

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

**LICENSE MBTA 14907**

**RAILROAD PROPERTIES**

**ACTON, MASSACHUSETTS**

**TOWN OF ACTON**

**1. The License**

The Massachusetts Bay Transportation Authority, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, established and existing pursuant to Chapter 161A of the Massachusetts General Laws, with a usual place of business at 10 Park Plaza, Boston, Massachusetts (hereinafter referred to as the "MBTA"), hereby grants to the Town of Acton, a municipality with a usual place of business at 472 Main Street, Acton, MA 01720, (hereinafter referred to as "Licensee"), and its agent, the right and privilege to enter and construct a parking lot at 1 Maple Street, Acton, Massachusetts in areas A-TE-48, A-E-24 and A-GRSW-1 as shown on Exhibit A attached hereto and incorporated herein (hereafter referred to as the "Premises"). The MBTA acknowledges that the Licensee's agent will be the Massachusetts Department of Transportation ("MDOT"), which will award the construction contract and supervise the construction contractor.

**2. General Conditions**

Among the terms and conditions of this License are included the following General Conditions:

- 2.1 Date: July 29, 2015
- 2.2 Licensee: Town of Acton
- 2.3 Term: From August 11, 2015, to August 11, 2016; except that the MBTA may terminate this License for Entry with thirty (30) days written notice.
- 2.4 Fees:
- Administrative Fee: \$ Waived.
- License Fee: \$ Waived.
- Design and Construction Review Fee: See Section 4.1(h) herein and Exhibit C hereto.
- 2.5 Premises: The areas near the Fitchburg Line railroad right of way at 1 Maple Street, Massachusetts, specifically and only in the areas shown as areas A-TE-48, A-E-24 and A-GRSW-1 in Exhibit A attached hereto.
- 2.6 Scope of License: Licensee may access and construct a parking lot with 34 parking spaces, lighting, drainage and landscaping on the Premises, consistent with the illustration attached hereto as Exhibit A and the materials submitted to the MBTA with its application. No

other investigations or activities of any kind may be performed on the Premise and MBTA property. Licensee shall have the right to permit its employees, contractors, agents and the Selected Contractor to use the Premises as permitted hereunder and acting by and through the Licensee, subject to all of the terms and conditions of this License.

Licensee understands and agrees that upon selection and execution of a binding construction contract executed by MDOT (the "Construction Contract") for the contractor for the construction project detailed in this License (the "Selected Contractor"), the Selected Contractor and Licensee shall adhere to the following conditions. Notwithstanding anything set forth herein to the contrary, Licensee shall only be responsible for the below conditions, if and to the extent permitted by law, and if the Construction Contract does not require compliance with the below conditions. The conditions are as follows:

- a. Licensee and Selected Contractor shall adhere to the terms and conditions of the MBTA Design and Construction Department's letter, dated June 10, 2015, hereto attached as Exhibit C and incorporated herein by reference.
- b. Licensee and Selected Contractor shall adhere to the terms and conditions of the MBTA Railroad Operations Department's letter, dated June 12, 2015, hereto attached as Exhibit D and incorporated herein by reference.
- c. Licensee and Selected Contractor shall adhere to the terms and conditions of the MBTA System Safety Department's letter, dated June 25, 2015, hereto attached as Exhibit E and incorporated herein by reference.
- d. Licensee and Selected Contractor shall adhere to the terms and conditions of the MBTA System-Wide Accessibility Department's letter, dated May 8, 2015, hereto attached as Exhibit F and incorporated herein by reference.
- e. Licensee shall share with the MBTA all revenue obtained from use of the Premises, including, but not limited to parking, with a 50%-50% share of net revenues after the Licensee's expenses associated with the Premises.
- f. The Licensee and MBTA shall engage in negotiations of a lease for the ongoing operation, maintenance and use of the Premises.

In the event of a conflict between the conditions stated in this Section 2.6 and other provisions of this License, whichever provisions are more restrictive of Licensee or impose a higher standard on Licensee shall control.

2.7 Notices:

**MBTA:**

Real Estate Department  
Massachusetts Bay Transportation Authority  
10 Park Plaza, Room 5720  
Boston, Massachusetts 02116  
Attn: Assistant General Manager for Real Estate and Asset  
Development

and

MBTA Railroad Operations Department  
45 High Street  
Boston, Massachusetts 02110  
Attn: Director

and

Keolis Commuter Services, LLC  
32 Cobble Hill Road  
Somerville, Massachusetts 02143  
Attn: Director

and

MBTA Design and Construction Department  
100 Sumer Street- 12th floor  
Boston, Massachusetts 02143  
Attn: Assistant General Manager

and

Massachusetts Realty Group  
20 Park Plaza, Suite 1120  
Boston, Massachusetts 02116  
Attn: MBTA License Management

**LICENSEE:**

Town of Acton  
472 Main Street  
Acton, Massachusetts 01720  
Attn: Roland Bartl, Town Planner

**3. Consideration**

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

**4. Terms and Conditions of License for Entry**

Licensee shall require the Construction Contract entered into by MDOT and the Selected Contractor, to obligate the Selected Contractor to comply with, and be subject to, the terms and conditions of this Section 4 as set forth below. Notwithstanding anything set forth herein to the contrary, Licensee shall only be responsible for the terms and conditions of this Section 4, if and to the extent permitted by law, if the Construction Contract does not require compliance with the terms and conditions of this Section 4.

**4.1 Scope of Activity**

(a) Scope of Activity

The Scope of Activity is the Scope of License (Section 2.6) as modified by the terms of this License and the Exhibits attached hereto and incorporated herein. The Selected Contractor shall minimize the disruption to and alteration of the Premises and, as soon as possible after each entry onto the Premises, shall return the Premises to the condition existing immediately prior to the initiation of the Scope of Activity and entry hereunder; except as specifically authorized under the Scope of License.

Except pursuant to an approved Access Plan, defined in Exhibit B, attached hereto and incorporated herein, or in case of emergency, Selected Contractor shall provide at least ten (10) days' prior written notice of its desire to enter the Premises to the MBTA's Operating Department's in accordance with Section 2.6 for access. The MBTA may have an observer present at all times when Selected Contractor is present on the Premises. See Exhibit B for required notice from Selected Contractor when Selected Contractor needs access because of an emergency. Selected Contractor shall do all work in accordance with Section 2.6.

(b) Utilities

Selected Contractor acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of the Scope of Activity. Selected Contractor shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. To the extent, the MBTA or Keolis Commuter Services, LLC ("KCS") or parties acting on behalf of either, locate and mark utilities in the railroad rights of way and appurtenant thereto, Selected Contractor shall be responsible for payment to such parties for such services which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the transit line(s) or used in connection with services or operations of the MBTA (as defined below). Any damage to any utilities on or near the Premises caused by Selected Contractor shall be the sole responsibility of Selected Contractor. If Selected Contractor does not immediately repair any utilities it has damaged, the MBTA, without being under any obligation to do so and without waiving the Selected Contractor's obligation hereunder, may repair any utilities damaged by the Selected Contractor immediately and without notice in case of emergency. In the event the MBTA exercises such right, the Selected Contractor shall pay to the MBTA immediately upon demand all of the MBTA's cost of performing such repairs plus a fee equal to twenty-five percent of the MBTA's cost of performing such repairs to reimburse the MBTA for its administrative costs.

(c) Subordination to MBTA's Operating Requirements

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

(d) Environmental Cooperation

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

(e) Remediation Obligation of the Licensee

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

(f) Notice of Project Commencement and Completion and Record Drawings

Upon commencement and completion of its work, Selected Contractor shall provide written notice ("Notice of Project Commencement" and "Notice of Project Completion") to the entities stated below. Selected Contractor shall also provide the MBTA Railroad Operations Department with one reproducible "As-Built" copy of each approved construction drawing marked to indicate all changes and deviations from the original approved plans and recording the final conditions of the Premises ("Record Drawings") upon completion of the work authorized hereunder. The Notice of Project Commencement and Project Completion and any Record Drawings shall be delivered to:

MBTA Railroad Operations Department  
45 High Street  
Boston, Massachusetts 02110  
Attn: Director

And a copy of only the Notice of Project Commencement and Project Completion to:

Massachusetts Realty Group  
20 Park Plaza, Suite 1120  
Boston, Massachusetts 02116  
Attn: Accounting Department

(g) Evidence of Financial Responsibility – Intentionally Omitted.

(h) Plan Review Costs

Selected Contractor shall be responsible for and pay all costs that may be incurred by the MBTA for Design and Construction Plan Review that are in excess of the Fees allocated to those reviews in Section 2.4 above within 30 days of being invoiced for same. Such costs and Fees are in addition to the Administrative Fee and the License Fee, and are included within the Selected Contractor's indemnity obligations in Section 4.2(a) below.

**4.2 Indemnification and Release of MBTA**

(a) Selected Contractor shall indemnify, defend (at the option of the MBTA) and save the MBTA, KCS and Pan Am Railways, Inc. ("Pan Am") harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever including, without limitation, those related to Hazardous Materials that may be imposed upon, incurred by, or asserted against the MBTA by reason of any of the following occurrences:

- (1) the activities of the Selected Contractor hereunder or the exercise by the Selected Contractor of any rights or privileges hereby granted; or
- (2) the presence, discovery or revealing of any pre-existing Hazardous Materials on the Premises (or other property of the MBTA adjacent to the Premises) (i) which discovery is a result of the Selected Contractor's activities hereunder; (ii) where said Hazardous Materials are present because of Selected Contractor's previous occupancies of the Premises, whether those occupancies were unauthorized or permitted pursuant to prior agreements between the parties; or (iii) where those pre-existing Hazardous Materials migrated from land now or previously owned, leased, occupied or operated by the Licensee or for which the Licensee or Selected Contractor is a potentially responsible party as defined under Chapter 21E; or
- (3) the placement or accidental release of any Hazardous Materials onto the Premises (or other property of the MBTA adjacent to the Premises) by Selected Contractor or its employees, agents, contractors or consultants or by the employees, agents, or consultants of Selected Contractor or its subcontractors; or
- (4) any use, condition or occupation of the Premises or any part thereof by Selected Contractor; or

- (5) any failure of Selected Contractor to perform or comply with any of the terms hereof, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the activities or any part thereof.
- (b) Licensee was unable to inspect the Premises due to ongoing construction work by the MBTA but has decided based on other sufficient knowledge and information that the Premises are suitable for the uses Licensee contemplates. Licensee and Selected Contractor assume all the risk of entry on to the Premises.
- (c) Selected Contractor hereby releases the MBTA from any responsibility for Selected Contractor's losses or damages related to the condition of the Premises, and Selected Contractor covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or any other claim) (hereinafter "Claims") against the MBTA, including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's death relating to, or arising from, the condition of the Premises.

Selected Contractor shall obtain a written release of liability similar to the one in this Section 4.2(c) and including the language of Section 4.2(d) in favor of the MBTA from each of Selected Contractor's consultants and contractors before they enter onto the Premises.

- (d) In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, Selected Contractor shall indemnify, defend (at the option of the MBTA) and save the MBTA, KCS and Pan AM harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments related to the injury, illness or death of any employee of Licensee or of an employee of Licensee's contractors or consultants; except if the "Claim" arose because of the MBTA's grossly negligent or willful misconduct. It shall not be grossly negligent to allow access to the Premises that are in substantially the condition they were in when Licensee inspected the Premises before accepting this License for Entry.
- (e) Licensee and Selected Contractor shall be notified, in writing, by the MBTA of the assertion of any claim against it that Licensee or Selected Contractor has agreed to indemnify above (the "Indemnified Claim").
- (1) If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, Selected Contractor shall reimburse the MBTA for all costs and expenses (including,

without limitation, reasonable attorneys' fees and expenses) incurred by the MBTA in connection with the MBTA's defense of the Indemnified Claim against it and/or the conduct of all response actions, including, without limitation, those required by Chapter 21E and the MCP. The settlement or compromise of any Indemnified Claim shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the MBTA on behalf of the Selected Contractor or any other action that would materially prejudice the rights of the Licensee without the Licensee's express written approval. The Selected Contractor shall cooperate fully and promptly with the MBTA in the defense of any Indemnified Claim.

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

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

- (f) Selected Contractor shall provide to the MBTA financial assurance guaranteeing Licensee's performance of the obligations of this License for Entry in a form satisfactory to the MBTA.

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

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

#### **4.3 Insurance**

Prior to entry on the Premises and prior to any construction activities, Selected Contractor, their consultants and subcontractors shall provide the MBTA with a certificate or certificates of insurance and

shall, during the term hereof, renew and replace any expired certificate, evidencing the insurance of the activities permitted hereunder, and Licensee's covenant of indemnification hereinabove, with companies that are reasonably acceptable to the MBTA, as stated below, in which Licensee and/or Selected Contractor and others hereinafter specified are either additional insureds as their interests may appear or named insureds and which provide minimum liability coverage as follows, except that to the extent that any insurance certificate or certificates are required to be provided by Licensee, such certificates shall be provided through the Massachusetts Interlocal Insurance Association, Inc., ("MIIA"), the non-profit member-based corporation serving the insurance needs of Massachusetts cities and towns, or through its successor or through another provider or providers, Licensee's certificates shall comply with the following provisions unless commercially unavailable to Licensee. Nothing herein shall obligate Licensee to purchase additional insurance or insurances unless the Construction Contract does not require compliance with the terms and conditions of this Section 4:

- (a) Commercial General Liability Insurance  
Insuring the Selected Contractor, the MBTA the Premises and all activities allowed hereunder as well as Selected Contractor's indemnification obligations contained in Section 4 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate. Umbrella liability coverage with limits of not less than Ten Million Dollars (\$10,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA as an additional insured.
- (b) Worker's Compensation Insurance  
Insuring all persons employed by Selected Contractor in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against the MBTA or the Premises with limits of liability of not less than those required by Massachusetts General Laws, Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. Each of Selected Contractor's subcontractors and consultants shall have similar policies covering their employees.
- (c) Railroad Protective Liability Insurance  
Insuring the MBTA and the Railroad Companies as named insureds with limits of not less than \$5,000,000.00 per occurrence and \$10,000,000.00 in aggregate combined bodily injury property damage. KCS and Pan Am shall be provided with an original policy of Railroad Protective Liability Insurance and the MBTA shall be provided with certificates of insurance.
- (d) Automobile Liability Insurance  
Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of Selected Contractor and its consultants and subcontractors that are used in the activities permitted hereunder.

The required insurance coverages hereinbefore specified shall be placed with insurance companies currently licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts (which licensure shall remain in effect during the entire Term of this License for Entry) and having a Best's rating of B+ or better, shall

be taken out before the License is commenced and be kept in full force and effect throughout the term of the License, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance shall be written on an occurrence basis form, as opposed to a claim made basis form. The MBTA shall be named as an additional insured under Selected Contractor's Commercial General Liability, Automobile Liability, Umbrella, Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA which precludes these insurers from being able to make any subrogation claims against either the MBTA. All such insurance as is required of the Selected Contractor shall be provided by or on behalf of all subcontractors to cover their operations performed. The Selected Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the License and throughout the term of the License, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required.

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

**4.4 Compliance with Laws**

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

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

**4.5 Non-Exclusive Use**

The MBTA makes no representations or warranty, express or implied, that the Licensee shall have sole or exclusive use of the Premises under this License. In the event other agreements, licenses or easements have been or are granted, the Licensee shall be responsible for coordinating its work and activities with that of other licensees and parties in interest. The MBTA shall not be liable for delays, obstructions, or like occurrences affecting the Licensee, arising out of the work of the MBTA or other licensees or parties in interest.

Licensee's rights herein are granted subject to easements and rights of record and existing leases and licenses.

**4.6 No Warranty**

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

**4.7 Termination**

At the termination of this License, Selected Contractor agrees to remove all of Selected Contractor's and Licensee's personal property and debris from the Premises. Should Licensee not perform such activities at the end of the Term, the MBTA may perform any

and all necessary activities at the sole expense of the Selected Contractor. Any personal property not so removed shall, at the option of the MBTA, either become the property of the MBTA or be removed by the MBTA and disposed of without any liability in the MBTA for such removal and disposition, all at the sole expense of Selected Contractor.

**4.8 Assignment**

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

**5. Notices**

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (hereinafter "Notice"), shall be in writing and shall be deemed to have been properly given when deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described in Section 2.7 or when delivered by messenger or overnight mail service to the correct addressee. Notice shall be deemed received when actually received or when the proffered Notice has been refused by the Addressee. The signature of an employee, servant or agent of the Addressee shall be determinative on the issue of actual receipt.

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

**6. Results**

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

**7. Default and Termination**

**(a) Termination for Non-Payment**

The Construction Contract shall require Selected Contractor to establish and fund a force account for the benefit of the MBTA or to pay promptly any applicable Administrative Fee, License Fee, Design and Construction Review Fee or any other sum herein specified to be paid upon the due date hereunder., If Licensee shall fail to include a provision requiring compliance with this section in the Construction Contract, and any fees required herein shall be unpaid by the Selected Contractor, Licensee shall be in default and the MBTA shall have the right at any time thereafter to terminate this License by giving Licensee four (4) weeks written notice of the MBTA's decision to terminate for non-payment ("Termination

Notice"). Licensee shall not be entitled to cure any such default by tendering payment after the expiration of the four (4) week grace period which starts upon Licensee's, or Licensee's servants, agents or employee's receipt of (or refusal to accept) the MBTA's Termination Notice. Any amount due hereunder that is not paid when due shall be charged to 1.5% per month and 18% per annum.

(b) Default of Terms and Conditions

Licensee shall also be in default if Licensee:

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

and if such defaults continue after four (4) weeks' written notice given by the MBTA to Licensee to cure, the MBTA may terminate this License by written notice to Licensee and/or deny access to the Premises and expel Licensee and those claiming through or under Licensee and remove Licensee's effects from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant, and, upon entry as aforesaid, the rights of Licensee created by this License for Entry shall terminate. Notwithstanding the preceding, if Licensee begins to cure a default as soon as possible within said four week period and thereafter continues to pursue a cure with all due diligence, then the MBTA shall not terminate this License until and unless Licensee ceases to pursue a cure with all due diligence and has not in fact cured said default. Licensee agrees to pay any expense including reasonable attorneys' fees incurred by the MBTA in enforcing any of Licensee's obligations hereunder.

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

Notwithstanding the foregoing, MBTA shall seek such reimbursement from Selected Contractor and Licensee shall not be liable for costs under this Paragraph 7 unless Selected Contractor is not required to comply with the provisions of this Paragraph 7 by the Construction Contract.

In the event this License is terminated pursuant to this Paragraph 7, the MBTA shall retain the License Fee as partial damages, without prejudice to its right to claim additional damages as a result of the breach.

**8. Holding Over**

If Licensee desires to continue the work defined in the Scope of Activity after the termination of this License, the resulting license shall be on a month-to-month basis and may be terminated by either party at any time by providing the other party with thirty (30) days prior written notice of termination. During such extended term, Licensee shall be bound by all applicable provisions of this License. The License Fee and Administrative Fee have been waived for this License.

**9. Work in Harmony**

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

**10. Promotional Material**

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

**11. Nondiscrimination**

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

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

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

**12. Taxes**

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

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

13. **No Third Party Beneficiaries**

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

14. **Entire Agreement**

This License contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties hereto with respect to the subject matter hereof not embodied herein shall be of any force or effect.

15. **Governing Law**

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

16. **Successors and Assigns**

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

17. **Limitation On Damages**

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

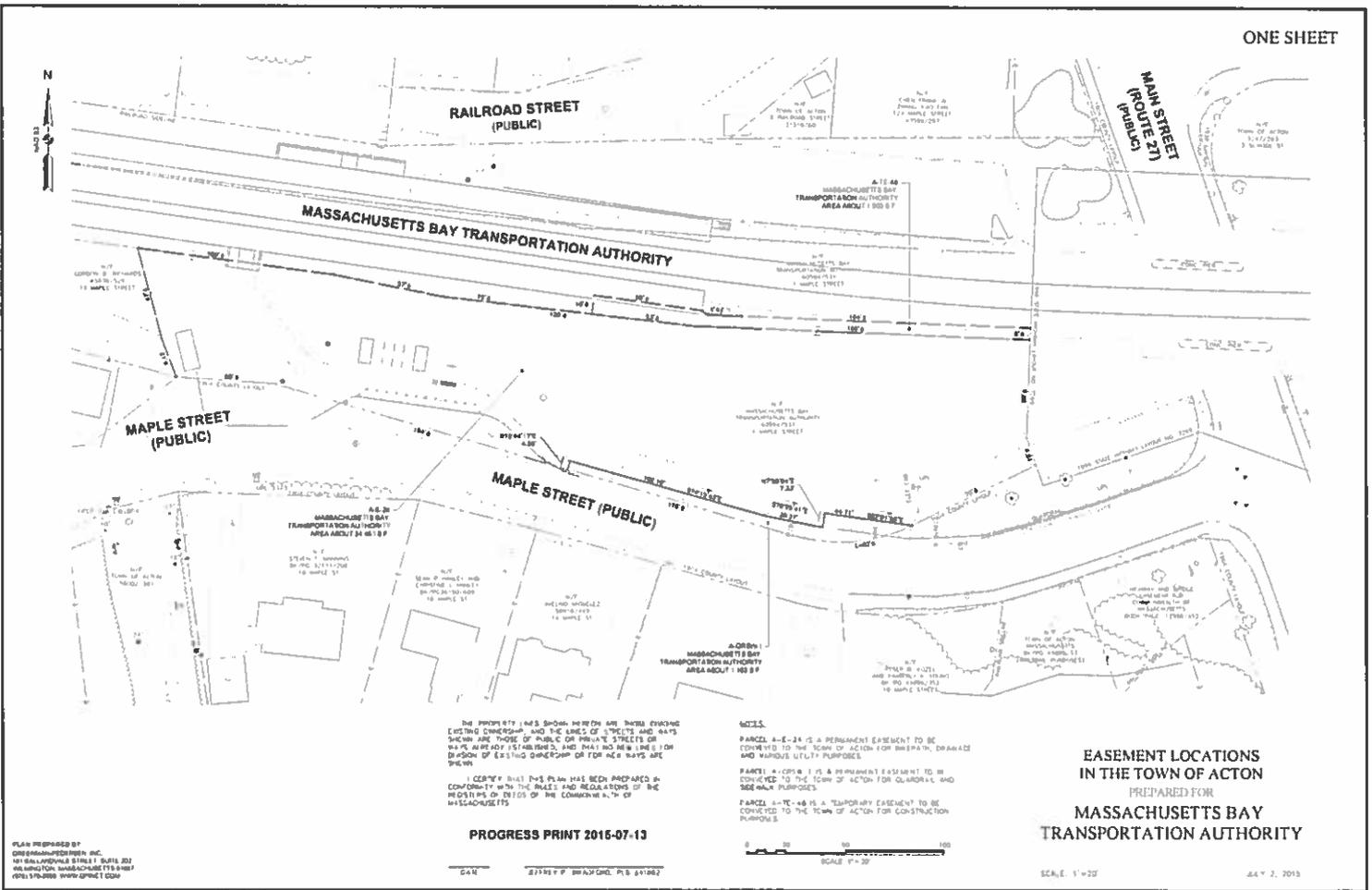
No official, employee, agent, officer, attorney or consultant of Licensee shall be personally liable to the MBTA, or to any successor-in-interest or person claiming by, through or under the MBTA, in the event of any default or breach of this License, or for any amount which may become due or on any claim, cause of action, or obligation whatsoever under the terms of this License.

No official, employee, agent, officer, attorney or consultant of the MBTA shall be personally liable to the Licensee, or to any successor-in-interest or person claiming by, through or under the Licensee, in the event of any default or breach of this License, or for any amount which may become due or on any claim, cause of action, or obligation whatsoever under the terms of this License.

18. **No Waiver** No failure by Licensor to insist upon strict performance of any term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any such term, covenant or condition. The acceptance by Licensor of any amount less than the full amount due to Licensor hereunder shall not be deemed a waiver by Licensor of its right to collect the full amount due. Licensor may deposit checks or drafts that state "final payment", "payment in full" or the like without being deemed to have waived its right to receive all amounts due hereunder. Any waiver by Licensor of any term, covenant or condition hereof shall not be effective unless such waiver is in writing.



**EXHIBIT A**  
**PLAN OF PREMISE**



The PROPERTY LINES SHOWN HEREON ARE THOSE EXISTING EXCEPT WHERE SHOWN OTHERWISE AND THE LINES OF "EASEMENTS AND RIGHTS" SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR RIGHTS AS PER CITY RECORDS AND SHALL NOT BE HELD TO BE A DIVISION OF EXISTING OWNERSHIP OR FOR NEW RIGHTS AS THEY ARE SHOWN.

(C.B.T.A.'S) THIS PLAN HAS BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTERED PROFESSIONAL ENGINEERS OF THE COMMONWEALTH OF MASSACHUSETTS.

PROGRESS PRINT 2016-07-13

**NOTES:**

PARCEL 4-E-24 IS A PERMANENT EASEMENT TO BE CONVEYED TO THE TOWN OF ACTON FOR BARRIERS, DRAINAGE AND VARIOUS UTILITY PURPOSES.

PARCEL 4-E-28 IS A PERMANENT EASEMENT TO BE CONVEYED TO THE TOWN OF ACTON FOR CLARIFICATION AND VARIOUS PURPOSES.

PARCEL 4-E-46 IS A TEMPORARY EASEMENT TO BE CONVEYED TO THE TOWN OF ACTON FOR CONSTRUCTION PURPOSES.

**EASEMENT LOCATIONS  
IN THE TOWN OF ACTON  
PREPARED FOR  
MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY**



PLAN PREPARED BY:  
GREENBERGPERKINS, INC.  
100 STATE STREET, SUITE 1001  
BOSTON, MASSACHUSETTS 02109  
PHONE: 617-552-2000 WWW.GREENP.COM

DATE: 2/23/17 BY: JGD, PLS 241002

SCALE: 1"=20'

24 J. 2013

## EXHIBIT B

### SCOPE OF ACTIVITY

Subject to the terms and conditions in this License Agreement, the Licensee, its agents, employees, contractors, subcontractors, representatives, and/or the Selected Contractor are hereby granted a license to enter upon the Premises for the sole purpose as described in section 2.6. Licensee shall require the Construction Contract entered into by MDOT and the Selected Contractor, to obligate the Selected Contractor to comply with, and be subject to, the terms and conditions of this Exhibit B as set forth below. Notwithstanding anything set forth herein to the contrary, Licensee, shall only be responsible for the terms and conditions of this Exhibit B, if and to the extent permitted by law, if the Construction Contract does not require compliance with the terms and conditions of this Exhibit B.

Selected Contractor shall conduct all activities within the Premises in a safe manner and immediately notify the MBTA if any problem occurs which may result in a safety hazard. If any unsafe situation should occur, Selected Contractor will correct the situation by eliminating any safety hazard immediately or, if the situation cannot be reasonably cured immediately, then in such longer time as is reasonably required, and in all such unsafe situations, MBTA Railroad Operations Safety Procedures shall be followed.

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

Unless entry is made pursuant to an Access Plan approved by the MBTA, Licensee or Selected Contractor agree to give, **each time it desires entry**, at least ten (10) days' prior written notification to the MBTA (except in cases of emergency when notice shall be given to the MBTA as quickly as possible) of its need to access the Premises for all work to be performed under this License by contacting the MBTA in accordance to Section 2.6 for access. Licensee and Selected Contractor understand that the more notice given to the MBTA the more likely it will be that Selected Contractor can gain access at the times requested. **Selected Contractor shall present evidence of the required insurance coverage before each entry. In the case of an emergency, Licensee shall as soon as possible contact MBTA Control Center 617-222-5278.**

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

If at any time during the work of installation or connection, the MBTA or KCS should, in their sole and absolute discretion, deem flagmen, watchmen, communications/signaling personnel, electric traction

personnel, inspectors assigned to construction crews, and/or other measures, including but not limited to train re-routing, desirable or necessary to protect its operations, its property or its employees or other persons on or near the Premises, the MBTA or KCS shall upon notice to Selected Contractor (where such notice is feasible) have the right to place such personnel, including personnel of the MBTA's agents or to take such measures, at the sole cost and expense of Selected Contractor. Such cost and expense shall include the current wages and fringe benefits due and owing to such personnel in and for the performance of such measures. Selected Contractor hereby covenants and agrees to bear the full cost and expense thereof and to reimburse the MBTA or KCS within thirty (30) days of receiving an itemized, written invoice for such reimbursement. The MBTA's failure to furnish such personnel or take such measures shall not relieve Selected Contractor of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to Selected Contractor on the part of the MBTA or the Railroad Companies. Upon being notified that the personnel or measures referred to in the first sentence of this Paragraph have been deemed desirable or necessary by the MBTA, Selected Contractor shall not commence or continue construction or repair measures, as the case may be, unless and until such personnel or measures are in place.

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

Selected Contractor shall comply with all applicable MBTA Railroad Operations Directorate requirements including, but not limited to, those entitled: "I - Guidelines and Procedures for Construction on MBTA Railroad and Transit Properties" dated August 2014, "II - Maintenance and Protection of Railroad Traffic" dated August 2014, "III - Insurance Specifications" dated August 2014 and MBTA Special Instructions dated April, 2003. To the extent that there is an irreconcilable conflict between the aforementioned requirements and this License, the terms and conditions contained in the MBTA Railroad Operations Directorate Procedures shall control unless the requirements in this License for Entry are more strict.

**EXHIBIT C**



Charles D. Baker, Governor  
Karyn E. Polito, Lieutenant Governor  
Stephanie Pollack, MassDOT Secretary & CEO  
Frank DePaola, Interim General Manager



**massDOT**  
Massachusetts Department of Transportation

June 10, 2015

Ms. Krista LoCurto  
License Manager  
Massachusetts Realty Group  
20 Park Plaza, 11<sup>th</sup> Floor  
Suite 1115A  
Boston, MA 02116

Re: MRG Project No. MBTA-14907  
Assabet River Rail Trail Parking Lot Construction, Acton, MA

Dear Ms. LoCurto:

The MBTA Design and Construction Department has reviewed the Town of Acton's request for a permanent easement on MBTA-owned land for the construction and operation of a parking lot at 1 Maple Street. The lot will serve the Assabet River Rail Trail (ARRT) and the South Acton commuter rail station. Construction of the parking lot will include the creation of 34 parking spaces, drainage, landscaping, and lighting.

The Design and Construction Department has no objection to the easement for the parking lot, subject to the following conditions:

- The construction of the parking lot is a follow-on project that will take place after the current upgrade project to the South Acton station is complete. Work on the parking lot cannot proceed until the MBTA station project is completed in 2016 and the equipment and trailers have been demobilized.
- This department has previously submitted comments to the Town of Acton on the parking lot design. These comments must be incorporated into the design prior to final approval.
- This department will require that full construction documents be submitted for review and approval prior to commencement of the work. Please forward the documents to the attention of Ed Hunter as soon as they are available.
- The station upgrade project includes an emergency egress stairway from the southeast corner of the platform. The proposed work for the parking lot will block egress from that stairway. Maintaining egress is required for code compliance. Please describe what measures will be taken to provide interim egress while the parking lot is under construction.
- It is anticipated that no access within the MBTA right-of-way will be required under this project; however, should the need to access the right-of-way arise, the MBTA shall be notified immediately, and no access shall be permitted until appropriate safety controls for train movements and passenger waiting areas

have been put in place. All construction personnel entering the right-of-way shall be required to complete the MBTA's commuter rail safety training program, and will be required to present valid proof of the completion of that training prior to being allowed entry.

Please anticipate providing a description of the construction methodology for construction of the lot, including equipment to be used, prior to commencing construction. Where required, provide the method of support of excavation to be used.

The applicant will be required to enter into a Force Account Agreement with the MBTA in order to defray the costs of any and all expenses to the MBTA related to design reviews, power work, safety oversight, structural review and assessment, construction inspection, flagging, and other activities related to this application. Please assume a minimum of two weeks to establish such an account from the time of MBTA labor estimates. A third-party agreement with the MBTA's contracted commuter rail operator will be necessary should flagging be needed. Furthermore, any repairs to MBTA facilities necessitated by construction activity will be performed under MBTA direction in a timely fashion and at no cost to the MBTA.

The Design and Construction Department defers to MBTA Safety, System Wide Accessibility, Railroad Engineering & Maintenance, and Power departments for further consideration.

Please call me at 617-222-3117 with any questions you may have.

Sincerely,



Edmond F. Hunter  
Assistant General Manager  
for Design and Construction

Copies: S. Culp, L. Brelsford, R. Arnold, Jack Martin

**EXHIBIT D**



Charles D. Baker, Governor  
Karyn E. Polito, Lieutenant Governor  
Stephanie Pollack, MassDOT Secretary & CEO  
Frank DePaola, Interim General Manager

**massDOT**  
Massachusetts Department of Transportation

June 12, 2015  
Letter No. TEM 015-150

Ms. Patricia Barrett  
Permit and License Administrator  
Massachusetts Realty Group  
20 Park Plaza – Suite 1120  
Boston, MA 02116

RE: Assabet River Trail –Parking Lot – MBTA 14907

Dear Ms. LoCurto,

Railroad Operations (RRO) has reviewed the request of the Town of Acton (TOA) relative to the construction of a bike path and an overflow parking lot as the South Acton Station including drainage, landscaping and lighting that will create 34 parking spaces. The work proposed is adjacent to the Fitchburg Main Line.

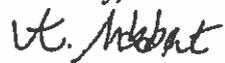
Railroad Operations (RRO) has no objection to the request as long as TOA:

- Obtains Railroad Protective Insurance and indemnifies MBTA, Keolis and the Pan Am
- Fully complies with the MBTA Railroad Operations Directorate for all work
- Provides RRO with the 100% design plans for review and approval
- Maintain vehicular access to the existing signal bungalow
- Does not create a condition where additional runoff is directed toward the ROW
- Should ROW access be necessary, ensures all workers are RWP safety qualified by the Operating Railroad- Keolis
- Should ROW access be necessary, requests flagging from the Operating Railroad- Keolis
- Notifies RRO of any design changes
- Provides their Work Plan to the MBTA for review and approval prior to any work. This should detail what equipment will be utilized, the positioning of any equipment and a track protection plan.
- Obtains any/all other applicable permits and/or licenses
- Restores any/all affected areas to pre-existing condition to the satisfaction of the MBTA

Massachusetts Bay Transportation Authority  
Ten Park Plaza, Suite 3910, Boston, MA 02116  
www.mbta.com

TOA should contact Keolis prior to the commencement of the project to review the training requirements and for providing flagging support as necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Sekkat".

Mohamed Sekkat,  
Director - Engineering and Maintenance Railroad Operations

Cc: MBTA: K. Biggins, M. Boyle, D. Helmar, A. McGowan

**EXHIBIT E**



Charles D. Baker, Governor  
Karyn E. Polito, Lieutenant Governor  
Stephanie Pollack, MassDOT Secretary & CEO  
Frank DePinto, Interim General Manager

**massDOT**  
Massachusetts Department of Transportation

**MEMORANDUM**

**To:** Steven V. Culp  
Deputy Director of System Safety Engineering and Management

**From:** James A. Joseph *[Signature]*  
System Safety Analyst

**Date:** June 25, 2015

**Subject:** Town of Acton/Maynard  
Assabet River Trail Parking Lot Construction  
MRG Project #MBTA-14907

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MBTA Safety has received and reviewed a request submitted by the Town of Acton to access MBTA property to construct a parking lot that will be used in the Assabet River Rail Trail. The request was submitted to the MBTA through Massachusetts Realty Group (MRG).

It is our understanding that in addition to building a commuter parking lot, this project includes drainage, landscaping, and lighting work. Based on the information submitted, MBTA Safety should deem the request to be "Approved with Conditions". In addition to any and all conditions set forth by, Design and Construction, Railroad Engineering & Maintenance, System Wide Accessibility the following conditions shall be met:

1. As previously requested, the pipe drainage system needs to be independent of MBTA track drainage system.
2. Dig safe should be contacted 72 hours prior to any trenching activities on parking lot.
3. Contractor work crew must receive Roadway Worker Protection training prior to working adjacent to MBTA ROW
4. All activities should be coordinated with Railroad Engineering and Maintenance, Design and Construction, MBTA Safety, and System wide Accessibility.
5. If at any time MBTA deemed the work unsafe, all activities must stop until conditions can be corrected.

If you have any questions or concerns, please feel free to contact me.

**EXHIBIT F**



**Massachusetts  
Bay  
Transportation  
Authority**

*System-Wide Accessibility Department  
10 Park Plaza Suite 4720, Boston, MA 02116*

**System-Wide Accessibility  
Design Review Comments**

(D)

**Project Title: Assabet River Rail Trail**  
**Canvass #: 14907**  
**SWA Log #: 371**  
**MBR Project Manager: Krista LoCurto**  
**Review Date: 05/08/15 – Reviewed by MF**  
**Follow Up Meeting? No**

**Design %: N/A**  
**Delivery Type: Electronic**  
**Designer: GPI**

COMMENT	DRWG. NO. SPEC. SECT.	REVIEWERS COMMENT <small>State action required by designer. (Clarify, Add Delete, etc.) Retain a copy of your comments for future reference.</small>	Action Codes: <small>A - Agree, designer will comply D - Disagree, for reasons noted. C - Clarification or answer provided.</small>	ACTION CODE
		This license is approved with the following conditions:		
1.	General	APS must be provided for all pedestrian signals.		
2.	General	Verify that detectable warnings extend the full width of the trail at vehicle crossings.		
3.	General	The sign mounting height must be set at a minimum clearance of 80 inches above the ground along the path of travel (trail path).		
4.	General	The lowest branch of any tree in direct path of travel must be set at a minimum clearance of 80 inches above the ground, preferably 96 inches with wet sagging branches.		
5.	General	The cross-slope of trail cannot exceed 2% at any location.		
6.	General	Guardrails or barriers must be provided at certain sections of bikeway where the drop-off edges (deep sloped areas) are dangerous for anyone, especially with narrow trails or busy trails with lots of bicyclists, runners, persons with mobility devices, etc.		
7.	23	Accessible parking spaces must be provided in the parking lot.		
8.	36 & 37	Please provide more details about the surface of boardwalks on the trail. How will vertical and horizontal gaps be maintained at less than 1/8"?		
9.	36 & 37	Please confirm the slope of the boardwalk ramp. If it is between 5.1% and 8.3%, handrails must be provided on both sides of the ramp. If it is less than 5%, handrails are not required by accessibility requirements. However MUTCD and AASHTO guidelines may call for crash barriers.		

10.	General	Depending on when construction commences, new Share Use/PROW guidelines will have been published by the US Access Board and US DOT may have begun adoption thereof. The design team should follow these federal agencies websites for up to date information.	
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