

FOLEY, HOAG & ELIOT LLP

ONE POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-2170

Jeffrey B. Mullan
(617) 832-1224
jmullan@fhe.com

TELEPHONE 617-832-1000
FACSIMILE 617-832-7000
<http://www.fhe.com>

1615 L STREET, N.W., SUITE 850
WASHINGTON, D.C. 20036
TEL: 202-775-0600
FAX: 202-857-0140

September 17, 1997

Edward J. Corcoran II, Esquire
Chief Counsel
Massachusetts Highway Department
10 Park Plaza
Boston, MA 02116

Re: Land Transfer Agreement with the United States Postal Service

Dear Ned:

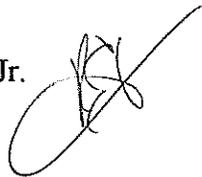
Enclosed for your files and the files of the Highway Commission is the original and a copy of the referenced agreement.

Sincerely,


Jeffrey B. Mullan

JBM/mhh

cc: William J. Smith, Esquire
Gerald L. Solomon, Esquire
Mr. Richard Moeller
Mr. Curt DeSautel
Mr. Roland E. Dutil, Jr.
Mr. Robert R. Albee



7/30/97

LAND TRANSFER AGREEMENT

This LAND TRANSFER AGREEMENT (this "Agreement") is made as of the 5th day of ^{August} ~~July~~, 1997, by and between the **Massachusetts Highway Department**, a state agency established pursuant to Chapter 16 of the Massachusetts General Laws, with a usual place of business at 10 Park Plaza, Boston, Massachusetts ("MHD"), the **United States Postal Service**, a public instrumentality and an independent establishment of the executive branch of the Government of the United States established pursuant to Title 39 of the United States Code, having an office at Facilities Department, Realty Asset Management, 4301 Wilson Boulevard, Suite 300, Arlington, VA 22203-1861 ("USPS"), and the **Federal Highway Administration**, a federal agency established pursuant to Title 49 of the United States Code, having an office at 55 Broadway, Cambridge, Massachusetts 02142 ("FHWA"). MHD, USPS and FHWA may hereafter be collectively referred to as the "Parties."

RECITALS

1. MHD is in the process of designing and constructing the Central Artery / Ted Williams Tunnel Project (the "Project"), which includes, among other elements, an extension of Interstate 90 in the City of Boston from its present terminus at the intersection of the South Bay Interchange with Interstate 93 easterly to a point located on Route 1A in East Boston, Massachusetts.

2. USPS owns properties located within the proposed right of way design of the Project which will be affected by Project construction and which properties are identified as: (I) the General Mail Facility located at 25 Dorchester Avenue, Boston, Massachusetts (the "GMF Parcel"); and (ii) an approximately 1,500 space surface parking lot located on A Street in Boston, Massachusetts (the "A Street Lot"). Since January 1, 1997, MHD has had the use of portions of the GMF Parcel and the A Street Lot on a temporary basis for purposes in connection with the Project.

3. The Project is funded, in part, by FHWA, and as such is subject to compliance with all applicable federal law and regulations. The Parties intend to preserve, to the maximum extent feasible, the MHD's eligibility for such funding as it relates to the design and construction of the Project.

4. The acquisition of rights in the USPS Properties for the Project by the MHD is governed, in part, by 23 CFR Part 712, Subpart E, which addresses acquisition of federal lands for the Project, as well as Title 39 of the United States Code, which establishes the rights, power, and authority of the USPS relative to property owned or controlled by the USPS.

5. This Agreement is intended to: (I) establish an overall framework for the use and acquisition of the portions of the GMF Parcel and the A Street Lot which are required for the Project; (ii) ensure that the USPS is paid just compensation for the use and acquisition of portions of the GMF Parcel and the A Street Lot; (iii) ensure postal operations are not materially adversely impacted by MHD construction activities; (iv) establish a framework pursuant to which the USPS can achieve certain uses of the

GMF Parcel and the A Street Lot following the construction of the Project, including, but not limited to, development of air rights for office, hotel, or other uses deemed appropriate by the USPS and permitted by applicable law; and (v) comply with the requirements set forth in 23 CFR Part 712, Subpart E.

NOW, THEREFORE, in consideration of the mutual promises as more particularly set forth below, the Parties hereby agree as follows:

AGREEMENT

1.0 Conveyance of Easements in Land From USPS to MHD

1.1 USPS hereby agrees to convey to MHD, and MHD hereby agrees to accept from USPS, those certain temporary and permanent easements in the GMF Parcel and the A Street Lot which are required by MHD for the Project and which are more particularly shown on the plans attached to this Agreement as Exhibit A (GMF Parcel) and Exhibit B (A Street Lot) (which areas are collectively referred to herein as the "USPS Properties"). All such rights in the USPS Properties granted pursuant to this Agreement shall be in the form of temporary or permanent easements, it being the intention of the Parties that the fee simple title to the USPS Properties shall remain with USPS.

1.2 Conveyance of rights to MHD as set forth in Section 1.1 above shall be subject to the terms and conditions set forth in Exhibit C during the term of the temporary easements so conveyed, and shall include MHD's right to use the areas identified as temporary easements on Exhibit A and Exhibit B (the "Temporary

Easement Areas", which areas include the right to temporarily occupy the surface of the permanent easement areas identified on said exhibits) up to and including December 31, 2001; subject, however, to the right of MHD, upon notice given to USPS not later than six (6) months prior to December 31, 2001, to extend such temporary easements for a six (6) month period (the "Extension Period") at no additional expense to MHD or USPS. Any such extension taken by MHD shall be further subject to the determination of USPS, made not later than ninety (90) days following its receipt of notice from MHD, that MHD's use of the Temporary Easement Areas during the Extension Period will have no material adverse impact on USPS operations on such Temporary Easement Areas, or on any air rights development (including the costs and/or schedule related to such development) thereon; provided further, in the event the USPS does not make such a determination, the MHD shall not be permitted to use the Temporary Easement Areas during the Extension Period. Occupancy of the Temporary Easement Areas by MHD beyond the Extension Period shall be strictly prohibited, but shall be subject to additional negotiation and a written agreement between the Parties. The Parties agree to cooperate with each other to the fullest extent regarding the use of the Temporary Easement Areas for the Project beyond the Extension Period should that become necessary; in furtherance thereof, the Parties specifically recognize that surface restoration under CO1A3 and CO9A7 may occur after the expiration of the initial Term of the Temporary Easements or the Extension Period, if permitted, and agree to mutually cooperate to advance the MHD and USPS projects without material or substantial adverse cost/schedule or Postal operation impacts to the extent possible.

easement extended to 6-30-02

NEGOTIATION BEYOND 6-30-02

1.3 The conveyances set forth in Section 1.1 above shall be by quitclaim deed(s) conveying good, record and marketable rights in the USPS Properties to MHD. Such deeds shall be delivered to MHD at its offices not later than thirty (30) days from USPS's receipt of a written request to do so from MHD; provided, however, that any such request, and the party making the request, is otherwise in compliance with the terms and conditions of this Agreement. The USPS agrees to not further encumber the USPS Properties after the date of this Agreement without the prior written approval of MHD.

1.4 The conveyance of rights in the GMF Parcel to the MHD shall include the permanent right for the MHD, its successors and assigns, to park five (5) passenger vehicles within 200 feet of vent building #1 (so called), and one additional space to the north side entrance of vent building #1 (so called) for vehicles displaying handicap decals, which parking space shall be designed according to the then applicable Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).

2.0 Conveyances from MHD to USPS

MHD -> USPS

2.1 As partial consideration for the conveyance of the USPS Properties to MHD as set forth above, and pursuant to a directive of FHWA attached hereto and incorporated herein as Exhibit D, MHD hereby agrees to convey to USPS, and USPS hereby agrees to accept from MHD, the following:

(a) the fee simple title in the former so-called House Of Bianchi, Slade Gorton & Co., Solomon and Lewis properties (parcels 64-LT-1; 64-SR-1; 64-SR-2) as

indicated on the attached Exhibit B-4 (the "A Street Surplus Parcels") as functional replacement for USPS operations, including, but not limited to, parking. MHD's conveyance of parcel 64-LT-1 to USPS shall be subject to a subsurface permanent highway easement for the right to construct, use, maintain, repair and replace portions of the Project located thereon by MHD;

(b) the fee simple title in the property known as the "New Sliver Parcel" and identified as parcel 60-SR-1 on Exhibit B-4. USPS acknowledges that the New Sliver Parcel is subject to, and is limited by, certain air rights or air space now or formerly owned by Nicholas Contos et al., and shall be conveyed subject to the MHD's reservation of an easement (not to exceed sixty (60) feet in width) to construct, use, maintain, repair and replace a connection to the so-called South Boston By-Pass Road over a portion of the New Sliver Parcel;

(c) such interests in property as MHD shall acquire and be authorized to convey in the properties, including but not limited to, development rights, not required for Project purposes as shown on the plan attached hereto as Exhibit A-4;

(d) title to the "New Dorchester Avenue Bridge" to be constructed within the limits of portions of the property identified on the plan attached hereto as Exhibit A-4 together with the necessary easements to maintain the bridge, its walls, approach slabs and related appurtenances; and

(e) the right to use, pursuant to the procedure set forth in Exhibit E attached hereto, the area outside the limits of current USPS ownership as are

necessary to utilize the foundations illustrated on Exhibit C-5 as shown on Exhibit B-3 and Exhibit B-4.

2.2 MHD agrees that USPS may occupy the Temporary Easement Areas on the A Street Lot granted to MHD pursuant to Section 1.1 of this Agreement prior to their expiration, at no expense to USPS, up to and including December 31, 2001; subject, however, to the determination of MHD, made not later than ninety (90) days following its receipt of a notice from USPS requesting the use of the Temporary Easement Areas, that USPS's use of the Temporary Easement Areas will have no impact (financial or otherwise) on MHD's design or construction of the Project, or on any of MHD's construction contractors relative to the portion of the Project being constructed on the USPS Properties; provided further, in the event the MHD does not make such a determination, the USPS shall not be permitted to use the Temporary Easement Areas. The parties agree to cooperate with each other to the fullest extent regarding use by the USPS of the Temporary Easement Areas prior to the expiration of the temporary easements granted in accordance with this Agreement, such use by the USPS to include, but not be limited to, the furtherance of air rights development of the USPS Properties for office, hotel, or other use deemed appropriate by the USPS and otherwise permitted by law.

2.3 The conveyances set forth in Section 2.1 above shall be by quitclaim deed(s) conveying good, record and marketable rights in the properties to be conveyed by MHD. Subject to the requirements of this Agreement, deeds for the properties or rights in properties to be conveyed to USPS as set forth in Sections 2.1 (a), (b), (c), (d)

and (e) above shall be delivered to the USPS at its offices, in a form suitable for recording, not later than sixty (60) days from MHD's receipt of a written request from USPS, but in no event earlier than the later of December 31, 2001, or the date which the portions of the Project on which the USPS Properties are located are open to vehicular traffic.

2.4 The Parties acknowledge that the precise areas and/or terms of conveyance of the properties to be conveyed to or by MHD will be substantially as shown on exhibits attached to this Agreement, but are subject to a final determination to conform to the final design of the applicable portion of the Project, and an analysis of the construction related to surface restoration needs of MHD regarding which portions of the properties will be available for disposition.

2.5 Until such time as title to the New Silver Parcel is conveyed to the USPS, the MHD shall provide to USPS a license to use the New Silver Parcel which, so long as the USPS remains in compliance with the terms of this Agreement, shall be irrevocable. MHD further agrees to not further encumber any of the properties to be conveyed to USPS after the date of this Agreement without the prior written approval of USPS.

2.6 All conveyances set forth in Section 2.1 shall be subject to the requirements of this Agreement and the requirements set forth in FHWA's January 6, 1997 letter to MHD on the subject, which letter is attached to this Agreement as Exhibit D.

FHWA
APPROVAL
LTR

3.0 Payment for Impacts to USPS Development Potential

3.1 MHD shall, contemporaneously with MHD's receipt of deed(s) conveying rights in the USPS Properties, pay to USPS the sum of THIRTEEN MILLION FOUR HUNDRED EIGHTY EIGHT THOUSAND DOLLARS (\$13,488,000), plus interest on such amount earned at the rate of \$3,695 per day from January 1, 1997 to the date of such payment (the "Adjusted Air Rights Development Compensation"); provided, however, no such interest shall be paid for the period June 25, 1997 through and including July 3, 1997, and such interest shall be paid at the rate of \$1847.50 per day for the period July 4, 1997 through the date of execution of this Agreement by the USPS. Interest shall be paid at the rate of \$3,695 per day from the day after execution of this Agreement by the USPS through the date of payment of the Adjusted Air Rights Development Compensation. The Parties acknowledge that they will use their respective best efforts to convey the USPS Properties and to make payment of the Adjusted Air Rights Development Compensation not later than August 29, 1997. The Adjusted Air Rights Development Compensation shall be made by check drawn on an account controlled by The Commonwealth of Massachusetts or by wire transfer pursuant to wire instructions received from USPS and shall be delivered or transferred to the USPS for deposit in accordance with instruction received from USPS. The Parties acknowledge that the Adjusted Air Rights Development Compensation represents the present value of the damages owed to USPS as a result of its loss of the utility in the development of a portion of the USPS Properties.

AIR RIGHTS
Development
Compensation

3.2 The Parties further acknowledge that the Adjusted Air Rights Development Compensation includes an amount paid to USPS as compensation for

certain increases in construction insurance premiums which have been documented to result from the Project.

3.3 The Parties further acknowledge that the Adjusted Air Rights Development Compensation includes a decrease of a mutually agreed amount equal to the estimated cost of installing elements added to the Project by the MHD at the request of the USPS (the "USPS Elements") in accordance with plans of such elements provided by USPS at its sole cost and expense, a description of which is attached hereto as Exhibit G. The plans of the USPS Elements prepared by or on behalf of USPS are in a form and substance acceptable to MHD and have been prepared solely for the purpose of assisting the USPS in the future development of the A Street Lot. The USPS Elements shall be installed pursuant to an MHD contract performed by a contractor selected by MHD in its sole discretion. Following such installation, the location of the USPS Elements shall be confirmed by a record set of drawings of the applicable portion of the Project at the A Street Lot which shall be prepared by MHD or at the direction of MHD at MHD's sole cost and expense. Any costs related to USPS's design and construction phase services by the engineer of record retained by USPS related to the installation of the USPS Elements by MHD shall be paid directly by USPS.

3.4 The Parties hereby agree that the Adjusted Air Rights Development Compensation, plus the conveyances set forth in Section 2 above, compensates the USPS, in the form of functional replacement, for all damages and impacts associated with Project construction, including, but not limited to: (I) loss of all development

potential and impacts to operations attributable to the Project at the GMF Parcel and the A Street Lot by paying to USPS what it may have spent to retain such potential in light of the construction of the Project; (ii) all costs related to the relocation or demolition of so-called Fruit Farm from its present location on the A Street Lot; (iii) the loss in value attributable to the MHD's use of the Temporary Easement Areas and other portions of the USPS Properties on a permanent basis; and (iv) any and all damages attributable to the loss in value to any of the USPS's remaining land at the GMF Parcel or the A Street Lot. The calculation of compensation due to the USPS includes compensation from USPS to MHD for the costs of any environmental remediation which may be required in order to construct the Project within the A Street Lot.

3.5 The Parties further agree that compensation for Project impacts (as shown on the plans attached as Exhibit A and Exhibit B) shall be capped at the amount set forth in Section 3.1 herein. No further payments shall be made for any acquisition of any rights in the GMF Parcel or the A Street Lot identified in this Agreement, except as specifically provided for herein.

3.6 The Parties further agree that all payments made to USPS pursuant to this Agreement are made as a condition of the land transfer in order to functionally replace the operations and development potential of the USPS Properties in accordance with 23 CFR Part 712, and consider the fact that MHD has had the use of the USPS Properties since January 1, 1997. In no event shall any such payments be considered to be land damages, which the USPS hereby agrees to waive in total. USPS also hereby agrees, in accordance with M.G. L. c. 79, s. 7A, to waive any real

estate appraisals which may otherwise be required by Massachusetts law. The Parties agree the USPS is not entitled to any relocation benefits pursuant to state or federal law.

4.0 Rights of Entry

4.1 The USPS Properties conveyed pursuant to this Agreement shall be subject to the terms and conditions set forth in Exhibit C during the period of the temporary easements conveyed and need not be set forth in any deed or Grant of Temporary Easement, but shall survive any such conveyance.

4.2 The Parties further agree that the Right of Entry for Environmental Testing and Remediation between MHD and USPS dated April 5, 1993, attached hereto as Exhibit I.1 shall remain in full force and effect. In addition, MHD acknowledges its responsibilities under the Air Quality Monitoring Plan for the USPS Boston General Mail Facility, as clarified by an April 16, 1996 letter and Response to United States Postal Service Comments on Massachusetts Highway Department (MHD) Air Quality Monitoring Plan for the USPS Boston General Mail Facility (GMF)-Draft Plan April, 1995, attached hereto as Exhibit I.2 (collectively referred to as the "Air Quality Plan") and covenants to cooperate with the USPS and the Massachusetts Bay Transportation Authority and to perform any action in accordance with said Air Quality Plan, including the maintenance of the second corrective step listed in section 8.0, therein.

4.3 Except as otherwise provided in Sections 1.2, 4.1 and 4.2 above, the provisions of all other Right of Entry Agreements executed between MHD and USPS are superseded by the terms of this Agreement and shall be terminated upon the

conveyance by USPS of rights in the applicable portion of the USPS Properties in accordance with this Agreement.

4.4 The USPS hereby agrees that it shall vacate the so-called Lewis parcel at such time as the MHD completes (i) the striping and resurfacing of the New Sliver Parcel and portions of the A Street Lot outside the easement area as required in Section 7.2(a) of this Agreement; and (ii) subject to MHD's receipt of technical information pertaining to its integration with other USPS systems, the installation of a card controlled gate at the A Street Lot entrance located on West First Street as required in Section 7.2(c) of this Agreement. However, the USPS hereby agrees to vacate the so-called Lewis parcel following the completion of the work set forth at (i), above, and prior to the completion of the work set forth at (ii), above, provided MHD provides full time guard service in accordance with §6.3, hereinafter. Furthermore, should installation of appropriate drainage for surface parking on the New Sliver Parcel require an upgrade at any time to existing drainage systems, such upgrades shall be the sole responsibility of MHD.

5.0 Environmental Matters

5.1 The Parties hereby acknowledge that any costs attributable to the cleanup, removal, disposal or remediation of any Hazardous Materials, Oil or Hazardous Wastes (as those terms are defined by the Massachusetts General Laws) which may be required as a condition of any state or federal law in order to construct those portions of the Project to be constructed on either the A Street Lot or the GMF Parcel, if any, have been accounted for in the compensation paid or otherwise provided

to USPS pursuant to this Agreement. To the extent permitted by state or federal law, all such costs shall therefore be assumed by MHD.

5.2 As the current owner of the A Street Surplus Parcels and the New Sliver Parcel, MHD shall be responsible for, or shall otherwise address, the cleanup, removal, disposal or remediation, if any, of any Hazardous Materials, Oil or Hazardous Wastes (as those terms are defined by the Massachusetts General Laws) which may be required as a condition of any state or federal law in order to construct those portions of the Project to be constructed thereon or as may otherwise be required by any regulatory agency having jurisdiction over such work, and further agrees that any such cleanup, removal, disposal or remediation shall be sufficient to allow the USPS to use the A Street Surplus Parcels and the New Sliver Parcel as surface parking lots. USPS shall be responsible for, or shall otherwise address, the cleanup, removal, disposal or remediation, if any, of any Hazardous Material, Oil or Hazardous Wastes (as those terms are defined by the Massachusetts General Laws) which may be necessary on the A Street Surplus Parcels and the New Sliver Parcel at such time as the USPS wishes to use the A Street Surplus Parcels or the New Sliver Parcel for any other use.

5.3 In addition to the responsibilities set forth in Section 5.2 above, and subject to the provisions of Section 4.2 above, the Parties hereby agree that the MHD may pursue against USPS the recovery of any of its costs incurred in the cleanup, removal, disposal or remediation, if any, of any Hazardous Materials, Oil or Hazardous Wastes (as those terms are defined by the Massachusetts General Laws) located outside the limits of the proposed right of way of the Project (as shown on Exhibit A-2,

A-3 and A-4 and Exhibit B-2 and B-3) which are (i) related in any way to the environmental condition of the A Street Lot or the A Street Surplus Parcels and caused by USPS during USPS's use and occupancy of the A Street Lot or the A Street Surplus Parcels, or (ii) contamination of the A Street Lot or the A Street Surplus Parcels coming onto said property from other property owned or operated by the USPS.

6.0 USPS Force Account

6.1 The Parties hereby acknowledge that MHD and USPS have executed a Force Account Agreement (the "Force Account") dated November 10, 1994, a copy of which is attached as Exhibit J.

6.2 As a part of the Force Account, MHD agrees to promptly reimburse to the USPS certain expenses incurred by USPS which are related to the Project and which are authorized and incurred pursuant to the procedure set forth more particularly therein. Such reimbursement shall be made following the MHD's receipt of proper supporting documentation as more particularly set forth in the Force Account.

6.3 In addition to those tasks otherwise permitted under the Force Account, the Parties hereby agree that the pre-authorized actual and reasonable costs incurred by USPS in connection with: (i) the retention of a consultant to observe and monitor the construction of the Project on the GMF Parcel and the A Street Lot (excepting, however, the design and construction phase services related to the installation of the USPS Elements thereon, as set forth in Section 3.3); (ii) the design of the surface

restoration of the A Street Lot and the so-called New Silver Parcel, including the area of the so-called Fruit Farm following demolition pursuant to Section 7.2(a) (when available) in order to permit the properties to be used for parking during construction;

(iii) the movement of trailers between the GMF Parcel and the A Street Lot necessitated by construction at the GMF Parcel (in the same manner as is set forth in Exhibit I); and

(iv) 24 hour a day guard service for the West First Street entrance to the A Street Lot for the period of time beginning when the USPS vacates the Lewis property until the card controlled gate at the entrance to the Silver Parcel is installed by MHD (except to the extent such time period is attributable to delay caused by USPS action or inaction), shall be eligible for reimbursement pursuant to the Force Account. The Parties acknowledge that the USPS shall be responsible for any mitigation to USPS operations which may be required due to delays in the USPS's completion of the work set forth in this Section 6.3.

7.0 Construction Matters

7.1 The Parties hereby acknowledge that this Agreement represents the full extent of concessions and agreements reached between the Parties with respect to the Project. USPS agrees that it will not seek any further concessions for impacts to the USPS Properties which are related to the Project.

7.2 USPS hereby acknowledges that MHD, as a part of the Project, shall undertake, and MHD hereby agrees to complete, the following:

(a) demolition of the so-called Fruit Farm presently located on the A Street Lot, and striping and resurfacing of the New Silver Parcel and portions of the A

Street Lot outside the easement area in accordance with a design completed by the USPS in accordance with Section 6.3 above;

(b) construction of an extension of the West Service Road under Summer Street and on the A Street Lot in approximately the location as shown on a plan drawn by Fay, Spofford and Thorndike, which construction shall, subject to the further approval of the City of Boston (if necessary), include the curb cut locations illustrated on the plan attached hereto as Exhibit K. In connection with such construction, MHD agrees to provide its cooperation in obtaining any required City of Boston approvals for the curb cuts shown on said Exhibit K;

(c) installation of a card controlled gate located at the A Street Lot entrance located on West First Street;

(d) preparation, including appropriate drainage, striping, asphalt paving and lighting, of either the A Street Surplus Parcels prior to conveyance for use as surface parking or restoration of the north portion of the A Street Lot that was disturbed by Project construction. In the event that the USPS elects to require the MHD to prepare the A Street Surplus Parcels for parking (which election shall be made not later than 60 days following the MHD's forwarding of written notice to USPS's Authorized Representative), such preparation by MHD shall be in lieu of similarly restoring the north portion of the A Street Lot which will be disturbed due to Project construction;

(e) subject to USPS review and approval, the design and reconstruction of GMF parking garage;

(f) subject to USPS review and approval, construction of temporary and permanent Dorchester Avenue bridges, including a guard house, and semaphore gate; and

(g) to the extent deemed necessary by the MBTA, the installation of temporary and permanent 13.8 KV duct banks on the USPS Properties.

All construction to be completed by MHD as required by this Section 7.0 shall be completed in a timely manner so as to not adversely affect USPS operations.

7.3 USPS hereby agrees to require any contractor, developer, ground lessee, partner or other organization which it permits to construct, occupy or develop any structure above the Project or on or above the USPS Properties to: (i) indemnify and hold The Commonwealth of Massachusetts, MHD, its public successors and assigns and the management consultant firm of Bechtel/Parsons Brinkerhoff ("B/PB") harmless from and against any claims, loss, damage, actions, causes of action, or liability(ies) made against or incurred by The Commonwealth of Massachusetts, the MHD its public successors and assigns or B/PB on account of the Project or any USPS development; and (ii) to obtain and maintain comprehensive general liability insurance against any such claim in amounts of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence and in the aggregate, which insurance shall name MHD, its public successors and assigns and B/PB as additional insured parties. Satisfaction of the obligation to obtain and maintain such insurance shall in no way limit the indemnification obligations set forth in this Section. MHD agrees to not seek recovery from the USPS or its developer (which shall not include a construction contractor,

designer, tenant other than a groundlessee or other similar organization) from any claims, loss, damage, actions, causes of action or liability(ies) resulting from construction activities adjacent to or above the Project or USPS Properties which is or are demonstrated to be performed in accordance with plans and specifications reviewed and approved by MHD, and shall look solely to other parties for any available remedy or recovery.

7.4 Not later than six (6) months from the effective date of this Agreement, MHD agrees to prepare a "Developer's Handbook," which shall include, at a minimum, the elements described in Exhibit E, a process for review and approval of plans, and contract documents for the portions of the Project to be constructed on the USPS Properties and/or the A Street Surplus Parcels, for the purpose of, in part, assisting USPS in constructing future development over such portions of the Project. Not later than sixty (60) days prior to the issuance of the "Developer's Handbook," MHD shall submit a draft of the Developer's Handbook to the USPS for its review and approval. Following completion of that portion of the Project over the A Street Lot and/or the A Street Surplus Parcels, the Developer's Handbook shall be edited or amended to include the relevant as-built or record drawings.

7.5 MHD shall give notice to USPS at least 5 working days prior to backfilling any excavation relating to the USPS Elements in order to allow the construction monitor retained by USPS to observe the conditions existing prior to such backfilling. If the construction monitor finds the existing subsurface conditions to violate the construction

documents or this Agreement he/she shall notify the MHD's Authorized Representative for corrective action.

8.0 Resolution of Disputes

To the maximum extent permitted by law, this Agreement shall be subject to the Contract Disputes Act of 1978, 41 U.S.C. §§6101-6113. The Parties agree that following the filing of an appeal with the Board of Contracts Appeals or the Court of Federal Claims, the Parties shall suspend the appeal and address any dispute, disagreement or misunderstanding ("Dispute") regarding any interpretation of, or any action taken or to be taken under or pursuant to this Agreement, to the following staff persons of the Parties for resolution: MHD - Director of Construction Services; USPS - Contracting Officer's Representative; and FHWA - Division Right of Way Program Manager (collectively the "Staff Persons"). For the purposes of this Agreement, the date upon which a Dispute shall be deemed to have arisen is the date when the Staff Persons initially discuss in writing or exchange written correspondence regarding the Dispute.

In the event the Staff Persons, after meeting in person and making all other good faith efforts which may be necessary, cannot resolve the Dispute within ninety (90) days of the date the Dispute arises, the Dispute shall be referred to the following persons for resolution: MHD - CA/TWT Project Director; USPS - Manager of Realty Asset Management; FHWA - Division Administrator (collectively, the "Supervisory Persons"). Any such Dispute referred to the Supervisory Persons shall be referred together with a memorandum summarizing the relevant facts concerning the Dispute

which shall be prepared and agreed to by the Staff Persons and which shall in no event exceed five (5) pages in length.

In the event the Supervisory Persons, after meeting in person and making all other good faith efforts which may be necessary, cannot resolve the Dispute within ninety (90) days of the date the Dispute is referred from the Staff Persons, the action initially commenced may proceed. Nothing herein shall prohibit the Parties from mutually agreeing to submit any Dispute hereunder to mediation or arbitration.

9.0 Miscellaneous Matters

9.1 Successors and Assigns. To the extent permitted by law, the provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the USPS and the public body or bodies succeeding to the interests of the MHD. It is the intention of the Parties that the provisions of this Agreement may only be enforced by the Parties hereto, or their successors and assigns, and that no other person or persons or entity is or are authorized to undertake any action to enforce any provisions hereof without the prior written approval of the Parties. The USPS acknowledges that the MHD may assign its rights and obligations under this Agreement in accordance with such authorization as may be provided by applicable law. When used in this Agreement, even when not specifically stated, the names of the Parties shall also include their respective successors and assigns.

9.2 Notices All notices or other communication required or permitted to be given under this Agreement shall be in writing, signed by a duly authorized officer of the MHD, or a duly authorized contracting officer of the USPS or FHWA, and shall be

deemed delivered if mailed, postage prepaid, by certified mail, return receipt requested, or delivered by hand to the principal office of the intended party, which is as follows unless otherwise designated by written notice to the other parties:

USPS: United States Postal Service
Manager, Realty Asset Management
4301 Wilson Boulevard, Suite 300
Arlington, VA 22203-1861

with a copy to: CA/T Project Coordinator
United States Postal Service
25 Dorchester Avenue
Boston, MA 02205-9750
Attn: David P. Coughlin

MHD: Massachusetts Highway Department
10 Park Plaza, Suite 3150
Boston, MA 02116
Attn: Commissioner

with copies to: Chief Counsel
Massachusetts Highway Department
10 Park Plaza
Boston, MA 02116

FHWA: Division Administrator
Federal Highway Administration
55 Broadway - 10th Floor
Cambridge, MA 02142

9.3 Cooperation; Authorized Representatives. The Parties agree to cooperate with each other reasonably, actively and in good faith and in any other way not specifically set forth in this Agreement in connection with the Project to effectuate the provisions of this Agreement. For the purpose of this Agreement, MHD hereby appoints Robert Albee, at (617) 951-6130 as its authorized representative; the USPS

hereby appoints William Davies, at (703) 526-2854 as its authorized representative; and FHWA hereby appoints its Division Administrator, at (617) 494-3657 as its authorized representative. Questions regarding access to the USPS Properties, or the interpretation of this Agreement shall initially be addressed to the Parties' respective authorized representatives. Each authorized representative shall also be authorized to initiate, execute and deliver any correspondence relating to this Agreement which is not specifically required by the terms hereof.

9.4 Amendments. This Agreement, or any part thereof, may be amended from time to time hereafter only in writing executed by the Parties.

9.5 Future Adjustments to Plans. The Parties acknowledge that the areas of properties set forth on Exhibit A and Exhibit B attached hereto, and in the contract documents relating to the portions of the Project impacting the USPS Properties, while intended to be accurate, are subject to further refinement to accommodate changes initiated by any of the Parties. Any material changes to any such areas or documents which are reasonably expected to impact USPS's operations or USPS's ability to develop the space above the USPS Properties may be made only with the written approval of the Parties. Written notice of any and all such changes shall be provided to the Parties pursuant to Section 9.2 of this Agreement not later than ten (10) working days prior to the effective date of such change. If the proposed change is reasonably expected to affect either USPS operations or the ability of the USPS to develop its property in the future, or add to the cost of any such development, the Parties agree to negotiate until agreement is reached on the extent of any such proposed change.

9.6 Severability. Each and every covenant and agreement contained in this Agreement is and shall be construed to be a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9.7 Term "MHD". The use of the term MHD to describe the entity making conveyances and receiving land for the construction of the Project is used as a matter of convenience. The Parties acknowledge that, in accordance with M.G.L. c. 7, s. 40E, all land purported to be owned or acquired by an agency of The Commonwealth of Massachusetts is owned by The Commonwealth of Massachusetts, and is controlled by such acquiring agency. All conveyances set forth in this Agreement shall be subject to compliance with state law, including the approval of, and coordination with, the Division of Capital Planning and Operations pursuant to M.G.L. c. 7, ss. 40E-40J to the full extent such approval and coordination is required by state law.

9.8 Governing Law. To the maximum extent permitted by law, this Agreement shall be governed and construed in accordance with Federal Law.

9.9 Execution in Counterparts. This Agreement may be executed in multiple counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

9.10 Effective Date. This Agreement shall be deemed to become effective as of the date it shall be executed and dated by all Parties.

9.11 Termination of Agreement. This Agreement shall be deemed to be terminated on the last date of each Parties' compliance with each of the obligations set forth herein.

9.12 Integration. This Agreement, including the schedules and exhibits made a part hereof, constitutes the entire agreement of the Parties with respect to the matters referenced herein, and supersedes all prior dealings and agreements, written or oral, between the Parties with respect to such matters.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed, sealed and delivered by their respective duly authorized representatives, as of the date first written above.

UNITED STATES POSTAL SERVICE

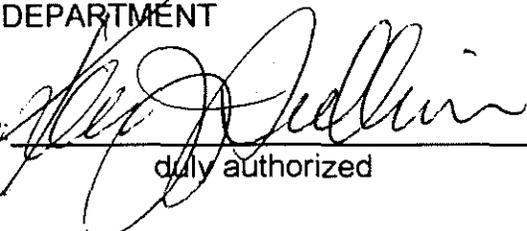
By: _____
duly authorized

Approved as to form:



Chief Counsel
Massachusetts Highway Dept.

MASSACHUSETTS HIGHWAY
DEPARTMENT

By: 

duly authorized

FEDERAL HIGHWAY ADMINISTRATION

By: _____
duly authorized

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed, sealed and delivered by their respective duly authorized representatives, as of the date first written above.

UNITED STATES POSTAL SERVICE

By: _____
duly authorized

Approved as to form:

MASSACHUSETTS HIGHWAY
DEPARTMENT

Chief Counsel
Massachusetts Highway Dept.

By: _____
duly authorized

FEDERAL HIGHWAY ADMINISTRATION

By:  _____
duly authorized

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed, sealed and delivered by their respective duly authorized representatives, as of the date first written above.

UNITED STATES POSTAL SERVICE

By: Michael E. Kunstadt wtd
duly authorized

Approved as to form:

MASSACHUSETTS HIGHWAY DEPARTMENT

Chief Counsel
Massachusetts Highway Dept.

By: _____
duly authorized

FEDERAL HIGHWAY ADMINISTRATION

By: _____
duly authorized