

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
LICENSE MBTA 14008A
RAILROAD PROPERTIES
LOWELL, MASSACHUSETTS
CITY OF LOWELL

1. **The License**

The Massachusetts Bay Transportation Authority, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, established and existing pursuant to Chapter 161A of the Massachusetts General Laws, with a usual place of business at 10 Park Plaza, Boston, Massachusetts (hereinafter referred to as the "MBTA"), hereby grants to City of Lowell, with a usual place of business at 375 Merrimack Street, Lowell, Massachusetts 01852 (hereinafter referred to as "Licensee"), the right and privilege to enter upon a certain portion the Lowell Line, Lowell, Massachusetts as shown on Exhibit A attached hereto and incorporated herein (hereafter referred to as the "Premises").

2. **General Conditions**

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

- 2.1 **Date:** March 29, 2016
- 2.2 **Licensee:** City of Lowell
- 2.3 **Term:** From March 29, 2016 to March 28, 2017; except that the MBTA may terminate this License with thirty (30) days written notice.
- 2.4 **Fees:**
- Administrative Fee:** \$ 1,000.00 paid with License execution
- License Fee:** \$ 1,822.35 paid with License execution
- 2.5 **Premises:** The portion of MBTA property located between the properties commonly known as 1361 Middlesex Street and 900 Broadway Street Lowell, Massachusetts, being a certain portion of the Lowell Line right- of- way measuring approximately 66 feet in length and 20 feet in width, as more fully shown in Exhibit A attached hereto.
- 2.6 **Scope of License:** Licensee shall install, maintain, repair; one 36-inch sewer pipe to a depth of at least 6.5 feet (or as otherwise specified by the MBTA) for approximately 66-feet transversely under the tracks across the Premises, consistent with the conceptual plans attached hereto as Exhibit A, and with construction plans to be prepared by a licensed engineer at Licensee's expense and

submitted to MBTA for approval before being incorporated in this License. Licensee may not commence any construction activities under this license unless and until the MBTA Railroad Operations Department has approved Licensee's Construction Plans. No investigations of any kind may be performed on the MBTA Right of Way. Licensee shall have the right to permit its employees, contractors and agents to use the Premises as permitted hereunder and acting by and through the Licensee, subject to all of the terms and conditions of this License.

All of Licensee's work, including, without limitation, Licensee's initial installation of improvements and all repairs or alterations to the Premises or the improvements, shall be performed diligently in accordance with plans prepared by licensed professionals at Licensee's cost and approved by the MBTA in the MBTA's sole discretion.

Licensee understands and agrees to the following conditions:

1. If any of the conditions set forth above conflicts with another provision of this License, whichever provision is more restrictive or imposes a higher standard shall control.
2. Licensee shall contact, Shawn Higgins at Pam Am Railways ("Pan Am"), 978-663-1127, prior to the commencement of the project for flagging support.
3. Licensee's contractor shall provide Commercial General Liability and Railroad Protective Liability Insurances certificates according to section 4.3-Insurance of this License.

If any of the conditions set forth above conflicts with another provision of this License, whichever provision is more restrictive or imposes a higher standard shall control.

2.7 Notices:

MBTA:

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

MBTA Railroad Operations Department
Engineering and Maintenance
32 Cobble Hill Road
Somerville, Massachusetts 02143
Attn: Section Chief

and

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

and

Pan Am Railways
Iron Horse Park
High Street
N. Billerica, MA 01862

LICENSEE:

City of Lowell
375 Merrimack Street
Lowell, Massachusetts 02150
Attn: Kevin Murphy, City Manager

3. Consideration

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

4. Terms and Conditions of License for Entry

This License is subject to the following terms and conditions:

4.1 Scope of Activity

(a) Scope of Activity

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

Except pursuant to an approved Access Plan, defined in Exhibit B, attached hereto and incorporated herein, or in case of emergency, Licensee shall provide at least four (4) days' prior written notice of its desire to enter the Premises to Pan Am for access. The MBTA or Pan Am may have an observer present at all times when Licensee is present on the Premises. See Exhibit B for required notice from Licensee when Licensee needs access because of an emergency. Licensee shall do all work in accordance with the Plan described in Exhibit B.

(b) Utilities

Licensee acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of the Scope of Activity. Licensee shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the

regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. To the extent Pan Am, the MBTA, or parties acting on behalf of either, locate and mark railroad utilities in the railroad rights of way and appurtenant thereto, Licensee shall be responsible for payment to such parties for such services which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the railroad and transit line(s) or used in connection with services or operations of the MBTA and/or the Railroad Companies (as defined below). Any damage to any utilities on or near the Premises caused by Licensee shall be the sole responsibility of Licensee. If Licensee does not immediately repair any utilities it has damaged, the MBTA, without being under any obligation to do so and without waiving the Licensee's obligation hereunder, may repair any utilities damaged by the Licensee immediately and without notice in case of emergency. In the event the MBTA exercises such right, the Licensee shall pay to the MBTA immediately upon demand all of the MBTA's cost of performing such repairs plus a fee equal to twenty-five percent of the MBTA's cost of performing such repairs to reimburse the MBTA for its administrative costs.

(c) Subordination to MBTA's Operating Requirements

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

(d) Environmental Cooperation

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

(e) Remediation Obligation of the Licensee

Whenever by law or the terms of this License, Licensee is responsible for remediation of Hazardous Materials on MBTA property, Licensee, upon written demand of the MBTA, shall conduct, at Licensee's sole cost and expense (or, at the MBTA's election, reimburse the MBTA for the cost and expense incurred by the MBTA in connection with the MBTA's conduct of), all response actions required by Chapter 21E and the MCP with respect to the Hazardous Materials (including the hiring of a Licensed Site Professional). Any such response action, if performed by Licensee, shall be performed in accordance with Chapter 21E, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by the MBTA, shall be completed in a timely manner to the reasonable satisfaction of the MBTA, and shall allow the MBTA to use the

Premises, and/or MBTA owned adjacent or contiguous property, for its present use and for any future transportation use. Licensee shall also be responsible for the reasonable costs incurred by the MBTA in hiring consultants (including a Licensed Site Professional) to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results.

(f) Notice of Project Completion and Record Drawings

Upon completion of its work, Licensee shall provide written notice ("Notice of Project Completion") to the MBTA Railroad Operations Department of the date of project completion. Licensee shall also provide the MBTA Railroad Operations Department, and all relevant Railroad Companies, defined below, with one reproducible "As-Built" copy of each approved construction drawing marked to indicate all changes and deviations from the original approved plans and recording the final conditions of the Premises ("Record Drawings") upon completion of the work authorized hereunder. All Record Drawings shall be received and accepted by the MBTA and the Railroad Company(ies) prior to final inspection. The Notice of Project Completion and the Record Drawings shall be delivered to:

Section Chief
Engineering and Maintenance
MBTA Railroad Operations Department
32 Cobble Hill Road
Somerville, MA 02143

and

Railroad Company(ies) at the Notice location designated in Section 2.8 herein.

(g) Evidence of Financial Responsibility

Prior to commencement of Licensee's activities hereunder, Licensee shall provide evidence to the MBTA'S reasonable satisfaction that Licensee has sufficient financial resources available to discharge any anticipated obligations hereunder. Such resources may be in the form of Licensee's net worth, insurance coverage, a bond or such other financial security as may be acceptable to the MBTA in form and amount.

4.2 Indemnification and Release of MBTA

- (a) Licensee shall indemnify, defend (at the option of the MBTA) and save the MBTA, , Pan Am and any other company operating on the Right of Way (collectively, except for the MBTA, the "Railroad Companies") harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever including, without limitation, those related to Hazardous Materials that may be imposed upon, incurred by, or asserted against the MBTA or the Railroad Companies by reason of any of the following occurrences:

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

In subsection (2) above, Licensee's previous occupancies of the Premises includes occupancies by the predecessors in interest of Licensee.

- (b) Licensee has inspected the Premises and decided that the Premises are suitable for the uses Licensee contemplates. Licensee assumes all the risk of entry on to the Premises.
- (c) Licensee hereby releases the MBTA and the Railroad Companies from any responsibility for Licensee's losses or damages related to the condition of the Premises, and Licensee covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or any other claim) (hereinafter "Claims") against the MBTA or the Railroad Companies, including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's death relating to, or arising from, the condition of the Premises.

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

- (d) In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, Licensee shall indemnify, defend (at the option of the MBTA) and save the MBTA harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments related to the injury, illness or death of any employee of Licensee or of an employee of Licensee's contractors or consultants; except if the "Claim" arose because of the MBTA's grossly negligent or willful misconduct. It shall not be grossly negligent to allow access to the Premises that are in substantially the condition they were in when Licensee inspected the Premises before accepting this License.
- (e) Licensee shall be notified, in writing, by the MBTA and each of the affected Railroad Companies of the assertion of any claim against it that Licensee has agreed to indemnify above (the "Indemnified Claim").
 - (1) If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, Licensee shall reimburse the MBTA for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the MBTA in connection with the MBTA's defense of the Indemnified Claim against it and/or the conduct of all response actions, including, without limitation, those required by Chapter 21E and the MCP. The settlement or compromise of any Indemnified Claim shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the MBTA on behalf of the Licensee or any other action that would materially prejudice the rights of the Licensee without the Licensee's express written approval. The Licensee shall cooperate fully and promptly with the MBTA in the defense of any Indemnified Claim. This same right of self defense and the right to Licensee reimbursement shall apply to each of the Railroad Companies that has an Indemnified Claim against it.
 - (2) If the MBTA decides to have Licensee defend the Indemnified Claim or handle the response action, the MBTA shall notify Licensee of that decision in writing and the Licensee shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA is fully indemnified by the Licensee 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 Licensee on behalf of the MBTA or any other action that would materially prejudice the rights

of the MBTA without the MBTA's express written approval. The MBTA shall cooperate with the Licensee in the defense of any Indemnified Claim. If any of the Railroad Companies wants the Licensee to defend it against an Indemnified Claim, then they must agree to this paragraph 4.2 (e)(2).

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

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

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

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

4.3 Insurance

Prior to entry hereunder, Licensee and its consultants and contractors shall provide the MBTA, Pan Am and any other Railroad Companies designated by the MBTA with a certificate or certificates of insurance and shall, during the term hereof, renew and replace any expired certificate, evidencing the insurance of the activities permitted hereunder, and Licensee's covenant of indemnification hereinabove, with companies that are reasonably acceptable to the MBTA, as stated below, in which Licensee and others hereinafter specified are either additional insureds as their interests may appear or named insureds and which provide minimum liability coverage as follows:

- (a) Commercial General Liability Insurance
Insuring the Licensee, the MBTA, the Railroad Companies, the Premises and all activities allowed hereunder as well as Licensee's indemnification obligations contained in Section 4 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate. Umbrella liability coverage with limits of not less than Ten Million Dollars (\$10,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA and the Railroad Companies as additional insureds.
- (b) Worker's Compensation Insurance
Insuring all persons employed by Licensee in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against the MBTA or the Railroad Companies or the Premises with limits of liability of not less than those required by Massachusetts General

Laws, Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA and the Railroad Companies. Each of Licensee's subcontractors and consultants shall have similar policies covering their employees.

(c) Railroad Protective Liability Insurance

While working within fifty (50) feet of the tracks on the right of way, insuring the MBTA and the Railroad Companies as named insureds 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. Pan Am shall be provided with an original policy of Railroad Protective Liability Insurance and the MBTA and the remaining Railroad Companies shall be provided with certificates of insurance.

(d) Automobile Liability Insurance

Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of Licensee and its consultants and contractors that are used in the activities permitted hereunder.

The required insurance coverages hereinbefore specified shall be placed with insurance companies currently licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts (which licensure shall remain in effect during the entire Term of this License) and having a Best's rating of B+ or better, shall be taken out before the License is commenced and be kept in full force and effect throughout the term of the License, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance shall be written on an occurrence basis form, as opposed to a claims made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella, Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA and the Railroad Companies which precludes these insurers from being able to make any subrogation claims against either the MBTA or the Railroad Companies. All such insurance as is required of the Licensee shall be provided by or on behalf of all subcontractors to cover their operations performed. The Licensee shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the License and throughout the term of the License, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required.

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

4.4 Compliance with Laws

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

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

4.5 Non-Exclusive Use

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

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

4.6 No Warranty

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

4.7 Termination

At the termination of this License, Licensee agrees to restore the Premises promptly to the condition it was in at the commencement of the term hereof, and to remove all of Licensee's personal property and debris from the Premises; except the installations as described in section 2.6 may remain unless the MBTA notifies Licensee to remove the all or any portion of such improvements and equipment. Should Licensee not perform such restoration at the end of the Term, the MBTA may perform any and all necessary restoration at the sole expense of the Licensee. Any personal property not so removed shall, at the option of the MBTA, either become the property of the MBTA or be removed by the MBTA and disposed of without any liability in the MBTA for such removal and disposition, all at the sole expense of Licensee.

4.8 Assignment

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

5. Notices

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (hereinafter "Notice"), shall be in writing and shall be deemed to have been properly given when deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described in Section 2.8 or when delivered by messenger or overnight mail service to the correct addressee. Notice shall be deemed received when actually received or when the proffered Notice has been refused by the Addressee. The signature of an employee, servant or agent of the Addressee shall be determinative on the issue of actual receipt.

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

6. Results

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

7. Default and Termination

(a) Termination for Non-Payment

In the event that Licensee shall neglect or fail to pay the License Fee, Administrative Fee, or any other sum herein specified to be paid upon the due date hereunder, Licensee shall be in default and the MBTA shall have the right at any time thereafter to terminate this License by giving Licensee two (2) weeks written notice of the MBTA's decision to terminate for non-payment ("Termination Notice"). Licensee shall not be entitled to cure any such default by tendering payment after the expiration of the two (2) week grace period which starts upon Licensee's, or Licensee's servants, agents or employee's receipt of (or refusal to accept) the MBTA's Termination Notice. Any amount due hereunder that is not paid when due shall be charged to 1.5% per month and 18% per annum.

(b) Default of Terms and Conditions

Licensee shall also be in default if Licensee:

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

and if such defaults continue after two (2) weeks' written notice given by the MBTA to Licensee to cure, the MBTA may terminate this License For Entry by written notice to Licensee and/or deny access to the Premises and expel Licensee and those claiming through or under Licensee and remove Licensee's effects from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant, and, upon entry as aforesaid, the rights of Licensee created by this License for

Entry shall terminate. Notwithstanding the preceding, if Licensee begins to cure a default as soon as possible within said two week period and thereafter continues to pursue a cure with all due diligence, then the MBTA shall not terminate this License for Entry until and unless Licensee ceases to pursue a cure with all due diligence and has not in fact cured said default. Licensee agrees to pay any expense including reasonable attorneys' fees incurred by the MBTA in enforcing any of Licensee's obligations hereunder.

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

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

8. Holding Over

If Licensee desires to continue the work defined in the Scope of Activity and/ or to maintain any of the installations described in Section 2.6 after the termination of the Term, the resulting License shall be on a month-to-month basis and may be terminated by either party at any time by providing the other party with thirty (30) days prior written notice of termination. During such holdover period, the License Fee shall be increased annually on the anniversary of the date of this License by adding to the License Fee (i) the greater of the amount that is determined by multiplying the License Fee then payable during the immediately preceding year by five percent (5%) and (ii) the amount that is determined by multiplying the License Fee then payable during the immediately preceding year by the percentage increase in the Consumer Price Index (Boston, Massachusetts, all items, all consumers).

9. Work in Harmony

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

10. Promotional Material

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

11. Nondiscrimination

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

Licensee shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era

veteran status in its activities at the Premises, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors.

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

12. Taxes

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

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

13. No Third Party Beneficiaries

This License shall not be construed to create any third party beneficiary rights in favor of any other parties (except the explicit rights granted to the Railroad Companies) or any right or privilege for the benefit of any other parties.

14. Entire Agreement

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

15. Governing Law

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

16. Successors and Assigns

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

17. Limitation On Damages

The MBTA shall not be liable to Licensee for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits unless specified herein.

18. No Waiver No failure by Licensor to insist upon strict performance of any term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any such term, covenant or condition. The

acceptance by Licensor of any amount less than the full amount due to Licensor hereunder shall not be deemed a waiver by Licensor of its right to collect the full amount due. Licensor may deposit checks or drafts that state "final payment", "payment in full" or the like without being deemed to have waived its right to receive all amounts due hereunder. Any waiver by Licensor of any term, covenant or condition hereof shall not be effective unless such waiver is in writing.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this License to be executed this _____ day of _____ 2016.

**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

CITY OF LOWELL

By: _____
Mark E. Boyle
Assistant General Manager for
Real Estate and Asset Development

By: Kevin Murphy
Name: Kevin Murphy
Title: Lowell City Manager

EXHIBIT A
PLAN OF PROPERTY

EXHIBIT B

SCOPE OF ACTIVITY

Subject to the terms and conditions in this License Agreement, the Licensee, its agents, employees, contractors, subcontractors, and/or representatives are hereby granted a license to enter upon the Premises for the sole purpose of the scope of work as described in section 2.6.

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

Licensee shall submit a plan and detailed specifications (including the materials to be used) and the proposed methods of performing the work, or any part thereof (the "Plan") to the MBTA. Licensee shall not enter the Premises until the Plan has been approved by the MBTA. Such approval may be withheld in the MBTA's sole discretion. The Scope of Activity for said construction, installation, maintenance, operation and/or replacement will be more fully defined in the approved Plan, which approved Plan will automatically be incorporated herein by reference and made part of this License.

The Licensee shall also provide the MBTA with a detailed schedule of times when Licensee, its employees, contractors, subcontractors, or agents would like to be on the Premises to undertake the Scope of Activity (the "Access Plan"). The MBTA and Pan Am shall have full power to make a final determination of when Licensee may be on the Premises as it is necessary to coordinate the work of all those desiring or having the right to access the Premises.

Unless entry is made pursuant to an Access Plan approved by both the MBTA and Pan Am Licensee agrees to give, **each time it desires entry**, at least four (4) days' prior written notification to the MBTA and Pan Am (except in cases of emergency when notice shall be given to the MBTA and the Railroad Companies as quickly as possible) of its need to access the Premises for all work to be performed under this License by contacting Pan Am according to section 2.6 for access. Licensee understands that the more notice given to the Pan Am the more likely it will be that Licensee can gain access at the times requested. **Licensee shall present evidence of the required insurance coverage before each entry. In the case of an emergency, Licensee shall as soon as possible contact MBTA Control Center 617-222-5278.**

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

If at any time during the work of installation or connection, the MBTA or an affected Railroad Company 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 train re-routing, desirable or necessary to protect its operations, its property or its employees or other persons on or near the Premises, the MBTA and/or a Railroad Company shall upon notice to Licensee (where such notice is feasible) have the right to place such personnel, including personnel of the MBTA's or the Railroad Company's agents or to take such measures, at the sole cost and expense of Licensee. 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. Licensee hereby covenants and agrees to bear the full cost and expense thereof and to reimburse the MBTA and/or the Railroad Company within thirty (30) days of receiving an itemized, written invoice for such reimbursement. The MBTA's or a Railroad Company's failure to furnish such personnel or take such measures shall not relieve Licensee of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to Licensee on the part of the MBTA or the Railroad Companies. Upon being notified that the personnel or measures referred to in the first sentence of this Paragraph have been deemed desirable or necessary by the MBTA and/or a Railroad Company, Licensee 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 Licensee shall deem any requirement for flagging or the like by the MBTA or a Railroad Company or one of their agents for supervision of the activity hereunder as unreasonable, Licensee shall nevertheless pay for such flagging and the like, but may take exception in writing thereto as an unreasonable requirement in each instance. The parties agree to review such exceptions at the times of billings for such services and attempt to adjust them as the MBTA may deem appropriate. This reimbursement is in addition to the License Fee and Administrative Fee required hereunder.

Licensee shall comply with all applicable MBTA Railroad Operations Directorate requirements including, but not limited to, those entitled: "I - Guidelines and Procedures for Construction on MBTA Railroad and Transit Properties" dated May 1994, "II - Maintenance and Protection of Railroad Traffic" dated May 1994, "III - Insurance Specifications " dated May 1994 and MBTA Special Instructions dated April, 2003. To the extent that there is an irreconcilable conflict between the aforementioned requirements and this License the terms and conditions contained in the MBTA Railroad Operations Directorate Procedures shall control unless the requirements in this License are more strict.

No individual, including representatives and employees of Licensee, may enter onto the Premises unless that individual has first attended Pan Am Safety Orientation/RWP Class (for scheduling contact Shawn Higgins at 978-663-1127).

