fenway).
- Identify opportunities for alternative parking strategies (valet, shared cars).
- Provide adequate space for on-street loading and restrict loading to non-peak periods and not before 7:00 AM or past 11:00 PM.

■ Vehicular access and circulation

- Identify Massachusetts Avenue intersection and traffic-control improvements to maximize efficiency of operation, with equal consideration of all modes and functions. Evaluate the addition of storage lanes and the legalization of left turns at intersections in conjunction with circulation changes and the resulting impacts locally.
- Roadway and intersection improvements associated with air-rights development must resolve increased pedestrian/auto conflicts due to Parcel 12 development.
- Maintain existing Turnpike on-ramp.

■ Bicycles

- Provide secure bicycle storage in new buildings.



Looking west on Newbury Street towards the Massachusetts Avenue intersection.

Development on Parcel 12 should be designed to provide a focus for the view corridor down Newbury Street.



PUBLIC REALM

■ Sidewalks

- In the spirit of the goal of using air-rights development to enrich and enliven the public realm in this area, the programming, configuration, and design of air rights buildings should encourage the use of the public sidewalks as much as possible. Shops and other active uses should line the sidewalks, with primary entrances for each business accessible from the street. Internal malls are discouraged.
- Public sidewalks should be wide (a minimum of 24 feet is suggested) and animated with outdoor dining or other activities along Massachusetts Avenue and Boylston Street.
- Buildings along Massachusetts Avenue and both sides of Boylston Street should form street walls that line sidewalks in a manner similar to the existing street walls along Massachusetts Avenue and the north side of Boylston Street.
- Streetscape improvements along all public streets should reflect the Boston Transportation Department's *Streetscape Guidelines for Boston's Major Roads*. Streetscape elements such as lighting fixtures, furniture, and other elements should also reflect the BRA's master plan along Boylston Street and should be compatible with this master plan along Massachusetts Avenue.

■ Public transportation facilities

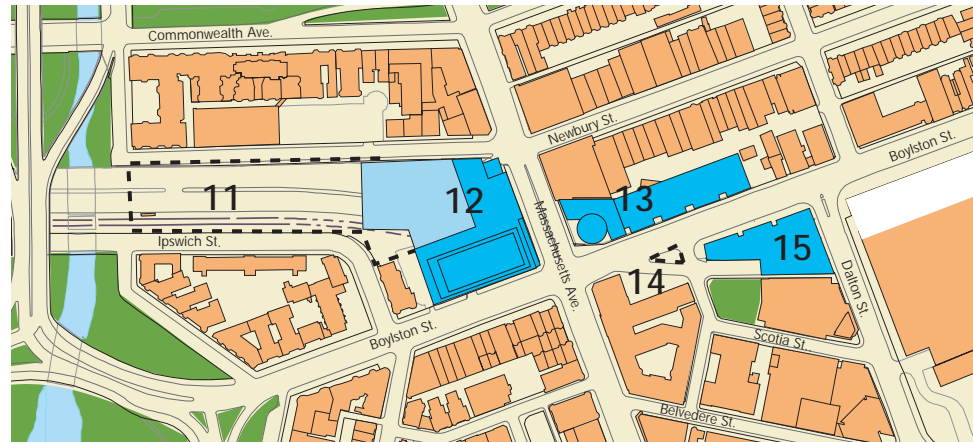
- Air rights development on Parcels 12 and 13 should include sheltered waiting facilities for bus patrons.
- The entry to the Green Line station should be visually prominent and should include signage and nighttime lighting.



Buildings should face Boylston Street with diverse retail uses with individual entries, set into a street wall that maintains the street's rhythm of facades.

■ View corridors

- Parcel 12 terminates a view corridor along Newbury Street. Explore ways to preserve this view corridor or to create an appropriate architectural focal point through massing and design.
- Developers should make every effort to minimize the impacts of traffic, wind, shadow and other adverse effects and suggest steps to mitigate these impacts on the community.



Plan illustrates potential air rights development.

FORM

■ Building locations

- Parcels 12-15 represent some of the most visible gaps in Boston's public realm; air rights development is desirable on these parcels consistent with these guidelines.
- Buildings on these parcels should occupy as much of the street frontage as possible.
- Only one taller building (15+ stories) is to be located on these parcels; all additional buildings should be less than 15 stories.

■ Scale and massing

- Buildings facing directly onto Massachusetts Avenue and Boylston Street should reinforce the existing visual vitality and diversity of these streets. Appropriate street wall heights in these area generally range between four and six stories (approximately 50 feet to 75 feet). To encourage

A Civic Vision for Turnpike Air Rights in Boston



Existing buildings suggest a variety of street wall heights and a sense of variety in façades.



variety, portions of these street walls could reflect height and massing comparable to the Tower Records building, which is eight stories and 118 feet tall.

- To reinforce the visual integrity of these street walls and maintain an appropriate scale relationship to other nearby buildings, additional massing above this base should be set back at least one building bay (approximately 20 feet) from the building's street wall.
- As important as the height of street walls and other massing concerns in reinforcing the valued vitality and diversity of Massachusetts Avenue and Boylston Street is the length of frontage that each building presents along the street.
- Reflect the prevailing scale and character of nearby buildings- including traditional rhythm created by a variety of building-widths (approximately 25 feet to 100 feet), building bays (16 feet to 25 feet), and variety of design details. A single building with more extensive widths along the street (exceeding 100 feet) should pay special attention to reinforcing this traditional scale in its façade.

■ Height

- The SDSC endorses the rejection by the Boylston Square Citizens Advisory Committee (CAC) of Millennium Partners 49-story proposal for Parcel 12 and believes that 49 stories is substantially higher than what should be the maximum allowable height of the taller building constructed on these parcels.
- Only one taller building above 15 stories should be allowed on either Parcel 12 or 15. No other buildings on these parcels should exceed 14 stories. Some members of the SDSC believe the taller building should be located on Parcel 12; others believe it should be located on Parcel 15.
- There must be minimal adverse transportation, shadow, wind and other environmental impacts, as determined by environmental studies, on the residential portions of the Back Bay, Fenway and Kenmore Square, and such impacts must be mitigated to the greatest extent possible. Shadow impacts shall include the impacts on the tops and sides of buildings.



A taller building stands alone on Parcel 12 (above). A taller building on Parcel 15 (below) joins the collection of taller buildings that already mark the commercial Back Bay district.



- Lower heights are appropriate for Parcel 13, which is in the Back Bay Architectural District. Heights should not exceed the adjacent Tower Records building (118 feet without mechanicals). Development should also respect adjacent 2 story carriage houses on the last block of Newbury Street.
- Parcel 14 is too small to accommodate more than street-wall-scaled building elements.

■ **Design character**

- The Tower Records building (360 Newbury Street) offers a mix of exciting design elements, durable materials and detailing, and a pedestrian-friendly street level that represents a desirable precedent for buildings on the air-rights parcels. While new buildings should not literally resemble the Tower Records building, these new buildings should incorporate the qualities and spirit exemplified by that building.
- The design at the street level facing Massachusetts Avenue and Boylston Street should enliven the pedestrian experience by including creative signage and lighting, handsome store fronts (at least half of the street frontage should be transparent), awnings, and/or other pedestrian-friendly elements.



New buildings would fill the gap along Massachusetts Avenue.

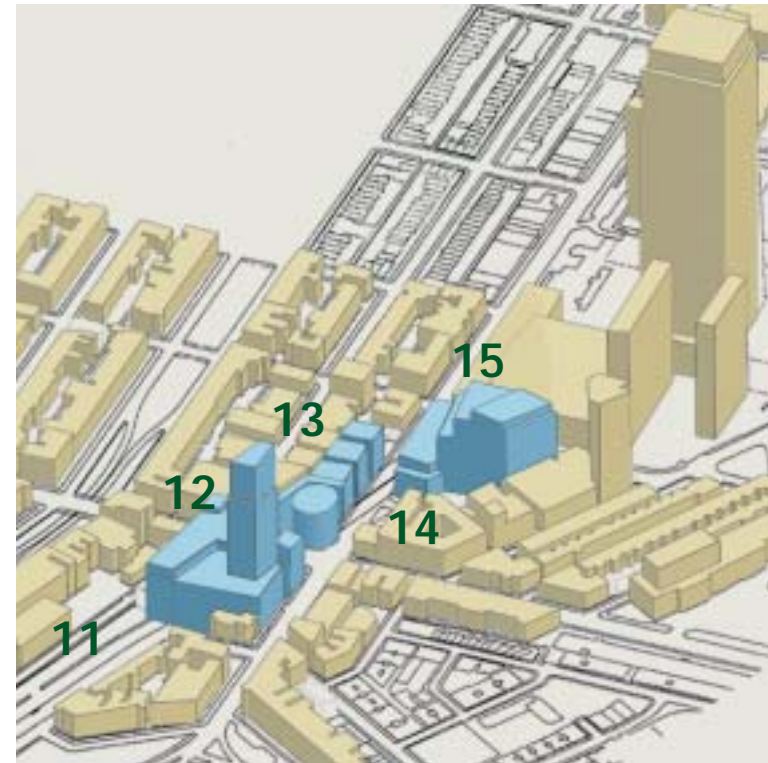
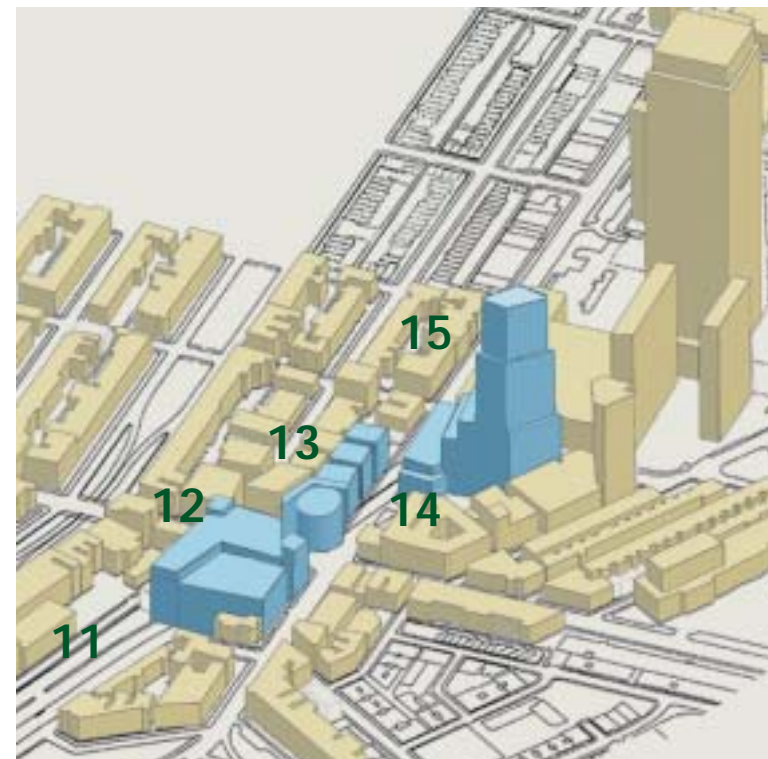


Illustration of maximum height and massing envisioned in the Guidelines. Because of proximity to other taller buildings, more height was viewed as appropriate on Parcel 15 than on Parcel 12.



APPENDIX C

EXCERPTS FROM “A CIVIC VISION FOR TURNPIKE AIR RIGHTS IN BOSTON”

N.B.: The following excerpts from “A Civic Vision for Turnpike Air Rights in Boston” (June 2000) are provided herein only for convenience. MassPike makes no representation or warranty as to the accuracy, currency, or completeness of these excerpts. Proposers should obtain a full copy of the Civic Vision from the BRA.



A new Yawkey multi-modal station should have a strong pedestrian connection to Kenmore Square.

from a new Yawkey Station across Beacon Street would provide a critical link to Blandford Street, where an improved stairway and ramp are also needed.

Open space

The Charles River and Muddy River corridors wrap around three sides of the Kenmore Square/Fenway Park district. Open space resources in this area are substantial but they are difficult to reach. Turnpike air rights should be used to provide access to these resources. The introduction of pedestrian and bicycle paths from the Fens, the Charles River, and Newbury Street will go a long way to reconnecting this area.

A single multi-use path could link three major open space corridors – the Charles River Basin, the Fens, and the Commonwealth Mall. Walkers, runners, skaters, and cyclists would be able to traverse the city without leaving the park environment. Support from Turnpike air rights development, along with the reconstruction of the Bowker Overpass would provide an opportunity to reclaim this forgotten piece of Boston open space.



Surface parking on Parcel 7 discourages pedestrians and isolates Audubon Circle from Kenmore Square.

Urban design

Kenmore Square and Fenway Park about the Turnpike, along with the backside of former warehouse structures housing entertainment and other enterprises. The lights of Fenway Park loom above. Apartment buildings about Parcel 7 to the west and the Turnpike at Charlesgate.

While Kenmore Square and attractions like Lansdowne Street and Fenway Park could make this area one of Boston's most cohesive pedestrian realms, the area is highly fragmented due in large part to the long stretches of exposed bridges along Beacon Street and Brookline Avenue. Large surface parking lots on Parcel 7 further erode the fabric. There is an opportunity to capture this area's potential by filling the gaps along Beacon and Brookline with new buildings that line the sidewalk edges and engage pedestrians at street level. These new buildings should form a transition from the row-house and small apartment building scale of Audubon Circle to the larger, commercial, scale of Kenmore Square.

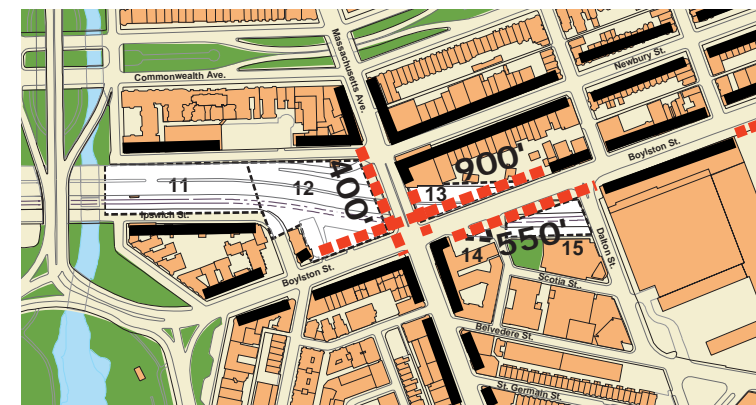
PARCELS 11-15

CHARLESGATE TO HYNES CONVENTION CENTER

Streets and walks

The large gaps in the Back Bay grid at the intersection of Massachusetts Avenue and Boylston Street make travelling along these streets very unpleasant. An unsightly bus shelter at the 400-foot gap along Massachusetts Avenue provides inadequate protection from wind, noise, and exhaust fumes.

Boylston Street, with a mix of large- and small-scale buildings, is the commercial spine of the Back Bay. The gap created by the Prudential Center, the Hynes Convention Center, and the Turnpike has created a long inactive zone along the streets and has isolated the block of small commercial stores west of Massachusetts Avenue. Air rights development on these parcels should reestablish the broader sidewalk widths across the Turnpike. Sidewalks on Massachusetts Avenue around the Tower Records building (360 Newbury Street) should be wider and include bus turnouts.



Barren Turnpike bridges discourage pedestrian connections between the Back Bay and Fenway.

A Civic Vision for Turnpike Air Rights in Boston

Newbury Street's variety of stores, wide sidewalks, and outdoor dining offer good models for air rights development.



Newbury Street mixes residences and retail uses in historic townhouses set back 34 feet from the curb. The street changes to all-commercial use in the last block before Massachusetts Avenue. The narrower walks and increased commercial activity in this last block make for a lively atmosphere. The Public Garden terminates the view down Newbury Street to the east and Fenway Studios terminates it to the west. There is, however, no hint of the bend in the Back Bay grid, and future development on Parcel 12 should address this opportunity.

Open space

The Fens is the focus of the Fenway neighborhood. Copley Square, the Commonwealth Avenue Mall, the Public Garden, and the Charles River Basin all contribute significantly to the quality of life in the Back Bay. Development of these parcels should establish a comfortable and vital pedestrian environment. None of the Turnpike parcels would be appropriate for open space. Air rights development on Parcel 12 should provide generous sidewalks on Boylston and Newbury Streets to connect to the Fens and Charlesgate Park.

Urban design

At this point, the Turnpike crosses into Boston's historic core. Both the Fenway and Back Bay include substantial historic districts, one of which overlaps Parcel 13. The Fenway Studios, a National Historic Landmark, uniquely benefits from the northern light afforded by the corridor. Future air rights development should protect this asset.



Air rights development offers an opportunity to fill the gaps along these streets in ways that maintain the character and quality of the nearby pedestrian realm. Redevelopment of former rail yards and air rights into the Prudential Center complex set the stage for a dramatic contrast to the historic row-house scale and character of buildings north of Boylston Street. Air rights development on Parcels 14 and 15, south of Boylston Street, could help form a transition between these very different scales. The scale and character of development on Parcels 12 and 13 should be carefully scaled to respect the historic Back Bay.



The historic Fenway Studios, which depend on unobstructed natural light, face Parcel 11.

EXISTING AIR RIGHTS DEVELOPMENT DALTON STREET TO CLARENDON STREET

Openings to natural light and views

At Dalton Street drivers leave the sunlight and pass underneath four existing air rights projects: the Hynes Convention Center, the Prudential Center, Copley Place, and the John Hancock garage. Entering this 3,000-foot tunnel in the Back Bay and coming out next to Chinatown can be disorienting. This experience underscores the importance of preserving intermittent openings along the Turnpike to provide a sense of connection to and orientation within the city.

Lessons learned

The quality of the public realm in and around the existing air rights projects highlights some of the pitfalls of these developments.

- The pressure to maximize building footprints to avoid height at Copley Place resulted in the complete loss of sidewalks in some areas. The empty plaza at the corner of Dartmouth and Stuart Streets or the flight of stairs at the base of the Hancock garage demonstrate awkward resolutions of grade changes over structure.



Future air rights parking should not be visible from public sidewalks.

- Along city sidewalks, buildings should step down with the grade to make multiple entrances and windows at street level possible. This is difficult but not impossible to do. The Hancock garage, however, also shows how wide driveways and inactive street walls create an unfriendly pedestrian environment.

- Finding ways to incorporate parking in future air rights development will be one of the many tough challenges developers will face.



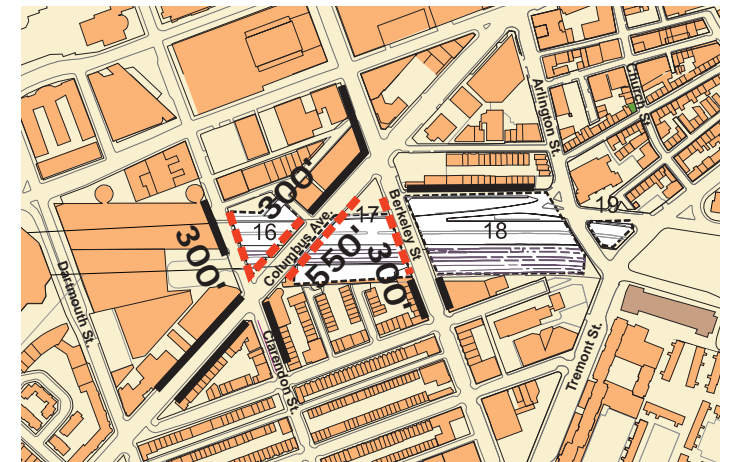
Air rights development could relocate the generally empty Chandler Park, adjacent to Parcel 18, to a more appropriate location.

PARCELS 16-19 CLARENDON STREET TO TREMONT STREET

Streets and walks

The streets of the Back Bay – Arlington, Berkeley, Clarendon and Dartmouth – connect directly across the Turnpike to the South End and re-create a portion of the Back Bay grid in the South End. Pedestrian traffic between these districts is particularly heavy on Dartmouth and Clarendon Streets, where the entrances to the Back Bay/South End Station are located.

Columbus Avenue slices diagonally across the grid of streets. Its width suggests the need for sidewalks more generous than the prevailing 12-foot-wide sidewalks.



The Turnpike isolates Back Bay and Bay Village from the South End.

Open space

Neighborhoods in this area are among the densest in Boston and have little open space. The land along the Turnpike ramp directly in front of Cortes Street offers a rare opportunity to create some open space for this district. By building an attractive retaining wall and backfilling, this parcel could be made level with Cortes Street. A linear urban park could then be established at relatively small expense compared to parks constructed on decking. An expansion of this park could occur over a portion of Parcel 18. The Guidelines also recommend leaving Parcels 10 and 11 undeveloped, or adding park features on parts of these parcels. All or part of Parcel 18 should be added as a park to this list for several reasons. This parcel has great width and length and has room for beautifully landscaped edges unlike much of the rest of the Turnpike corridor. It also provides wonderful views of the Boston skyline.

The small park at the terminus of Chandler Street is rarely used and not well maintained. This site happens to be the focal point of four streets and would make an excellent site for a civic building to help bridge the gap between neighborhoods. The guidelines contemplate a tradeoff of this *terra-firma* parkland for the construction of a building in return for a considerably larger park above air rights on Parcel 18.



Parcel 18 could accommodate a community park that balances the impacts of new development.

List of Title Documents

Title Study conducted by the BSC Group, dated as of January 1998, and additional documents, including, without limitation:

Parcel 12:

1. Order of Taking B1, recorded April 17, 1962, and related documents
 - a) Order of Taking B1 (Alteration 1), recorded October 4, 1963, and related documents
2. Order of Taking B2, recorded June 19, 1962, and related documents
 - a) Order of Taking B2 (Amendment 1), recorded November 29, 1962, and related documents
 - b) Order of Taking B2 (Alteration 1), recorded October 26, 1966, and related documents
3. Order of Taking B50 and confirmatory Deed, recorded December 27, 1962, and related documents
 - a) Amendment of Deed, recorded February 26, 1979
4. Easement from MassPike to New York Central RR, recorded December 27, 1962
 - a) Amendment to Easement, recorded February 26, 1979
5. Order of Taking B93, recorded February 14, 1964, and related documents
6. Grant of Permanent Easement from MassPike to MBTA, dated December 10, 1964
7. Deed from MassPike to the City of Boston, dated January 11, 1973
8. Taking of easement by the Public Improvement Commission of the City of Boston, recorded April 2, 1973

Parcel 13:

1. Order of Taking B50 and confirmatory Deed, recorded December 27, 1962, and related documents
 - a) Amendment of Deed, recorded February 26, 1979
2. Easement from MassPike to New York Central RR, recorded December 27, 1962
 - a) Amendment to Easement, recorded February 26, 1979
3. Order of Taking B66, recorded December 27, 1962, and related documents

4. Order of Taking B2, recorded June 19, 1962, and related documents
 - a) Order of Taking B2 (Amendment 1), recorded November 29, 1962, and related documents
 - b) Order of Taking B2 (Alteration 1), recorded October 26, 1966, and related documents
5. Grant of Permanent Easement from MassPike to MBTA, dated December 10, 1964
6. Order of Taking E52, dated March 19, 1965, and related documents
7. Wall Easement Agreement, dated February 12, 1987
8. Deed and Reservation of Easement from MBTA to MassPike, recorded June 7, 1999

Parcel 14:

1. Order of Taking B2, recorded June 19, 1962, and related documents
 - a) Order of Taking B2 (Amendment 1), recorded November 29, 1962, and related documents
 - b) Order of Taking B2 (Alteration 1), recorded October 26, 1966, and related documents
2. Order of Taking B17, recorded July 3, 1962, and related documents
3. Order of Taking B50 and confirmatory Deed, recorded December 27, 1962, and related documents
 - a) Amendment of Deed, recorded February 26, 1979
4. Easement from MassPike to New York Central RR, recorded December 27, 1962
 - a) Amendment to Easement, recorded February 26, 1979

Parcel 15:

1. Order of Taking B2, recorded June 19, 1962, and related documents
 - a) Order of Taking B2 (Amendment 1), recorded November 29, 1962, and related documents
 - b) Order of Taking B2 (Alteration 1), recorded October 26, 1966, and related documents
2. Order of Taking B50 and confirmatory Deed, recorded December 27, 1962, and related documents
 - a) Amendment of Deed, recorded February 26, 1979

3. Easement from MassPike to New York Central RR, recorded December 27, 1962
 - a) Amendment to Easement, recorded February 26, 1979
4. Order of Taking B104, recorded August 6, 1964, and related documents

N.B. MassPike makes no representation or warranty as to the accuracy, currency, or completeness of this information. Proposers and the Selected Developer(s) are responsible for verifying all ownership and title information.

List of Turnpike Design Materials

- Highway and Bridge Original Construction Drawings
- Details of Retaining Walls
- Right-of-Way Drawings
- Electronic Aerial mapping drawings of the Turnpike

Executive Order 390

[THE COMMONWEALTH OF MASSACHUSETTS LETTERHEAD]
[EXECUTIVE DEPARTMENT]

By His Excellency

WILLIAM F. WELD
GOVERNOR

EXECUTIVE ORDER NO 390

ESTABLISHING AN AFFIRMATIVE MARKET PROGRAM IN PUBLIC CONTRACTING

WHEREAS, The Commonwealth has an affirmative responsibility to develop and maintain equitable practices and policies in the public marketplace;

WHEREAS, a diverse business community strengthens the state economy and is beneficial to all of the citizens of the Commonwealth;

WHEREAS, in 1990, the Massachusetts Commission Against Discrimination conducted hearings and investigations which documented a history of discrimination against minorities and women in the Commonwealth, and in 1994, the Executive Office of Transportation and Construction produced a Disparity Study which documented a history of discrimination against minority and women owned businesses, in which the Commonwealth's agencies were participants;

WHEREAS, this discrimination against minorities and women currently affects the utilization of minority and women owned businesses in state contracting;

WHEREAS, the Commonwealth has a compelling interest in redressing the effects of past discrimination through the utilization of the available and qualified pool of minority and women owned businesses;

NOW, THEREFORE, I, WILLIAM F. WELD, Governor of the Commonwealth of Massachusetts, by virtue of MassPike vested in me as Supreme Executive Magistrate, and Lieutenant Governor ARGEO PAUL CELLUCI, do hereby order as follows:

Section 1. Declaration of Policy. It is the policy of the Commonwealth to promote equality in the market and, to that end, to encourage full participation of minority and women owned businesses in all areas of state contracting, including contracts for construction, design, goods and services.

Section 2. Affirmative Market Plans. The Commonwealth has a compelling interest in using racial and gender based classifications for the purposes of remedying past discrimination and promoting other, non-remedial objectives such as the delivery of effective human services in the areas of public health, safety and welfare.

Subject to the approval and direction of the Secretary of Administration and Finance, all executive offices, agencies, departments, boards and commissions of the Commonwealth (hereinafter referred to as "Agency" or "Agencies") are hereby directed to implement the narrowly tailored affirmative market program set forth in this Executive Order which shall include race and gender conscious goals where necessary to eliminate disparity between minority or women owned businesses (M/WBEs) and other business entities in the relevant market, defined as the Commonwealth of Massachusetts.

For purposes of this Executive Order, "minority" shall be defined as a permanent resident of the U.S. operating a business within the Commonwealth who is black, Western Hemisphere Hispanic, Asian, American Indian, or Cape Verdean, and a "Minority Business Enterprise" (MBE) as a minority business certified by the Sate Office of Minority and Women Business Assistance (SOMWBA) or another state Agency. A "Woman Business Enterprise" (WBE) shall be a business certified as such by SMWBA or another state Agency.

Goals for M/WBE participation in state funded contracts shall be based upon the broadest and most inclusive pool of available M/WBEs capable of performing the contracts and interested in doing business with the Commonwealth in the areas of construction, design, goods and services. SOMWBA, or its successor, shall create and maintain a current directory of certified M/WBEs which will serve as one source of information in determining the pool of available M/WBEs. Goals shall be established by the Secretary of Administration and Finance, or his/her designee, and shall be expressed as overall annual program goals, applicable to the total dollar amount of an Agency's contracts awarded during the fiscal year for each of the Agency's types of contracts. The goals established in Section 1.2 of Executive Order 237 shall remain in effect until revised goals are developed pursuant to this Executive Order, which shall occur promptly, but in no event later than January 1, 1997. Goals developed pursuant to this Executive Order shall be revised as necessary for the fiscal year beginning July 1, 1997 and at least every two years thereafter.

The Secretary of Administration and Finance, or his/her designee, shall develop a procedure by which Agencies may, for an individual contract, adjust the goals for M/WBE participation (whether the goals are established pursuant to Executive Order 237 or pursuant to this Executive Order) based upon actual availability, geographic location of the project, the contractual scope of work or other relevant factors.

The Secretary of Administration and Finance, and his/her designee, shall develop a good faith efforts waiver procedure by which Agencies may determine, at any time prior to the award of the contract, that compliance with the goals is not feasible and by which Agencies may reduce or waive the goals for an individual contract.

Recognizing the importance of joint ventures and partnerships involving M/WBEs in increasing the participation of M/WBEs in state contracting, the Secretary of Administration and Finance, or his/her designee, shall develop guidelines and procedures for Agencies to follow in contracting with such entities. Such guidelines and procedures shall seek to encourage the development of joint ventures and partnerships for the purpose of contracting with the Commonwealth.

In connection with the affirmative market program SOMWBA shall regularly review and, where necessary, modify its certification process to ensure that it operates effectively, and shall report annually to the Secretary of Administration and Finance.

Section 3. Capacity Development. The Massachusetts Office of Business Development (MOBD), or its successor, is hereby designated the state Agency responsible for providing a capacity development program to M/WBEs and other interested businesses seeking to do business with the Commonwealth. The capacity development program shall include, but is not limited to, the following core areas of business development: strategic planning, financial management planning, human resource management and planning, information technology access and management, and marketing.

MOBD shall report annually to the Secretary of Administration and Finance on its progress in assisting M/WBEs and other businesses.

Contracting Agencies of the Commonwealth shall supplement the capacity development program provided by MOBD with industry specific assistance, training, education and procurement information.

Section 4. Program Oversight, Enforcement and Reporting Requirements. The Secretary of Administration and Finance shall be responsible for the overall management, monitoring and enforcement of the program established pursuant to this Executive Order. A Program Director shall be designated within the Executive Office of Administration and Finance to assist in program development, coordination and compliance. A Director of Enforcement shall be designated within the Executive Office of Administration and Finance with responsibility for monitoring contract compliance across all Agencies, addressing potential program violations and coordinating Agency enforcement activities with SOMWBA and the Attorney General.

Each Secretary and Agency head shall designate a highly placed individual charged with management of this program. Each Secretary and Agency head may designate such other personnel as they deem necessary to support the implementation, monitoring and enforcement of this program and the coordination of those functions. Each Secretariat shall ensure that Agencies establish, subject to guidelines developed by the Secretary of Administration and Finance and his/her designee, special provisions that serve as governing standards for contract compliance. It is the intention

of this Executive Order that the principles underlying the affirmative market program be incorporated into the fabric of general management in state government.

Each Secretariat shall report annually to the Secretary of Administration and Finance on the effectiveness of the program, including a report of the total dollar amounts awarded and actually paid to M/WBEs in all areas of state contracting. The Secretary of Administration and Finance shall report annually, within ten weeks of the issuance of the Annual Financial Report by the Office of the Comptroller, to the Minority and Women Business Enterprise Oversight Committee established by this Executive Order and to the Governor.

Section 5. Minority and Women Business Enterprise Oversight Committee. The Secretary of Administration and Finance shall appoint a Minority and Women Business enterprise Oversight Committee, not to exceed twenty members, which shall assist the Secretary in the implementation of this Executive Order. Oversight Committee members shall serve for two year terms, except that in the initial appointments, one half shall be appointed to one year terms, and one half shall be appointed to two year terms. Members may serve a maximum of three (3) full two year terms.

Section 6. Independent Authorities and Public Institutions of Higher Learning. Independent authorities and public institutions of higher learning are encouraged to adopt M/WBE policies and programs consistent with this Executive Order.

Section 7. Sunset Provision. The Executive Office for Administration and Finance shall review the program described in this Executive Order at least every five years. The review shall determine: whether the objectives are being met; whether the conditions giving rise to the Order continue to exist; whether race and gender neutral measures are capable of addressing the effects of discrimination without the other measures specified in the Order; and whether the program described in the Order should be modified or sunsetted.

Section 8. Effective Date. With the exception of the goal component of the affirmative market program, as set forth in Section 2 of this Executive Order, all provisions of this Executive Order are effective immediately. The goal component of Executive Order 237, as set forth in Section 1.2 of Executive Order 237, shall remain in effect until revised goals are developed pursuant to Section 2 of this Executive Order, but in no event shall it remain in effect beyond January 1, 1997. All other provisions of Executive Order 237 are hereby immediately revoked.

Given at the Executive Chamber in Boston this 6 day
of Aug. in the year one thousand nine hundred and ninety-six.

[SEAL]

s/a
William F. Weld, Governor
Commonwealth of Massachusetts

s/a
Argeo Paul Cellucci, Lieutenant Governor
Commonwealth of Massachusetts

SCHEDULES

Proposal Form

Reference is herein made to a certain Request for Proposals dated September, 2008 issued by the Massachusetts Turnpike Authority relating to Air Rights Parcels 12, 13, 14, and 15, Massachusetts Avenue/Boylston Street intersection Area, Boston (together with all figures, appendices and schedules, the “RFP”). Initial capitalized terms, unless otherwise defined herein, shall have the meanings assigned to such terms in the RFP.

The undersigned (the “Proposer”) affirms that it has read and fully understands the terms and conditions set forth in the RFP, and hereby agrees to the terms and conditions thereof.

1. The Proposer hereby irrevocably submits its Lease Proposal(s) for Air Rights Parcels known as Parcel(s) (INSERT APPLICABLE Parcel number(s) 12, 13, 14 ,15 any or all or any combination) to MassPike subject to the lease terms and conditions of the RFP.
2. The Proposer herewith submits a Submission Deposit in the amount of _____ Dollars (\$ _____), which shall be held and disposed of in accordance with Section IV.C(2) of the RFP.
3. The Proposer agrees that all of the Proposer’s expenses related to the preparation of this Proposal for Air Rights Parcel 12, 13, 14, and 15 and (if applicable) the consummation of the transaction contemplated hereby, including any costs related to any third party representation engaged by the Proposer, are the Proposer’s sole responsibility.

Executed under seal by the duly authorized _____ of the Proposer:

Name of Proposer: _____

Signature: _____ Date: _____

Print Name: _____ Title: _____

See Air Rights Parcel 12, 13, 14, & 15 RFP, Section V, "Submission Requirements," Subsection: Proposal Content: Component II, Financial Proposal," Paragraph 1, "Rent Offer Form," for detailed instructions on completing this form.

a. Respondent

Name of Respondent:		Type of Entity:	
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b. Term

Base Lease Term:		years	
Number of extensions:		for	years each
At the option of (check one):		Developer	MassPike

c. Non-Recurring Rent

Date	Payments
	\$
	\$
	\$
TOTAL:	\$

d. Annual Rent

i. Initial Annual Rent:	\$	beginning in:	
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ii. Rent Escalation:		
BY FIXED PERCENTAGE increase:		%
OR INDEX on which increase are to be based:		
minimum percentage increase:		%
Escalation of Annual Rent payments to occur every:		Years

iii. Adjustment to Fair Market Value to occur every:		Years
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e. Performance-Based Rent

f. Projected Rent Payments

year:	1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017
Non-Recurring Rent	\$	\$	\$	\$	\$					
Annual Rent	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Performance-Based Rent	\$	\$	\$	\$	\$	\$		\$	\$	\$
Total Projected Rent Payments	\$	\$:\$	\$	\$	\$	\$	\$	\$	\$

g. Authorized Signature

I hereby certify that the Respondent listed above offers to enter into a Development Agreement, Lease, and/or other agreement with the Massachusetts Turnpike Authority for Air Rights Parcel 12, 13, 14, & 15 under the terms shown on this Form and further described in the accompanying Proposal, subject to the terms and conditions of the RFP and further negotiations with MassPike.	Sign:		Date:
	Print:		

Section 40J Disclosure Statement

DISPOSITION OF REAL PROPERTY

For the purposes of disclosure pursuant to the Massachusetts General Laws, Chapter 7, Section 40J, the undersigned (the “Proposer”) does hereby provide the following statement giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property defined as “Air Rights Parcels 12, 13, 14, and 15” in that certain Request for Proposals dated September, 2008, issued by the Massachusetts Turnpike Authority. If there are no such persons, the Proposer has indicated this by inserting the word “NONE” in the space below.

Name	Address
_____	_____
_____	_____
_____	_____

Note: If necessary, please attach additional names and addresses on a separate sheet of paper referencing this Statement.

This Disclosure Statement is signed under the pains and penalties of perjury on this ___ day of _____, 2008 by the duly authorized _____ of the Proposer:

Name of Proposer: _____

Signature: _____ Date: _____

Print Name: _____

Title: _____

Sample Clerk's Certificate Form

(Applicable to all Corporations)

I, _____, being the clerk of
_____, hereby certify that the
Proposal submitted herewith has been authorized by the board of directors of said corporation, and
that the above signatures are those of duly authorized agents and/or officers of same.

Date: _____

Clerk

CORPORATE SEAL

Additional Certifications Form

Reference is herein made to a certain Request for Proposals dated September, 2008, issued by the Massachusetts Turnpike Authority (“MassPike”) relating to Air Rights Parcels 12, 13, 14, and 15, Massachusetts Ave. and Boylston St., Boston (together with all figures, appendices and schedules, the “RFP”). Initial capitalized terms, unless otherwise defined herein, shall have the meanings assigned to such terms in the RFP.

Chapter 66A (Confidentiality and Privacy)

The undersigned (the “Proposer”) acknowledges that, during the course of its performance of the development agreement, the lease or other agreement contemplated under the RFP, the Proposer may acquire or obtain access to “personal data” and become a “holder” of such “personal data” (as defined in Chapter 66A of the Massachusetts General Laws (“Chapter 66A”)) or other information deemed confidential by MassPike. The Proposer shall comply with Chapter 66A and any applicable regulations promulgated thereunder relative to confidentiality and privacy.

Chapter 62C, Section 49A (Tax Compliance)

Pursuant to M.G.L. Chapter 62C, Section 49A, the Proposer hereby certifies (a) under the pains and penalties of perjury that the Proposer is in full compliance with all federal laws and laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support, and (b) to the best of its knowledge and belief, Proposer has no outstanding payment or filing obligations to the Commonwealth of Massachusetts Department of Revenue.

Section 7 of Chapter 521, Acts of 1990 (Child Care Assistance)

Pursuant to Section 7 of Chapter 521, Acts of 1990, as amended by Chapter 329, Acts of 1991, and regulations issued pursuant thereto, 102 CMR 12.00, the Proposer certifies under the pains and penalties of perjury that the Proposer is in compliance with all laws of the Commonwealth of Massachusetts relating to child care assistance, and if the Proposer is a qualified employer having fifty (50) or more full time employees, has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placement; or is an exempt employer.

Chapter 7, Section 22C (Northern Ireland Notice and Certification)

State agencies, state authorities, the House of Representatives or the state Senate may not procure goods or services from any person employing ten (10) or more employees in an office or other facility located in Northern Ireland who fails to complete the certification required by M.G.L. c. 7, section 22C. The Proposer certifies under the pains and penalties of perjury either that (check the applicable statement):

the Proposer does not employ ten (10) or more employees in an office or other facility in Northern Ireland;

OR

() the Proposer employs ten (10) or more employees in an office or other facility located in Northern Ireland and further certifies that:

1. the Proposer does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief, and
2. the Proposer promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and
3. the Proposer is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Conflict of Interest/Collusion Certification

The Proposer certifies under the pains and penalties of perjury that (a) no relationship exists between the Proposer and MassPike or any officer, employee, or agent of MassPike that constitutes unfair competition or a conflict of interest or that may be adverse to MassPike; and (b) it has not acted in collusion with any other Proposer or other entity doing business with MassPike in a way that would constitute unfair competition or that may be adverse to MassPike.

Other Certifications

The Proposer certifies under the pains and penalties of perjury that the Proposer has filed with the Secretary of State all certificates and annual reports required by law.

The Proposer certifies under the pains and penalties of perjury that the Proposer is not presently debarred or suspended from providing goods and/or services to the Commonwealth, or any other applicable debarment or suspension provision under state law or any rules or regulations promulgated thereunder.

Signed under the pains and penalties of perjury on this ____ day of _____, 2008 by the duly authorized _____ of the Proposer:

Name of Proposer: _____

Signature: _____

Print Name: _____

Title: _____

