

INTERAGENCY AGREEMENT
BY AND BETWEEN THE
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
AND THE
TOWN OF CONCORD, MASSACHUSETTS

This Agreement is made this day of , 2007 by and between the Massachusetts Bay Transportation Authority (hereinafter referred to as the "MBTA"), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts organized and existing pursuant to Massachusetts General Laws Chapter 161A with offices at Ten Park Plaza, Boston, Massachusetts 02116 and the Town of Concord (hereinafter referred to as "Town"), a municipality of the Commonwealth of Massachusetts with offices at 22 Monument Square, P.O. Box 535, Concord, MA 01742. The MBTA and the Town shall hereinafter sometimes collectively be referred to as the "Parties".

WITNESSETH THAT:

WHEREAS, the MBTA owns the commuter rail line known as the Fitchburg/South Acton line, (the "ROW"), which ROW includes a commuter rail station at 20 Commonwealth Avenue in West Concord, Massachusetts known as the West Concord Depot, with a historically significant building (the "Building"), also owned by the MBTA;

WHEREAS, the Building is in deteriorated condition and is in need of repair

WHEREAS the MBTA and the Town are interested in restoring and rehabilitating the exterior of the building to its historic appearance;

WHEREAS, the Building is listed on the National Register of Historic Places, and is an historic resource within the meaning of the Community Preservation Act, G.L. c. 44B; and

WHEREAS, the MBTA and the Town are committed to cooperate with each other to accomplish this goal, including by each contributing 50% of the construction costs of restoring and rehabilitating the exterior of the Building; total cost of the rehabilitation work not to exceed \$ \$440,000; including all costs associated with flag men;

WHEREAS, the MBTA's commitment for its 50% contribution of construction costs is contingent on the Building being rehabilitated in Fiscal Year 2008, but in any event neither the MBTA's nor the Town's contribution to the construction costs shall exceed \$220,000 each.

NOW, THEREFORE, in consideration of the promises and mutually dependent covenants set forth herein, the Parties agree as follows:

ARTICLE 1: RESPONSIBILITIES OF THE PARTIES

A: MBTA'S RESPONSIBILITIES

1. The MBTA grants to the Town of Concord an amount not to exceed 50% or \$220,000, whichever amount is less, of the cost of restoration and rehabilitation of the Building exterior. Said grant is to be used solely for the purposes of restoring and rehabilitating the Building, and costs incidental thereto, all such improvement hereinafter referred to as the "Project". Payment of these funds shall be made according to the attached Exhibit B – Method of Payment.

2. The MBTA will be responsible for the design plans and construction drawings for the Project, in coordination with the Town and its consulting architect, the cost of the design will be borne by the MBTA and said design will be in accord with the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties, as required by the Massachusetts Community Preservation Act.

3. The MBTA shall enforce its contract with its architect for the Project for the benefit of the Town to ensure that all construction management responsibilities of the architect with respect to the construction contract are effectively and timely performed. The MBTA acknowledges that the Town is a third-party beneficiary of its design contract with the architect. Further, the MBTA agrees to enforce, as much as it legally can, the Town's rights due to any design error that occurs.

4. All improvements so made to the Building will become the property of the MBTA and the MBTA will be responsible for maintaining all of its property, including without limitation, all improvements to the Building, as further specified herein.

B: TOWN'S RESPONSIBILITIES

1. The Town will contribute an amount not to exceed 50% or \$220,000, whichever amount is less, of the cost of the Project, derived from Concord Community Preservation Funds to be used solely for the purposes of restoring and rehabilitating the Building, and costs incidental thereto.

a. The Town shall be solely responsible for bidding and awarding the contract to a construction contractor (the Contractor) to implement the Project in conformity with such public bidding requirements as may be applicable to the Project and the General Laws of the Commonwealth of Massachusetts.

b. Subject to the availability of sufficient funds, the scope of work for the Project shall include:

i. Reset/re-attach column in southeast corner knocked off its support;

- ii. Repair and replace roof sheathing where damaged;
- iii. Remove temporary wood partitions in breezeway between station and baggage room;
- iv. Re-route and conceal exposed conduit running at 7' height across breezeway;
- v. Patch or replace existing slate roofing on station roof;
- vi. Remove asphalt shingles on kitchen element and replace with similar;
- vii. Repair and replace copper ridge rolls as required;
- viii. Replace fascia boards;
- ix. Replace and repair rafter ends and soffit tongue and groove wood, rotted at eaves under valley;
- x. Replace existing valley flashing with copper (one location);
- xi. Replace metal roof on two dormers with Terne Metal;
- xii. Remove, by hand, and dispose of existing stucco brick on entire façade, in manner to protect and preserve underlying historic wood siding;
- xiii. Restore original wood clapboard and tongue and groove siding and associated trim, and replace with similar where necessary;
- xiv. Restore wood trim and decorative details on dormer faces with similar where necessary;
- xv. Restore and repaint all wood surfaces of station using original station colors;
- xvi. Replace 7 existing recessed light fixtures with similar fixtures of similar wattage; and
- xvii. Associated add alternates

2. The Town and all consultant(s) and contractor(s) to the Town shall maintain records and other evidence pertaining to construction costs incurred in the Project for three years after the date of completion of the Project, except that in the event of litigation or settlement of claims resulting from the performance of this Agreement, the Town agrees to maintain the required documents until any of the parties mentioned *infra* have disposed of all such litigation, appeals, claims or exceptions related thereto at its local office for the inspection, if requested, by the MBTA, The Federal Transportation Authority, the U.S. Secretary of Transportation, the Comptroller General of the United States, and the Commonwealth of Massachusetts or its authorized representatives, and other persons or parties deemed appropriate by the MBTA; Town shall ensure that all of all its contractors and subcontractors to the lowest tier comply with the wording of this paragraph.

3. The Town shall include a provision in the construction contract for the Project that the Contractor shall indemnify, defend (at the option of the MBTA and the Town) and save harmless the MBTA and the Town, and each of their consultants, agents, employees, officials, successors, affiliates and assigns 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 environmental 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 illness or death, except those related to pre-existing Hazardous Materials not caused by the Contractor, that existed on, under or over the MBTA property prior to the date of execution of this Agreement in the area of Project, that may be imposed upon or incurred by or asserted against the MBTA or the Town by reason of any of the following acts occurring or arising from the contractor's performance of the construction contract;

- a. any accident, injury to, or death of any person or any damage to property occurring in the area of the Building or on the Platform or relevant areas of track arising out of or in any way attributable to the exercise by the Contractor of any right or privilege now or hereinafter granted in connection with this Agreement or with regard to the carrying out by the Town of its responsibilities pursuant to this Agreement; or
- b. any use, nonuse, condition, or occupation of the Building or any part thereof, or resulting from the condition thereof; or
- c. any failure by the Contractor to perform or comply with any of the applicable terms hereof or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the Building or the ownership, occupancy or use thereof; or
- d. any placement or accidental release, except as qualified below, of any Hazardous Materials onto property of the MBTA by the Contractor or its employees, agents, consultants or subcontractors or any other party acting in behalf of the Contractor, except that the Contractor shall not be responsible for pre-existing Hazardous Materials' conditions not caused by the Contractor that existed on, under, or over the MBTA property prior to the execution of this Agreement in the area of the Project; or

4. The Town shall require under the construction contract that the Contractor provide insurance coverage in the types, amounts and limits as follows:

- a. Railroad Protective Liability Insurance. If at any time, construction or work is to occur within fifty (50) feet of the center line of the track nearest such construction, then prior to commencement of any such construction

or related activities, the MBTA and the Railroad Companies shall be covered as named insureds with limits of not less than Two Million (\$2,000,000) per occurrence for all damages arising out of bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of Six Million (\$6,000,000) for all damages arising out of bodily injury to or death of two or more persons in any one accident, and regular protective property damage liability insurance providing for a limit of not less than Six Million (\$6,000,000) for all damages arising out of damage to or destruction of property during the policy period.

b. Commercial General Liability Insurance

Insuring the MBTA, the Town and the Project and all activities allowed hereunder as well as the Contractor's indemnification obligations with a minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million (\$1,000,000.00) Dollars per occurrence and Three Million (\$3,000,000.00) Dollars in aggregate. Umbrella liability coverage with limits of not less than Two Million (\$2,000,000.00) Dollars covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims-made basis) and name the Town, MBTA and others hereinafter designated as additional insureds as their interests may appear. Such insurance may be subject to standard exclusions found in property and general liability insurance policies.

- c. Worker's Compensation Insurance insuring all persons employed by the Contractor in connection with any work done on or about the Project with respect to which claims for death or bodily injury could be asserted against the MBTA, the Town or the Project 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 contractor's right to subrogation against the MBTA if such a policy is commercially available.

d. Automobile Liability Insurance

Automobile liability insurance with a combined single limit of not less than One Million (\$1,000,000.00) Dollars per occurrence covering all owned, non-owned, hired, rented or leased vehicles of Contractor.

The required insurance coverages herein specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better; be kept in full force and effect throughout the term of the construction contract; shall be primary to and non-contributory to any coverages maintained by the MBTA or the Town; and shall require the MBTA and the Town be given at least thirty (30) days' advance notice in the event of any cancellation or materially adverse change in

coverage. Prior to the inception date of the construction and any entry upon MBTA property by the Contractor, the MBTA and the Town shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required, and naming the MBTA, MBCR, National Railroad Passenger Corporation (Amtrak) CSX and the Town as additional insureds.

In the event of the cancellation of any policy during the term of the construction Contract, or the failure to keep in effect the insurance required by this section, the MBTA may, without further notice and at its option, procure or renew such insurance on account of the Contractor, the Town agrees that said cost of additional insurance, if necessary, shall be paid with funds from the Contract.

5. The Town agrees that it will provide, if necessary, Worker's Compensation for all Town employees and consultants, or those acting on behalf of the Town, performing work on the subject property insuring that all persons employed by the Town in connection with any work done on or about the Project with respect to which claims for death or bodily injury could be asserted against the MBTA, the Town or the Project 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 company's right to subrogation against the MBTA if such a policy is commercially available.

ARTICLE 2: GENERAL PROVISIONS

1. Commencement. The terms of this Interagency Agreement shall commence upon the execution hereof by both parties hereto and shall continue, until the completion of the Project and the payment of all sums due thereunder, except that the Maintenance Agreement shall remain in effect pursuant to its express terms.
2. Default. A party shall be in default hereunder if that party fails to comply with one or more terms of this Interagency Agreement and is so notified in writing by the other party of the specific term(s) non-compliance.
3. Remedies. If after notification of a default, the defaulting party fails to commence cure within thirty (30) days of such notice or fails to pursue such cure with all due diligence, then the non-defaulting party shall have all remedies available at law or at equity, including without limitation, specific performance and payment of all damage, expenses and costs, as well as the following additional remedies.
 - a. If the Contractor fails to do the construction or other required work during the construction phase pursuant to the approved construction plans or if the Contractor is more than one month behind schedule for other than a force majeure reason, the MBTA may, if it so chooses, upon ten days notice, take over the construction and other work. Upon receipt of such

notice, the Town shall issue a seven day notice to the Contractor of the intent of its designee, the MBTA, to take over the work and the Town shall give to the MBTA funds to complete such work, not to exceed the Town's 50% share of completion costs nor exceeding the Town's total maximum appropriation for this Project of \$220,000, after deduction thereto of costs incurred and payments previously made.

4. Required Licenses. The Town and its contractor acknowledge that the MBTA will enter into a Project Initiative Agreement ("P.I.") with Massachusetts Bay Commuter Rail ("MBCR") for the express purpose of providing funding for the use of Flag Men; costs to be shared by the MBTA and the Town.
5. Right to Inspect. It is understood that authorized representative of the MBTA may inspect or review the work in progress on the Project at any time.
6. Transportation System Priority. The activities of the Town hereunder shall be subordinate at all times to the MBTA in owning, operating and maintaining its transportation system. If the Town interferes in any manner not approved by the MBTA, the MBTA may immediately stop the interfering activity.
 - a. During the construction period for alterations, repair or improvements to the MBTA property, the Town shall require the Contractor to comply with all applicable Railroad Operations Directorate requirements, including but not limited to those entitled "I — Guidelines and Procedures for Construction on MBTA Railroad Property" dated May 1994; "II — Maintenance and Protection of Railroad Traffic" dated May 1994. These requirements (among which are Railroad Protective Liability Insurance and the use of Flagmen) to be paid by the contractor may change over time and affect repairs and replacements in the future. To the extent the heretofore mentioned requirements in this paragraph are modified or waived as specifically stated elsewhere in this Interagency Agreement, the Agreement terms shall govern.
 - b. Advance notification is required for construction cranes to be operated on MBTA property. The following written information must be included with this notification:
 - (i) Copy of the crane certification.
 - (ii) Verification that the crane components/connections are structurally sound.
 - (iii) Verification that the crane is capable of lifting the maximum intended load.
 - (iv) Verification that the crane operator is duly licensed to operate a crane.

7. Restricted Benefits. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom. No member, officer, or employee of the MBTA or the Town during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
8. Notices. Whenever in this Agreement it shall be required or permitted that notice, demand or other communication be given or served by either Party to this Agreement to or upon the other, such notice shall be deemed to have been duly given or served if in writing and forwarded by certified or registered mail, return receipt requested, postage prepaid, addressed to the party to whom it is to be given or served at its address as follows: if to the MBTA, addressed to: MBTA, Ten Park Plaza, Boston, Massachusetts 02116, Attention: Director of Real Estate, with a copy to: General Counsel, MBTA, Ten Park Plaza, 7th Floor Law Department, Boston, MA 02116; Section Chief, Engineering and Maintenance, Railroad Operations, MBTA, 32 Cobble Hill road, Somerville, MA 02143; and, Susan Wolfson Director of Revenue, MBTA, 21 Arlington Street, Building 2, Charlestown, MA 02129; and if to the Town, addressed to Town Manager, P.O. Box 535, Concord, Massachusetts, 01742, with each party may change its address for purposes of notices by giving notice to the other party in the manner hereinbefore provided.
9. Dispute Resolution. The MBTA and the Town intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the Parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the Parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the MBTA and the Town. The Secretary of the Executive Office of Transportation shall be the final administrative arbiter of any dispute that has not been resolved by the MBTA and the Town. Each party reserves its right to seek judicial remedies for claims arising out of this Agreement, only after having complied with the process of dispute resolution contemplated herein.
10. Governing Law and Severability. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. In the event any provision of the Agreement shall be determined to be invalid or unenforceable under applicable law, such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Agreement shall be construed as if such provision had never been made part hereof.

11. Equal Opportunity. With respect to its exercise of all rights and privileges herein granted, the Town shall undertake affirmative action as required by Federal and State laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless the Town is otherwise exempted therefrom. The Town agrees that it shall comply with any and all affirmative action plans submitted pursuant to the directives of any Federal agency and in accordance with Federal Law.
12. Non-Discrimination Policy. The Town 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, subcontractors or trades persons.
13. Requirements of 49 CFR Part 23. This Agreement is subject to the requirement of the U. S. Department of Transportation's regulations at 49 CFR Part 23. The Town agrees that it will not discriminate against any business owner because of the owner's race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status in connection with the award or performance of any contracts or agreements covered by 49 CFR Part 23. The Town agrees to include the above statements in any subsequent contracts or agreements that it enters and cause those businesses to include such statements in further agreements.

14. Minority and Female Participation. The Town shall take reasonable steps to encourage and utilize minority and female business enterprises in the construction of the Project.
15. The Town agrees that in work performed pursuant to this Agreement, all contracts for the construction to take place on MBTA property in connection with the work authorized pursuant to this Agreement shall require that:
 - a. All contractors and subcontractors provide labor that can work in harmony with other elements of labor employed or to be employed by the MBTA at or near the MBTA property; contractors and subcontractors agree that all persons in employment for the purpose of managing or working on the MBTA's premises shall conduct themselves in an orderly and proper manner so as not to annoy or offend persons or MBTA's employees using the premises; moreover, the contractor and subcontractor, at the request of the MBTA will, for cause shown remove from work on the work site in question any employee who shall cause any annoyance or offense as aforesaid. The contractor and/or subcontractor further covenants and agrees that, in the exercise of the rights and privileges granted, its employees or representatives will not deface or damage the property of the MBTA, deposit or leave behind any litter or refuse of any kind, or

other matter in or about said premises; contractor and subcontractor shall assume all liability for actions on the part of its employees;

- b. All contractors and subcontractors comply with all applicable provisions of this Interagency Agreement; and
- c. Performance bonds and payment bonds in form and substance satisfactory to the MBTA be obtained, each of which shall name the MBTA as an additional obligee and which shall be in the penal sum equal to the amount of the construction contracts.

16. No Alterations. The Town shall not make or permit to be made any structural alterations, additions, or improvements to the Building, not otherwise included in the plans and specifications for the Project, without the MBTA's prior written consent which consent shall be based on review of the Contractor's plans for such alterations.

17. No Assignment. Both Parties agree that they will not assign this Agreement without the written consent of the other Party.

18. Binding Agreement. This Agreement shall bind and inure to the benefit of the Parties and their respective representatives, successors or assigns. This Agreement contains the entire agreement of the Parties and may not be modified except by an instrument in writing signed by both the MBTA and the Town.

19. Headings. The headings used herein are used only for convenience of reference and are not to be considered a part of this Agreement or to be used in determining the intent of the Parties.

20. Entire Agreement; Amendments. This Agreement (including, without limitation, the Exhibits hereto) constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both parties hereto.

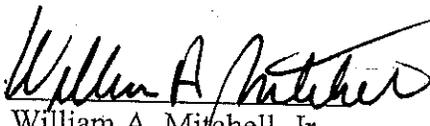
21. Waiver. No waiver by either party hereto of any one or more defaults by the other party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether alike or of a different character. No failure on the part of either party hereto to complain of any action or non-action on the part of the other party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the party who is making such waiver.

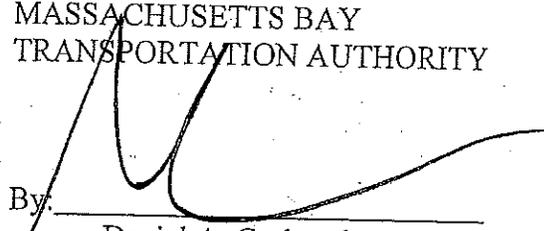
23. Force Majeure. Neither party shall be liable to the other or deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of cause beyond its reasonable control and without its fault or negligence.
24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.
25. Applicable Law. This Agreement is intended to be a binding agreement, enforceable as such, which will be interpreted in accordance with the laws of the Commonwealth of Massachusetts.
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IN WITNESS WHEREOF, the undersigned MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY and THE TOWN OF CONCORD have
executed this agreement as of the date and year first above written.

Approved As to Form

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

By: 
William A. Mitchell, Jr.
General Counsel 

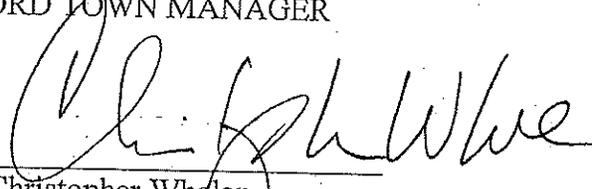
By: 
Daniel A. Grabauskas
General Manager

Dated: _____

Dated: _____

TOWN OF CONCORD

CONCORD TOWN MANAGER

By: 
Christopher Whelan
Town Manager

Dated: 8/21/07

EXHIBIT A
MAINTENANCE AGREEMENT

The MBTA shall, at its sole cost and expense, maintain the Building in sound structural condition and a good state of repair in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time ("the Secretary's Standards"). The Town does not assume any obligation for maintaining, repairing or administering the Premises or the Building

The MBTA shall not undertake any of the following actions without the prior express written approval of the Town, which approval may be withheld or conditioned in the sole discretion of the Town: increase or decrease the height of, make additions to, change the exterior construction materials of, or move, improve, alter, reconstruct or change the facades (including fenestration and trim), roofs, foundations and chimneys of the Building; unless the MBTA determines that the Building may interfere with the MBTA railroad operations, in which event the MBTA maintains its sole authority to make necessary changes to the Building.

The parties acknowledge the Town's agreement to expend municipal funds for restoration and rehabilitation of a facility owned by the MBTA is based on the expectation that the Building will remain a public facility, and that the MBTA presently intends to continue the use of the Building as a commuter rail facility open to the public indefinitely. In the event, however, that the building is sold or converted within thirty (30) years of the substantial completion of the improvements funded pursuant to this Agreement, the MBTA shall repay to the Town a proportionate amount of the total funds expended by the Town. Such proportionate amount shall be calculated as the total Town expenditures multiplied by a percentage, and such percentage being determined by dividing by thirty the number of years remaining, as of the date of sale or conversion, of the thirty year period after substantial completion.

EXHIBIT B
FORM OF PAYMENT

1. The MBTA agrees to provide a grant to the Town not to exceed \$220,000 or 50% of the eligible costs of the Project, whichever amount is less, in the manner described below. The MBTA shall have the right to review all expenditures and reserves its rights to implement a cost recovery audit to verify the amounts intended for the present project that is the subject matter of this Agreement.

2. The architect shall review each payment requisition submitted by the Contractor and provide any necessary backup documentation to certify to the Town the amount owing and due to the Contractor. Prior to the architect's submitting the Contractor's payment requisition to the Town, the MBTA shall review and authorize payment in accordance therewith. Prior to paying the requisition, the MBTA and the Town shall resolve any questions concerning payment with the architect.

3. The Town shall process the payment to the Contractor, and shall promptly submit an invoice to the MBTA for reimbursement of 50% of the Contractor approved requisition amount from the funds that the MBTA has granted the Town for the Project. The method for processing any incidental project expenses shall be identical.

4. In accordance with the architect's construction management responsibilities, all Change Order requests shall first be reviewed by the architect, whose recommendation shall be submitted to the MBTA and the Town. Prior to final approval of any Change Order, the MBTA and the Town shall confirm that the total budgeted amount of the Project from both the MBTA and the Town will not be exceeded by the additional costs of the Change Order. In the event that a Change Order amount will cause the total budget to be exceeded, the architect, MBTA and the Owner shall consult and determine a reduction in the scope of other work in order to avoid any cost overrun.