

Addendum No. 1 to RFQ 25-24



CITY OF SOMERVILLE, MASSACHUSETTS
Department of Procurement and Contracting Services
KATJANA BALLANTYNE
MAYOR

**To: Applicants for RFQ 25-24: Architectural & Engineering Design Services for Green Line Crossing
between Inner Belt and Brickbottom**

From: Thupten Chukhatsang, Senior Procurement Manager

Date: 11/7/2024

Re: Extension of Application Submission Deadline

Questions and Responses

Attachment: Final Recorded Pedestrian Crossing Easement Agreement

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**** Failure to acknowledge this addendum may result in bid disqualification. ****

NAME OF COMPANY / INDIVIDUAL: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE/FAX/EMAIL: _____

SIGNATURE OF AUTHORIZED INDIVIDUAL: _____

ACKNOWLEDGEMENT OF ADDENDA:

Addendum #1 _____ #2 _____ #3 _____ #4 _____

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Extension of Application Submission Deadline:

The City is extending the deadline for submission of applications by 1 week from the original due date.

Applications are now due by 2:30pm on Wednesday, November 20, 2024.

Questions and Responses

1. Is there a maximum page limit for the response document?

Response: There is no stipulated page limit for responses; however it is appreciated if you can limit your response to the minimum number of pages necessary to adequately demonstrate your qualifications.

2. Should consultants submit company format resumes, as well as the resume format on page 51?

Response: Consultants may submit standard company format resumes in addition to the Designer Standard Application Form if they wish; please keep the response to Question 1 in mind.

3. For each design phase there is a requirement to interface with MassDOT and have meetings to obtain feedback. Please confirm if the design will be subject to a formal MassDOT review process for 25%, 75% and 100%? Note: this add deliverables beyond the scope outlined in the RFQ, such as Design Justification Workbooks, PDDG Checklists, Contract Time Duration memos, etc.

Response: As this is not a MassDOT project these additional deliverables are not required.

4. Will the eventual payment mechanism be Lump Sum Not to Exceed, or Time & Material Not to Exceed?

Response: The contract will be for a "Not to Exceed Lump Sum Ceiling Amount" based on the negotiated and accepted fee proposal that would include a detailed breakdown of all fee rates with estimated hours of the project team and estimated allowances for other expenses that are accepted. The payment mechanism will be based on the negotiated fee schedule.

5. Do projects in project experience have to match what we submitted on DSB form (standard municipal forms)?

Response: Projects submitted for the project experience question must also be included in the Designer Standard Application Form; additional projects may be listed on the form if desired.

6. HDR Question- This RFQ calls for preliminary Design and Alternatives Analysis to be completed within 4 months and final design shall be completed within 10 month. This allows for 2 months for each submission. This is a fast schedule when factoring in internal QA/QC,

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stakeholder review, stakeholder comment resolution, community outreach, MBTA/DPU/DPL approval and environmental permitting. Has a design schedule extension been considered?

Response: The city will consider an extension on the design timeline. Consultants can recommend a schedule that they feel is needed to perform the work, with a timeline not to exceed 15 months.

7. The RFQ asks for a design schedule. Please provide City of Somerville review times for design submittals.

Response: The length of design reviews by the city will vary depending on the direction of the design. Assume 3 weeks for internal city review between design submissions.

8. Has the City of Somerville had any discussions about acquiring property, property easements, or construction easements with the MBTA or private land owners? Are there any documents in place?

Response: The final recorded Pedestrian Crossing Easement Agreement for the interim crossing is attached. The City holds a public access and use easement for the Interim At Grade Crossing. The private developers have a License for Entry from the MBTA that allows them to construct the crossing. The pedestrian bridge "concept" easement areas are included on Exhibits C and E of the attachment. Since these are on record, proposers can get better versions from the Middlesex South Registry of Deeds.

9. Are we able to use the topographic survey that was apart of the RFP or will a new survey need to be completed?

Response: A new survey will need to be completed.

Attachment (following this page):

Pedestrian Crossing Easement Agreement (69 pages long)



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PEDESTRIAN CROSSING EASEMENT AGREEMENT

This **PEDESTRIAN CROSSING EASEMENT AGREEMENT** (this "**Agreement**") is made and entered into as of this 30th day of October, 2024 (the "**Effective Date**"), by and between the **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**, a body politic and corporate and public instrumentality of the Commonwealth of Massachusetts, duly established and existing under Chapter 161A of the General Laws of the Commonwealth of Massachusetts, with offices at Ten Park Plaza, Boston, Massachusetts 02116-3971 (the "**MBTA**"), the **CITY OF SOMERVILLE**, a political subdivision of the Commonwealth of Massachusetts, with an address of City Hall, 93 Highland Avenue, Somerville, Massachusetts 02143 (the "**City**" or "**Grantee**"), **NRL WSC 200 INNER BELT PROP, LLC**, a Delaware limited liability company with an address at 610 West 26th Street Suite 910, New York, NY 10001 ("**Innerbelt Owner**"), and **INNERBELT II QOZB LP**, a Delaware limited partnership with an address at 610 West 26th Street Suite 910, New York, NY 10001 ("**Brickbottom Owner**").

The MBTA, the City, Innerbelt Owner, and Brickbottom Owner may individually be referred to as a "**Party**" and are collectively referred to in this Agreement as the "**Parties**."

RECITALS

- A. Innerbelt Owner owns certain real property located at and known as 150-200 Inner Belt Road, Somerville, MA, which property is more fully described in Exhibit A hereto (the "**Innerbelt Property**").
- B. Brickbottom Owner owns certain real property located at and known as 86 Joy Street, Somerville, Massachusetts, which property is more fully described in Exhibit B hereto (the "**Brickbottom Property**").
- C. The MBTA owns certain real property abutting the Innerbelt Property and the Brickbottom Property, which property is currently used as a right-of-way for the MBTA Green Line and commuter rail (the "**MBTA Property**").
- D. The City is the lessee of certain properties comprising a portion of the MBTA Property known as the "Community Path" (the "**Community Path Premises**") pursuant to a lease with the MBTA dated as of May 30, 2023 (the "**Community Path Lease**"), which, among other things, permits the City, for the benefit of the general public, to occupy the Community Path Premises and obligates the City to operate and maintain the Community Path in accordance with the terms of the Community Path Lease.
- E. The Parties desire for easements to be granted as provided hereunder to allow for the construction, ownership, operation, maintenance and use of a new interim at-grade ADA accessible pedestrian access pathway across a portion of the MBTA Property and a portion of the Innerbelt Property to create an interim connection for members of the general public (the "**Interim At-Grade Connection**") between Somerville's

Inner Belt and Brickbottom neighborhoods, and to improve access to the MBTA's Green Line East Somerville Station, it being acknowledged that the initial construction of the Interim At-Grade Connection will be undertaken pursuant to a separate License for Entry between the MBTA and Innerbelt Owner and/or Brickbottom Owner permitting such initial construction work (the "Interim Connection Construction License").

- F. The Parties also desire for easements to be granted as provided hereunder to allow for the design, permitting, construction, ownership, operation, maintenance, repair and use of a new ADA accessible pedestrian bridge to be open to the general public (including associated appurtenances, the "Pedestrian Bridge") between the Innerbelt Property and the Brickbottom Property, over and across a portion of the MBTA Property and portions of the Innerbelt Property and Brickbottom Property, to replace the Interim At-Grade Connection, to connect Somerville's Inner Belt and Brickbottom neighborhoods, and to improve public access to the MBTA's Green Line East Somerville Station, it being acknowledged that the initial construction of the Pedestrian Bridge will be undertaken in the future subject to the provisions of this Agreement respecting Major Activity and shall only be undertaken pursuant to a License for Entry in the MBTA's then current standard form (with the insurance and other requirements pursuant to such License for Entry modified as appropriate given the scope of the proposed activity for which the License for Entry is being required), permitting such work.
- G. The Parties execute this Agreement to provide each of the Parties with the respective rights and easements as provided hereunder to facilitate the design, permitting, construction, ownership, operation, repair, maintenance, replacement and use, as necessary, of the Interim At-Grade Connection and the Pedestrian Bridge (which terms shall include all associated drainage facilities and other elements) (collectively, the "Crossing Facilities").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

AGREEMENTS

1. Defined Terms. In addition to the terms defined in the body of this Agreement, definitions for certain additional capitalized terms used in this Agreement are set forth on Schedule 1 and incorporated into this Agreement by reference.

2. Grant of MBTA Easements. In consideration of the payment of THREE HUNDRED TWENTY THOUSAND DOLLARS AND ZERO CENTS (\$320,000.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

- (a) The MBTA hereby grants to the Grantee, subject to the terms and conditions of this Agreement, a permanent right and easement that is in gross as to the City and appurtenant to each of the Innerbelt Property, the Brickbottom Property and the Community Path Premises, on, over and across the portion of the MBTA Property shown and described as "MBTA Pedestrian Bridge Easement Area" on Exhibit C (the "MBTA Pedestrian Bridge Easement Area") to allow Grantee to access, own, use, operate, repair, maintain and replace, as necessary, the Pedestrian Bridge as shown conceptually on Exhibit C, for the benefit of the Parties and members of the general public.
- (b) The easement over the MBTA Pedestrian Bridge Easement Area is granted together with the right and easement, during the construction, repair and replacement of the Pedestrian Bridge from time to time, to use and occupy that portion of the MBTA Property shown as "MBTA Pedestrian Bridge Construction Easement Area" on Exhibit C ("MBTA Pedestrian Bridge Construction Easement Area") to access, construct, repair and replace the Pedestrian Bridge from time to time, it being acknowledged that any Major Activity (as defined below) undertaken by any of Grantee, Innerbelt Owner, Brickbottom Owner or others within the MBTA Pedestrian Crossing Construction Easement Area shall be subject to the provisions of this Agreement respecting Major Activity and shall only be undertaken pursuant to a License for Entry in the MBTA's then current standard form (with the insurance and other requirements pursuant to such License for Entry modified as appropriate given the scope of the proposed activity for which the License for Entry is being required), permitting such work.

The Grantee shall not exercise the permanent easement rights conveyed by the MBTA in Sections 2(a) and 2(b) and the Grantee shall not have the right to access the MBTA Pedestrian Bridge Easement Area or the MBTA Pedestrian Bridge Construction Easement Area until such time as the MBTA has delivered to the Grantee (not to be unreasonably withheld, conditioned or delayed), and the Grantee shall have caused to be recorded with the Registry a Certificate of Satisfaction in the form attached to this Agreement as Exhibit D, evidencing to the MBTA's reasonable satisfaction (i) of the final design of the Pedestrian Bridge, and (ii) that sufficient funds have been secured and will be available for payment of the anticipated cost to build and thereafter maintain the Pedestrian Bridge and for the Grantee to satisfy its indemnification and other obligations to the MBTA (the "Funding Obligation"); provided, however, that in the event the Certificate of Satisfaction is not recorded on or before the Outside Date (as defined below and as may be extended), the rights granted to Grantee in Sections 2(a) and 2(b) may be terminated at the sole discretion of the MBTA.

As used herein, the "Outside Date" shall mean the date of the MBTA's commencement of construction at East Somerville Station to accommodate new "type-10 vehicles" for use on the MBTA Property, which shall not

occur earlier than December 31, 2033, provided that the Outside Date may be extended for an additional period (the "Extended Period"), upon written notice from any of the Parties to all of the other Parties, subject to the satisfaction of conditions that (i) the MBTA has determined the final design of the Pedestrian Bridge to be reasonably satisfactory, (ii) reasonable efforts to satisfy the Funding Obligation remain ongoing, including establishment of an Association (as defined below) or another funding mechanism (such as district improvement financing) to facilitate making funding obligations binding on owners of property proximate to the Pedestrian Bridge aimed at satisfying the Funding Obligation, (iii) the Pedestrian Bridge is then and otherwise remains ready, following resolution of the Funding Obligation, to proceed with the start of the formal solicitation of contractors for construction of the Pedestrian Bridge, (iv) the Grantee (and/or, if applicable, its nominees or Innerbelt Owner or Brickbottom Owner) commits to the MBTA's reasonable satisfaction to pay to the MBTA a fee equal to the greater of (A) the amount of all actual reasonable costs of the MBTA's maintenance and repair of the Interim At-Grade Connection and associated infrastructure, or (B) \$125,000 for each year of the Extended Period (the "Annual Extension Fee") to defray the MBTA's costs of maintenance and repair of the Interim At-Grade Connection and associated infrastructure during the Extended Period, such as costs of fare vending machines to the extent required because of the Interim At-Grade Connection, which shall be paid pursuant to a Force Account Agreement that provides for a Force Account to cover the same and for the Annual Extension Fee to increase beginning in the second year of the Extended Period in accordance with the increase in the consumer price index (for all urban consumers in the Boston Cambridge Newton Area or its equivalent) during the preceding twelve month period, and (v) exercise of the rights granted to Grantee in Sections 2(a) and 2(b) do not create safety risks or ADA violations respecting the operation and functionality of the MBTA Facilities or the safety of MBTA patrons using the same, it being acknowledged and agreed that the Parties will reasonably cooperate to the extent necessary to promptly resolve any such safety risks or ADA violations. With respect to the construction and maintenance of the Pedestrian Bridge, the Parties acknowledge that the Grantee, Innerbelt Owner, and Brickbottom Owner are, as of the Effective Date, advancing a plan pursuant to which an association controlled, managed and financed by owners of property proximate to the Pedestrian Bridge and other parties benefiting from increased access to the Inner Belt and Brickbottom areas via the Pedestrian Bridge (the "Association") would be organized and capitalized for such purposes. The MBTA agrees to reasonably cooperate with the other Parties with respect to the Association; provided, however, that, while the organization and capitalization of the Association is not, in and of itself, a pre-condition of the MBTA's execution of a Certificate of Satisfaction, the transfer of any obligation of any of the Grantee, Innerbelt Owner, or Brickbottom Owner (or all of them) to the Association or any other party shall be subject to

the prior approval of the MBTA as evidenced by an amendment to this Agreement.

- (c) The MBTA hereby grants to the Grantee, subject to the terms and conditions of this Agreement, a temporary right and easement that is in gross as to the City and appurtenant to the Innerbelt Property, the Brickbottom Property and the Community Path Premises, on, over and across the portion of the MBTA Property shown and described as "MBTA Interim Crossing Easement Area" on Exhibit E (the "MBTA Interim Crossing Easement Area"), to access and use the Interim At-Grade Connection as shown conceptually on Exhibit E, for the benefit of the Parties and members of the general public, it being acknowledged that the City is not undertaking any responsibility for initial construction of the Interim At-Grade Connection, which will be undertaken pursuant to the Interim Connection Construction License, which shall govern such initial construction.
- (d) The easement over the MBTA Interim Crossing Easement Area is granted together with the right and easement, during the construction, repair and replacement of the Interim At-Grade Connection from time to time, to use and occupy that portion of the MBTA Property shown as "MBTA Interim Crossing Construction Easement Area" on Exhibit E ("MBTA Interim Crossing Construction Easement Area") and together with the MBTA Pedestrian Bridge Easement Area and MBTA Pedestrian Bridge Construction Easement Area, and the MBTA Interim Crossing Easement Area, collectively, the "MBTA Easement Areas") to access and use the Interim At-Grade Connection from time to time, it being acknowledged that (x) the Interim Connection Construction License rather than by this Agreement shall govern initial construction of the Interim At-Grade Connection, and (y) any other Major Activity (as defined below) undertaken by any of Grantee, Innerbelt Owner, Brickbottom Owner or others within the MBTA Interim Crossing Construction Easement Area shall be subject to the provisions of this Agreement respecting such Major Activity and shall be undertaken pursuant to a License for Entry in the MBTA's then current standard form (with the insurance and other requirements pursuant to such License for Entry modified as appropriate given the scope of the proposed activity for which the License for Entry is being required), permitting such work; provided, however, that the Grantee's obligations with respect to the Interim At-Grade Connection, MBTA Interim Crossing Easement Area, and the MBTA Interim Crossing Construction Easement Area shall be specifically limited as more particularly set forth in Section 9 below.
- (e) The temporary easements granted by the MBTA respecting the Interim At-Grade Connection in Sections 2(c) and 2(d) shall be effective as of the Effective Date and may be terminated at the sole discretion of the MBTA on or after the earlier of (i) the Outside Date, or (ii) the opening for use by members of the public of the Pedestrian Bridge.

3. Grant of Innerbelt Easements. In consideration of the agreements made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

- (a) Innerbelt Owner hereby grants to Grantee, subject to the terms and conditions of this Agreement (including, without limitation, the rights to relocate such easement as set forth below), a permanent right and easement that is in gross as to the City and appurtenant to each of the Innerbelt Property, Brickbottom Property and the Community Path Premises, on, over and across the portion of the Innerbelt Property identified as "Innerbelt Pedestrian Bridge Easement Area" on Exhibit C (the "Innerbelt Pedestrian Bridge Easement Area") to allow Grantee to access, own, use, operate, repair, maintain and replace the Pedestrian Bridge as shown conceptually on Exhibit C, for the benefit of the Parties and members of the general public. The easements granted pursuant to this Section 3(a) and Section 3(b) below shall be effective and coterminous with the easement granted by the MBTA pursuant to Section 2(a).
- (b) The easement over the Innerbelt Pedestrian Bridge Easement Area is granted together with the right and easement, during the construction, repair and replacement of the Pedestrian Bridge from time to time, to use and occupy those portions of the Innerbelt Property identified as "Innerbelt Pedestrian Bridge Construction Easement Area" on Exhibit C (each, a "Innerbelt Pedestrian Bridge Construction Easement Area") to access, construct, repair and replace the Pedestrian Bridge from time to time.
- (c) Innerbelt Owner hereby grants to the Grantee, subject to the terms and conditions of this Agreement, a right and easement that is in gross as to the City and appurtenant to the Community Path Premises, on, over and across the portion of the Innerbelt Property identified as "Innerbelt Interim Crossing Innerbelt Easement Area" on Exhibit E (the "Innerbelt Interim Crossing Easement Area") and together with the Innerbelt Pedestrian Bridge Easement Area, and Innerbelt Pedestrian Bridge Construction Easement Area, collectively, the "Innerbelt Easement Areas", to allow the City to access and use the Interim At-Grade Connection for the benefit of the Parties and members of the general public, following the completion of initial construction of the same pursuant to the Interim Connection Construction License provided, however, that the Grantee's obligations with respect to the Innerbelt Interim Crossing Easement Area shall be specifically limited as more particularly set forth in Section 9 below. The easement granted pursuant to this Section 3(c) shall be effective and coterminous with the easement granted by the MBTA pursuant to Section 2(d).
- (d) Innerbelt Owner, in its sole discretion, may, from time to time, temporarily or permanently relocate or modify all or any portions of the Innerbelt Easement Areas that provide access to the Pedestrian Bridge and/or the Interim At-Grade Connection, provided that such relocated

Innerbelt Easement Areas continue to provide comparable access to the Pedestrian Bridge or the Interim At-Grade Connection, as applicable, for the benefit of the Parties and members of the general public. Upon any such relocation, Innerbelt Owner shall provide written notice of the same to the other Parties hereunder and record a copy of an updated easement plan reflecting such relocation, and thereafter the terms "Innerbelt Pedestrian Bridge Easement Area", "Innerbelt Interim Crossing Easement Area", and "Innerbelt Easement Areas" as used herein shall mean the same as so relocated from and after the effective date of such relocation.

4. Grant of Brickbottom Easements. In consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

- (a) Brickbottom Owner hereby grants to Grantee, subject to the terms and conditions of this Agreement (including, without limitation, the rights to relocate such easement as set forth below), a permanent right and easement that is in gross as to the City and appurtenant to each of the Innerbelt Property, Brickbottom Property and the Community Path Premises, on, over and across the portion of the Brickbottom Property identified as "Brickbottom Pedestrian Bridge Easement Area" on Exhibit C (the "Brickbottom Pedestrian Bridge Easement Area") to allow Grantee to access, own, use, operate, repair, maintain and replace the Pedestrian Bridge as shown conceptually on Exhibit C, for the benefit of the Parties and members of the general public. The easements granted pursuant to this Section 4(a) and Section 4(b) below shall be effective and coterminous with the easement granted by the MBTA pursuant to Section 2(a), except as provided in the next sentence. Brickbottom Owner further hereby grants to Grantee, subject to the terms and conditions of this Agreement (including, without limitation, the rights to relocate such easement as set forth below), a temporary right and easement that is in gross as to the City and appurtenant to the City's interest in the Community Path Premises, on, over and across the temporary metal ramp and crosswalk located within a portion of the Brickbottom Pedestrian Bridge Easement Area, for pedestrian access to the Community Path pending the design and construction and granting of an easement respecting future replacement access, until termination of such temporary right and easement pursuant to the provisions respecting termination set forth in Section 32 below or otherwise.
- (b) The easement over the Brickbottom Pedestrian Bridge Easement Area is granted together with the right and easement, during the construction, repair and replacement of the Pedestrian Bridge from time to time, to use and occupy those portions of the Innerbelt Property identified as "Innerbelt Pedestrian Bridge Construction Easement Area" on Exhibit C (the "Brickbottom Pedestrian Bridge Construction Easement Area") and together with the Brickbottom Pedestrian Bridge Easement Area, the "Brickbottom Easement Areas") to construct, repair and replace the Pedestrian Bridge from time to time.

- (c) Brickbottom Owner, in its sole discretion, may, from time to time, temporarily or permanently relocate or modify all or any portions of the Brickbottom Easement Areas that provide access to the Pedestrian Bridge and/or the Community Path, provided that such relocated Brickbottom Easement Areas continue to provide access to the Pedestrian Bridge and/or the Community Path, for the benefit of the Parties and members of the general public, as applicable. Upon any such relocation, Brickbottom Owner shall provide written notice of the same to the other Parties hereunder and record a copy of an updated easement plan reflecting such relocation, and thereafter the terms "Brickbottom Pedestrian Bridge Easement Area", and "Innerbelt Easement Areas" as used herein shall mean the same as so relocated from and after the effective date of such relocation.

5. Conditions to Grant of Easements. The Easements are granted subject to:

- (a) The provisions of this Agreement;
- (b) All encumbrances and other matters of record as of the date of recording of this Agreement with the Registry;
- (c) The provisions of the Community Path Lease;
- (d) All matters including, without limitation, improvements, otherwise in existence within any of the Easement Areas as of the date of recording of this Agreement with the Registry, whether or not shown on the Easement Plan, provided that none of the Parties shall record any encumbrances or other matters affecting title to any of the Easement Areas between execution and delivery of this Agreement and recordation of this Agreement; and
- (e) All Applicable Laws.

The Grantee acknowledges that none of the Parties nor any person or entity acting under or on behalf of any Party has made any representations or warranties (express or implied, in fact or in law) concerning the Easement Areas (including the Surface and/or Subsurface Conditions thereof), or the condition, suitability, or title to or of the foregoing, the nature, condition or usability thereof or with respect to any matter whatsoever concerning this Agreement. The Grantee is accepting the Easement Areas in their "as is", "where is" and "with all faults" condition, and without recourse to the other Parties as to the nature, condition or usability thereof.

Following the completion of the initial construction of the improvements located within each of the Easement Areas, each Party hereunder shall have the right to cause the preparation of a plan stamped by a professional land surveyor and an associated draft amendment to this Agreement, which plan and amendment shall be shared the other Parties hereunder, confirming the final locations and dimensions of the Easement Areas and improvements located therein. Subject

to each Party's reasonable approval of such plan and amendment, such approval not to be unreasonably withheld, conditioned or delayed, the same shall be recorded. Absent any such amendment, the Easement Areas shall be deemed to be in the locations generally shown the Exhibits attached hereto, as modified (if applicable) to accommodate the actual as-built locations and dimensions of the applicable improvements constructed hereunder.

6. Exercise by the Grantee of Rights and Easements. The rights and easements granted to the Grantee herein shall be exercised by the Grantee, and its contractors, agents and employees, subject to the following conditions, it being acknowledged that the MBTA, Innerbelt Owner and Brickbottom Owner shall be responsible for their respective maintenance and other responsibilities hereunder, including without limitation under Section 9 below:

- (a) The Grantee shall be solely responsible for all costs and expenses associated with its exercise of any rights or easements herein granted to Grantee (including the cost of all design, construction, installation, operation, use, maintenance, repair, replacement, restoration, modification, alteration or removal relating to any portion of the Pedestrian Bridge);
- (b) In the ownership, use, occupancy, operation, maintenance, repair, replacement, restoration, alteration or other modification of the Pedestrian Bridge or any portion thereof by the Grantee, the Grantee shall be solely responsible, at its sole cost and expense, for (i) obtaining, maintaining in full force and effect, and complying with the requirements of, all Permits and Approvals required by the provisions of any Applicable Law to be obtained from any Governmental Authority, and (ii) complying with the requirements of all Applicable Laws and all applicable MBTA Requirements, it being acknowledged that the City is not undertaking any responsibility for initial construction of the Interim At-Grade Connection, which will be undertaken pursuant to the Interim Connection Construction License, which shall govern such initial construction and any matters that survive such initial construction pursuant to the terms of the Interim Connection Construction License. In addition to complying with all Applicable Laws as set forth above, the Grantee shall comply with, and shall require in its contracts with contractors and consultants performing work on or in the Crossing Facilities or otherwise within the Easement Areas that such contractors and consultants comply with, all Applicable Laws;
- (c) All work performed by the Grantee on or within the Pedestrian Bridge Easement Areas or which is otherwise performed or undertaken by the Grantee pursuant to this Agreement shall be performed or undertaken consistent with the requirements of Exhibit F and without adversely affecting or interfering with the continuous and unimpeded safe use and operation of the MBTA Facilities;
- (d) All work performed by the Grantee on or within the Easement Areas shall be performed or undertaken in a good and workerlike manner, using first-class materials and equipment, at the Grantee's sole risk;

- (e) The Grantee shall give written notice to the other Parties at least seven (7) days prior to the commencement of any work (other than snow removal or other routine maintenance that does not interfere in any manner with the continuous and unimpeded safe use and operation of the MBTA Facilities and the Innerbelt Property and Brickbottom Property) within the Easement Areas;
- (f) All work to be performed by the Grantee and its contractors and subcontractors on or within the MBTA Easement Areas pursuant to the provisions of this Agreement shall be coordinated with the operation of the MBTA Facilities and any work to be performed by the MBTA or any of its contractors so as to assure the harmonious prosecution of such work hereunder and such work by the MBTA or its contractors, and to prevent any damage to or interference with the operation of, any of the MBTA Facilities;
- (g) Once the Grantee commences any work within the Easement Areas, such work shall be prosecuted to completion diligently and continuously, and shall be completed within a reasonable time of the commencement thereof;
- (h) After completion of any work within the Easement Areas, the Grantee shall promptly restore and repair the surface of the Easement Areas substantially to their former condition, including the restoration and repair of any landscaped or paved area, as modified by the improvements allowed pursuant to this Agreement;
- (i) If, at any time during the performance of any work by or on behalf of the Grantee with respect to the Pedestrian Bridge, pursuant to this Agreement, the MBTA should, in its sole and absolute discretion, deem flagmen, watchmen, communications/signaling personnel, electric traction personnel, inspectors assigned to construction crews, and/or other measures, including but not limited to trains, transit cars and/or bus re-routing, or the provision of alternative means of transporting MBTA passengers (such as shuttle busses), desirable or necessary to protect its operations, its property, the MBTA Facilities, or its employees or other persons on or near the MBTA Property, the MBTA shall upon notice to the Grantee (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 the Grantee (collectively, "MBTA Oversight/Response Measures"). 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. The Grantee hereby covenants and agrees to bear the full cost and expense thereof and, to the extent to which the applicable Parties have not theretofore entered into a Force Account Agreement to cover the cost of such measures, to reimburse the MBTA within thirty (30) days of receiving an itemized, written invoice for such reimbursement. The MBTA's failure to furnish such personnel or take such measures shall not relieve the Grantee of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to the Grantee on the part of the MBTA. Upon being notified that the personnel or measures referred to in the first sentence of this paragraph have been deemed desirable or necessary by the MBTA, the Grantee

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 the Grantee shall deem any requirement for flagging or the like by the MBTA or one of its agents for supervision of the activity hereunder as unreasonable; the Grantee 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 reasonably appropriate;

- (j) All Third-Party Costs incurred by or on behalf of the MBTA in connection with the Pedestrian Bridge, which are covered by a Force Account Agreement shall be paid in full by the Grantee from the applicable Force Account. The Grantee shall replenish or cause the replenishment of each Force Account as provided in the written Force Account Agreement governing the same. All Third Party Costs incurred by or on behalf of the MBTA relating to any activity undertaken in connection with this Agreement which (1) (A) arise from or relate to any failure by the Grantee to perform an obligation to the MBTA under this Agreement (including, without limitation, costs of enforcing any provision of this Agreement), or (B) are incurred by the MBTA to respond to an unforeseen circumstance that may reasonably be expected to impact or pose a risk to MBTA operations or right of way, or (C) are incurred by the MBTA in connection with or in response to a request by the Grantee, and (2) are not covered by a Force Account Agreement, shall be reimbursed by the Grantee to the MBTA within thirty (30) days after invoice therefor; and
- (k) The provisions of this Section 6 shall apply to the Innerbelt Owner solely with respect to the exercise of rights and easements within the portion of the Interim At-Grade Connection located within the limits of the Innerbelt Interim Crossing Easement Area.

7. Major Activity. Following the completion of the initial construction of the Interim At-Grade Connection pursuant to the Interim Connection Construction License, in order to protect the operations and functionality of the MBTA Facilities, and the safety of the MBTA patrons using the same, during the initial construction of the Crossing Facilities and in the event that the Grantee desires to make or cause to be made any alterations, additions, improvements, or other modifications of or to the Crossing Facilities, or desires to undertake other activities that may foul the MBTA's rail operations (collectively, "Major Activity"), in addition to complying with the provisions of Section 6 above to the extent that such provisions apply (including, without limitation, the requirement of a License for Entry from the MBTA where required by such Section), the Grantee or the party or parties to such License for Entry (each an "Applicable Party") shall, at its sole cost, comply with, and shall cause its contractors, subcontractors, consultants, employees and agents to comply with, the following additional requirements:

- (a) Major Activity Within the Easement Areas. All Major Activity shall be subject to the prior written approval of the MBTA, which approval may be withheld by the MBTA in the event that it determines, in its sole discretion, that the proposed Major Activity could materially and adversely affect the structural integrity of the portions of the

Crossing Facility, the safety or functionality of the MBTA Facilities, the safety of the MBTA patrons using the same, or the safety of MBTA operations on the MBTA Property. Prior to the commencement by the Applicable Party of any Major Activity, such Applicable Party shall obtain a License for Entry from the MBTA, in the MBTA's then current standard form, permitting such work (with the insurance and other requirements pursuant to such License for Entry modified as appropriate given the scope of the proposed activity for which the License for Entry is being required), permitting such work.

(b) Design Review. Prior to the commencement of any demolition, construction, or other on-site work in connection with a Major Activity, the MBTA shall have the right to review and approve each of the preliminary plans and specifications, the design development documents and the final plans and specifications for such Major Activity (or, in the event such Major Activity does not call for design development, details concerning the means and methods to complete such Major Activity), which plans shall also show (in both the vertical and the horizontal planes) the proposed location within the Easement Areas of each project constituting Major Activity (collectively, including any means and methods submittal as applicable, the "Design Submissions"). The MBTA shall have a period of thirty (30) calendar days within which to review each Design Submission.

The MBTA's right to approve the Design Submissions shall be limited to determining whether the Design Submissions satisfy the following requirements (collectively, the "MBTA Design Requirements"): (i) the structural system of the Pedestrian Bridge will be sufficient to support the Pedestrian Bridge, as fully occupied and loaded, after such Major Activity is completed; and (ii) after the construction of such Major Activity, the Pedestrian Bridge as so modified will not interfere with: (1) the continued unimpeded and uninterrupted operation and use of, and safety of, the MBTA Facilities, or (2) the maintenance, repair, replacement, or restoration of any of the MBTA Facilities in existence on the date that the MBTA approves such Design Submission, or (3) the continued unimpeded, uninterrupted and safe use of the MBTA Property for railroad and transit operations, vehicular access, accessibility requirements, and egress and pedestrian traffic by the MBTA and its patrons and others entitled to do so; and no expenditure will reasonably be required by the MBTA in connection with the construction of such Major Activity (whether for protection of the MBTA Facilities or otherwise) that the Applicable Party does not pay (or agree with the MBTA in writing prior to the MBTA's approval of the Design Submissions to pay); and (iv) compliance with the MBTA Standards.

The final written approval by the MBTA of the design of each Major Activity (as to the MBTA Design Requirements only) shall be required prior to the commencement of any demolition or construction activities within the MBTA Easement Areas in connection with such Major Activity. After the MBTA issues such final written approval, the MBTA shall retain the right to review, and its written approval shall be required of, all proposed design changes relating to the Major Activity which are likely to affect the satisfaction of the MBTA Design Requirements by the Pedestrian Bridge as so modified, which

review and approval shall be undertaken in the manner provided in, and shall be subject to the provisions of, this Section 7.

The review and approval by the MBTA of any Design Submission, or any other plan, specification or other materials provided to the MBTA by or on behalf of the Applicable Party, shall not (i) relieve the Applicable Party of its sole responsibility for the accuracy, completeness and coordination of, or for errors or omissions in, the design of the Major Activity, or the consistency of such design with the requirements of Applicable Laws and the MBTA Requirements, or (ii) create any liability on the part of the MBTA with respect to such design.

(c) Construction. The MBTA shall have the right to approve all contractors and subcontractors engaged (directly or indirectly) by the Applicable Party in connection with any Major Activity, with such approval to not be unreasonably withheld, conditioned or delayed. The MBTA shall have the right to inspect the progress of construction of all Major Activity for the purpose of confirming that they are being constructed in accordance with the Design Submissions previously approved by the MBTA, and otherwise protecting the interests of the MBTA. Such inspections shall be scheduled upon reasonable advance notice to the Applicable Party, and shall be scheduled and conducted so as not to impair the progress of construction of the Major Activity. The Applicable Party shall have the right to designate a representative to be present during such inspections and shall deliver to the MBTA Capital Delivery Department copies of as-built drawings of all Major Activity promptly after the completion of construction thereof.

(d) Bonds. The MBTA reserves the right to require the Applicable Party to obtain or cause to be obtained a performance bond naming the MBTA as an obligee (the "Bond") and to provide an original of the Bond to the MBTA, prior to the commencement of construction of a Major Activity. The Bond shall provide for completion of construction of any such work on customary and usual terms for such a bond in the event of the failure by the Applicable Party to perform its obligations under this Agreement or the applicable License for Entry with respect to the Major Activity, and shall be issued by a surety company reasonably satisfactory to the MBTA.

8. Use of the Easement Areas. Each of the Easement Areas shall be used by the Grantee or Applicable Party, as applicable, only for the purpose(s) identified therefor in Sections 2, 3 and 4 above and for no other purpose. The Grantee or Applicable Party shall not, either with or without negligence, injure, overload, deface, damage or otherwise harm the Easement Areas or any other portion of the MBTA Property or the MBTA Facilities, the Brickbottom Property or the Innerbelt Property.

9. Maintenance and Other Responsibilities Respecting Crossing Facilities. The Grantee (and any parties that join in such obligation, including any Association as applicable) shall be responsible for maintaining all components of the Pedestrian Bridge in accordance with the requirements of this Agreement, including, without limitation the maintenance requirements detailed in Exhibit F. Following the completion of the initial construction of the Interim At-Grade Connection pursuant to the Interim Connection Construction License, with respect to maintenance

(including but not limited to the timely removal of snow and ice in a commercially reasonable manner) and repair of the Interim At-Grade Connection, which shall be in accordance with MBTA Standards for at-grade pedestrian crossings, in compliance with all applicable laws and the MBTA Standards, and otherwise in a manner consistent with the provisions of this Agreement:

- a. The MBTA shall maintain, at its sole cost and expense, the portions of the Interim At-Grade Connection that are located on the MBTA Property and included within the "MBTA Maintenance Area" as shown on Exhibit E, and the MBTA shall perform its obligations respecting the Community Path Premises in accordance with and subject to the terms and conditions of the Community Path Lease, as applicable;
- b. The Innerbelt Owner shall maintain, at its sole cost and expense, the portions of the Interim At-Grade Connection that are located on the Innerbelt Property and shall have the right and obligation to also maintain that area included within the "Additional Innerbelt Maintenance Area" as shown on Exhibit E; provided, however, that with respect to the Additional Innerbelt Maintenance Area, Innerbelt Owner's responsibility shall be specifically limited as set forth in Exhibit F; and
- c. Notwithstanding any provision of this Agreement to the contrary, the Grantee shall have no obligations respecting the construction, maintenance, operation or repair of the Interim At-Grade Connection or respecting any undertaking within the Interim Crossing Easement Areas.

All such maintenance to be in accordance with MBTA Standards applicable to public pedestrian areas and bridges similar to the Interim At-Grade Connection and the Pedestrian Bridge, as applicable, located within the MBTA service area and open to use by the general public.

10. Reserved Rights.

- (a) Reserved Rights of the MBTA. The MBTA hereby reserves the right to make any and all use of the MBTA Property (including the MBTA Easement Areas), and the right to grant rights and easements to other persons or entities to use the MBTA Property or any portion thereof, for any purpose; provided, however, that with respect to those portions of the MBTA Property which are included within the MBTA Easement Areas, such use shall not be inconsistent with the rights and easements herein granted to the Grantee and shall not have an adverse effect on such Parties' or the public's ability to use the Crossing Facilities as set forth in this Agreement, such reserved rights of the MBTA to include the right to operate the MBTA Facilities and the right (and the right to grant rights and easements to other persons or entities) to go on, over, under and through the MBTA Property, from time to time, with vehicles, machinery and equipment for such periods and at such times as the MBTA, in its reasonable discretion, deems necessary or appropriate, for the purpose of using, operating, maintaining, repairing, replacing, restoring, modifying, altering, improving, expanding, relocating or removing all or any portions of the MBTA Facilities; provided, however, that (i) the MBTA shall give written notice to

the other Parties at least ten (10) business days prior to the commencement of any excavation or construction work on the surface of the MBTA Easement Areas (except in case of emergency), (ii) the MBTA shall not exercise such rights on the surface of the MBTA Easement Areas if such rights can be reasonably exercised (without material additional cost to the MBTA) on the surface of portions of the MBTA Property that are not within the MBTA Easement Areas, (iii) in the course of the exercise of its reserved rights by the MBTA, the MBTA shall use reasonable efforts to minimize any disturbance or interference with the use and enjoyment of the Crossing Facilities by the other Parties and members of the general public and shall consult with the other Parties as to how to achieve such a result, and (iv) following the completion of any work by the MBTA in connection with the foregoing, the MBTA shall promptly reasonably restore or repair the surface of the MBTA Easement Areas which is disturbed in connection with such work to substantially the same condition as it was in prior to the commencement of such work by the MBTA (including paving and landscaping). In addition, the MBTA reserves the right, exercisable -from time to time, to attach, maintain, repair, replace, improve, add to, or otherwise modify lighting fixtures, communications and signal equipment, and related appurtenances on the underside of the Pedestrian Bridge in connection with the operation of the MBTA Facilities, provided (i) the same does not affect the structural integrity or operation (including effects related to noise and vibration) of the Pedestrian Bridge, and (ii) the MBTA provides plans and other relevant information regarding any proposed attachment to the Grantee and affords the Grantee the opportunity to review and comment on such materials, including the ability of the Pedestrian Bridge to support such additional equipment, prior to making such attachment. The MBTA shall be responsible for ensuring that any appurtenances which extend below the lowest surface of the Pedestrian Bridge provide sufficient clearance for operation of the MBTA Facilities, and shall be responsible for all maintenance, repairs, and replacements of all such fixtures, equipment and appurtenances at its sole cost and expense.

- (b) Reserved Rights of Innerbelt Owner and Brickbottom Owner. Innerbelt Owner and Brickbottom Owner each hereby reserves the right to make any and all use of the Innerbelt Property and Brickbottom Property, respectively, (including the Innerbelt Easement Areas and Brickbottom Easement Areas, respectively), and the right to grant rights and easements to other persons or entities to use the Innerbelt Property and Brickbottom Property or any portion thereof, for any purpose; provided, however, that with respect to those portions of the Innerbelt Property and Brickbottom Property which are included within the Innerbelt Easement Areas and Brickbottom Easement Areas, such use shall not be inconsistent with the rights and easements herein granted to the Grantee and shall not have an adverse effect on the Grantee's ability to use the Crossing Facilities as set forth in this Agreement, such reserved rights of Innerbelt Owner and Brickbottom Owner to include the right to operate the improvements located on the Innerbelt Property and Brickbottom Property and the right (and the right to grant rights and easements to other persons or entities) to go on, over, under and through the Innerbelt Property and Brickbottom Property, from time to time, with vehicles,

machinery and equipment for such periods and at such times as the Innerbelt Owner and Brickbottom Owner, in their reasonable discretion, deem necessary or appropriate, for the purpose of using, operating, maintaining, repairing, replacing, restoring, modifying, altering, improving, expanding, relocating or removing all or any portions of the improvements located on the Innerbelt Property and/or Brickbottom Property; provided, however, that (i) each of Innerbelt Owner and Brickbottom Owner shall give written notice to the other Parties at least ten (10) business days prior to the commencement of any excavation or construction work on the surface of the Innerbelt Easement Areas or Brickbottom Easement Areas (except in case of emergency), (ii) Innerbelt Owner and Brickbottom Owner shall not exercise such rights on the surface of the Innerbelt Easement Areas or Brickbottom Easement Areas if such rights can be reasonably exercised (without material additional cost to Innerbelt Owner and Brickbottom Owner) on the surface of portions of the Innerbelt Property and Brickbottom Property that are not within the Innerbelt Easement Areas or Brickbottom Easement Areas, (iii) once either Innerbelt Owner and Brickbottom Owner commences any construction activities within the Innerbelt Easement Areas or Brickbottom Easement Areas, it shall proceed with such construction diligently and continuously to, at a minimum, make such areas available and safe for passage, and all such work shall be performed in a good and workmanlike manner, in the course of the exercise of its reserved rights by Innerbelt Owner and Brickbottom Owner, they shall each use reasonable efforts to minimize any disturbance or interference with the use and enjoyment of the Crossing Facilities by the other Parties and members of the general public and shall consult with the other Parties as to how to achieve such a result, and (iv) following the completion of any work by Innerbelt Owner and Brickbottom Owner in connection with the foregoing, each shall promptly reasonably restore or repair the surface of the Innerbelt Easement Areas or Brickbottom Easement Areas which is disturbed in connection with such work to substantially the same condition as it was in prior to the commencement of such work by Innerbelt Owner and Brickbottom Owner (including paving and landscaping).

11. Agreement to Defend and Hold Harmless and Release of the MBTA.

(a) The Grantee and any parties that may join in such obligations pursuant to an amendment to this Agreement, including any Association that joins in this Agreement as a party hereto pursuant to an amendment as contemplated by Section 2(c) above (each, an "Indemnifying Party" and collectively, the "Indemnifying Parties") for themselves and their successors and assigns and those claiming by and through the Indemnifying Parties, shall defend (at the option of the MBTA, with counsel reasonably acceptable to the MBTA), and hold harmless the MBTA and the MBTA Parties, from and against all claims, costs, fees, expenses, losses, liabilities, obligations, litigation, demands, judgments, suits, proceedings, damages, fines, and penalties (including reasonable attorneys' and experts' fees and expenses, costs of investigation and litigation, clean-up costs relating to the Pedestrian Bridge, and waste disposal costs) of any kind or nature whatsoever (collectively, "Claims") which may at any time be imposed upon, incurred by or asserted or awarded against the MBTA or any of the MBTA Parties and arising out of or related to:

- (1) the activities of the Indemnifying Parties hereunder or the exercise by the Indemnifying Parties of any rights or privileges hereby granted; or
- (2) any alleged or actual defect, negligence, or willful misconduct in the design or construction of Pedestrian Bridge, or any part thereof; or
- (3) death, bodily injury or property damage claimed to have been caused by or to result from the design, construction, operation, use, maintenance, repair, removal, alteration, extension, or change of or to the Pedestrian Bridge, or any part thereof, provided that the same is not caused by the gross negligence or willful misconduct of, or breach of any Indemnifying Party's obligations under this Agreement by the MBTA or any of the MBTA Parties; or
- (4) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Pedestrian Bridge or the Pedestrian Bridge Easement Areas, exclusive of the Interim At-Grade Crossing Easement Areas, or any part of either, provided that the same is not caused by the gross negligence or willful misconduct of, or breach of any Indemnifying Party's obligations under this Agreement by the MBTA or any of the MBTA Parties; or
- (5) any damage to, interference with, interruption of, or adverse effect upon the use, maintenance, operation or structural integrity of the MBTA Facilities, as a result of or in connection with the development, design, construction, installation, use, occupancy, operation, maintenance, repair, inspection, replacement, safety or condition of any portion of the Pedestrian Bridge (provided that the same is not caused by a breach of any Indemnifying Party's obligations under this Agreement by the MBTA or any of the MBTA Parties), or as a result of any negligence or willful misconduct or breach of any provision of this Agreement by the Indemnifying Parties; or
- (6) any violation by the Indemnifying Parties of any Applicable Law, including any Environmental Law; or
- (7) any failure by the Indemnifying Parties to perform in a timely manner any of their respective obligations under this Agreement, provided that such failure is not caused by the act or omission of the MBTA or any of the MBTA Parties; or

- (8) the presence or release of Hazardous Materials which (i) are released by the Indemnifying Parties within, on, under or in the vicinity of the MBTA Property (including the Easement Areas), or (ii) are present on or under the surface of the MBTA Property (including the Pedestrian Bridge Easement Areas) as of the date of this Agreement, which presence is revealed as a result of the Indemnifying Parties' activities hereunder, unless such presence or release is caused by the gross negligence or willful misconduct of the MBTA or any of the MBTA Parties; or
- (9) those potentially negative impacts, including noise, odor, vibrations, electromagnetic fields, particles, pollution and fumes created by or resulting, directly or indirectly, from the operation of the MBTA Facilities and the MBTA's transportation activities in, on under and through the MBTA Property (including -the Easement Areas) during the term of this Agreement, that impact or occur to the Indemnifying Parties (collectively, the "Negative Impacts").

Notwithstanding the foregoing, the agreement to defend and hold harmless described in this Section 11(a) shall not apply to the extent that any Claim is caused by or results from the gross negligence or willful misconduct of the MBTA or any of the MBTA Parties. The foregoing express obligation to defend and hold harmless shall not be construed to negate or abridge any other obligation to defend and hold harmless running to the MBTA which would exist at common law or under other provisions of this Agreement, and the extent of the obligation to defend and hold harmless shall not be limited by any provision of insurance undertaken in accordance with this Agreement. Further, the Indemnifying Parties shall defend (at the option of the MBTA, with counsel reasonably acceptable to the MBTA) and hold harmless the MBTA and the MBTA Parties from and against all costs, reasonable counsel and expert fees, expenses and disbursements incurred in connection with or in defending any such Claim or any action or proceeding brought thereon for which such Indemnifying Party is responsible hereunder; and in case any action or proceeding is brought against the MBTA or any of the MBTA Parties by reason of any such Claim, the Indemnifying Parties, upon notice from the MBTA, shall resist or defend such action or proceeding with counsel reasonably acceptable to the MBTA, as applicable.

The Parties acknowledge that the application of, and enforcement of the indemnification obligations on, the City as set forth in this Agreement are made specifically subject to the limitations set forth in Mass. Gen. L. c. 44, s. 31.

(b) The Indemnifying Parties hereby release the MBTA and the MBTA Parties from any and all Claims related to the condition of the Pedestrian Bridge Easement Areas or arising out of or related to the operation of MBTA operations within the MBTA Property, except to the extent, if any, to which such Claims arise out of the gross negligence or willful misconduct of the MBTA, and the Indemnifying Parties covenant and agree that they will not assert or bring, nor encourage or assist any third

party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or any other claim) against the MBTA or any of the MBTA Parties relating to or arising out of the condition of the MBTA Property, including, with respect to the Pedestrian Bridge, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, 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, except to the extent, if any, to which such claims arise out of the gross negligence or willful misconduct of the MBTA.

In addition, the Indemnifying Parties (1) hereby releases the MBTA and the MBTA Parties from any and all Claims relating to or arising out of any Negative Impacts, and (2) shall not assert or bring, nor encourage or assist any third party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or any other claim) against the MBTA or any of the MBTA Parties relating to or arising out of the fact that the Pedestrian Bridge or any part thereof is or may be subject to Negative Impacts.

The Indemnifying Parties shall obtain a written release of liability similar to the one in this Section 11(b) in favor of the MBTA and the MBTA Parties from each of the Indemnifying Parties' consultants and contractors before they enter onto the Easement Areas.

(c) In clarification of the above release and covenants to defend and hold harmless, and not in limitation of them, the Indemnifying Parties shall defend (at the option of the MBTA, with counsel reasonably acceptable to the MBTA) and hold harmless the MBTA and the MBTA Parties from and against any and all Claims related to the injury, illness or death of any employee of the Indemnifying Parties or of an employee of the Indemnifying Parties' contractors or consultants; except if the Claim arose because of the gross negligence or willful misconduct of the MBTA. It shall not be grossly negligent to allow access to the Easement Areas that are in substantially the condition they are in as of the Effective Date.

(d) The Indemnifying Parties shall be notified, in writing, by the MBTA of the assertion of any Claim against it identified in the preceding provisions of this Section 2 with respect to which the Indemnifying Parties has agreed to defend and hold the MBTA harmless (an "Enumerated Claim").

- (1) If the MBTA decides to itself conduct the defense of an-Enumerated Claim against it or to conduct any other response itself, the Indemnifying Parties shall reimburse the MBTA for all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the MBTA in connection with the MBTA's defense of the Enumerated Claim against it and/or the conduct of all response actions, including those required by Chapter 21E and

the MCP. The settlement or compromise of any Enumerated 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 Indemnifying Parties or any other action that would materially prejudice the rights of the Indemnifying Parties without the Indemnifying Parties' express written approval. The Indemnifying Parties shall cooperate reasonably and promptly with the MBTA in the defense of any Enumerated Claim.

- (2) If the MBTA decides to have an Indemnifying Party defend the Enumerated Claim or handle the response action, the MBTA shall notify the Indemnifying Party of that decision in writing and the Indemnifying Parties shall bear the entire cost thereof and shall have sole control of the defense of any Enumerated Claim and all negotiations for its settlement or compromise provided that the MBTA is fully held harmless by the Indemnifying Party 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 Indemnifying Party 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 reasonably and promptly with the Indemnifying Party in the defense of any Enumerated Claim.

(e) At such time as any Indemnifying Party engages any contractors or subcontractors to undertake any Major Activity, maintenance, replacement, repairs or other work within the Easement Areas, the Indemnifying Party shall cause such contractors and subcontractors to indemnify, defend and hold harmless the MBTA and the MBTA Parties from all Enumerated Claims identified in subsections (a) and (c) of this Section 11 and defense costs- related thereto, upon the terms and conditions set forth in such subsections (a) and (c). The provisions of subsection (d) of this Section 11 shall also apply to any Enumerated Claims against the MBTA with respect to which any such contractors or subcontractors are required by this Section 11 to indemnify, defend and hold harmless the MBTA.

(f) The provisions of this Section 11 shall apply to the Innerbelt Owner solely with respect to Claims which may at any time be imposed upon, incurred by or asserted or awarded against the MBTA or any of the MBTA Parties and arising out of or related to the portion of the Interim At-Grade Connection located within the limits of the Innerbelt Interim Crossing Easement Area.

(g) The provisions of this Section 11 shall survive the termination of this Agreement.

12. Responsibility of the MBTA. The MBTA shall be responsible to each of the other Parties for the actions and activities of the MBTA's employees, contractors and agents taken within the scope of their respective employment or engagement, including within the MBTA Easement Areas.

13. Insurance Requirements. In exercising any rights under this Agreement, each of the Parties shall comply with the requirements detailed in Exhibit G, including provisions thereof relating to self insurance.

14. Casualty to the Pedestrian Bridge. If any portion of the Pedestrian Bridge is damaged or destroyed by fire or other casualty at any time, each Party that becomes aware of the same shall immediately notify the other Parties thereof and Grantee shall take all necessary action, at its sole cost and expense, to secure the Pedestrian Bridge against unauthorized entry and so as to protect the public safety. At all times after the occurrence of such damage or destruction until either the completion of restoration of the Pedestrian Bridge, or the completion of the removal thereof; the Grantee shall be responsible, at its sole cost and expense: (a) to ensure the sufficiency of the structural system of the Pedestrian Bridge to continue to support the Pedestrian Bridge (or what remains thereof after such damage and/or during or following any removal of improvements) as then occupied- and loaded; (b) not to interrupt or impede, except to the extent necessary to protect public safety and then only to the extent and for as long as reasonably necessary, the continued operation of; and safety of, the MBTA Facilities (including reasonable access thereto by foot and by motor vehicle) and the safety of MBTA patrons using the same.

Following any such casualty, if any insurance proceeds are available to restore the Pedestrian Bridge, the Grantee shall place such proceeds in escrow and shall thereafter use such proceeds solely to complete the repair and restoration. If the proceeds are sufficient to restore the Pedestrian Bridge, the Grantee shall notify the other Parties that the Grantee intends to repair and restore the damaged Pedestrian Bridge, and shall thereafter use such proceeds solely to complete the repair and restoration (in which case, the same shall be restored to substantially the condition in which it was the time of the occurrence of such fire or other casualty). In the event that available insurance proceeds are insufficient to repair and restore the Pedestrian Bridge, the Grantee shall elect either: (a) to repair and restore the damaged Pedestrian Bridge (in which case, the same shall be restored to substantially the condition in which it was the time of the occurrence of such fire or other casualty and the escrowed proceeds shall be used solely for such purpose); or (b) to remove the Pedestrian Bridge in its entirety, and shall notify the MBTA in writing of its election within one hundred eighty (180) days after the occurrence of any damage to or destruction of the Pedestrian Bridge (in which case the insurance proceeds shall remain in escrow and shall only be used to fund a future replacement of the Pedestrian Bridge hereunder). If the Grantee notifies the other Parties within such time that the Grantee intends to repair the Pedestrian Bridge, then the Applicable Party shall enter into a License for Entry governing the design and reconstruction of the Pedestrian Bridge, and the provisions of this Agreement shall apply to such restoration work. If the Grantee notifies other Parties within such time that the Grantee intends to remove the Pedestrian Bridge, then the Grantee shall, at its sole cost and

expense, demolish all remaining portions of the Pedestrian Bridge in accordance with a demolition plan, and by contractors, first approved by the MBTA, and remove and properly dispose of all debris associated therewith in accordance with all Applicable Laws, and leave the MBTA Pedestrian Bridge Easement Area in the same condition as existed prior to the commencement of construction of the Pedestrian Bridge. All costs and expenses incurred by the MBTA in connection with such casualty and restoration or demolition (as the case may be), including, without limitation, Third Party Costs and MBTA Oversight/Response Costs, to the extent the same are not covered by insurance, shall be paid by the Grantee to the MBTA within thirty (30) days of receiving an itemized, written invoice for such costs and expenses.

Notwithstanding the above provisions of this Section 14, in the event the Grantee elects to remove the Pedestrian Bridge, the MBTA shall have the option to reconstruct the Pedestrian Bridge by notice to the other Parties forwarded within sixty (60) days of its receipt of notice of the Grantee's election to remove the Pedestrian Bridge, in which case the Grantee shall assign the available insurance proceeds to the MBTA, which the MBTA shall use solely for such reconstruction, together with the use of such of the MBTA's own funds as may be necessary for such reconstruction. In that event, the Grantee shall not be responsible to pay to the MBTA its cost or expenses or its Third Party Costs or the MBTA Oversight/Response Costs.

15. Environmental Matters.

(a) Environmental Representations, Warranties and Covenants. The Grantee represents and warrants to, and covenants with, the MBTA, Innerbelt Owner and Brickbottom Owner as follows:

- (1) Except as may be permitted by and only in accordance with applicable Environmental Laws, the Grantee shall not allow any Hazardous Materials to be transported to or from, stored, located, discharged, possessed, managed, processed or otherwise handled within the Easement Areas. The Grantee shall comply with all Environmental Laws affecting the Easement Areas, and shall not cause or contribute to, or permit or suffer any other person or entity to cause or contribute to, any release or threat of release of Hazardous Materials or any possible violation of Environmental Laws with respect to or arising out of or in connection with the Pedestrian Bridge Easement Areas.
- (2) The Grantee shall promptly notify the other Parties in writing should the Grantee become aware of: (i) any release or threatened release of Hazardous Materials within the Pedestrian Bridge Easement Areas which could subject the Grantee, the MBTA, Innerbelt Owner, Brickbottom Owner, or any portion of the MBTA Property, Innerbelt Property, or Brickbottom Property (including the Easement Areas) to a claim under any Environmental Laws; (ii) any notice of responsibility or any other notices received from any Governmental Authorities concerning any non-compliance with Environmental Laws of the Pedestrian

Bridge Easement Areas; or (iii) the commencement of any litigation or any information relating to any threat of litigation relating to any release or threatened release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Pedestrian Bridge Easement Areas. The Grantee shall deliver to the other Parties any documentation or records as such Parties may reasonably request in connection with all such notices, inquiries and communications, and shall give written notice to the other Parties of any material subsequent developments respecting the same from time to time following written request for the same from such other Parties.

- (3) In the event that any Indemnifying Party becomes aware of any release or threatened release of Hazardous Materials or any possible violation of Environmental Laws with respect to the Easement Areas, such Indemnifying Party shall notify appropriate Governmental Authorities in accordance with Environmental Laws, including M.G.L. c. 21E and the Massachusetts Contingency Plan. The Indemnifying Party shall promptly provide the other Parties with copies of any notices or reports with respect to Hazardous Materials which are given by or on behalf of the Grantee to any Governmental Authorities with respect to the Easement Areas.
- (4) The Grantee shall, with reasonable diligence, and at its own cost and expense, take all actions (to the extent and at the time or from time to time) as shall be necessary or advisable for the assessment, clean-up and monitoring of the Pedestrian Bridge Easement Areas, including all removal, containment and remedial actions in accordance with all applicable Environmental Laws, including M.G.L. c. 21E and the Massachusetts Contingency Plan, to the extent such actions (or such costs and expenses) are required by reason of or are otherwise attributable to the actions or inactions (where a duty to act exists) of the Grantee, its contractors or subcontractors under this Agreement, including, without limitation, the discovery or revealing by the Grantee, its contractors or subcontractors of any pre-existing hazardous material on the MBTA Property and shall further pay or cause to be paid at no expense to the other Parties, all clean-up, administrative, and enforcement costs of Governmental Authorities or the parties protected by Environmental Laws which may be asserted against the other Parties to the extent such actions (or such costs and expenses) are required by reason of or are otherwise attributable to the actions or inactions (where a duty to act exists) of the Grantee, its contractors or subcontractors under this Agreement (including, without limitation, the

discovery or revealing by the Grantee, its contractors or subcontractors of any pre-existing Hazardous Materials on the MBTA Property). Any restriction on activity or use of any portion of the MBTA Property, Innerbelt Property, or Brickbottom Property (including the Easement Areas) arising under Environmental Laws, including M.G.L. c. 21E and the Massachusetts Contingency Plan, shall be subject to the prior written approval of the other Party that is the owner of the applicable property, which approval may be withheld in the sole and absolute discretion of such Party.

- (5) All reasonable costs (including those costs set forth above), damages, liabilities, losses, claims, expenses (including reasonable attorneys' fees and disbursements) which are incurred by the other Parties in connection with any breach or default by the Grantee of any of the Grantee's obligations under this Section 15, or any of the Grantee's warranties and representations set forth in this Section 15, or in connection with any other matters addressed in this Section 15 shall be Third Party Costs, and shall be paid by the Grantee to the MBTA within thirty (30) days after demand upon the Grantee therefor.
- (6) The provisions of this Section 15 shall apply equally to (x) Hazardous Materials which were present within the Pedestrian Bridge Easement Areas as of the date of this Agreement (regardless of the origin thereof), and (y) Hazardous Materials which first become present within the Pedestrian Bridge Easement Areas at any time after the date of this Agreement other than by reason of the act or omission of the other Party that is an owner of the applicable property or any of its employees, agents or contractors first occurring after the date of this Agreement.

(b) Inspections by the MBTA. The MBTA may from time to time, as the MBTA deems necessary, perform investigations, examinations and tests (including subsurface investigations and borings) of the MBTA Easement Areas with respect to any possible release or threatened release of any Hazardous Materials or any possible violation of any Environmental Laws. Each of the Parties shall reasonably cooperate with any such inspections, examinations and tests. If such inspection, examination or test reasonably demonstrates that a release or threatened release of any Hazardous Materials on or from the MBTA Easement Areas may exist, or that there may be a violation of any Environmental Laws within the MBTA Easement Areas, and the same is the responsibility of the Grantee hereunder, then the Grantee shall, within thirty (30) days after demand, reimburse the MBTA for all costs and expenses incurred by the MBTA in connection with such inspection, examination and test, and any reports prepared in connection therewith.

(c) The provisions of this Section 15 shall apply to the Innerbelt Owner solely with respect to Hazardous Materials within the portion of the Interim At-Grade Connection located within the limits of the Innerbelt Interim Crossing Easement Area.

(d) The provisions of this Section 15 shall survive the termination of this Agreement.

16. Mechanics' Liens. Prior to the commencement by any Party of any work within the Easement Areas, each such Party shall notify all of its contractors that it is not the owner of any areas outside of such Party's property (i.e., the MBTA Property, Innerbelt Property or Brickbottom Property) upon which such work is to be performed, that it is not acting as the agent of the other Parties in arranging for such work to be performed, and that it does not have the power or the authority to act on behalf of the other Parties. Each Party shall, within thirty (30) days after the recording or filing thereof; discharge (either by payment or by the filing of the necessary bond, or otherwise) any mechanic's or materialmen's lien filed or recorded against any other Party's property (i.e., the MBTA Property, Innerbelt Property or Brickbottom Property, as applicable) arising out of any payment due or claimed to be due for any labor, services, materials, supplies or equipment alleged to have been furnished to or for such Party in, upon or about the Pedestrian Bridge or the MBTA Property, Innerbelt Property or Brickbottom Property (including the Easement Areas).

17. Taxes. If and to the extent to which Taxes are assessed against or imposed upon the improvements constituting the Pedestrian Bridge, the Grantee shall pay all such Taxes directly to the appropriate Governmental Authority, on or prior to the date such Taxes may last be paid without incurring any interest or penalty, and the Grantee shall promptly provide the MBTA with evidence of such payment. If the improvements constituting the Pedestrian Bridge are not separately taxed or assessed, then, in that event, the Taxes as levied shall be apportioned between the improvements constituting the Pedestrian Bridge and such other areas with which it is assessed in such a manner that the Grantee shall pay its equitable portion of any such Taxes.

18. Default and Remedies. If any Party hereto is in default, and has not cured such default within forty five (45) days after written notice thereof (or such longer period as may be reasonably necessary under the circumstances, provided that such default is curable and the defaulting Party has commenced such cure within such 45-day period and is thereafter prosecuting the same with reasonable diligence to completion), then each non-defaulting Party shall have the following exclusive remedies:

(a) the right to seek specific performance of the defaulted obligations;

(b) the right to cure the defaulting Party's default and to seek reimbursement within sixty (60) days and to recover such reimbursement not later than sixty (60) days after demand therefor for all reasonable costs and expenses incurred in curing such default, including reasonable fees and expenses of attorneys and consultants, it being acknowledged that any Major Activity undertaken pursuant to this Section 18(b) shall be subject to the provisions of this Agreement respecting Major Activity and shall be undertaken pursuant to a License for Entry in the MBTA's then current standard form (with the insurance and other requirements pursuant to such License for Entry modified as

appropriate given the scope of the proposed activity for which the License for Entry is being required), permitting such work; and

(c) the right to seek damages for any losses directly resulting from the defaulting Party's failure to perform hereunder together with reasonable legal fees and expenses incurred in connection with recovery of such losses (subject to any limitation on damages or liability that may be set forth in this Agreement).

19. Rights to Enter. In addition to any other rights of entry in favor of the MBTA, Innerbelt Owner, and Brickbottom Owner provided under this Agreement, the MBTA, Innerbelt Owner, and Brickbottom Owner, and their respective employees, contractors, subcontractors, consultants and agents may, upon such notice and in such manner as is reasonable under the circumstance (and in case of emergency at any time) enter the Pedestrian Bridge in the exercise of any rights reserved to the MBTA, Innerbelt Owner, and/or Brickbottom Owner hereunder, or to inspect (including making tests and measurements), secure or protect the Easement Areas. Except in case of emergency, in entering the Pedestrian Bridge, the MBTA, Innerbelt Owner, and Brickbottom Owner shall use reasonable efforts to minimize any interference with the use of the Pedestrian Bridge and the Easement Areas by Grantee and those claiming by and through Grantee. Such right of entry shall not impose, nor does the MBTA, Innerbelt Owner, or Brickbottom Owner assume, any responsibility for the condition of the Pedestrian Bridge, but this provision shall not exculpate the MBTA, Innerbelt Owner, and Brickbottom Owner from liability to the extent caused by the gross negligence or willful misconduct of the MBTA, Innerbelt Owner, and Brickbottom Owner, or their respective employees, contractors, subcontractors, consultants or agents; provided, however, that nothing in this Section 19 shall limit the extent of the obligations, with respect to the Pedestrian Bridge, of any Indemnifying Parties.

20. Subordination to the MBTA's Operating Requirements. The MBTA Easements are subject and subordinate at all times to the requirements of the MBTA to maintain public safety and to maintain and operate a transportation system and to the condition that the grant of the MBTA Easements and the use of the MBTA Easement Areas pursuant to this Agreement may not obstruct, delay or prevent the MBTA's operation of its transportation services. The Parties understand and agree that any occupation, work, use or activity permitted hereunder may be stopped or delayed at any time in response to each such requirement, provided that the MBTA shall provide such notice of the same as is practicable under the circumstances. The MBTA shall not be responsible or liable for any direct, indirect or consequential costs or damages incurred by the other Parties as a result of any such interruption or delay and the other Parties shall not be liable for any default in performance resulting from such stoppage or delay.

21. Nondiscrimination. With respect to its exercise of all rights and privileges herein granted, each Applicable Party shall undertake affirmative action to the extent required by Federal and state laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless otherwise exempted therefrom. Each Applicable Party shall comply with any and all applicable 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, provided that advanced notice of any such plans are provided.

The Applicable Parties shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or military veteran status in its activities in connection with the Pedestrian Bridge or the Easement Areas, including the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors.

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

22. General Requirement for Prior Approval of Governmental Authorities.

Notwithstanding anything contained in this Agreement to the contrary, if, as a matter of Applicable Law, the consent or approval of any Governmental Authority is required, at any time and from time to time, as a condition to the exercise or performance of any right, obligation, covenant or agreement by any Applicable Party under or pursuant to the provisions of this Agreement (whether or not specific reference is made to any Governmental Authority in such provisions), the Applicable Party shall, as a condition to such exercise or performance, first obtain the required written consent or approval of the applicable Governmental Authority thereto, and deliver a copy of such consent or approval to the other Parties. The express reference to Governmental Authorities in certain provisions of this Agreement is not intended, and shall not be interpreted, to limit the Applicable Party's obligations under this Section 22 to such provisions only.

23. Relationship of the Parties. Nothing contained herein shall be construed as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between any of the Parties.

24. Further Documents and Actions. The Grantee, as the recipient of easements granted hereunder, shall, simultaneously with the execution and delivery of this Agreement, execute and deliver to the MBTA, or cause the execution and delivery to the MBTA of, all such certificates of tax compliance, disclosures required by M.G.L. c. 7C, Section 38, and all such other certificates, instruments, documents or disclosures as are required by Applicable Laws or as the MBTA may reasonably request in connection with this Agreement.

25. Time of the Essence. Time is of the essence of each and every covenant and each and every date in this Agreement.

26. Submission Not An Offer. The submission of this Agreement for examination does not constitute an offer, it being understood that none of the Parties shall be legally bound by this Agreement unless and until this Agreement has been executed and delivered by each of the Parties.

27. Further Assurances; Cooperation. The Parties hereby agree to execute, acknowledge and deliver such further assurances and amendments hereto as may from time to time be reasonably requested by any other Party in order to better assure the rights and obligations herein created. The Parties further agree to cooperate with each other regarding the implementation of the provisions of the Agreement in every respect, including, without

limitation, in accessing state and federal resources to cover costs and expenses as may be necessary or as may be not otherwise available in the event of a casualty.

28. Successors and Assigns. The provisions of this Agreement shall run with the MBTA Property, the Innerbelt Property, the Brickbottom Property and the Community Path Premises and shall bind and inure to the benefit of the MBTA, Innerbelt Owner, Brickbottom Owner and the City, and their respective successors and permitted assigns. The Parties shall not assign or otherwise transfer all or any portion of its right, title or interest in and under this Agreement, other than by operation of law to a successor owned of the applicable real property (in which case the Party involved in such transfer shall provide notice to the other Parties), without the prior written approval of the other Parties, which approval may be withheld by the other Parties in their respective sole and absolute discretion.

29. Non-Exclusive. Except as expressly stated otherwise herein, this Agreement is not to be construed in any way so as to grant any easement to the exclusion of the MBTA, Innerbelt Owner, Brickbottom Owner, or others later granted a similar right; provided that no rights shall hereafter be granted to any third parties in, to or on the Easement Areas which are inconsistent with the rights and easements herein granted to the Grantee or which have an adverse effect on the Grantee's ability to use the Crossing Facilities for their intended purpose. Each of the MBTA, the Innerbelt Owner and the Brickbottom Owner expressly reserves the right to use the Easement Areas on its respective property for all uses not inconsistent with the easement rights granted herein.

30. Limitation on Liability and Damages. No director, officer, member, agent or employee of any Party shall ever be personally or individually liable to any other Party hereunder. No Party shall be liable for any loss or damage to person or property resulting from any accident, theft, vandalism or other occurrence within any portion of the Easement Areas over which they are not responsible pursuant to the terms of this Agreement, unless the same is caused by the gross negligence or willful misconduct of such Party or any of its employees, agents or contractors. The provisions hereof shall survive the expiration or earlier termination of this Agreement.

31. Application of Recreational Use Statute. Each of the City, Innerbelt Owner and Brickbottom Owner (and their respective owners, members, officers, directors and all other affiliated parties to whom such protection may extend) shall have the benefit of M.G.L. c. 21 §17C as to liability, it being acknowledged and agreed that this Agreement is for the purpose of permitting public use of the Easement Areas for recreational purposes without imposing a charge or fee therefor, and it is the intent of the Parties that the City, Innerbelt Owner and Brickbottom Owner (and their respective owners, members, officers, directors and all other affiliated parties to whom such protection may extend) shall have the benefit thereof as to liability. This Agreement does not constitute a dedication of the applicable Easement Areas on the Innerbelt Property or the Brickbottom Property or any portion thereof as a public park; such areas shall remain privately owned, open to the public by permission as provided herein. The provisions hereof shall survive the expiration or earlier termination of this Agreement.

32. Future Termination of Access Rights In Event Replacement Access Rights Are Granted. The easements granted by Innerbelt Owner and Brickbottom Owner for access to and from the Crossing Facilities are intended to provide the general public with pedestrian access to

and from the Crossing Facilities, across applicable portions of the Innerbelt Easement Areas and Brickbottom Easement Areas. In the event that the City acquires, by other recorded instrument(s), rights for the general public to pedestrian access to and from the Crossing Facilities in a manner reasonably found and confirmed by the MBTA and City in writing to be acceptable, whether by a fee or easement interest, such access easements across applicable portions of the Innerbelt Easement Areas and Brickbottom Easement Areas shall terminate and be of no further force or effect without the need to execute or record any further instrument. The Parties agree to execute and record an instrument acknowledging such termination if requested by Innerbelt Owner, Brickbottom Owner or any Party, but such termination shall be automatic with respect to each easement area upon conveyance, acceptance, and grant of fee or easement interests in such easement area allowing such use, as applicable (or recording of comparable instruments pursuant to which the public has acquired rights to use such areas), without the need to execute or record any further instrument.

33. Notices. All notices, demands, submissions, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof, shall be in writing and shall be deemed to have been properly given if delivered by hand during regular business hours, by any recognized courier service providing receipts, or sent by certified United States mail, postage prepaid, return receipt requested, to the Parties at the addresses first above written, or to such other addresses as may from time to time be specified in writing by any Party hereto given in accordance with this Section 33.

IF TO THE MBTA:

Massachusetts Bay Transportation Authority
Office of Real Estate and Asset Development
Ten Park Plaza
Boston, Massachusetts 02116
Attn: Chief Real Estate Officer

and

Massachusetts Bay Transportation Authority
Office of the General Counsel
Ten Park Plaza, Suite 3510
Boston, Massachusetts 02116
Attn: Real Estate Counsel

With a copy to any other address as the MBTA may direct at any time by giving fifteen (15) days' prior written notice thereof to the other Party in accordance with the provisions herein.

IF TO THE CITY:

City of Somerville
Somerville City Hall
93 Highland Avenue

Somerville, MA 02143
Attention: Mayor

and:

City of Somerville
Somerville City Hall – Law Department
93 Highland Avenue
Attention: City Solicitor

IF TO INNERBELT OWNER:

NRL WSC 200 INNER BELT PROP, LLC
610 West 26th Street, Suite 910
New York, New York 10001
Attn: Christopher Pachios

and:

c/o Wheelock Street Capital
500 Boylston Street, 16th Floor
Boston, Massachusetts 02116
Attn: Jeffrey Laliberte and Ryan Patton

and:

DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110
Attn: Brian Hochleutner, Esq.

IF TO BRICKBOTTOM OWNER:

Innerbelt II QOZB LP
610 West 26th Street, Suite 910
New York, New York 10001
Attn: Christopher Pachios

and:

Nixon Peabody LLP
Exchange Place, 53 State Street
Boston, MA 02109-2835
Attn: Jennifer R. Schultz, Esq.

Each of the Parties shall, at any time and from time to time, have the right to specify as their proper addresses for purposes of this Agreement any other address or addresses by giving fifteen (15) days' prior written notice thereof to the other Parties in accordance with the provisions herein. Each of the Parties, and their respective successors and assigns, shall notify the other Parties in writing upon or promptly after the conveyance by any such Party of its interest, or its successors' and assigns' interest, in this Agreement, which notice shall include the new Party's name, address, and contact information.

34. Amendments. This Agreement may not be amended, modified, or terminated except by a written instrument duly executed by each of the Parties, or their respective successors in title.

35. Waiver. Any waiver by any Party of any provision of this Agreement must be in writing and signed by the Party against whom the enforcement of such waiver is sought; and shall constitute a waiver of that provision on that occasion only, and shall not operate or be construed as a waiver of any other provision or subsequent breach thereof.

36. Applicable Law. This Agreement shall be interpreted, construed, controlled and governed by the laws of The Commonwealth of Massachusetts, without regard to conflicts of law principles.

37. Entire Agreement. This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof, and supersedes, incorporates and merges all prior negotiations, representations and agreements, whether oral or written.

38. Construction. The Article and Section titles in this Agreement are for convenience only and shall not be deemed to be part of this Agreement for purposes of interpreting, construing or enforcing any of the provisions of this Agreement. All pronouns and any variations of pronouns shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the Parties may require. Whenever the terms referred to herein are singular, the same shall be deemed to mean the plural, as the context indicates, and vice-versa. As used in this Agreement, the terms "include" and "including" shall be construed as if followed by the phrase "without limitation". This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party who drafted or caused this Agreement to be drafted, all Parties having participated in the drafting of this Agreement.

39. Use of the terms "Grantee"; Appointment of Authorized Representatives. Except as specifically set forth in this Agreement, the use of the terms "Grantee" shall mean the Grantee named herein. The Grantee shall, from time to time, designate an "Authorized Representative" to deal on its behalf in implementing the provisions of this Agreement. Such Authorized Representative shall be authorized to act on behalf of the Grantee in every respect, shall be authorized to receive communications from the MBTA on behalf of the Grantee, and the MBTA shall be entitled to rely on such designation in every respect. The Grantee initially designates Executive Director of OSPCD Tom Galligani for such purpose. The MBTA shall, from time to time, designate an "Authorized Representative" to deal on its behalf in

implementing the provisions of this Agreement. Such Authorized Representative shall be authorized to act on behalf of the Grantee in every respect, shall be authorized to receive communications from the MBTA on behalf of the Grantee, and the MBTA shall be entitled to rely on such designation in every respect. The MBTA initially designates its Chief Real Estate Officer for such purpose.

40. Business Day. If any date contemplated under this Agreement shall not fall- on a Business Day, then such date shall be extended to the next succeeding Business Day.

41. Exhibits. All of the Exhibits referenced in this Agreement are attached hereto and shall have the same meaning as if they were incorporated fully within the text of this Agreement.

42. Severability. If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such -term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

43. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute one and the same instrument.

44. Title. For the MBTA's title to the land making up the MBTA Easements Areas, see deed of the Boston and Maine Corporation to the MBTA dated September 25, 1973 and recorded with the Registry in Book 12527, Page 299. For Brickbottom Owner's title to land making up the Brickbottom Easement Areas see deed from Joy Street Limited Partnership, a Massachusetts limited partnership, to InnerBelt II QOZB LP, a Delaware limited partnership, dated May 29, 2020, and recorded in Middlesex South County Registry of Deeds in Book 74809, Page 470, and filed with Middlesex South Registry District of the Land Court as Document No. 1843056 creating Certificate of Title No. 273263 in Registration Book 1558, Page 44. For Innerbelt Owner's title to land making up the Innerbelt Easement Areas see Deed to NRL WSC 200 Inner Belt Prop, LLC, a Delaware limited liability company dated October 21, 2021, recorded with the Registry in Book 78992, Page 517.

(The next page is the first signature page)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed under seal as of the date and year first written above.

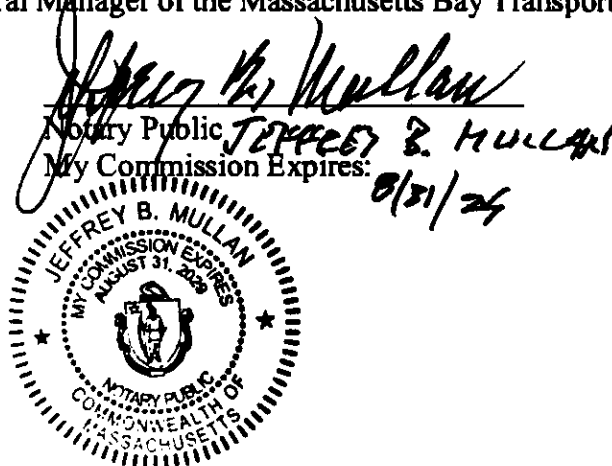
**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

By: 
Phillip Eng
General Manager

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 29th day of October, 2024, before me, the undersigned Notary Public, personally appeared the above-named Phillip Eng, General Manager of the Massachusetts Bay Transportation Authority, personally known to me or proved to me through satisfactory evidence of identification, which was personally known to be the individual whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as General Manager of the Massachusetts Bay Transportation Authority,



[Signature Page to Pedestrian Crossing Easement]

INNERBELT OWNER:

NRL WSC 200 INNER BELT PROP, LLC,
a Delaware limited liability company

By: Christopher S. Flagg
Name: Christopher S. Flagg
Title: Authorized Signatory

State of New York

County of New York

On the 28th day of October, 2024, before me, the undersigned notary public, personally appeared Christopher S. Flagg, proved to me through satisfactory evidence of identification, which was NYS Drivers' License, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of NRL WSC 200 INNER BELT PROP, LLC

Lisa M. DeMaso
Notary Public

Lisa M. DeMaso
Print Name

My Commission expires: 2/02/2028

LISA M DEMASO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6403819
Qualified in Richmond County
My Commission Expires 02-03-2028

[Signature Page to Pedestrian Crossing Easement]

BRICKBOTTOM OWNER:

INNERBELT II QOZB LP,
a Delaware limited partnership

By: **NRL Manager LLC, its general partner**

By: **North River Company, LLC,**
its managing member

By: *Christopher S. Flagg*
Name: Christopher S. Flagg
Title: President

STATE OF NEW YORK

New York, ss.

On this 28th day of October, 2024, before me, the undersigned Notary Public, personally appeared the above-named Christopher S. Flagg, personally known to me or proved to me through satisfactory evidence of identification, which was personally known to be the individual whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as President of North River Company, LLC, as managing member of NRL Manager LLC, as general partner of Innerbelt II QOZB LP.

Lisa M. Demaso

Notary Public

My Commission Expires: 2/03/28

LISA M DEMASO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6403819
Qualified in Richmond County
My Commission Expires 02-03-2028

[Signature Page to Pedestrian Crossing Easement]

CITY OF SOMERVILLE

By Katjana Ballantyne
Katjana Ballantyne, Mayor

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 29 day of October, 2024, before me, the undersigned Notary Public, personally appeared the above-named Katjana Ballantyne, Mayor of the City of Somerville, personally known to me or proved to me through satisfactory evidence of identification, which was personally known to be the individual whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Mayor of the City of Somerville.

Susan M. Tkaczok
Notary Public Susan M. Tkaczok
My Commission Expires: 12/27/2030

[Schedule(s) and Exhibits Follow]



LIST OF SCHEDULES AND EXHIBITS TO THIS AGREEMENT

Schedule 1	<u>Defined Terms</u>
Exhibit A	<u>Legal Description of Innerbelt Property</u>
Exhibit B	<u>Legal Description of Brickbottom Property</u>
Exhibit C	<u>Pedestrian Bridge Concept and Plan and Description of the Easement Areas Related to the Pedestrian Bridge</u>
Exhibit D	<u>Form of Certificate of Satisfaction</u>
Exhibit E	<u>Plan of the Interim At-Grade Connection and Plan and Description of the Easement Areas Related to the Interim At-Grade Connection</u>
Exhibit F	<u>Maintenance Requirements for Crossing Facilities</u>
Exhibit G	<u>Insurance Requirements</u>

SCHEDULE 1

DEFINED TERMS

"Applicable Law" shall mean, with respect to any matter referred to herein, all laws applicable with respect thereto, including all applicable constitutional provisions, statutes, ordinances, codes, by-laws, regulations, rulings, decisions, rules, orders, determinations and requirements of any Governmental Authority, as the same may be amended from time to time, subject to any applicable exemptions, exceptions and variances.

"Business Day" shall mean any day other than a Saturday, Sunday, day on which commercial banks in Boston, Massachusetts are authorized or required by law to remain closed or legal holiday recognized by the MBTA.

"Crossing Facilities" shall mean, collectively, the Interim At-Grade Connection and the Pedestrian Bridge.

"Easements" shall mean, collectively, the easements more particularly detailed in this Agreement.

"Easement Areas" shall mean, collectively, the areas of land covered by the easements more particularly detailed in this Agreement.

"Environmental Laws" shall mean any and all Applicable Laws now in force or subsequently enacted, modified, or amended pertaining to (i) the protection of health, safety, and the indoor or outdoor environment; (ii) the conservation, management or use of natural resources and wildlife; (iii) the protection or use of surface water or groundwater; (iv) the management; manufacture, possession, presence, use, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any Hazardous Materials; or (v) pollution (including any release to air, land, surface water and groundwater). To the extent applicable, such Applicable Laws include, but are not limited to: (a) the Clean Air Act, 42 U.S.C. § 7401, et seq.; (b) the Clean Water Act, 33 U.S.C. § 1251, et seq.; (c) the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; (d) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; (e) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; (f) the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; (g) Title III of the Superfund Amendments and Reauthorization Act ("SARA"), also known as the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001; (h) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; (i) federal regulations promulgated pursuant to any of the foregoing statutes; (j) Massachusetts laws and regulations enacted in order to implement federal environmental statutes and regulations; (k) the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C; (l) the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c. 21E ("**Chapter 21E**"); (m) the Hazardous Substances Disclosure by Employers Act, M.G.L. c. 111F; (n) Massachusetts Toxic Use Reduction Act, M.G.L. c. 211; (o) the Wetlands Protection Act, M.G.L. c. 131, § 40; (p) Chapter 91 of the Massachusetts General Laws; (q) Massachusetts regulations promulgated

pursuant to the authority of applicable state environmental laws including the Massachusetts Contingency Plan, 31 CMR 40.0000 et seq. (the "MCP"); and (r) local ordinances and regulations including those adopted by local emergency planning districts pursuant to Title III of SARA and implementing state legislation.

"Force Account" shall mean each force or expense account funded by the Grantee and held by the MBTA in connection with the Crossing Facilities, the MBTA Easement Areas or this Agreement, pursuant to a written agreement executed by the Grantee and the MBTA in the form then used by the MBTA for such accounts (each, a **"Force Account Agreement"**).

"Force Majeure" shall mean delays or hindrances incurred by a Party hereto caused by strikes or other labor trouble, shortage of materials, fire or other casualty, acts of terrorism, acts of the public enemy, blackouts, riots, epidemics, earthquakes, floods, hurricanes, tornadoes, other natural disasters and other acts of God, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar, beyond such Party's reasonable control; provided, however, that lack of funds shall not constitute a Force Majeure.

"Governmental Authority" shall mean any federal, state, county, city, local or other legislative, executive, judicial or other governmental agency, body, board, commission, department, authority, or the like.

"Grantee Parties" shall mean, collectively, all contractors, subcontractors, employees or agents of the Grantee, and any other person or entity for which the Grantee is legally responsible.

"Hazardous Materials" shall mean, but shall not be limited to, products, wastes and substances which, because of their quantitative concentration, chemical, - radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety, welfare, or to the environment, including any asbestos-containing material (whether or not friable), flammable materials, explosives, radioactive substances, polychlorinated biphenyls, other carcinogens, oil and other petroleum products, pollutants, solvents and chlorinated oils, -pesticides, herbicides, radon gas, reactive metals and compounds, contaminants, lead paint, urea- formaldehyde foam insulation, mold or microbial matter, and any other hazardous or toxic materials, chemical, biological, radioactive, or other wastes and substances to the extent defined, determined or identified as such in or regulated by any Environmental Laws.

"Interim Crossing Easement Areas" shall mean, collectively, the MBTA Interim Crossing Easement Area, the MBTA Interim Crossing Construction Easement Area and the Innerbelt Interim Crossing Easement Area.

"MBTA Facilities" shall mean any rail tracks, rail beds, rail rights of way, ramps, bridges, tunnels, supports, stations, platforms, surface parking areas, signaling systems and equipment, passageways, entrances, exits, easements appurtenant thereto, communications facilities, lighting systems and equipment, switching systems and equipment, ventilation systems and equipment, life safety systems and equipment, drainage systems, and all other areas, facilities,

and equipment used in connection with any of the foregoing, in each case which are situated either within the MBTA Property or within the vicinity thereof but are affected by conditions existing from time to time within the MBTA Property, and whether or not installed, used, operated or maintained by the MBTA or third parties, all as the same may be constructed; installed, modified, altered, relocated or replaced from time to time.

"MBTA Parties" shall mean, collectively, the directors, officers, employees, contractors and agents of the MBTA, or of any entity (whether a successor to the MBTA or a third party engaged by the MBTA for such purposes) performing the functions of the MBTA, from time to time.

"MBTA Requirements" shall mean all binding policies, requirements and binding conditions relating or applicable to the MBTA Facilities or the Easement Areas as set forth by the MBTA from time to time, including the MBTA Standards, the MBTA Operating Requirements, and the MBTA Operating Department Requirements.

"MBTA Standards" shall mean the binding standards applicable to MBTA facilities generally as adopted by the MBTA from time to time and consistently applied throughout the MBTA's system.

"Pedestrian" shall mean any person authorized to access land on foot or otherwise, consistent with the requirements and who is afforded access as contemplated by M.G.L. c. 21 §17C.

"Pedestrian Bridge Easement Areas" shall mean those Easements Areas related to the Pedestrian Bridge and comprising the MBTA Pedestrian Bridge Easement Area, the MBTA Pedestrian Bridge Construction Easement Area, the Innerbelt Pedestrian Bridge Easement Area, the Innerbelt Pedestrian Bridge Construction Easement Area, the Brickbottom Pedestrian Bridge Easement Area, and the Brickbottom Pedestrian Bridge Easement Area.

"Permits and Approvals" shall mean, with respect to any matter referred to herein, all permits, licenses, approvals, consents, reviews and the like as may be necessary from any Governmental Authority under Applicable Law or pursuant to MBTA Requirements in connection with the use, occupancy, operation, maintenance, repair, replacement, improvements, addition to or other modification of or to any portion of the Crossing Facilities.

"Registry" shall mean the Middlesex South District Registry of Deeds.

"Surface and/or Subsurface Conditions" shall mean any and all above ground and/or subsurface conditions (including groundwater), structures, improvements, systems, lines, materials and facilities of any kind or nature, including all subsurface structures, improvements and facilities related to highways, railways, tunnels, buildings, bridges or ramps, including foundations, footings, walls (including excavation walls and slurry walls), vent buildings, waterproofing, and utilities (including the MBTA Facilities).

"Taxes" shall mean, collectively, all taxes, assessments, betterments, excises, user fees, imposts, charges, license fees, levies, municipal liens and all other governmental charges and fees of any

kind or nature whether general or special, ordinary or extraordinary, or impositions or agreed payments in lieu thereof or other payments made in connection with- the -provision of governmental services or improvements (including any so-called linkage, impact or voluntary betterment payments), and all penalties and interest thereon, assessed or imposed against the Pedestrian Bridge or against the MBTA on account of its interest in the improvements erected pursuant to this Agreement within the MBTA Easement Areas, as if the Grantee were the owner of the MBTA Easement Areas. If the present system of ad valorem taxation of property shall be changed so that, in lieu of or in addition to the whole or any part of such ad valorem tax there shall be assessed, levied or imposed against the Pedestrian Bridge or against the MBTA on account of its interest in the improvements erected pursuant to this Agreement within the MBTA Easement Areas any kind or nature of federal, state, county, municipal or other governmental capital rent, income, sales, franchise, excise or similar tax, assessment, levy, charge or fee, measured by or based in whole or in part upon any incidents, benefits or measures of real property or real property operations, then any and all of such taxes, assessments, levies, charges and fees shall be included in Impositions. Except as otherwise provided in the immediately preceding sentence, "Taxes" shall not include any of the following: all income, estate, succession, inheritance, gift, franchise, corporate and any excise tax, in each case assessed against the MBTA.

"Third Party Costs" shall mean all third party costs (including consultants' and attorneys' fees, survey, title and engineering costs) incurred by or on behalf of the MBTA relating to any activity undertaken or performed by or for the MBTA in connection with the Crossing Facilities or this Agreement, including the following activities: (i) preparation or review of any plans, easements, or other documents or agreements contemplated hereby or related to the Crossing Facilities or this Agreement; (ii) any inspection of any work or procedure performed under this Agreement by the Grantee or a Grantee Party; (iii) any meetings, discussions or negotiations with the Grantee, or with third parties at the request of the Grantee, with respect to any matters related to the Crossing Facilities or this Agreement; (iv) any matters related- to compliance of the design, construction, use or operation of the Crossing Facilities, or this Agreement, with any Applicable Laws, Project Approvals or MBTA Requirements; (v) any proposed amendment or modification of this Agreement or any other documents or agreements executed by the parties in connection with the Project; (vi) any other review, consent, inspection or testing relating to the Crossing Facilities or the Easement Areas (including any inspections and testing performed by the MBTA with respect to Hazardous Materials pursuant to the provisions of this Agreement); provided that costs associated with any such inspection or testing shall be subject to reimbursement by the Grantee only if the MBTA has a reasonable basis for believing, at the time of conducting such testing or inspection, that a violation of Applicable Laws- or a default under this Agreement then exists; (vii) any other action undertaken by the MBTA in connection with the Crossing Facilities or the Easement Areas; or (viii) any disputes, compliance or enforcement of any provision-of this Agreement, whether or not the same ripens into an Event of Default. In addition, for purposes of this Agreement, the term "Third Party Costs" shall include (x) all costs incurred by or on behalf of the MBTA in connection with MBTA Oversight/Response Measures, and (y) the costs of MBTA personnel assigned to the supervision, coordination or oversight of any activity to be undertaken, or work to be performed, by or on behalf of the Grantee pursuant to this Agreement.

Exhibit A

Legal Description of Innerbelt Property

A certain parcel of land situated in the city of Somerville, Middlesex County, Commonwealth of Massachusetts, located southerly of Washington Street, westerly of Inner Belt Road and easterly of Chestnut Street, shown as "Proposed North Lot" on a plan entitled "200 Inner Belt Road, Lot Split Plan of Land in Somerville, Massachusetts", scale 1"=80', dated 5 June, 2024, prepared by DGT Associates, Inc., prepared for NRL WSC 200 Inner Belt Prop, LLC, recorded with the Middlesex Registry of Deeds Southern District as Plan 516 or 2024, and more particularly bounded and described as follows:

Commencing at a stone bound drill hole on the southerly sideline of Inner Belt Road, thence N 37-03-56 W 198.62 feet along the southerly sideline of Inner Belt Road to a point on the northeasterly corner of said parcel, said point being the True Point of Beginning; thence running:

S 52-56-04 W 220.37 feet by land now or formerly of NRL WSC 200 Inner Belt Prop, LLC to a point on land now or formerly of Massachusetts Bay Transportation Authority (MBTA); thence

N 35-10-59 W 1558.36 feet to a point; thence

S 53-36-50 E 593.96 feet to a point on land now or formerly of Francis James Properties LLC. The last two courses being by said land of MBTA; thence

S 37-03-56 E 530.70 feet by said land of Francis James Properties LLC to a point on land now or formerly of City of Somerville; thence

S 52-56-04 W 35.00 feet to a point; thence

S 37-03-56 E 80.14 feet to a point; thence

N 52-56-04 E 35.00 feet to a point on the southerly sideline of Inner Belt Road. The last three courses being by said land of City of Somerville; thence

S 37-03-56 E 377.32 feet along the southerly sideline of Inner Belt Road to The Point of Beginning.

Said parcel containing 252,395± square feet or 5.794± acres of land.

Exhibit B

Legal Description of Brickbottom Property

All those certain plots, pieces or parcels of land with the Pedestrian Bridges and improvements thereon, erected, situated, laying and being on Joy Street in the City of Somerville, Middlesex County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

Southwesterly by the Northeasterly line of Chestnut Street, now called Joy Street, eighty (80) feet;

Southwesterly and Westerly by said Joy Street by three lines measuring together four hundred sixteen and 31/100 (416.31) feet;

Northwesterly by land now or formerly of the Somerville Housing Authority and land of owners unknown, one hundred nineteen and 35/100 (119.35) feet;

Northeasterly by land of the Boston and Maine Railroad, formerly the Boston and Lowell Railroad Corporation, by two lines measuring together four hundred ninety-one and 29/100 (491.29) feet;

Southeasterly by land of sundry adjoining owners as shown on Land Court Plan hereinafter referred to, one hundred forty-six and 10/100 (146.10) feet.

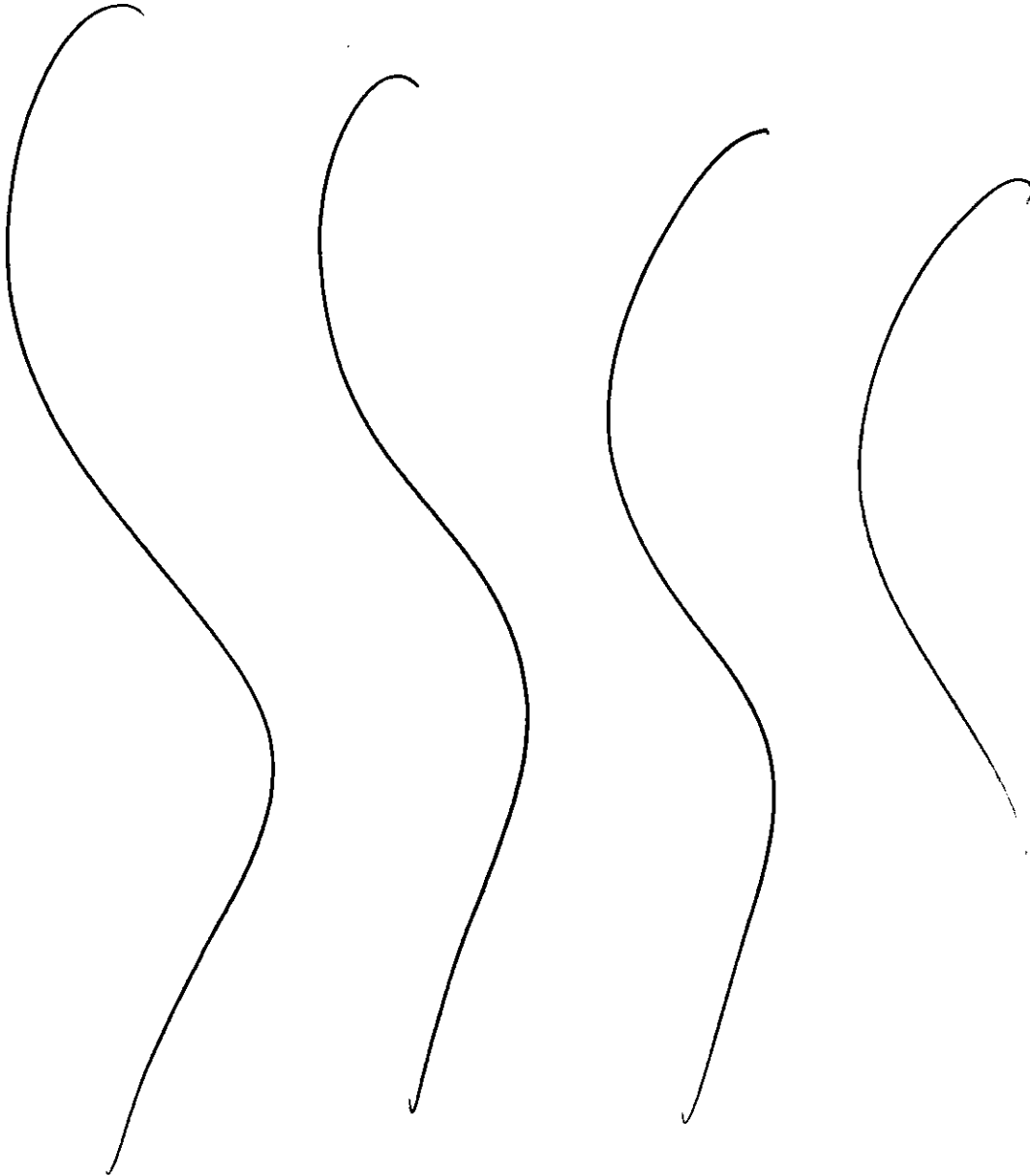
A portion of the above-described premises is registered land, being all the premises described in Certificate of Title No. 45749, Book 300, Page 105, and shown on Plan No. 17219A filed with said Certificate of Title No. 45749. Unnumbered lot.

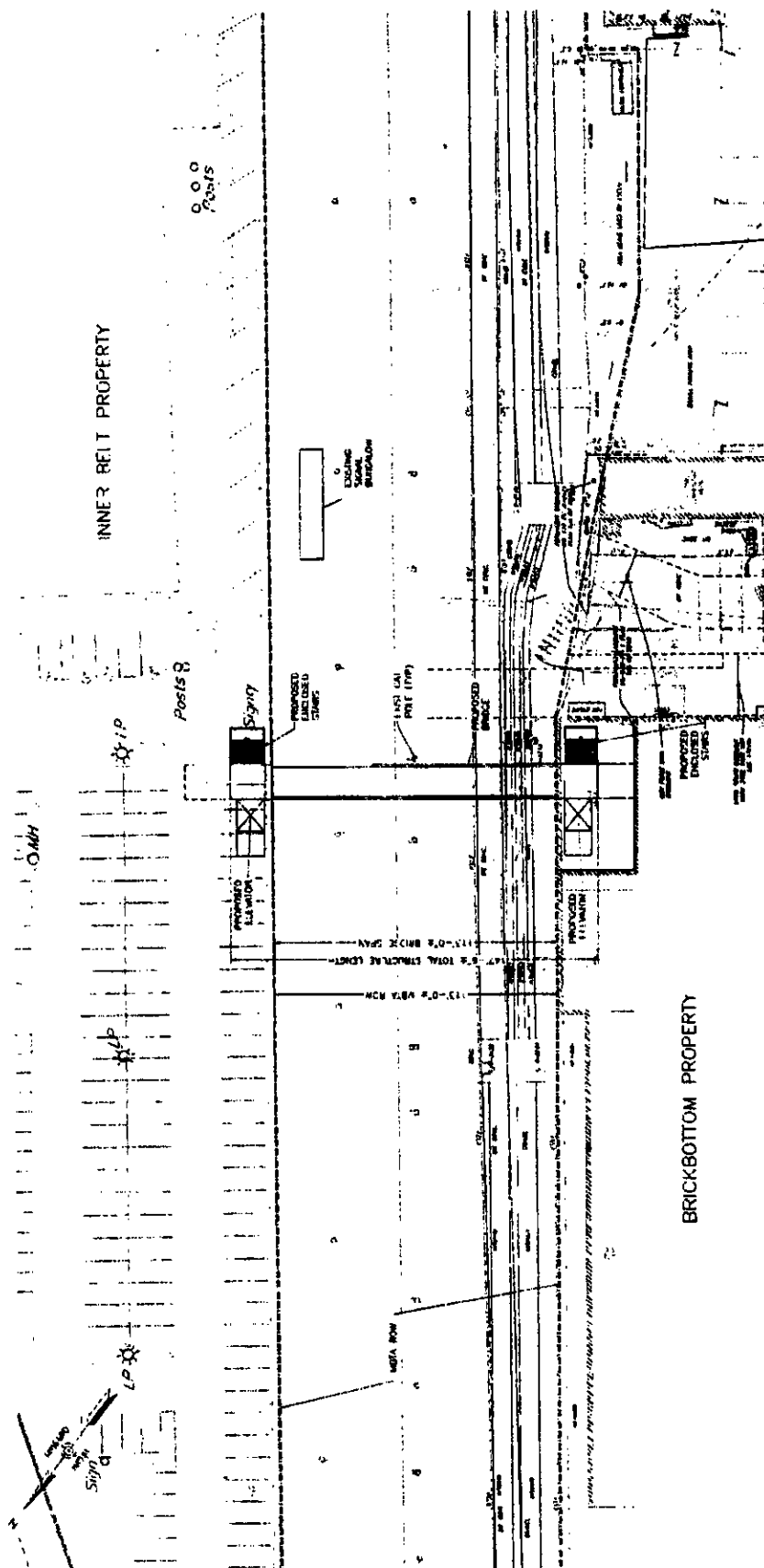
Said premises being also shown as Parcel C and adjoining land on plan entitled "Property Line Map, Linwood Joy Project Area, UR Mass., Somerville Housing Authority, Somerville, Middlesex, Mass.", Whitman & Howard, Engineers, dated Dec. 28, 1956, Revised Feb. 18, 1957, recorded with Middlesex South Registry of Deeds as Plan No. 190 of 1957.

For title see deed from Joy Street Limited Partnership, a Massachusetts limited partnership, to InnerBelt II QOZB LP, a Delaware limited partnership, dated May 29, 2020, and recorded in Middlesex South County Registry of Deeds in Book 74809, Page 470, and filed with Middlesex South Registry District of the Land Court as Document No. 1843056 creating Certificate of Title No. 273263 in Registration Book 1558, Page 44.

Exhibit C
Pedestrian Bridge Concept and Plan and Description of
the Easement Areas Related to the Pedestrian Bridge

[see attached]





PEDESTRIAN BRIDGE PLAN
SCALE: 1" = 20'

Exhibit D

Form of Certificate of Satisfaction

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
CERTIFICATE OF SATISFACTION**

PROJECT: Innerbelt Pedestrian Bridge
MBTA COUNTERPARTY: City of Somerville
CONTRACT NAME: _____
LOCATION: Innerbelt/Brickbottom, Somerville, MA
DESIGNER OF RECORD: _____
AUTHORITY: Pedestrian Crossing Easement Agreement among MBTA, City of Somerville, NRL
WSC 200 Inner Belt Prop. LLC and Innerbelt II OQZB LP dated _____, 2024
, and recorded with the Middlesex South Registry of Deeds at _____ (the "Agreement")
TO: City of Somerville

Pursuant to the Agreement, notice is hereby given that the Massachusetts Bay Transportation Authority hereby issues this Certificate of Satisfaction as contemplated by the Agreement.

The Massachusetts Bay Transportation Authority acknowledges that the Grantee under the Agreement shall cause this Certificate of Satisfaction to be recorded with the Middlesex South Registry of Deeds, whereupon the Grantee shall have the right to commence construction of the Pedestrian Bridge (as defined in the Agreement) and exercise the permanent easement rights conveyed by the Massachusetts Bay Transportation Authority in Sections 2(a) and 2(b) of the Agreement [as amended by First Amendment to Pedestrian Crossing Easement Agreement dated -----, ----- and recorded herewith].

The undersigned recommends the issuance of this Certificate of Satisfaction:

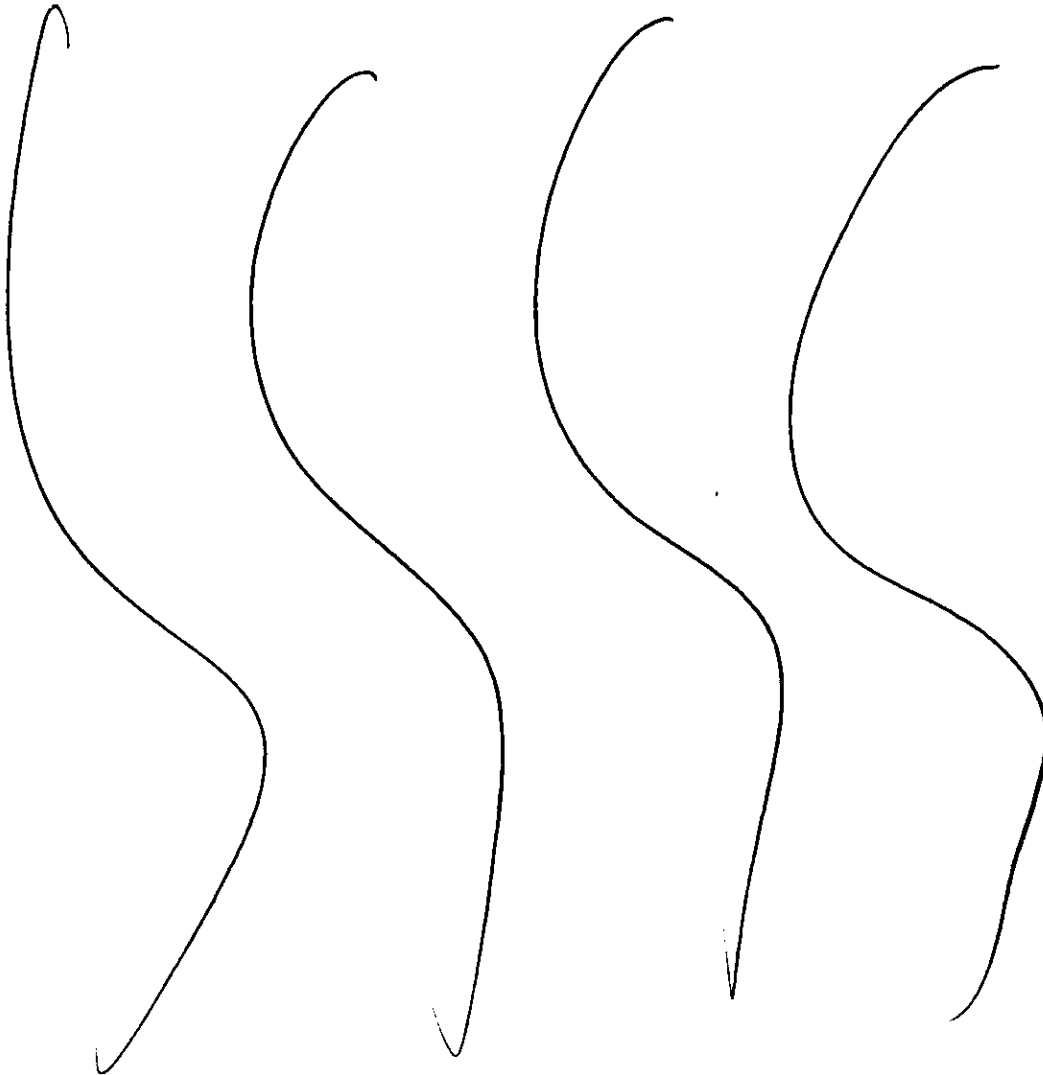
	Signature	Date
Design Firm _____	by _____	
Contractor _____	by _____	
Grantee _____	by _____	
MBTA Project Manager _____		
MBTA Deputy Director of Design and Construction _____		
MBTA Manager of Quality Assurance _____		
APPROVED _____		Date _____
Director of Construction		

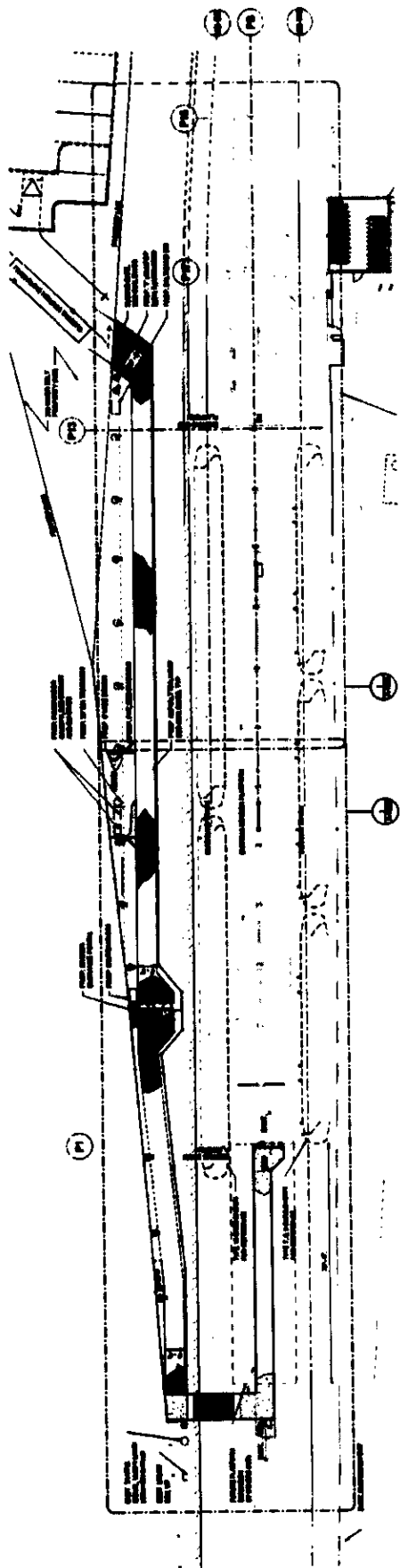
Exhibit D

- 1 -

Exhibit E
Plan of the Interim At-Grade Connection and
Plan and Description of Easement Areas Related to the Interim At-Grade Connection

[see attached]





1 SEE PLAN
10/1/17

1. CONSTRUCTION OF THE
2. CONSTRUCTION OF THE

100% SUBMITTAL / R/C
NIEL WPEC AND BINDER BELLY P/W, LLC
OO

2017-10-17
2017-10-17

100% SUBMITTAL / R/C
NIEL WPEC AND BINDER BELLY P/W, LLC
OO

100% SUBMITTAL / R/C
NIEL WPEC AND BINDER BELLY P/W, LLC
OO

100% SUBMITTAL / R/C
NIEL WPEC AND BINDER BELLY P/W, LLC
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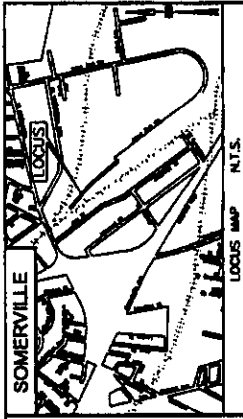
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NIEL WPEC AND BINDER BELLY P/W, LLC
OO

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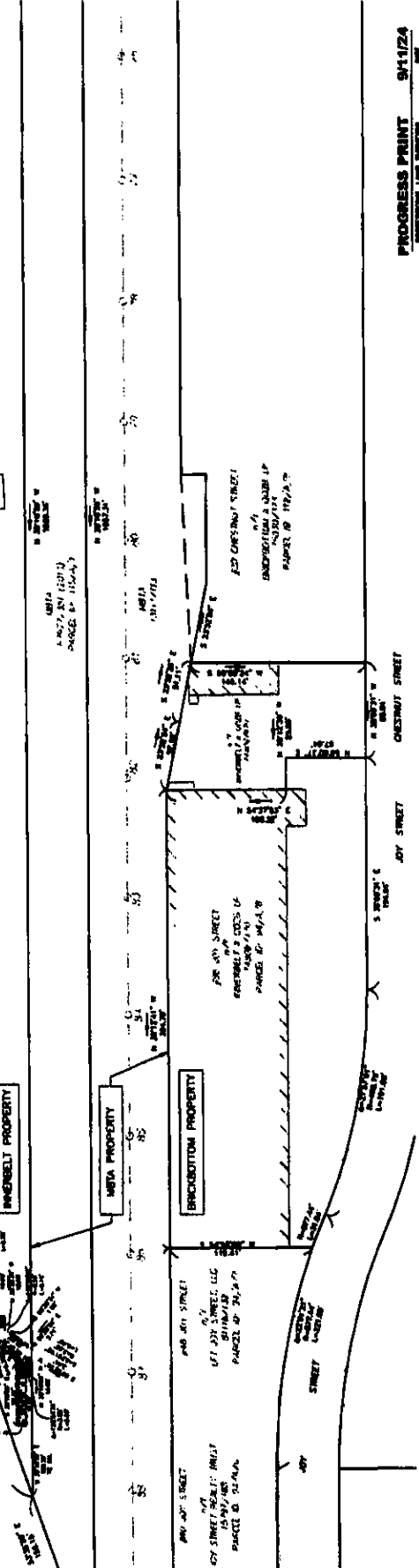
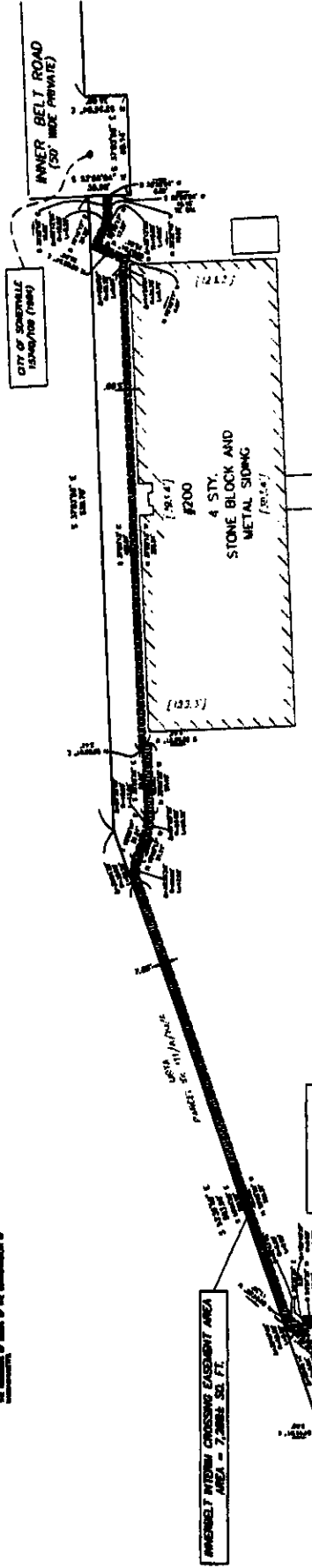
100% SUBMITTAL / R/C
NIEL WPEC AND BINDER BELLY P/W, LLC
OO



SOMERVILLE
LOCUS
LOCUS MAP N.T.S.

PROJECT NO. 111-2-10-00
CITY OF SOMERVILLE
PLANNING DEPARTMENT
2011

NOTES:
1. THE CITY OF SOMERVILLE HAS REVIEWED THIS PLAN AND APPROVES THE INFORMATION CONTAINED HEREIN FOR THE PURPOSES OF THE CITY'S PLANNING DEPARTMENT.
2. THE CITY OF SOMERVILLE HAS REVIEWED THIS PLAN AND APPROVES THE INFORMATION CONTAINED HEREIN FOR THE PURPOSES OF THE CITY'S PLANNING DEPARTMENT.
3. THE CITY OF SOMERVILLE HAS REVIEWED THIS PLAN AND APPROVES THE INFORMATION CONTAINED HEREIN FOR THE PURPOSES OF THE CITY'S PLANNING DEPARTMENT.
4. THE CITY OF SOMERVILLE HAS REVIEWED THIS PLAN AND APPROVES THE INFORMATION CONTAINED HEREIN FOR THE PURPOSES OF THE CITY'S PLANNING DEPARTMENT.
5. THE CITY OF SOMERVILLE HAS REVIEWED THIS PLAN AND APPROVES THE INFORMATION CONTAINED HEREIN FOR THE PURPOSES OF THE CITY'S PLANNING DEPARTMENT.



PROGRESS PRINT 9/11/24

EXHIBIT E - PLAN OF THE INTERIM AT-GRADE CONNECTION AND PLAN AND DESCRIPTION OF THE EASEMENT AREAS RELATED TO THE INTERIM AT-GRADE CONNECTION

SOMERVILLE, MASSACHUSETTS
MIDDLESEX COUNTY

DOT Associates
Surveying & Engineering
1072 BROADWAY
SOMERVILLE, MA 02143
TEL: 617.254.1111
WWW.DOTASSOCIATES.COM

PREPARED FOR:
MR. WING ZOO INHERENT PROP. LLC

NO.	DESCRIPTION	DATE	BY	CHECKED	APPROVED
1	PREPARED	09/11/24	WZ	WZ	WZ
2	REVISION	09/11/24	WZ	WZ	WZ

SCALE: 1" = 40'

DATE: 09/11/24

BY: WZ

CHECKED: WZ

APPROVED: WZ

Exhibit F

Maintenance Requirements for the Crossing Facilities

In performing any maintenance, repair or replacement work within the Easement Areas (as opposed to undertaking a Major Activity and in addition to complying with the provisions of Section 7 of the Agreement to the extent that such provisions apply (including, without limitation, the requirement of a License for Entry from the MBTA, where required by that Section), the Applicable Party shall, at its sole cost, comply with, and cause its contractors, subcontractors, consultants, employees and agents to comply with, the following additional requirements:

(a) The Grantee shall, at all times, operate, monitor, maintain, repair, replace and keep the Pedestrian Bridge in first-class repair and condition, and in compliance with the terms of all Permits and Approvals, the MBTA Requirements and all Applicable Laws. The Grantee shall be solely responsible, at its sole cost and expense, for performing all maintenance (including snow removal in conformance with the MBTA snow removal standards sufficient to permit the Pedestrian Bridge to remain safe and for the Pedestrian Bridge, to the extent feasible and reasonably prudent due to weather conditions, to remain open to the public during MBTA hours of operation) and making all necessary repairs, replacements, additions and improvements to the Pedestrian Bridge, (including the portions thereof situated within the MBTA Easement Areas), both interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, in each case as necessary to: (i) ensure the sufficiency of the structural system of the Pedestrian Bridge to support the Pedestrian Bridge (as fully occupied and loaded); (ii) maintain the integrity of the components of the Pedestrian Bridge, including the elevators and all other means of access; (iii) continue unimpeded and uninterrupted, accessible, and safe, and operated in such a manner so as not to unreasonably interfere with (A) the use of the MBTA Property for vehicular access and egress and for pedestrian traffic by the MBTA and its patrons and others from time to time entitled to do so, and (B) the operations of the MBTA Facilities; and (iv) compliance with MBTA Standards (the foregoing items (i) — (iv) collectively are hereinafter referred to, collectively, as the “MBTA Operating Requirements”). All such work shall be performed so as not to adversely affect or unreasonably interfere with the use, operation, safety, construction, installation, maintenance, repair, replacement, restoration, modification, alteration or removal of any of the MBTA Facilities;

(b) At the time of completion of the construction of the Pedestrian Bridge, the Grantee shall provide to the MBTA, at the Grantee's sole cost and expense, a written report prepared by a structural engineer registered in The Commonwealth of Massachusetts selected by the mutual agreement of the Grantee and the MBTA, setting forth the results of a structural inspection of the Pedestrian Bridge performed by such engineer, together with any structural maintenance, repairs, additions, improvements or replacements that such engineer determines to be necessary in order to maintain the structural integrity of the Pedestrian Bridge. The Grantee shall, at its sole cost and expense, cause such an inspection to be performed and such a report to be delivered to the MBTA every two (2) years after the date of the opening of the Pedestrian Bridge to the general public; provided, however, that the MBTA shall have the additional right to request such an updated report at any time that the MBTA has a reasonable basis for believing

that an issue exists as to the sufficiency of the structural system of the Pedestrian Bridge, by giving written notice to the Grantee setting forth in reasonable detail the grounds for such belief, together with any supporting materials. In the event that any such report recommends corrective or other action to be taken in order to maintain the structural integrity of the Pedestrian Bridge, (i) all such action shall be taken and work performed by the Grantee, at its sole cost and expense, within the time-frame for such action or work as recommended in such report, and (ii) promptly following the completion of such action or work, the Grantee shall cause the affected portion(s) of the Pedestrian Bridge to be reinspected by such engineer and a supplemental report to be issued by such engineer as to the sufficiency of the action so taken or work so performed by the Grantee;

(c) The Grantee shall, within thirty (30) days after the MBTA's request therefor, reimburse the MBTA in full for all reasonable costs, fees (including all reasonable attorneys' fees and third party consultant's fees) and expenses incurred by the MBTA in connection with any repair or replacement required to be made to any component of the MBTA Facilities which is damaged or destroyed as a result of the negligence or willful misconduct of, or breach of any provision of this Agreement by, the Grantee, or any Grantee Party or any invitee of the Grantee;

(d) The MBTA shall have the right to enter upon the Pedestrian Bridge (after not less than seven (7) days' written notice to the Grantee except in the event of emergency) for the limited purpose of an inspection walk-through to determine whether the Grantee is performing the maintenance, repair or replacement work necessary to satisfy the MBTA Operating Requirements, provided that the Grantee shall have the right to designate a representative to be present during such inspection and the MBTA shall not unreasonably interfere with the use and occupancy of the Pedestrian Bridge while conducting such inspection. If the MBTA determines that the Grantee is not performing such maintenance, repair or replacement work, the MBTA may (but shall not be obligated to) give written notice to the Grantee in reasonable detail of such maintenance, repair or replacement work which the Grantee is required to perform hereunder and which the Grantee has neither already performed nor is performing. The Grantee shall then perform any such required work within thirty (30) days after receipt of such notice from the MBTA, or such longer period as may be reasonably required to perform such work (subject to the time reasonably required to comply with the requirements of applicable statutes relating to work to be performed for or on behalf of a municipality, and further subject to reasonable delays due to Force Majeure, weather conditions and other causes beyond the reasonable control of the Grantee, but provided also that such work is to be performed immediately if necessary to address a threat of imminent harm to persons (including MBTA patrons) or damage to property (including the MBTA Facilities)). If the Grantee has failed to perform such maintenance, repair or replacement work within the time period provided in the immediately preceding sentence, the MBTA may (but shall not be obligated to) perform such work if (i) the MBTA provides a second written notice to the Grantee, and (ii) the Grantee fails to commence performance of such work within ten (10) Business Days after receipt of such notice and thereafter diligently performs such work continuously to completion; provided, however, that in the event of an emergency, the MBTA shall have

the right to immediately take any such actions with only such notice to the Grantee as is practicable under the circumstances (but in such cases the MBTA shall notify the Grantee promptly after the, MBTA has made such entry). The MBTA shall be entitled to recover from the Grantee all reasonable costs and expenses incurred by the MBTA in connection with its performance of such work, which amounts shall be paid by the Grantee to the MBTA within thirty (30) days after the MBTA gives the Grantee written notice thereof and reasonable backup documentation;

(e) The MBTA may elect to exercise the remedies for default set forth in Section 18 of this Agreement, at any time and from time to time as permitted thereunder, including rights under Section 18(b) and under any License for Entry respecting cure of defaults and reimbursement of costs thereof; provided, however, that neither the making of any such election by the MBTA nor the performance by the MBTA of any such work or activity on one or more occasions shall (A) operate to relieve the Grantee of or waive or otherwise affect any of the Grantee's obligations or liabilities under this Agreement (including the Grantee's liability for the suitability and adequacy of any proposed design, materials and construction methods relating to the Pedestrian Bridge, and the compliance of any such work or activity with all Applicable Laws), or (B) be deemed an election by or the imposition of any obligation upon the MBTA to perform or undertake the same or any other work on any future occasion, except to the extent the MBTA expressly provides otherwise in writing;

(f) Prior to the commencement by the Grantee of any Major Activity the Grantee must obtain a License for Entry from the MBTA, in the MBTA's then current standard form, permitting such work (with the insurance and other requirements pursuant to such License for Entry modified as appropriate given the scope of the proposed activity for which the License for Entry is being required). The determination as to whether such activity is a "Major Activity" shall be made by the MBTA in its reasonable discretion; and

(g) The maintenance obligations with respect to the Innerbelt Interim Crossing Easement Area and the Additional Innerbelt Maintenance Area are detailed in the following maintenance narrative.

**Maintenance Narrative Respecting Interim At-Grade Connection Pathway to East
Somerville Green Line Station (the "Station")**

**A. Specific Maintenance Standards and Agreements Concerning Innerbelt Interim
Crossing Easement Area**

Innerbelt Owner will maintain the Innerbelt Interim Crossing Easement Area in accordance with the following:

Element	Maintenance Responsibility
1. Asphalt	a. Innerbelt Owner shall be responsible for the maintenance of the asphalt on the Innerbelt Interim Crossing Easement Area.

Exhibit F

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	<ul style="list-style-type: none"> b. Maintenance of asphalt shall include patching and repairing the path surface, repairing potholes, repainting any striping, repaving, and general upkeep of the asphalt, and shall be performed in accordance with industry standards.
2. Snow Removal	<ul style="list-style-type: none"> a. Innerbelt Owner will be responsible for snow removal and surface treatment (salt/sanding) of the Innerbelt Interim Crossing Easement Area as needed after 0.5" or greater of snow accumulation and shall ensure that the Innerbelt Interim Crossing Easement Area is free of such snow accumulation to permit passage to the Station during hours the Station is open to the public. b. Crews should ensure that the Innerbelt Interim Crossing Easement Area is cleared to be at least 5 ft. wide so customers, including those using wheeled mobility, can pass through safely, and curb ramps within the Innerbelt Interim Crossing Easement Area are cleared. c. The Innerbelt Interim Crossing Easement Area shall be cleared of snow and ice to allow clear safe travel as an accessible path following all snow and ice events. d. The MBTA reserves the right to complete such snow removal and treatment in the event Innerbelt Owner fails to do so.
3. Landscaped Areas	<ul style="list-style-type: none"> a. Innerbelt Owner will be responsible for maintenance of all landscaped areas on the Innerbelt Interim Crossing Easement Area, if any. b. Maintenance activity shall be performed in accordance with industry standards.
4. Signage	<ul style="list-style-type: none"> a. Innerbelt Owner will be responsible for maintaining all signage within the Innerbelt Interim Crossing Easement Area b. Any signage within the Innerbelt Interim Crossing Easement Area that directs the public to the Station or otherwise related to the MBTA shall be maintained and replaced as necessary in accordance with MBTA standards.
5. Trash Cans	<ul style="list-style-type: none"> a. Innerbelt Owner shall be responsible for installing and maintaining trash cans on the Innerbelt Interim Crossing Easement Area b. Trash removal will be conducted Monday – Friday as needed.

	c. Regularly clean/disinfect trash containers
6. Bicycle Racks	Innerbelt Owner shall be responsible for maintaining bicycle racks installed on the Innerbelt Interim Crossing Easement Area, if any.
7. Lighting	Innerbelt Owner shall be responsible for installing and maintaining lighting sufficient to safely illuminate the Private Premises at all times the Station is open to the public.
8. Fencing	The MBTA shall be responsible for maintaining all fencing on the MBTA Property, including fencing between the Innerbelt Property and the MBTA Property; Innerbelt Owner shall be responsible for maintaining any fencing within the Innerbelt Interim Crossing Easement Area, if any.
9. Accessibility	Innerbelt Owner shall maintain the Innerbelt Interim Crossing Easement Area so that it is capable of serving as an ADA compliant accessible path to the Station in accordance with the requirements of this Agreement
10. Drainage	Innerbelt Owner shall be responsible for maintaining any drainage infrastructure on the Innerbelt Interim Crossing Easement Area.
11. General	Innerbelt Owner shall sweep, clean, and remove any sand, salt, debris, trash, from the Innerbelt Interim Crossing Easement Area and shall regularly clean/disinfect benches, hand railings and other high-touch surfaces.

NOTE: With respect to snow removal on the Innerbelt Interim Crossing Easement Area, Innerbelt Owner shall maintain snow clearing capability to respond reasonably promptly twenty-four hours a day, seven days a week, and will commence clearing operations promptly whenever snow or slush accumulations are one inch or more depth, based upon forecasts made by the National Weather Service (or similar meteorological service).

B. Specific Maintenance Standards and Agreements Concerning the Additional Innerbelt Maintenance Area

In accordance with the requirements of Section 9 of this Agreement, Innerbelt Owner will have the right to, and will, perform the following maintenance duties within the Additional Innerbelt Maintenance Area (the "Additional Area"). Innerbelt Owner and the MBTA specifically acknowledge and agree that Innerbelt Owner's responsibilities respecting the Additional Area

shall be limited to the following activities and that the MBTA specifically retains the obligation for all other maintenance of the Additional Area, including all capital and other responsibilities.

Element	Maintenance Responsibility
1. Asphalt	<ul style="list-style-type: none"> a. Innerbelt Owner shall be responsible for the non-capital maintenance of the asphalt on the Additional Area. b. Maintenance of asphalt shall include non-capital patching and repairing of the path surface, repairing potholes, repainting any striping, and general upkeep of the asphalt, and shall be performed in accordance with industry standards. c. The MBTA shall be responsible for asphalt replacement and repaving as needed.
2. Snow Removal	<ul style="list-style-type: none"> a. Innerbelt Owner will be responsible for snow removal and surface treatment (salt/sanding) of the Additional Area as needed after 0.5" or greater of snow accumulation and shall ensure that the Additional Area is free of such snow accumulation to permit passage to the Station during hours the Station is open to the public. b. Crews should ensure that the Additional Area is cleared to be at least 5 ft. wide so customers, including those using wheeled mobility, can pass through safely, and curb ramps within the Additional Area are cleared. c. The Additional Area shall be cleared of snow and ice to allow clear safe travel as an accessible path following all snow and ice events. d. The MBTA reserves the right to complete such snow removal and treatment in the event Innerbelt Owner fails to do so.
3. Landscaped Areas	<ul style="list-style-type: none"> a. Innerbelt Owner will be responsible for maintenance of all landscaped areas on the Additional Area, if any. b. Maintenance activity shall be performed in accordance with industry standards.
4. Trash Cans	<ul style="list-style-type: none"> a. Innerbelt Owner shall be responsible for installing and maintaining trash cans on Additional Area b. Trash removal will be conducted Monday – Friday as needed. c. Regularly clean/disinfect trash containers
5. Lighting	<p>Innerbelt Owner shall be responsible for replacement of light bulbs as needed within the Additional Area. All other lighting maintenance shall be the MBTA's responsibility.</p>

6. Fencing	The MBTA shall be responsible for maintaining all fencing on the MBTA Property, including fencing within the Additional Area.
9. Accessibility	Innerbelt Owner shall maintain the Additional Area so that it is capable of serving as an ADA compliant accessible path to the Station in accordance with the requirements of this Agreement
10. General	Innerbelt Owner shall sweep, clean, and remove any sand, salt, debris, trash, from the Additional Area and shall regularly clean/disinfect benches, hand railings and other high-touch surfaces.

NOTE: With respect to snow removal on the Additional Area, Innerbelt Owner shall maintain snow clearing capability to respond reasonably promptly twenty-four hours a day, seven days a week, and will commence clearing operations promptly whenever snow or slush accumulations are one inch or more depth, based upon forecasts made by the National Weather Service (or similar meteorological service).

[END OF EXHIBIT F]

Exhibit G

Insurance Requirements

1. Insurance Required of the Grantee.

(a) Prior to the commencement of construction of the Pedestrian Bridge, the Grantee shall purchase and maintain throughout the term of this Agreement, at its sole cost and expense, commercial general liability insurance and/or umbrella liability insurance so as to provide coverage of not less than Five Million Dollars (\$5,000,000.00) combined single limit per occurrence, Ten Million Dollars (\$10,000,000.00) general aggregate, and Ten Million Dollars (\$10,000,000.00) products/completed operations aggregate for bodily injury, personal injury and property damage. Coverage shall apply to (i) liability arising out of the actions of the Grantee and any Grantee Party, (ii) liability assumed under contract and (iii) liability imputed to the Grantee through the activities of independent contractors, including subcontractors-. The policy(ies) shall name the MBTA as an additional insured. The policy(ies) shall provide coverage on a primary and non-contributory basis for the MBTA. The policy(ies) shall contain a clause waiving the right of subrogation in favor of the MBTA. The policy(ies) must contain endorsement(s) or language, which must be stated on the certificate of insurance, providing coverage equivalent to the coverage provided by ISO form CG 24 17 10 01. Coverage shall be written on an occurrence basis and shall include, but not be limited to the following:

- Products and completed operations hazard
- Contractual liability covering this Agreement
- Broad form property damage
- Personal injury coverage
- Coverage for the so-called "XCU" hazards, i.e., collapse of Pedestrian Bridges, blasting, and damage to underground property

The policy form(s) shall be amended so that the aggregate limits of liability apply per location or project. The policy(ies) must contain an endorsement removing the exclusion for activities within fifty (50) feet of the railroad tracks on the right of way.

No self-insured retention on the part of the Grantee shall be permitted with respect to the coverages to be provided by the aforementioned commercial general liability or umbrella liability policies.

(b) The Grantee shall purchase and maintain throughout the term of this Agreement, at its sole cost and expense, without duplication to the builder's

risk insurance set forth in Section 2.(f) below, commercial property insurance insuring the Pedestrian Bridge against risks of physical damage and loss as insured by the "all risk" policy form, which is at least as broad as that which is issued through the Insurance Services Office as form CP 10 30-Causes of Loss-Special Form, including coverage for fire, explosion, and terrorism, as well as reasonable coverage limits for earth movement, windstorm, and flood. The amount of insurance on the "all risk" form shall be not less than the full replacement cost value of the Pedestrian Bridge, with an agreed amount endorsement (waiving applicable coinsurance clause). The Grantee shall be responsible for all deductible amounts, which in any event shall not exceed Fifty Thousand Dollars (\$50,000.00) per occurrence. The policy shall be endorsed to provide that any act or negligence of the Grantee shall not prejudice the rights of the other Parties. Such policies shall name the Grantee as insured and the MBTA as a certificate holder.

2. Insurance Required of the Grantee or the Grantee's Contractors and Subcontractors.

(a) Worker's Compensation and Employer's Liability. Prior to and as a condition of commencement of any repair, maintenance, replacement, demolition, construction or other work within the Pedestrian Bridge or elsewhere within the Easement Areas (without regard to whether a License for Entry is required under this Agreement), the Grantee shall cause all of its contractors and subcontractors to obtain and thereafter to maintain throughout the terms of their respective contracts, Massachusetts statutory workers' compensation insurance, including coverage required under the U.S. Longshore and Harbor Worker's Compensation Act, Jones Act or other federal laws to the extent applicable to the work to be performed, and employer's liability insurance for not less than One Million Dollars (\$1,000,000.00) per occurrence for all persons to be employed by the Grantee in connection with activities on the Easement Areas or related to the Project. The policies shall contain a clause waiving the right of subrogation in favor of the MBTA.

(b) Commercial General Liability. Prior to and as a condition of commencement of any repair, maintenance, replacement, demolition, construction or other work within the Pedestrian Bridge or elsewhere within the Easement Areas (without regard to whether a License for Entry is required under this Agreement), the Grantee shall cause all of its contractors and subcontractors to obtain and thereafter to maintain throughout the terms of their respective contracts commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate, and Two Million Dollars (\$2,000,000.00) products/completed operations aggregate for bodily injury, personal injury and property damage (except that with respect to subcontractors whose subcontract amount is less than \$500,000, the aggregate coverage limit shall be not less than One Million Dollars (\$1,000,000) combined single limit).

Coverage shall include liability assumed under contract. The policy shall name the MBTA as an additional insured. The policy shall provide coverage on a primary and noncontributory basis for the MBTA. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. The policy must contain endorsement(s) or language, which must be stated on the certificate of insurance, providing coverage equivalent to the coverage provided by ISO form CG 24 17 10 01. Coverage shall be written on- an occurrence basis and shall include, but not be limited to the following:

- Products and completed operations hazard
- Contractual liability covering this Agreement Broad form property damage
- Personal injury coverage
- Coverage for the so-called "XCU" hazards, i.e., collapse of Pedestrian Bridges, blasting, and damage to underground property

The policy form shall be amended so that the aggregate limits of liability apply per location or project (except that with respect to subcontractors whose subcontract amount is less than \$500,000). The policy must contain an endorsement removing the exclusion for activities within fifty (50) feet of the railroad tracks on the right of way.

(c) Automobile Liability. Prior to and as a condition of commencement of any repair, maintenance, replacement, demolition, construction or other work within the Pedestrian Bridge or elsewhere within the Easement Areas (without regard to whether a License for Entry is required under this Agreement), the Grantee shall cause all of its contractors and subcontractors to _obtain and thereafter to maintain throughout the terms of their respective contracts, automobile liability insurance covering owned, non-owned, leased and hired vehicles in accordance with Applicable Laws, and to the extent applicable to the respective contractor or subcontractor, with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury and property damage. Coverage shall be written on an occurrence basis (as opposed to a claims-made basis). The policy shall name the MBTA as an _additional insured. The policy shall provide coverage on a primary and non-contributory basis for the MBTA. The policy must contain endorsement(s) or language, which must be stated on the certificate of insurance, providing coverage equivalent to the coverage provided by ISO form CA 20 70 10 01.

(d) Umbrella Liability. Prior to and as a condition of commencement of any repair, maintenance, replacement, demolition, construction or other work within the Pedestrian Bridge or elsewhere within the Easement Areas (without regard to whether a License for Entry is required under this Agreement), the Grantee shall cause all of its contractors and subcontractors

to obtain and thereafter to maintain throughout the terms of their respective contracts, umbrella liability insurance, which includes excess coverage over the primary commercial general liability, automobile liability and the employer's liability coverages set forth above. Such coverage shall- be no less broad than the primary coverages. Coverage shall be written on an occurrence basis (as opposed to a claims-made basis), with limits of not less than Two Million-Dollars (\$2,000,000.00) combined single limit per occurrence, Three Million Dollars (\$3,000,000.00) general aggregate, and Three Million Dollars (\$3,000,000.00) products/completed operations aggregate for bodily injury, personal injury and property damage (except that with respect to subcontractors whose subcontract amount is less than \$500,000, the aggregate coverage limit shall be not less than Two Million Dollars (\$2,000,000), whether achieved through a commercial general liability policy alone or through a combination of such a policy and an umbrella liability policy). The policy shall name the MBTA as an additional insured. The policy shall provide coverage on a primary and non-contributory basis for the MBTA. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. The policy must contain endorsement(s) or language, which must be stated on the certificate of insurance, providing coverage equivalent to the coverage provided by ISO form CU 24 09 03 05.

(e) Railroad Protective Liability. At all times that the Grantee or any Grantee Party is performing excavation work within fifty (50) feet of the tracks on the right of way, unless otherwise approved by the MBTA, the Grantee shall obtain and thereafter maintain, or shall cause its contractor to obtain and thereafter to maintain throughout the term of its contract, Railroad Protective Liability insurance insuring the MBTA as the first named insured with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) in aggregate combined bodily injury property damage. The MBTA shall be provided with an original policy of Railroad Protective Liability Insurance naming the MBTA as "first named insured."

(f) Builder's Risk Insurance. During the performance of any construction work within the Easement Areas for which the cost will exceed Five Million Dollars (\$5,000,000.00) (a "Significant Project") if required by the MBTA after its review of the scope of each Significant Project, the Grantee shall either obtain and thereafter maintain, or shall cause its contractor to obtain and thereafter to maintain throughout the term of its contract, builder's risk insurance insuring the Pedestrian Bridge and all construction work being performed therein or elsewhere within the Easement Areas (excepting site work and other at-grade work that is not subject to direct physical damage covered by builder's risk insurance) against risks of physical damage and loss as insured on an "all risk" form- comparable to at least what is issued through the Insurance Services Office, including fire, explosion and terrorism. Earth movement, windstorm, and flood will also be insured against at limits for comparable

Pedestrian Bridges within the Boston area. The amount of insurance on the "all risk" form shall be determined by the MBTA after its review of the scope of each Significant Project, and all policies shall include an agreed amount endorsement. The Grantee shall be responsible for all deductible amounts. The policy shall be endorsed to provide that any act or negligence of the Grantee shall not prejudice the rights of the MBTA. Such policies shall name the Grantee as insured and the MBTA as a certificate holder.

(g) Professional Liability Insurance. In connection with any Significant Project, the Grantee shall cause its architect, civil engineer, structural engineer and environmental engineer to each carry project specific professional liability insurance coverage for errors, omissions and negligent acts in an amount required by the MBTA after its review of the scope of each Significant Project. Such insurance shall extend to any act, error or omission in the performance of services in connection with such construction work. Such insurance policies shall be endorsed to include an extended claim reporting endorsement of at least three years following completion of work by the design professional or consultant.

(h) Contractor's Pollution Liability. During the performance of any Significant Project or other work for which a License for Entry is required under this Agreement to perform work related to Hazardous Materials, the Grantee shall cause its general contractor to obtain and maintain contractor's pollution liability coverage in an amount required by the MBTA after its review of the scope of each Significant Project dedicated to such construction project, and with terms reasonably satisfactory to the MBTA. Such insurance shall include the MBTA and the Grantee as additional insureds on a primary and non-contributory basis. If such coverage is provided by a claims-made policy, the policy must be maintained for a period of three years following completion of construction of the Project or the policy must be endorsed to include an extended claim reporting period of such duration.

(i) Other Insurance. Such other insurance in such coverages and amounts as may from time to time be reasonably required by the MBTA insuring the Grantee and the MBTA against other insurable hazards, as required by the MBTA from time to time in connection with Pedestrian Bridges and easement areas comparable in size and nature of use to the Pedestrian Bridge and the Easement Areas.

3. The following requirements shall apply to the insurance required to be maintained by the Grantee or its contractors, subcontractors, consultants and design professionals.

(a) The MBTA reserves the right to require higher limits and/or additional coverages, if the MBTA, in its sole discretion, determines that conditions warrant such additional limits and/or coverage.

(b) All insurance required to be maintained by the Grantee pursuant to this Agreement shall be written by insurance companies authorized by the Massachusetts Department of Insurance to underwrite insurance in Massachusetts and reasonably acceptable to the MBTA, and must have a Best's Financial Strength Rating of "A-" or better and a Best's Financial Size Category Class of "IX" (or the equivalent), or better unless otherwise approved by the MBTA in writing.

(c) All required insurance policies except for Worker's Compensation, Builder's Risk, Professional Liability and Property Insurance shall be endorsed to name the MBTA as an additional insured. All builder's risk and property insurance policies shall be endorsed to name the MBTA and the Grantee as loss payees, as their interests may appear.

(d) All required insurance policies shall name the MBTA as a certificate holder and shall be endorsed to waive the insurer's rights of subrogation against the MBTA and the MBTA Parties prior to a loss.

(e) The Grantee shall cause each contractor, subcontractor, consultant and design professional employed by or for the benefit of the Grantee in connection with the design or performance of any Major Activity or other construction work to be performed within the Pedestrian Bridge or elsewhere within the Easement Areas to purchase and maintain insurance of the types and amounts specified above. When requested by the MBTA, the Grantee shall furnish copies of certificates of insurance evidencing coverage for each contractor, subcontractor, consultant or design professional.

(f) Insurance shall not be subject to cancellation, material change in policy terms or conditions or non-renewal by either the insurance company or the Grantee unless thirty (30) days' prior written notice is provided to the MBTA.

(g) Failure to provide and continue in force the preceding insurance shall be deemed a default under this Agreement.

(h) The Grantee shall cause certificates of insurance evidencing each of the required insurance coverages to be delivered to the MBTA electronically prior to the commencement of the term of this Agreement (and certificates evidencing such coverages as are required to be maintained by contractors or subcontractors, or certificates evidencing additional insurance coverages as are required with respect to work to be performed, to be delivered to the MBTA prior to the commencement of such work), and renewal certificates to be delivered to the MBTA thereafter not later than thirty (30) days after the

expiration of the original policy or the preceding renewal policy (as the case may be). The certificate shall include the following minimum information:

- 1) The names and addresses of the certificate issuer and the insured
 - 2) Name of insurance company
 - 3) Policy number
 - 4) Policy period
 - 5) Identification of property
 - 6) Proper notice of material change, non-renewal or cancellation language as indicated above
 - 7) Policy limits
 - 8) A statement that each policy, except Worker's Compensation, Builder's Risk, Professional Liability and Property Insurance, is endorsed to name the MBTA as an additional insured
 - 9) A statement that each of the required insurance policies carried by the Grantee or any of its contractors, subcontractors, consultants or design professionals shall be primary and any insurance maintained by the MBTA shall be excess and non-contributory
 - 10) The general liability policy section must include a check in the "per location" or "per project" box, and must specifically state that contractual liability and "XCU" coverage is provided.
4. Certificates shall be addressed to the MBTA as certificate holder. The MBTA is entitled to rely upon the information provided in the certificate and the Grantee is responsible for the accuracy and validity of such information. The Grantee agrees that, if any certificate of insurance required hereunder states that said certificate does not confer rights to the certificate holder or otherwise disclaims responsibility for the MBTA's reliance thereon, the Grantee must provide the MBTA with an endorsement demonstrating the specified additional insured status. The MBTA shall in addition have the right to require complete copies of policies of insurance in lieu of certificates of insurance.
- (a) All such required insurance of the Grantee shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, certified by the Secretary of the Treasury, in concurrence with the Secretary of Homeland Security, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002, as amended.

Exhibit G

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(b) All required insurance policies shall provide coverage on a primary and noncontributory basis for the MBTA.

(c) If the Grantee fails (i) to obtain or to maintain in full force and effect any of the insurance coverages required of it by this Section 12, or (ii) to cause its contractors and subcontractors to obtain or to maintain in full force and effect any of the insurance coverages required of them by this Section 12, then, without limiting any of the MBTA's other rights, and notwithstanding any other provision of this Agreement concerning notice and cure of defaults, the MBTA may obtain such insurance, and the Grantee shall reimburse the MBTA for the cost thereof and related expenses and other charges incurred by the MBTA in connection therewith within thirty (30) days of demand therefor. The MBTA shall provide written notice to the Grantee of any such failure and shall provide the Grantee the opportunity to cure any such failure within five (5) Business Days of the receipt of such notice prior to obtaining such insurance.

(d) Any property or builder's risk insurance required to be furnished by the Grantee may be effected by a policy or policies of blanket insurance; provided, however, that the amount of the total insurance available or otherwise allocated to the Pedestrian Bridge shall be such as to furnish in protection the reasonable equivalent of separate policies in the amounts herein required, and provided further that, in all other respects, any such policy or policies shall comply with the other provisions of this Agreement. With respect to any insurance carried under a blanket policy, the Grantee shall deliver to the MBTA endorsements specifying the amount of blanket insurance allocated to the Pedestrian Bridge, as long as the possession of such endorsements confers upon the holder thereof the same rights as the holder would have if in possession of the original of such insurance policies.

(e) The aforesaid minimum limits of insurance policies shall be reasonably re-evaluated as of the date the Grantee is permitted to exercise its permanent easement rights as conveyed in Sections 2(a) and 2(b) above, and may be reasonably increased from time to time by the MBTA to reflect changes in market conditions and upon reasonable prior notice to the Grantee, and shall in no event limit the liability of the Grantee hereunder. The MBTA and the Grantee mutually agree that, with respect to any property loss, the one suffering said property loss releases the other of and from any and all claims with respect to such property loss that are covered by valid and collectable insurance policies; and they further mutually agree that their property insurance policies shall either recognize such waiver of subrogation or be endorsed to recognize such waiver of subrogation. Nothing contained in this Section shall be deemed to modify or otherwise affect releases elsewhere herein contained of either Party for claims.

(f) With respect to any insurance coverages which the MBTA is required to maintain pursuant to this Agreement, the MBTA may satisfy such requirements by means of self-insurance which shall respond as though self-insurance coverage were provided by a third-party insurer. As of the date hereof, the MBTA self-insures all liability exposures up to \$7,500,000.00 and maintains excess liability insurance above such \$7,500,000.00 self-insured retention up to \$67,500,000.00.

(g) With respect to any insurance coverages which the City is required to maintain pursuant to this Agreement, the City may satisfy such requirements by means of self-insurance which shall respond as though self-insurance coverage were provided by a third-party insurer. As of the date hereof, the City self-insures all liability in excess of an annual appropriation of \$300,000 in the Judgments and Settlements account administered by the City's Law Department.