Exhibit A

AGREEMENT BETWEEN THE TOWN OF ACTON

AND _____

Dated: _____, 2014

This Agreement between the Town of Acton ("Seller"), a Massachusetts municipal corporation with a principal address at Town Hall, 472 Main Street, Acton, MA 01720 and _____, a _____ corporation having a usual place of business at _____ ("Purchaser") (collectively the "Parties") is entered into as of the date written above.

WHEREAS, Seller owns a former railroad right-of-way within the Town of Acton which it plans to convert into a section of the Assabet River Rail Trail ("ARRT");

WHEREAS, the Town of Maynard owns another section of the former right-of-way within the Town of Maynard which it plans to convert into a section of the ARRT;

WHEREAS, other sections of the former railroad right-of-way pass through other Towns, which plan to convert such sections into the ARRT;

WHEREAS, Seller serves as the local project manager for sections of the ARRT running through the Towns of Acton and Maynard (the "ARRT property");

WHEREAS, the Acton-Maynard phase of construction of the rail trail on the ARRT property is scheduled to begin in 2015;

WHEREAS, Seller wishes to sell the steel rail currently located within the right-of-way running through the ARRT property in Acton and Maynard;

WHEREAS, Purchaser wishes to purchase the rail in the Acton/Maynard ARRT sections and is willing to remove and transport the rail from such sections at its own cost;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Sale and Purchase of Rail**

1.1 Seller agrees to sell and Purchaser agrees to purchase and take possession of the rail and related materials (the rail) located in the Acton-Maynard sections of the ARRT for an amount of $_____. This amount represents a payment for 20,714.50 linear feet of rail and related rail materials (or ____ tons). Should the actual linear feet of removed rail exceed such quantity, the Purchaser shall pay an additional $____ /linear foot for rail in excess of such quantity. Should the actual quantity of rail removed fall short of such number of linear feet, the

Seller shall reimburse the Purchaser by the same $___/linear foot for any shortfall in the actual amount of rail removed. Such adjusted payments shall be due at the time of demobilization of removal and transport activities.

1.2 Purchaser agrees to measure the amount of rail removed and stacked for transport, prior to its transport from the site, on a daily basis and report in writing such measurements of rail to the designated representative of the Seller. Seller shall have the right to verify such measurements within a reasonable time, provided that the transport of such rail from the site not be unreasonably delayed.

1.3 Purchaser shall remit the initial payment to the Seller on or before _____, 2014.

1.4 Upon taking possession of the rail by removing it from the Acton-Maynard sections of the ARRT, all right, title and interest in the rail shall pass from the Towns of Acton and/or Maynard, as the case may be, to the Purchaser. The duly authorized representatives of the Towns of Acton and Maynard shall take all actions and execute such documents as the Purchaser may reasonably request in order to effect such transfer of title.

2. **Conditions and Scope of Work of Rail Removal**

2.1 The Purchaser shall be given access to the ARRT property in accordance with the location plan submitted in response to the Request for Bids ("RFB"), as such plan may be modified and approved by the designated representative of the Seller ("approved location plan"). All removal and transport work must be coordinated with the designated representative of the Seller.

2.2 The Purchaser shall adhere to the staging of equipment, and the stacking and storage of rail, in compliance with the approved location plan. The Purchaser shall make such security arrangements as it deems appropriate to secure the rail prior to transport, and shall bear the risk of loss of rail after its removal from the rail bed and throughout the time of its storage on site.

2.3 The Purchaser shall adhere to the schedule for removal submitted in response to the RFB, as such schedule may be modified and approved by the designated representative of the Seller, and as it may updated from time to time, such updates also subject to the approval of the designated representative of the Seller. Should the Purchaser fail to meet the completion date in such schedule and any approved updates, the Seller reserves the right to terminate this Agreement in accordance with Section 8.1 below.

2.4 The hours of rail removal, transport and related work shall be limited to weekdays between the hours of 7:00 AM and 6:00 PM, and Saturdays between the hours of 8:00 AM and

5:00 PM. No removal, transport and related work shall be performed on Sundays and legal holidays.

2.5 The ARRT property must be left in substantially the same condition as existed prior to the removal of the rail. Therefore reclamation should not be necessary. However, in the event that any significant accidental disturbances occur in the process of rail removal, the Seller's designated representative shall be notified immediately, and determine necessary repairs and remediation to be carried out at no cost to the Towns of Acton or Maynard, and without affecting the agreed sale price of the rail materials.

2.6 In removing and transporting the rail, and any other activities without limitation conducted by the Purchaser on the ARRT property, the Purchaser shall comply with any and all Orders of Conditions and other lawful orders of the conservation commissions of the Towns of Acton and Maynard. Prior to commencing any work to remove the rail material, the designated representative of the Seller shall supply the Purchaser with copies of any such Order of Conditions.

2.7 Except for Orders of Conditions obtained by each Town from its respective conservation commissions, the Purchaser shall be responsible for obtaining at its own cost and complying with any other licenses and permits that may be required to remove and transport the rail.

2.8 No soil, trees, or shrubs shall be disturbed without the prior express written authorization of the Town of Acton. Removal of shrubs and trees on the tracks and in the immediate vicinity of the tracks shall be exempt from this provision to the extent necessary for the safe and efficient removal of the rail. All shrubs and trees removed from the tracks or immediate vicinity shall be taken off site and properly disposed. No materials, organic or otherwise shall be disposed of on site or within adjacent wetlands or any 100 foot wetlands buffer.

2.9 The Purchaser shall not remove any other materials, including rail ties, artifacts identified in the RFB and non-rail material from the ARRT property.

2.10 The Purchaser shall at its own expense take all necessary precautions for the safety of, and shall provide all protection necessary to prevent damage, injury or loss to employees of the Purchaser and any subcontractor hired by the Purchaser, to employees of the Seller during inspections of the removal and transport activities, to all other persons coming on to the property or to properties adjacent to the ARRT property.

2.11 The Purchaser shall at its own expense, preserve and protect from injury the ARRT property and properties adjacent thereto. The Purchaser shall take special care during the

removal, transport and related activities to avoid damage to underground structures such as without limitation utility lines and pipes, conduits, and culverts.

2.12 The Purchaser shall, on a daily basis, maintain the ARRT property in a clean and orderly condition.

2.13 The Purchaser shall keep itself fully informed of and comply with all federal, state and local laws and regulations that affect the rail removal and transport activities, including as they apply to those engaged or employed in such activities, and of all orders of governmental bodies having jurisdiction or authority over the same.

3. **No Warranty**

PURSUANT TO THIS AGREEMENT, THE SELLER SELLS AND THE PURCHASER TAKES THE RAIL "AS-IS WHERE-IS." NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE, WHETHER AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY THE SELLER. THE PARTIES AGREE THAT THE SELLER SHALL NOT BE DEEMED A MERCHANT UNDER ANY APPLICABLE SECTION OF THE MASSACHUSETTS UNIFORM COMMERCIAL CODE.

4. **No Liens**

The Purchaser shall not cause or create any mortgage, pledge, lien (including mechanics', labor or materialmen's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on the ARRT property. If Purchaser breaches its obligations under this Section, it shall immediately notify Seller in writing, shall promptly cause such Lien to be discharged and released of record without cost to Seller, and shall defend and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

5. **Insurance**

5.1 Prior to rail removal, the Contractor shall procure and maintain, and shall cause all subcontractors to procure and maintain, insurance of the following types of coverage and limits of liability:

a. Comprehensive General Liability ("CGL"), including products/completed operations, independent contractors and a "broad form" coverage endorsement, that must include contractual liability, property damage liability, bodily injury liability and personal injury liability. The minimum limit is

$1,000,000 per occurrence for Bodily Injury and Property Damage on a combined single limit basis.

b. Workers' Compensation Insurance to the extent required by statute.

c. Automobile Bodily Injury and Property Damage limits of at least $1,000,000.

d. Employers' Liability Insurance of at least $1,000,000.

5.2 All coverage shall be primary (unless otherwise noted), shall be written on an occurrence basis and shall be maintained without interruption from the date of this Agreement until the date of termination of this Agreement.

5.3 Certificates of insurance acceptable to the Town shall be filed with the Town prior to commencement of rail removal. The certificates and the insurance policies required by this Agreement shall not expire for at least one year from the date of issuance and shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire unless the Town has received at least 30 days prior written notice. If any of the foregoing insurance coverage are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of this coverage shall be submitted with the final application for payment. The certificate of insurance and the insurance policies required hereunder shall name the Town of Acton as additional insured with respect to all work performed on behalf of the Town. The insuring company shall be reputable, admitted to do business in Massachusetts and having a rating by A.M. best of at least A. VII.

5.4 The Contractor shall, upon execution of this Agreement, furnish a performance bond and a labor and materials or payment bond, each of a surety company qualified to do business under the Laws of the Commonwealth of Massachusetts and satisfactory to the Awarding Authority and each in the sum of the cost for rail removal as set for the on the Bid Form.

5.5 The contractor shall, upon execution of this Agreement, furnish a sufficient security conforming in all respects to General Laws Chapter 30, Section 39A, for payment of all rental and transportation charges for the hire or use of trucks and other equipment upon such contract, on a surety company qualified to do business under the Laws of the Commonwealth of Massachusetts and satisfactory to Awarding Authority and in the sum of the cost for rail removal.

6. **Indemnification**

6.1 Purchaser's Indemnity: Purchaser shall indemnify, defend and hold harmless the Towns of Acton and Maynard, and their officers, agents and employees (each a "Indemnitee") of and

from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Seller, and damage or destruction of property, including, but not limited to, property of the Towns of Acton and Maynard, or other loss or damage (any of the foregoing, a "Claim") incurred by either of the aforementioned Towns, arising out of (i) negligent acts or omissions or willful misconduct of Purchaser, its agents, officers, directors, employees or contractors; or (ii) the material breach by Purchaser of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by either of the aforementioned Towns and any Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses.

6.2 Limitations: Purchaser's obligations pursuant to Section 6 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of the Towns of Acton and Maynard, the Indemnitees, or their respective other contractors, successors or assigns, or to the acts of third parties.

7. **Limitation of liability**.

NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL OR ANALOGOUS DAMAGES, OR LOSSES OR DAMAGES FOR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

8. **Termination**

8.1 Termination for Cause: Either Party may terminate this Agreement in the event of a material breach upon seven (7) days advance written notice, unless the breaching party cures such breach within such seven (7) days. In the event of any such termination for cause, the Seller shall reimburse the Purchaser for any purchase price paid for rail not yet removed, after making deductions for any damages caused by the Purchaser.

8.2 Termination for Convenience: Either Party may terminate this Agreement for convenience upon seven (7) days advance written notice. In the event of any such termination for convenience, the Seller shall reimburse the Purchaser for any purchase price paid for rail not yet removed.

9. **Notices**

9.1 Notice Addresses: Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as set forth herein or at such other address as may be designated in writing to the other Party.

If to the Seller:

The Town Manager
Acton Town Hall
472 Main Street
Acton, MA 01720

If to the Purchaser:

9.2 Notice Delivery: Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by e-mail, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified herein when hand delivered, upon confirmation of sending when sent by e-mail (if sent during normal business hours or the next business day if sent at any other time), on the day after being sent when sent by overnight delivery service, or five (5) business days after deposit in the mail when sent by U.S. mail.

10. **Assignment**

Purchaser shall not sell, transfer, assign, pledge or cause to be assumed this Agreement, in whole or in part, without the prior written consent of the Seller.

11. **Miscellaneous**

11.1 This Agreement constitutes the entire agreement and understanding between the Seller and the Purchaser with respect to the subject matter hereof and supersedes all prior agreements between them relating to the subject matter hereof, which are hereafter of no further force or effect. The RFB issued by Seller and the bid and related materials submitted by Purchaser to Seller are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of the RFB and bid submitted by Purchaser, the provisions of this Agreement shall prevail

11.2 This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of the Seller and Purchaser.

11.3 This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of The Commonwealth of Massachusetts without reference to its principles of conflicts of laws.

11.4 The relationship between Seller and Purchaser shall not be that of partners, agents, or joint venturers, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Seller and Purchaser, in performing any of their obligations hereunder, shall be independent contractors and shall discharge their contractual obligations at their own risk. Neither Party has the right to create an obligation for the other Party.

11.5 This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile transmission of executed copies or signature pages for this Agreement shall be legal, valid and binding execution and delivery for all purposes.

IN WITNESS WHEREOF, the duly authorized officers of the Parties have executed this Agreement as an instrument under seal as of the Effective Date.

_____	_____
Steve L. Ledoux, Acton Town Manager	By:
	Title: