

COPY

**MEMORANDUM OF AGREEMENT
regarding the Rose Kennedy Greenway**

by and between

**The Massachusetts Turnpike Authority,
the City of Boston, The Commonwealth of Massachusetts, and
the Rose Fitzgerald Kennedy Greenway Conservancy, Inc.**

July 12, 2004

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MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“MOA” or “Agreement”) is entered into by and between the Massachusetts Turnpike Authority (the “Authority”), the Commonwealth of Massachusetts (the “Commonwealth”), acting by and through its Executive Office for Administration and Finance (“A&F”) and by and through its Executive Office of Transportation and Construction (“EOTC”), the City of Boston (the “City”) (collectively the “Public Parties”), and (from and after the Execution Date) the Rose Fitzgerald Kennedy Greenway Conservancy, Inc., a Massachusetts non-profit corporation (the “Conservancy”) (together, the “Parties” or, individually, a “Party”), to memorialize the understandings and certain obligations of the Parties with regard to the creation and operation of the Conservancy and the distribution and allocation of responsibilities related to the creation, operation, maintenance, management and funding of certain open space features to be designed and constructed by the Authority and more specifically identified on the map attached hereto and incorporated herein as Exhibit 1, commonly and by law referred to as the Rose Kennedy Greenway (the “Greenway”).

WHEREAS, the Massachusetts Legislature, in Section 117 of Chapter 205 of the Acts of 1996, directed that the open space above the underground portion of the Central Artery be designated the “Rose Kennedy Greenway”, in honor of Rose Fitzgerald Kennedy, the daughter of Boston Mayor John Francis Fitzgerald and the mother of President John Fitzgerald Kennedy and United States Senators Robert F. Kennedy and Edward M. Kennedy, and the Parties desire to dedicate the Greenway in keeping with the Legislature’s designation; and

WHEREAS, the Greenway will be located completely within the City of Boston and will become a significant public asset to be used and enjoyed by the residents of Boston and the Commonwealth, as well as by visitors to the City, and will border and connect several Boston neighborhoods, districts and cultural destinations; and

WHEREAS, EOTC and A&F are executive offices of the Commonwealth established pursuant to Mass. Gen. Laws c. 6A, §2, and the Authority is a public instrumentality of the Commonwealth established pursuant to Mass. Gen. Laws c. 81A, and each of them execute this Agreement in accordance with their statutory functions and responsibilities; and

WHEREAS, the Massachusetts Department of Highways ("MHD"), as a state agency within EOTC, has authorized the Secretary of EOTC to execute this Agreement on MHD's behalf; and

WHEREAS, the Greenway is being designed and constructed under the direction of the Authority as a part of and with funding provided through the Central Artery/Tunnel Project (the "Project"); and

WHEREAS, the design and construction of the Project is being managed by the Authority on MHD's behalf pursuant to a Central Artery/Ted Williams Tunnel Project Management Agreement (the "Project Management Agreement") effective as of July 1, 1997, as may be amended from time to time; and

WHEREAS, the Authority is currently completing the design of the Greenway; and

WHEREAS, the Authority shall construct the Greenway in accordance with the final design specifications for the Greenway, including its landscape and horticultural features, sculptural and other design elements, utilities and park fixtures; and

WHEREAS, the Public Parties have agreed that the creation of a private, charitable non-profit corporation to serve as a conservancy for the Greenway is the most effective way to ensure a true private-public partnership that will result in (a) adequate, stable and reliable funding for the Greenway, (b) a high-quality operation and maintenance program for the Greenway, and (c) a high-quality, inclusive and creative series of programs and events to facilitate broad-based use and enjoyment of the Greenway by the general public on a twenty-four hour-a-day/seven day-a-week basis, in all weather and seasons; and

WHEREAS, the Parties wish to set forth the respective and joint responsibilities of the Authority, the Commonwealth, the City, and the Conservancy for the creation, operation, maintenance, management, programming and funding of the Greenway;

NOW, THEREFORE, in order to memorialize the agreement of the Parties as to their responsibilities and roles in the creation of and cooperation with the Conservancy and in the creation, operation, maintenance, management, programming and funding of the Greenway, the Parties agree as follows:

Section I. Definitions.

The following terms, as used herein, have the meanings set forth below:

“Adjacent City Streets and Sidewalks” has the meaning set forth in Section 4.4.2 herein.

“A&F” has the meaning set forth in the Recitals.

“Articles” means the Articles of Organization of the Conservancy attached hereto and incorporated herein as Exhibit 2, as may be amended from time to time.

“Audit and Risk Management Plan” has the meaning set forth in Section 5.7 herein.

“Authority” has the meaning set forth in the Recitals.

“Bylaws” means the Bylaws of the Conservancy attached hereto and incorporated herein as Exhibit 3, as may be amended from time to time.

“Central Artery” has the meaning set forth in Chapter 81A.

“Chapter 81A” means Mass. Gen. Laws c. 81A.

“City” means the City of Boston.

“City Layout” has the meaning set forth in Section 4.3.1 herein.

“Conservancy” has the meaning set forth in the Recitals.

“Conservancy Board” has the meaning set forth in Section 4.1 herein.

“Development Parcels” for purposes of this Agreement means those parcels located between Causeway Street and Kneeland Street that have been designated as “future building sites” on Exhibit 1 and that shall be transferred by MHD to the Authority pursuant to Chapter 81A and the transfer agreement executed between the Authority and MHD pursuant thereto.

“Effective Date” means the date on which the Public Parties execute this Agreement.

“Endowment Budget Targets” has the meaning set forth in Section 5.3.2 herein.

“Endowment and Finance Plan” has the meaning set forth in Section 5.3.1 herein.

“EOTC” has the meaning set forth in the Recitals.

“Events Plan and Budget” means the Programs and Events Plan, Funding Protocol and Budget, as more specifically described in Section 5.5 herein.

“Execution Date” means the date on which the Conservancy executes this Agreement.

“Greenway” has the meaning set forth in the Recitals, and by way of further definition is the collection of open space parcels and related areas located within the limits of the state highway layout between the northerly limit of Causeway Street and the southerly limit of Kneeland Street in the City of Boston above but not including those highway elements to be conveyed to the Authority by the Commonwealth, acting by and through MHD, in accordance with section 12 of Chapter 81A, and including at a minimum parcels 8, 10, 13, 14, 15, 16, 17a, 17b, 18, 19, 21, 22 and 23 (a through d), as shown on Exhibit 1, together with any additional parcels and other areas as may, from time to time, be agreed to by the Parties; provided, however, that the Greenway shall not be deemed to include (a) any surface street or sidewalk that may be established within such area for the benefit of the City, including, without limitation, the Adjacent City Streets and Sidewalks, (b) the Development Parcels (as also shown on Exhibit 1), (c) the MassHort Parcels if said parcels are completed in accordance with the applicable requirements of any certificate or notice issued pursuant to the Massachusetts Environmental Policy Act (each such requirement a “MEPA Requirement”), or (d) parcel 18 if said parcel is developed in accordance with that certain Request for Proposals (“RFP”) issued in March 2004 (or any subsequent RFP for said parcel) and with any applicable MEPA Requirement.

“Greenway Administration Working Group” has the meaning set forth in Section 6.1 herein.

“Greenway Segment” has the meaning set forth in Section 4.2.1(c) herein.

“Initial Endowment Budget Target” has the meaning set forth in Section 5.3.2 herein.

“Initial Operations and Maintenance Plan” has the meaning set forth in Section 5.4 herein.

“Initial Staff” has the meaning set forth in Section 4.2.3 herein.

“Initial Staffing Period” has the meaning set forth in Section 4.2.3 herein.

“Long-Term Operations and Maintenance Plan” means the plan described in Section 5.4 herein.

“MassHort Parcels” means Greenway parcels 19, 21 and 22, as more specifically described in Section VIII herein and as shown on Exhibit 1.

“MHD” has the meaning set forth in the Recitals.

“Operations and Maintenance” or “Operate and Maintain” shall mean the activities and the conduct of such activities necessary to keep the Greenway in a condition and appearance specified in the Long-Term Operations and Maintenance Plan, including, without limitation, specialty horticultural maintenance and repairs.

“Plans and Protocols” means, collectively, the Long-Term Operations and Maintenance Plan, the Safety and Security Protocol, the Endowment and Finance Plan, the Events Plan and Budget, and the Audit and Risk Management Plan.

“Programs and Events Plan, Funding Protocol and Budget” means the Events Plan and Budget.

“Programming” or “Program” means the scheduling and permitting of events and other activities to be conducted on the Greenway in accordance with the Events Plan and Budget.

“Project Management Agreement” shall have the meaning set forth in the Recitals.

“Rose Kennedy Greenway Expendable Trust” means an expendable trust account of that name to be established pursuant to Mass. Gen. Laws c. 6A, §6 and c. 7, §4F and 801 CMR 50.01 et seq., which trust account shall be solely for the benefit of the Greenway and shall be used solely for charitable purposes described in Section 501(c)(3) of the Internal Revenue Code and the regulations thereunder, and which is governed by Trustees pursuant to a trust instrument drafted by the Commonwealth and reviewed and approved by the other Public Parties.

“Safety and Security Protocol” has the meaning set forth in Section 5.6 herein.

“Special Agreements” means agreements with the City governing maintenance responsibility issues arising from special features, materials, treatment or use of the Adjacent City Streets and Sidewalks.

“Term” has the meaning set forth in Section III herein.

Section II. Purposes of This Agreement.

2.1. Protection of the Public Investment.

The Parties intend to allocate and to share responsibility for the creation, operation, maintenance, management and programming of the Greenway so as to protect the substantial public investment in Interstate 93 and the

open space created above Interstate 93 and to ensure that the Greenway is a first-class public space and civic resource – one that is “*le meilleur des meilleurs*” in every respect.

2.2 Creation of Conservancy.

As further described herein, the Public Parties shall cooperate in the incorporation of a private, non-profit corporation, the Rose Fitzgerald Kennedy Greenway Conservancy, Inc., which shall be dedicated to raising funds for the Greenway and otherwise promoting, preserving, and improving the Greenway as a first-class public space. The Public Parties and the Conservancy desire to create a strong and successful private-public partnership that will advance the interests of the public in the Greenway.

2.3 Private Sector Support.

The Parties intend that the Conservancy shall encourage, solicit and secure significant private support for the ongoing stewardship, Programming, and Operations and Maintenance of the Greenway, and the Public Parties agree that they shall work with the Conservancy to advance that goal.

2.4 Adoption of Initial Period/Overall Objective.

In furtherance of the objectives stated herein, the Parties adopt this Agreement to (a) cooperate in the establishment of the Conservancy and to delegate responsibility to its various Committees, and (b) create an “Initial Period” during which the Conservancy must demonstrate the capability to achieve sustained, high-level fundraising, while the Authority guarantees

the day-to-day Operations and Maintenance of the Greenway, and the City coordinates Programming for the Greenway. The Parties' agreement is made after years of study and discussion regarding the most appropriate manner in which to govern this unique open space, and are taken following a detailed review and consideration of a national panel's recommendations in 2002. The Parties agree that the Authority shall continue to direct and supervise the design and construction of the Greenway, and that upon the successful completion of construction of the Greenway, and the demonstration during the Initial Period that the Conservancy can financially sustain, operate and maintain, and program the Greenway, the Greenway should then continue to be managed in the manner described herein and in the Articles and Bylaws.

Section III. Term of Agreement.

This Agreement shall commence on the Effective Date, and shall terminate upon the conclusion of the Initial Period (such period hereinafter referred to as the "Term"), unless the Parties mutually agree to shorten or extend this Agreement. The Parties shall meet not less than six (6) months before the end of the Term for the purpose of deciding whether to extend this Agreement.

Subject to the provisions of Section 5.3.4 herein, the Initial Period begins on the Effective Date and ends on the date which is the later of June 30, 2012 or five (5) years from the opening of the final Greenway Segment (as defined herein); provided, however, that in no event shall the Initial Period extend beyond June 30, 2013. For purposes of this

Agreement, "opening of the final Greenway Segment" shall mean the date on which all of the Greenway Segments have been opened to the general public.

Section IV. Roles and Obligations of the Parties.

4.1 Joint Creation of the Conservancy.

The Public Parties agree that designated representatives of each of them and a designated representative of the Kennedy family shall, within seventy-two (72) hours of the Effective Date, promptly oversee the filing of documentation and take all other actions necessary and appropriate to incorporate in Massachusetts a private, non-profit corporation that will qualify as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. This corporation shall be named the Rose Fitzgerald Kennedy Greenway Conservancy, Inc., shall be governed by a Board of Directors (the "Conservancy Board"), and shall be dedicated to ensuring that the Greenway be created, operated and maintained, managed, actively programmed, financed, and improved to the highest possible level subject to the provisions and limitations set forth in this Agreement, the Articles and the Bylaws, which are attached hereto and incorporated herein as Exhibit 2 and Exhibit 3, respectively. Upon its formation and the appointment of the Conservancy Board, the Public Parties intend that the Conservancy shall become a signatory and Party to this Agreement, and shall be managed and operated in a manner consistent with this Agreement and the Bylaws and Articles. In the event that the

Conservancy fails for any reason to execute this Agreement on or before October 31, 2004, this Agreement shall be null and void with no further recourse to or by the Public Parties.

4.2 The Turnpike Authority.

4.2.1 Design and Construction of Greenway.

- (a) The Authority shall continue to direct, supervise, undertake, and complete the design of the Greenway pursuant to the Project Management Agreement.
- (b) The Authority shall direct, supervise, undertake, and complete the construction of the Greenway, pursuant to the Project Management Agreement, in accordance with the Greenway final design specifications.
- (c) The Parties acknowledge that construction of the Greenway may be completed in segments (each a "Greenway Segment"), and that as each Greenway Segment is opened to the general public, Operations and Maintenance and Programming for each such Greenway Segment shall be conducted in accordance with this Agreement, the Bylaws and the Articles.

4.2.2 Initial Operations and Maintenance Responsibilities.

During the Initial Period, the Authority shall, in accordance with the Initial Operations and Maintenance Plan referred to in Section 5.4 below, pay for and perform or cause to be performed

the Operations and Maintenance of the Greenway, including, without limitation, specialty horticultural maintenance and repairs.

4.2.3 Initial Staffing of the Conservancy.

For the period beginning on the Effective Date and ending on December 31, 2008 (the "Initial Staffing Period"), the Authority shall develop job descriptions for the following staff positions for the Conservancy (the "Initial Staff"): an Executive Director, a fundraising specialist, and, at the Conservancy's request, up to two staff positions. The Initial Staff shall be employed by the Conservancy in a manner consistent with this Agreement and the Bylaws. During the Initial Staffing Period, the Authority shall provide the Conservancy with funds to support payment of the salaries of the Initial Staff, provided that such payments by the Authority to the Conservancy shall not exceed one hundred and twenty-five thousand dollars (\$125,000) each quarter, and shall not exceed in the aggregate two million dollars (\$2,000,000) during the Initial Staffing Period.

4.2.4 Authority Capital Contribution.

The Authority shall, in addition to other financial contributions as set forth in this Agreement, contribute, as described in this paragraph, five million dollars (\$5,000,000) (the "Authority's Matching Contribution") to the Conservancy as a dollar-for-dollar matching fund for private donations that are made to the

Conservancy during calendar years 2004 and 2005. No later than thirty (30) calendar days following written certification by the Conservancy to the Authority that a private donation has been made to the Conservancy on or before December 31, 2005, the Authority shall make a contribution to the Conservancy matching the amount of the certified private donation, up to an aggregate total of five million dollars (\$5,000,000.00). Upon receipt by the Conservancy, the Authority's Matching Contribution, shall (unless otherwise agreed by the Public Parties) be retained by the Conservancy as a part of its permanent endowment. Funds received from any other source shall be principally allocated to the endowment; provided, however, that the Conservancy shall have the ability to make appropriate expenditures from such funds for purposes that are related to its obligations under this Agreement and the Bylaws.

4.2.5 Other Authority Financial Commitments.

The Authority shall budget appropriately and maintain sufficient funds within its accounts during the Initial Period to fulfill and pay for all of its obligations under this Agreement. At the request of the Commonwealth, in furtherance of the partnership and cooperation among the Public Parties that is embodied in this Agreement, and as an additional contribution to the success and sustainability of the Greenway, the Authority shall procure for the

benefit of the Commonwealth, and for the benefit of the Commonwealth and the City for the purposes of Section 6.3.2, an irrevocable standby letter of credit (an "LC") that shall be maintained during the Term; provided, however, that (a) the amount of such LC shall not be less than twenty million dollars (\$20,000,000.00) on the earlier of the date which is thirty (30) days following the opening of the first Greenway Segment or December 31, 2007, (b) the Commonwealth shall pay all costs associated with the LC through December 31, 2007 and shall collaborate with the Authority in the placement of said LC, and (c) the LC shall provide, at a minimum, that it may be drawn for deposit into the Rose Kennedy Greenway Expendable Trust in the event of (x) a failure to meet the Initial Endowment Budget Target, or (y) the reason set forth in Section 6.3.2(c). Failure to comply with the requirements of this Section 4.2.5 shall be considered an Event of Default for which the remedy of specific performance shall be available in accordance with Section 6.3.2 herein.

4.3 The Commonwealth.

4.3.1 Creation of Sidewalks and Public Ways.

The Commonwealth shall, in consultation with the Authority and the City, not later than July 1, 2005, lay out and establish a system of City streets and sidewalks and vest the City with a public way easement within the area of the Greenway, all in accordance with

Massachusetts General Laws c. 81, 7A (the "City Layout"). The City Layout shall be subject to the prior approval of the City, acting by and through its Public Improvement Commission, and shall be deemed to be in full satisfaction of MHD's obligation to create such a street and sidewalk system pursuant to that certain Land Disposition Agreement dated June 10, 1992, between MHD and the City.

4.3.2 Commonwealth Cooperation.

The Commonwealth, acting by and through A&F and EOTC, shall cooperate with the other Parties in achieving their respective obligations under this Agreement, and shall, together with other appropriate representatives of the Commonwealth, participate in the Committees to be established in accordance with this Agreement and the Bylaws.

4.4 The City.

4.4.1 Creation of Sidewalks and Public Ways.

The City shall reasonably cooperate with MHD and the Authority in establishing the City Layout.

4.4.2 Adjacent City Streets and Sidewalks/Special Agreements.

Upon their completion, the City shall assume care, custody and control over, and responsibility for, all streets, roads, ways and sidewalks within the City Layout or otherwise crossing or adjacent to the Greenway (the "Adjacent City Streets and Sidewalks") and

all costs associated with the operations and maintenance thereof, except and unless special features, materials, treatment or use of such Adjacent City Streets and Sidewalks has resulted in special agreements (the "Special Agreements") with the City regarding such responsibility.

4.4.3 Agreement Regarding Certain Trees.

The Authority agrees that in the event that trees planted as a part of the Project within the Adjacent Streets and Sidewalks and the area that comprises the public realm associated with the Greenway need to be replaced because of their condition within eighteen (18) months following planting, the Authority shall implement and pay for a one-time replacement of trees of a type and quality reasonably equivalent to the initially planted trees, and the Authority shall secure a one-year warranty for such replacement trees.

4.4.4 Programming Events.

The City shall be responsible for Programming on the Greenway during the Term. Programming shall be conducted in accordance with the Events Plan and Budget. Revenues earned from such Programming (except only for those licensing fees that offset the City's administrative expenses as approved by the Audit and Risk Management Committee) shall be paid to the Conservancy in a manner and on a schedule to be established in the Events Plan and

Budget. As between the Parties, any costs for staging Programming on the Greenway that are not paid by the party sponsoring an event shall be paid by the Conservancy; provided, however, that all such costs shall be consistent with the Events Plan and Budget and no such costs may be incurred without the prior written approval of the Conservancy.

4.4.5 Policing, Fire Protection and Emergency Services.

Routine policing on the Greenway shall be provided by the Boston Police Department. Fire protection and related emergency services for the Greenway shall be provided by the Boston Fire Department or other appropriate City agencies or departments.

4.4.6 City Financial Contribution.

The City agrees to commit and spend, not later than two (2) years from the Effective Date, one million dollars (\$1,000,000) toward funding improvements associated with the public realm in the vicinity of the Greenway.

4.5. The Conservancy.

The Parties have agreed that the Articles and the Bylaws of the Conservancy shall be those attached hereto as Exhibit 2 and Exhibit 3 respectively, as the same may be revised from time to time by the Conservancy; provided, however, that the Bylaws and Articles shall not be inconsistent with the terms of this Agreement. During the Initial Period, except as specifically agreed to by all of the Public Parties, the

Conservancy shall not enter into contracts or incur other obligations that extend beyond December 31, 2010; after January 1, 2011, the Conservancy shall not, except as specifically agreed to by all of the Public Parties, enter into contracts or other obligations that extend beyond December 31, 2013. The Parties intend that the Conservancy shall function as a private, independent, strong, motivated and effective entity that is committed to fulfilling its organizational mission and complying with the terms of this Agreement, the Articles and the Bylaws, and that the Conservancy shall work to advance the public's interest in a Greenway that shall be an important public resource of national, regional and statewide significance for residents of and visitors to the City and the neighborhoods and districts in which it is situated. Toward that end, the Parties intend that the Conservancy, subject to the terms of this Agreement, the Articles and the Bylaws, shall, in accordance with applicable law and the Plans and Protocols developed pursuant to this Agreement and the Bylaws, assume certain responsibilities as set forth herein. The Parties agree and acknowledge that delegating to the Conservancy Operations and Maintenance, Programming and/or other additional responsibilities at the expiration of the Initial Period (i) requires the confirmation by each of the Public Parties that the Conservancy has accomplished its objectives during the Initial Period as set forth herein, and (ii) may require additional action, including, without limitation, state legislative action. In order to implement the provisions of sub-section (ii)

of the prior sentence, the Greenway Administration Working Group shall identify all such actions and make specific written recommendations regarding said actions to the Parties at the earliest possible time, but in no event later than December 31, 2005, including recommendations regarding interim measures that may be necessary in the absence of any required legislation. The Parties agree to cooperate in the development and implementation of all such recommendations.

Section V. The Committees.

5.1 The Committees, Plans, Protocols and Other Actions.

In accordance with its Bylaws, the Conservancy shall include the following standing committees (collectively, the "Committees"): an Operations and Maintenance Committee, a Programs and Events Committee, an Endowment and Finance Committee, and an Audit and Risk Management Committee. Each such Committee shall develop a Plan or Protocol, as further described herein. Each such Committee shall seek input from all appropriate sources, including without limitation, the Greenway Leadership Council, and shall hold at least one (1) public hearing in a location convenient to the Greenway to receive comments and input prior to the submission of a Plan or Protocol to the Public Parties. All such Plans and Protocols shall be completed not later than twelve (12) months following the Execution Date, and shall thereafter be reviewed and approved by each of the Public Parties prior to their submission to the

Conservancy Board for adoption and implementation; provided, however, that all such Plans and Protocols shall be completed, reviewed and approved by the Public Parties, and adopted and, consistent with this Agreement, implemented by the Conservancy (or one or more of the Public Parties, as specified herein) prior to the date the first Greenway Segment is opened.

5.2 Committee Membership.

The Parties acknowledge and recognize that much of the important work of the Conservancy and important aspects of the future of the Greenway will be developed and agreed to as a result of the work of the Committees. Accordingly, the Parties agree that the Committees shall include qualified members from the diverse citizenry and organizations that are stakeholders for the Greenway as more specifically set forth in the Bylaws.

5.3 Endowment and Finance Committee/Fundraising.

5.3.1 Endowment and Finance Committee.

An Endowment and Finance Committee of the Conservancy shall be appointed by the Board in accordance with the Bylaws. The Endowment and Finance Committee shall develop an Endowment and Finance Plan focused on raising and investing funds, managing the Conservancy on a long-term basis, developing a long-term business plan for the Conservancy, and identifying all sources of funding sufficient to fulfill the requirements of the Long-Term

Operations and Maintenance Plan, the Safety and Security Protocol, and the Events Plan and Budget for the Greenway.

5.3.2 Endowment Budget Targets.

For purposes of this Agreement, the Parties establish, as initial objectives, a goal to raise five million dollars (\$5,000,000) in private contributions on or before December 31, 2005, and an Initial Endowment Budget Target of twenty million dollars (\$20,000,000) on or before December 31, 2007. The Initial Endowment Budget Target shall be inclusive of all funds raised by the Conservancy through December 31, 2007, including the Authority's Matching Contribution. The Endowment and Finance Plan shall establish a Final Endowment Budget Target that must be met by the Conservancy on or prior to the conclusion of the Initial Period. The Initial Endowment Budget Target and the Final Endowment Budget Target are hereafter collectively referred to as the "Endowment Budget Targets."

5.3.3 Monitoring of Endowment Budget Targets.

The Parties, through the Greenway Administration Working Group, shall review the Conservancy's progress on meeting the Endowment Budget Targets and shall receive regular reports from the Endowment and Finance Committee and the Audit and Risk Management Committee verifying funds raised, and by the

Endowment and Finance Committee regarding the success of the Endowment and Finance Plan.

5.3.4 Failure to Meet Initial Endowment Budget Target.

In the event that the Audit and Risk Management Committee fails to verify, on or before January 15, 2008, that the Initial Endowment Budget Target has been met (that is, fails to verify that \$20,000,000 has been raised by the Conservancy on or before December 31, 2007), then, notwithstanding any other provision of this Agreement to the contrary, the Initial Period shall conclude on December 31, 2009 at which time the Term of this Agreement shall expire, all funds then remaining in the Conservancy's endowment shall be transferred to the Rose Kennedy Greenway Expendable Trust, and the Parties shall take all necessary and appropriate steps to ensure that the Greenway is successful, including, without limitation, seeking and implementing a dissolution or alteration of the Conservancy, and/or seeking legislation to (among other things) impose a special assessment or business improvement district associated with the Greenway.

5.3.5 Failure to Meet Final Endowment Budget Target.

In the event that the Audit and Risk Management Committee fails to verify that the Final Endowment Budget Target has been met, then, notwithstanding any other provision of this Agreement to the contrary, the Parties shall take all necessary and appropriate steps

to ensure that the Greenway is successful, including, without limitation, seeking and implementing a dissolution or alteration of the Conservancy, and seeking legislation to (among other things) impose a special assessment or business improvement district associated with the Greenway.

5.3.6 Dissolution of Conservancy.

The Parties agree that in the event the Conservancy is dissolved for any reason, all funds then remaining in the Conservancy's endowment shall be transferred to the Rose Kennedy Greenway Expendable Trust.

5.4 Operations and Maintenance Committee.

The Operations and Maintenance Committee of the Conservancy shall be appointed by the Board in accordance with its Bylaws. The Operations and Maintenance Committee shall develop a Long-Term Operations and Maintenance Plan that shall include an Initial Operations and Maintenance Plan that the Authority shall follow during the Initial Period. The Long-Term Operations and Maintenance Plan shall include, but not be limited to, a comprehensive plan and budget for routine and programmed maintenance, specialty horticultural maintenance, and other activities deemed necessary to ensure that the Greenway is maintained to a consistent and high standard of excellence. The Long-Term Operations and Maintenance Plan shall also address the performance of and payment for horticultural maintenance activities on or within appropriate portions

of the Adjacent City Streets and Sidewalks, through the recommendation of Special Agreements or otherwise. The Committee shall also make specific recommendations for the process by which the Public Parties and the Conservancy shall recommend, consider, approve, and implement future capital improvements to the Greenway; provided, however, that during the period following completion of construction of the Greenway, the expenditure of an amount greater than one million dollars (\$1,000,000) for the construction of any single element of the Greenway or any one (1) capital project to improve the Greenway shall be subject to the prior approval of the Owner of the Greenway.

5.5 Programs and Events Committee.

A Programs and Events Committee of the Conservancy shall be appointed by the Board in accordance with its Bylaws. The Programs and Events Committee shall develop a comprehensive Programs and Events Plan, Funding Protocol and Budget (the "Events Plan and Budget") for year-round programs and events on the Greenway, including specific recommendations to the Conservancy Board regarding a protocol for funding and establishing an annual budget for Programming, and a process for establishing, planning, accommodating and managing concessions and related activities. The Events Plan and Budget shall recognize and accommodate the fact that once completed, the Greenway is intended to be a public park entitled to the protections of Article 97 of the Amendments to the Massachusetts Constitution and subject to existing applicable

Commonwealth policy regarding the use and protection of public parkland. The Events Plan and Budget shall recognize the City's ability to authorize programs and events that do not require Conservancy funds, and shall recognize the City's ability to exclusively authorize concessions related to such programs and events. The Conservancy shall fund, or cause to be funded, and after the Initial Period (subject to the provisions of Section 4.5 herein) the Parties intend that the Conservancy shall implement the approved Events Plan and Budget; provided, however, that except as set forth in the preceding sentence, all concessions granted on the Greenway shall be approved by the Public Parties and shall be subject to applicable City permitting and licensing rules. Subject to the preceding sentence, the Parties intend that the Conservancy shall enter into one or more contracts regarding the implementation of the Events Plan and Budget, including any "First Year" program of events deemed suitable for the Greenway, in consultation with the Operations and Maintenance Committee. The Programs and Events Committee shall also prepare, not later than January 15th of each year, a report summarizing the Programming that occurred on the Greenway during the prior calendar year, including a report on fees collected and funds expended by the Conservancy on such Programming as well as comment and analysis about whether the Programming is consistent with the Events Plan and Budget and the provisions of this Agreement, and, if necessary, making recommendations for amendments to the Events Plan and Budget.

5.6 Safety and Security Protocol.

The Programs and Events Committee of the Conservancy shall, in collaboration with the Operations and Maintenance Committee, develop and complete a Safety and Security Protocol not later than twelve (12) months following the Execution Date. All security services required for the Greenway beyond routine policing shall be contracted with the City.

5.7 Audit and Risk Management Committee.

The Audit and Risk Management Committee of the Conservancy shall be appointed by the Board in accordance with its Bylaws. The Audit and Risk Management Committee shall develop an Audit and Risk Management Plan setting forth auditing, accounting and insurance protocols with respect to the use and management of the Greenway, as well as a plan for compliance with all applicable public charities laws and regulations and other applicable finance and reporting-related legal requirements.

5.8 Committee Coordination.

It is the intent of the Parties that all Committees, and in particular the Operations and Maintenance and the Programs and Events Committees, shall coordinate their discussions and the development of their respective Plans and Protocols in order to ensure to the highest degree possible that their respective Plans and Protocols are in harmony.

Section VI: Greenway Administration and Dispute Resolution.

6.1 Greenway Administration Working Group.

The Parties acknowledge that certain administrative and other issues regarding the management of the Greenway, including, without limitation, issues regarding procurement and compliance with applicable federal, state and local laws, require resolution prior to the opening of any Greenway Segment. The Public Parties shall therefore, within ten (10) days following the Effective Date, each appoint two (2) representatives to a Greenway Administration Working Group, (and, not later than thirty (30) days after the Execution Date, the Conservancy shall appoint two (2) representatives) which shall exist during the Initial Period. The Greenway Administration Working Group shall meet not less frequently than monthly to: (1) identify all issues that require resolution prior to the opening of any Greenway Segments, (2) make specific recommendations regarding how best to resolve those issues in a timely manner, and (3) undertake all other roles assigned to it under this Agreement. The Greenway Administration Working Group shall consult and coordinate with each of the Committees on the development of their respective Plans and Protocols. The Parties shall meet not less than six (6) months before the end of the Term for the purpose of deciding whether to extend the existence of the Greenway Administration Working Group beyond the Term.

6.2 Dispute Resolution.

6.2.1 In General.

The Parties agree that any dispute, disagreement or misunderstanding (“Dispute”) regarding any interpretation of, or any action taken or to be taken under or pursuant to this Agreement, shall be initially referred to the Greenway Administrative Working Group for resolution. For purposes of this Agreement, the date upon which a Dispute shall be deemed to have arisen is the date when at least one Authorized Representative of a Party forwards written correspondence regarding the Dispute to the other Authorized Representatives.

6.2.2 Dispute Resolution Procedure.

In the event the Greenway Administrative Working Group, after meeting in person and making all other good faith efforts which may be necessary, cannot resolve the Dispute within sixty (60) business days of the date the Dispute arises, and on the condition that not fewer than two (2) of the Parties concur that the Dispute exists, the Dispute shall, not later than fifteen (15) business days thereafter, be referred to a third party agreed to by the Parties and selected from suggestions made by each of the Parties (the “Neutral”). Costs for the services of the Neutral shall be paid by the Parties alleging that a Dispute exists. The Neutral shall be a person with significant professional experience in the operations and maintenance and/or programming of urban parks. The Parties shall thereafter have the opportunity to present the Dispute to the Neutral collectively, but in an

informal manner, and the Neutral shall, not later than thirty (30) business days after having been first selected, issue a recommendation for consideration by the Parties. Such recommendation shall be non-binding on the Parties.

6.2.3 Other Remedies.

In the event the Parties cannot resolve the Dispute following the receipt of the recommendation of the Neutral, the Parties shall be entitled to pursue any remedy available to them at law or in equity.

6.3 Default and Remedies.

6.3.1 In General.

The Parties acknowledge that failure to perform any of their respective obligations in the manner set forth in this Agreement shall be considered an Event of Default. Upon the occurrence of any Event of Default by one Party and the completion of the administrative dispute resolution procedure set forth in Section 6.2 above, another Party may, subject to applicable law, proceed to seek and obtain such remedies as may be available at law or in equity.

6.3.2 Specific Performance and Self Help.

The Parties further acknowledge that, in light of the agreed-upon benefits to the public from the creation of the Greenway, damages will not provide a full and adequate remedy in the event of a failure by the responsible Party to timely pursue and complete the following obligations:

- (a) failure to Operate and Maintain the Greenway in accordance with the Long-Term Operations and Maintenance Plan;
- (b) failure to Program the Greenway in a manner that is appropriate to and harmonious with the Events Plan and Budget, the Long-Term Operations and Maintenance Plan, or the Safety and Security Protocol;
- (c) failure to maintain sufficient funding to pay for the Authority's obligations under this Agreement; and
- (d) failure to place the LC as described in Section 4.2.5 herein.

Consequently, the Parties agree and acknowledge that specific performance is an appropriate remedy in the event of the failure of the relevant Party to timely perform the obligations specified in items (a), (b) and (d) above for which, notwithstanding the provisions of Section 6.3.1, two or more of the non-defaulting Parties may pursue the remedy of specific performance and/or self help; provided however, that any such remedy may not be pursued until the Parties have completed the informal dispute resolution process set forth in Section 6.2.2 above. With respect to item (c) above, the Parties agree and acknowledge that notwithstanding the provisions of Section 6.3.1, in the event two or more of the Public Parties (i) determine that there has been a failure to fund the Authority's obligations under this Agreement, (ii) have provided written notice of their determination to the Authority, and (iii) the Authority has not cured said

failure within forty-five (45) days of such written notice, then the City or the Commonwealth shall be able to exercise their rights under the LC, and cause a release of the funds guaranteed by the LC to the Rose Kennedy Greenway Expendable Trust for the purpose of paying for the Authority's obligations under this Agreement, provided, however, that any such remedy may not be pursued until the Parties have completed the informal dispute resolution process set forth in Section 6.2.2 above.

6.3.3 Remedies Are Cumulative/No Waiver.

In all other respects, the remedies available under this Section 6.3 and in other provisions of this Agreement are intended to be cumulative. No failure of either Party to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy available on a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach, term, or condition.

Section VII. Amendment Article 97/ MEPA Compliance.

It is the intent of the Parties that the Conservancy undertake its obligations under this Agreement and the Bylaws without relying on any federal, state or local funding (other than the specific funds committed in this Agreement).

Nevertheless, the Parties agree and acknowledge that the land on which the Greenway will be built was acquired, at least in part, for the purpose of satisfying the MEPA Requirement to create a significant open space public amenity through

downtown Boston in connection with the Project and to thereafter operate and maintain such open space as a publicly accessible park and open space area, and that therefore the Greenway, once completed, is to be afforded the protections of Article 97 of the Amendments to the Massachusetts Constitution in all respects.

Section VIII. Massachusetts Horticultural Society Parcels.

The Parties acknowledge that, in accordance with an ongoing process begun pursuant to certain of the permits and approvals obtained for the Project, the Massachusetts Horticultural Society is in the process of developing a facility on a portion of the Greenway situated on parcels 19, 21 and 22, as more specifically shown on Exhibit 1 (collectively, the “MassHort Parcels”). The Parties further acknowledge that the process for the development of the MassHort Parcels is currently separate and distinct from the process to design and construct the remainder of the Greenway. Nevertheless, the Parties agree that until such time as the final design specifications and funding for the MassHort Parcels is resolved and construction begins on the MassHort Parcels in accordance with any MEPA Requirement, the Authority shall Operate and Maintain the MassHort Parcels to a standard established in the Initial Operations and Maintenance Plan. Nothing in this Agreement shall be construed as affecting either the ongoing process of designing, funding and developing the MassHort Parcels, or any MEPA Requirements associated with said parcels.

Section IX. Miscellaneous.

9.1 Intellectual Property.

The Parties agree that they shall take all steps necessary to ensure that all revenue derived and earned from the branding of, or the trademark or other intellectual property rights associated with, the Rose Kennedy Greenway or the Conservancy shall belong solely and exclusively to the Conservancy during the Term.

9.2 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 Parties. It is the intention of the Parties that the provisions of this Agreement may only be enforced by the Parties, 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 provision herein without the prior written approval of the Parties. When used in this Agreement, even when not specifically stated, the names of the Parties shall also include their respective successors and assigns.

9.3 Federal Highway Interest.

The Parties acknowledge that the Greenway is being designed and constructed within the limits of an established state highway layout. Any non-highway use of the Greenway may therefore be subject to the jurisdiction of the Federal Highway Administration pursuant to Title 23 of

the United States Code and the federal regulations promulgated thereunder.

9.4 Specific Limitations.

The Parties intend that this Agreement be interpreted, as applicable, in a manner consistent with the provisions of applicable federal and state law, including, without limitation, Chapter 81A. Except as provided in Section 4.3.1, nothing in this Agreement shall be deemed to grant to any Party an interest in land nor permission for any Party to grant an interest in land.

9.5 Notices.

All notices or other communications required or permitted to be given under this Agreement shall be in writing, signed by each Parties' respective Authorized Representative, and shall be deemed delivered if (i) mailed, postage prepaid, by regular U.S. mail, to the persons and addresses below, or (ii) delivered by hand or by recognized overnight delivery service (with evidence of receipt) to the principal office of the intended party, as indicated below, unless such address is otherwise designated by written notice to the other Party:

if to the Authority:

Chairman
Massachusetts Turnpike Authority
10 Park Plaza, 4th Floor
Boston, MA 02116

if to the Commonwealth:

Secretary
Executive Office of Transportation and Construction
10 Park Plaza, Room 3170
Boston, MA 02116

if to the City:

Mayor
City of Boston
One City Hall Plaza
Boston City Hall
Boston, MA 02210

if to the Conservancy:

Executive Director
Rose Fitzgerald Kennedy Greenway Conservancy, Inc.
Boston, MA

with copies in each such instance to each of the Parties and each of the other Parties' designated Authorized Representatives.

9.6 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 to effectuate the provisions herein, including, specifically, all interaction with users of the Greenway, the press, and members of the general public. For the purpose of this Agreement, the Parties hereby each initially appoint the following persons as their respective Authorized Representatives: Director of the Boston Redevelopment Authority acting on behalf of the City (for the City); the Secretary of EOTC (for the Commonwealth), the Chairman of the Authority (for the Authority), and

the Executive Director of the Conservancy (for the Conservancy).

Questions regarding the obligations of the Parties under, 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 on behalf of their respective Parties, except as may be otherwise specifically required herein. Each Party reserves the right to change its Authorized Representative at any time after the date hereof by providing written notice to the other Party in the form required by Section 9.4 of this Agreement.

9.7 Integration.

This Agreement, which includes the 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.

9.8 Amendments.

This Agreement, or any part thereof, may be amended from time to time hereafter only in a writing duly authorized and executed by the Parties.

9.9 Governing Law.

To the maximum extent permitted by law, this Agreement shall be governed and construed in accordance with the laws of The Commonwealth of Massachusetts.

9.10 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.

9.11 Effective Date.

This Agreement shall be deemed to become effective as of the Effective Date.

9.12 Headings.

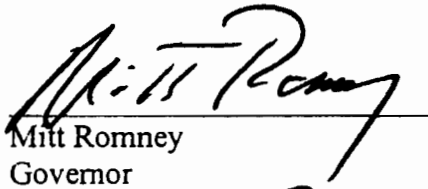
The Parties acknowledge that the headings included herein are for convenience only and are not to be considered to be a part of this Agreement.

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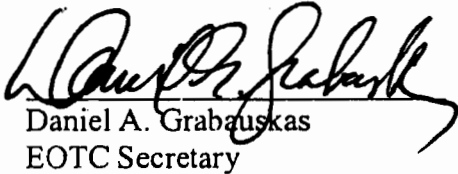
Executed by the duly authorized representatives of the Public Parties and a representative of the Kennedy family on this 12th day of July, 2004, and by the

Conservancy on the _____ day of _____, 2004.

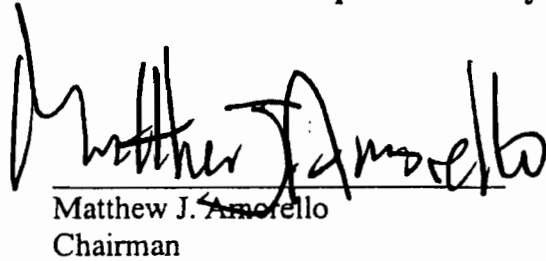
**The Commonwealth
of Massachusetts**


Mitt Romney
Governor

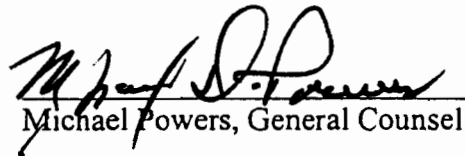

Eric Kriss, A&R Secretary


Daniel A. Grabauskas
EOTC Secretary

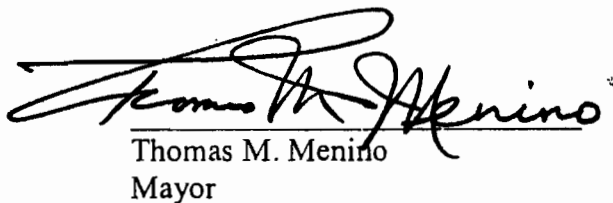
Massachusetts Turnpike Authority


Matthew J. Amorello
Chairman

Approved as to form:


Michael Powers, General Counsel

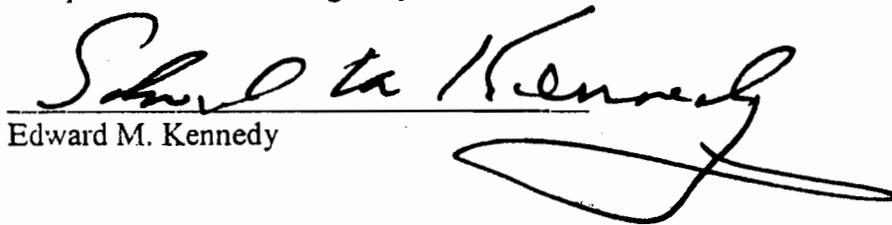
City of Boston


Thomas M. Menino
Mayor

**Rose Fitzgerald Kennedy
Conservancy, Inc.**


Title: _____ date

Role of the Rose Fitzgerald Kennedy family
accepted and acknowledged by:


Edward M. Kennedy

LIST OF EXHIBITS

| Title | Exhibit |
|-------------------------------|---------|
| Parcel Land Use Map..... | 1 |
| Articles of Organization..... | 2 |
| Bylaws..... | 3 |