

Execution Version

**Second Amended and Restated Lease Between the
Massachusetts Department of Transportation
and the
Rose Fitzgerald Kennedy Greenway Conservancy, Inc.**

PREAMBLE

This Second Amended and Restated Lease ("Lease") is made as of July 1, 2017 (the "Effective Date"), by and between the Massachusetts Department of Transportation, a body politic and corporate and public instrumentality of the Commonwealth of Massachusetts (the "Lessor," "MassDOT," or the "Department,") existing pursuant to M.G.L. Chapter 6C, as amended (the "Enabling Act"), having an office address of State Transportation Building, 10 Park Plaza, Boston, MA 02116, and the Rose Fitzgerald Kennedy Greenway Conservancy, Inc., (the "Lessee", or the "Conservancy"), a private, charitable, non-profit corporation created by articles of organization duly filed with the Office of the Secretary of the Commonwealth of Massachusetts on July 15, 2004, with a principal place of business at 185 Kneeland Street, Boston, MA 02111, (together "the Parties").

RECITALS

WHEREAS, pursuant to the Enabling Act, and subject to the provisions thereof, the Department has the authority to lease lands owned by the Department; and

WHEREAS, the Massachusetts Legislature, in Section 10 of Chapter 306 of the Acts of 2008, as amended by Chapter 242 of the Acts of 2012 (as amended, "the Act"), authorized the Conservancy to operate, manage, improve and maintain the Rose Fitzgerald Kennedy Greenway, and directed that the Department (as successor-in-interest to the Massachusetts Turnpike Authority (the "Authority") enter into a lease with the Conservancy in order to effectuate the intent of the Act; and

WHEREAS, Lessor, as landlord and successor-in-interest to the Authority, and Lessee, as tenant, entered into a certain Lease dated as of December 1, 2008 (the "Original Lease") whereby Lessor leased the Rose Fitzgerald Kennedy Greenway to Lessee, and Lessee agreed to operate, manage, improve and maintain the same, which was amended and restated by an Amended and Restated Lease dated as of July 1, 2015 (as amended, the "2015 Lease").

WHEREAS, pursuant to Chapter 25 of the Acts of 2009, the Authority was dissolved and all of its assets were transferred to the Department; and

WHEREAS, Lessor and Lessee have consequently determined to amend and restate the 2015 Lease in its entirety so as to extend the term of Lessee's leasehold interest in the Leased Premises (as hereinafter defined), and to modify certain other terms of the 2015 Lease, all as more specifically set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals, and of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree to amend and restate the 2015 Lease in its entirety as follows:

ARTICLE 1.

INTENTIONALLY DELETED

ARTICLE 2.

DEFINITIONS

SECTION 2.1. Certain Definitions. As used in this Lease, the terms defined in section 2 of the Act and capitalized herein shall have the meanings set forth in the Act as of the Effective Date. In addition to the other capitalized, defined terms contained herein, the following terms shall have the meanings respectively set forth below:

“2015 Lease” has the meaning set forth in the Recitals hereto.

“Act” has the meaning set forth in the Recitals hereto.

“Board” means the Conservancy’s Board of Directors.

“Chief Engineer” means the Chief Engineer of the Department, such member of the Chief Engineer’s staff to whom the Chief Engineer shall have from time to time delegated review, consent, approval or other rights, actions or authority under this Lease, or, if at the time in question no person shall be serving as Chief Engineer of the Department, then such other person as the Secretary of the Department, or his successor, shall have designated to exercise such review, consent, approval or other rights, actions or authority under this Lease.

“Dewey Square Right-Of-Way” means the land shown on Exhibit C hereto.

“First Lease Year” means the twelve consecutive months from July 1, 2017, through June 30, 2018.

“Fixed Improvements” means those design features, memorials, buildings or structures that have been or are hereafter installed by or for the use of the Conservancy and that are permanent features not susceptible to being moved or removed from the Leased Premises; provided, however, that the Greenway Carousel located on Parcel 14 shall be excluded from the definition of Fixed Improvements.

“Funding Agreement” means the Commonwealth of Massachusetts Subsidy Agreement by and between Lessor and Lessee dated as of July 1, 2017.

“Greenway Parcels” means parcels 5, 8, 10, 14, 15, 16, 17, 19, 21, 22 and 22A, 23B, and 23D (as well as K1 and K2) as shown on **Exhibit A**. Pursuant to the Act, parcels may be added to the Greenway Parcels. Any Option Parcel that Lessor decides to add to the Greenway Parcels shall be added by thirty (30) days advance written notice from Lessor to Lessee with the

effective date of such addition set forth in the notice, and Lessee and Lessor shall execute an amendment to this Lease to add such parcel to the Greenway Parcels defined herein.

“Lease Year” means the twelve consecutive months starting on an anniversary of the first day of the First Lease Year (July 1) through the anniversary of the last day of the First Lease Year (June 30).

“Leased Premises” means the Greenway Parcels, the Option Parcels, and the Limited Care Parcels described herein and shown on **Exhibit A**, but specifically excluding those elements, components or spaces comprising the tunnel, highway and ramp infrastructure of the Thomas P. O’Neill, Jr. tunnel or the Metropolitan Highway System.

“Lessor’s Remaining Property” means and refers to any and all of Lessor’s air rights, subsurface rights, land, rights, easements, property, roadways, tunnels, ramps and other structures and/or facilities, including without limitation, portions of the Metropolitan Highway System, in each case which adjoins or is proximate to (whether at, above or below grade) any portion of the Leased Premises.

“Limited Care Parcels” means the part of the Leased Premises described in Section 4.3(b) and designated as such on **Exhibit A**.

“Metropolitan Highway System” has the meaning set forth in M.G.L. ch. 6C.

“MOU” means the Memorandum of Understanding by and among Lessor, Lessee, City of Boston, and A Better City on behalf of its Rose Kennedy Greenway Abutters Committee dated as of June 19, 2017.

“Non-Article XCVII Parcels” means all portions of the Leased Premises other than the Greenway Parcels.

“Notice to Vacate” means that term as defined in Section 4.1 hereof.

“Option Parcels” means the part of the Leased Premises described in Section 3.4 and designated as such on **Exhibit A**.

“Original Lease” has the meaning set forth in the Recitals hereof.

“Original Lease Execution Date” means February 10, 2009.

“Park Use Guidelines” means the Park Use Guidelines attached hereto as **Exhibit B**, and any amendments and/or modifications thereof made after the Effective Date.

“Person” means any natural person, corporation, limited liability company, partnership, joint venture, association, trust or unincorporated organization and any government or political subdivision thereof or any agency, authority, commission, bureau or other division of any government or political subdivision thereof.

“Term” means the period commencing on the Effective Date, and ending on the tenth (10th) anniversary of the Effective Date, provided if one or both of the Term Extensions have been exercised, then the Term shall include the lease term of such exercised Term Extension(s) and shall end on the last date of the last exercised Term Extension(s).

“Term Extensions” means the two additional, consecutive ten-year lease terms described in Section 3.8 below.

“Work Permits” means permits that the Department is authorized to issue as referenced in Section 6.4 hereof.

SECTION 2.2. Certain Usages and Gender. The terms “include” and “including” shall be construed as if followed by the phrase “without limitation.” All terms contained herein shall be construed, whenever the context of this Lease so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

SECTION 2.3. Exhibits. In the event of any conflict or inconsistency between any Exhibit and the provisions of this Lease, the provisions of this Lease shall govern and control.

ARTICLE 3.

LEASED PREMISES; TERM; RESERVATIONS; ETC.

SECTION 3.1. Leased Premises. Lessor hereby demises and leases to Lessee, and Lessee hereby accepts and leases from Lessor, the Leased Premises, for the Term (unless sooner terminated, in whole or in part, as hereinafter provided), subject to the terms, conditions and provisions of this Lease. Lessee acknowledges that as of the Effective Date and prior thereto it has been in possession and continues to be in possession and occupies and uses the Leased Premises, because Lessee was the lessee under the prior leases of the Leased Premises between Lessor and Lessee dated December 1, 2008, as amended, and July 1, 2015, and Lessee acknowledges that it is accepting the Leased Premises in its current condition, “as is”, “where is” and “with all faults” condition.

SECTION 3.2. Obligations with Respect to Public Parklands. The Parties acknowledge that the Greenway Parcels shall be treated as a public park and a traditional open public forum without limiting free speech, and entitled in all respects to the protections afforded to public parkland under Article XCVII of the amendments to the Massachusetts constitution. This Lease is not intended to subject the Non-Article XCVII Parcels to the protections afforded to public parkland under Article XCVII of the amendments to the Massachusetts constitution.

SECTION 3.3. Appurtenant Rights. Lessor hereby grants to Lessee, as appurtenant to the Leased Premises, to the extent necessary or convenient for the operation, management, maintenance and programming of the Leased Premises, subject to the provisions of this Lease and such other terms and conditions consistent with this Lease as Lessor in its reasonable discretion may deem necessary or desirable, the right and easement from time to time during the Term to construct, use, maintain, repair and replace or renew as may be required, Fixed Improvements or other improvements located within the Leased Premises, provided that no Fixed Improvement or other improvements shall interfere with the safe and efficient use,

operation, maintenance, replacement, safety, layout or design of the Metropolitan Highway System. The Chief Engineer of the Department shall have the right to review and approve all such Fixed Improvements, and any repairs, replacements or renewals thereof, in accordance with the terms of this Lease.

SECTION 3.4. Option Parcels. Notwithstanding any provision of this Lease to the contrary, Parcels 6, 12, and 18, as described on **Exhibit A**, shall be designated as "Option Parcels". The Option Parcels are part of the Leased Premises solely to permit the Lessee to operate, manage, maintain, improve and program such parcels until, as to each Option Parcel, such time as MassDOT chooses to utilize such Option Parcel for another purpose. At any time during the Term, Lessor may, in its sole discretion, terminate this Lease with respect to one or more of the Option Parcels by giving Lessee one hundred twenty (120) days' prior written notice of Lessor's intention to terminate this Lease with respect to such Option Parcel(s). If any such notice is given by Lessor, then any and all rights granted to Lessee with respect to such Option Parcel(s) under this Lease shall cease, respectively, upon the date set forth in such notice. The Lessor agrees to provide the Lessee with a reasonable opportunity to remove any improvements (other than Fixed Improvements) on the applicable Option Parcel(s).

SECTION 3.5. Reservation of Rights in Favor of Lessor and Others. Lessor hereby reserves and retains during the Term the following rights and easements in and with respect to the Leased Premises, as appurtenant to Lessor's Remaining Property, provided that the exercise of the rights and easements reserved and retained under this Section does not adversely affect or unreasonably interfere with the Conservancy's rights and obligations under this Lease and the Act, or the use of the Leased Premises in accordance with this Lease. Any work performed or rights or easements exercised by Lessor (or any other Person to which Lessor has granted such rights or easements in accordance with this Section) shall be performed or exercised at Lessor's cost and expense (or the cost and expense of such other Person), in accordance with all applicable law; and prior to the commencement of any such work or exercise of such rights by Lessor, Lessor (or such other Person) shall obtain liability insurance in amounts and in a form customarily obtained by Lessor, which for Lessor may be self-insurance, in connection with work of the kind in question.

Lessor's rights and easements include, without limitation,

(i) the right to grant rights and easements to Persons to go, from time to time, on, over, under and through any portion of the Leased Premises, at no expense to Lessee, with vehicles, machinery and equipment, but only (x) for the use, operation, support, construction, installation, repair, alteration, relocation and replacement of improvements, fixtures, systems and components, all from time to time, of or relative to the Metropolitan Highway System or infrastructure owned by the City of Boston, and (y) for such periods and at such times as Lessor, in its reasonable discretion, deems necessary or appropriate after having considered less intrusive means and methods, upon reasonable advance notice to Lessee (except in the event of an emergency), provided that Lessor shall restore or repair any portion of the Leased Premises, whether at, above or below grade, disturbed or damaged in connection with such work to the same or better condition than it was prior to the commencement of such work;

(ii) the right to alter, maintain, repair, use, operate, replace and relocate improvements, fixtures, systems and components of or relative to the Metropolitan Highway System, from time to time, as Lessor, in its reasonable discretion, deems necessary or appropriate (and whether at, above or below grade), for support, ventilation, tunnel purposes, passage, drainage, utilities, and such other purposes as Lessor, in its reasonable discretion, deems necessary or appropriate for the safe and efficient operation of the Metropolitan Highway System, provided that Lessor shall restore or repair any portion of the Leased Premises, whether at, above or below grade, disturbed or damaged in connection with such work to the same or better condition than it was prior to the commencement of such work; and

(iii) for the benefit of all or any portion of Lessor's Remaining Property or the Metropolitan Highway System, the right to grant temporary easements under, across or over the Leased Premises for access, utilities, drainage or any other purpose associated with the operation and maintenance of the Metropolitan Highway System deemed necessary by Lessor, provided that Lessor shall restore or repair any portion of the Leased Premises, whether at, above or below grade, disturbed or damaged in connection with the use of such easements to the same or better condition than it was prior to the commencement of such work.

Notwithstanding any provision of this Lease to the contrary, Lessor shall not place equipment on the surface of the Leased Premises, except when necessary (a) to ensure the health and safety of Lessor's employees or contractors, or the general public, or (b) in connection with major traffic events that, in Lessor's sole discretion, cannot be accommodated in another nearby location. Prior to the placement of any such equipment, Lessor shall consult with Lessee to minimize the physical and aesthetic impact on park users and operators.

SECTION 3.6. Parcel 14 and National Park Service Pavilion. Lessee acknowledges that Lessor has entered into an agreement with the National Park Service for the operation of the Boston Harbor Islands Pavilion on a portion of Parcel 14. Lessor and Lessee agree that the Lease is subordinate to such agreement and any amendments, renewals or replacements thereof. Lessor reserves the right to grant to the National Parks Service any additional rights pertaining to Parcel 14 that may be necessary in the future for the repair, replacement and operation of the Boston Harbor Islands Pavilion upon reasonable notice to and consultation with Lessee including opportunity to review and comment on such agreement.

SECTION 3.7. City Requirements and Pedestrian Walkways. Lessee's interest shall be subject to all City easements and property interests within the Leased Premises. Further, the portions of the following seven (7) pedestrian walkways within the Leased Premises must remain in their respective current location and size, unless otherwise authorized in writing by the Department:

- (a) The Freedom Trail in Parcel 8, from John Fitzgerald Surface Road to Cross Street.
- (b) North Street Walkway in Parcel 10, from John Fitzgerald Surface Road to Cross Street.

(c) Commercial Street Walkway between John Fitzgerald Surface Road to Atlantic Avenue, adjacent to Parcel 12 & 13.

(d) Walkway in Parcel 14, from John Fitzgerald Surface Road to Atlantic Avenue.

(e) High Street Walkway in Parcel 17 between John Fitzgerald Surface Road to Atlantic Avenue.

(f) Linear walkway (the "Promenade") through the Wharf District, Parcels 14 through 17.

(g) Linear walkway in and certain sidewalks adjacent to Parcel 22A as shown on Exhibit C referred to thereon as the Dewey Square Right-of-Way.

SECTION 3.8. Term.

(a) The term of this Lease is ten (10) years commencing on July 1, 2017, and expiring on June 30, 2027, unless sooner terminated under the provisions hereof or by law.

(b) If this Lease has not been terminated, and provided that (i) no uncured default by either party exists and (ii) no circumstances exist that by the passage of time will become a default, the Parties may extend the Term of this Lease by mutual written agreement executed before the expiration of the Term hereof in which they agree to exercise the first Term Extension of ten (10) years. The term of the first Term Extension shall then commence on July 1, 2027 and expire on June 30, 2037, unless sooner terminated under the provisions hereof or by law. In the event that the Parties intend to exercise the first Term Extension pursuant to this Section 3.8(b), each Party shall deliver a written notice of intent to exercise the first Term Extension at least one hundred twenty (120) days prior to the expiration of the current Term.

(c) If this Lease has not been terminated, and provided that (i) no uncured default by either party exists and (ii) no circumstances exist that by the passage of time will become a default, the Parties may extend the Term of this Lease again by mutual written agreement executed before the expiration of the Term hereof (as extended by the first Term Extension) in which they agree to exercise the second Term Extension of ten (10) years. The term of the second Term Extension shall then commence on July 1, 2037 and expire on June 30, 2047, unless sooner terminated under the provisions hereof or by law. In the event that the Parties intend to exercise the second Term Extension pursuant to this Section 3.8(c), each Party shall deliver a written notice of intent to exercise the second Term Extension at least one hundred twenty (120) days prior to the expiration of the then-current Term.

(d) All of the provisions, covenants and agreements set forth in this Lease shall apply to the Term, including any extension thereof.

ARTICLE 4.

OBLIGATIONS WITH RESPECT TO THE LEASED PREMISES

SECTION 4.1. Lessor's Obligations. Except as otherwise expressly provided herein or in the Act, Lessor shall have no responsibility for the operation, management, improvement, maintenance and programming of the Leased Premises or for any costs associated with any of the foregoing.

Notwithstanding the foregoing, Lessor agrees to provide the following facilities as in-kind support to Lessee:

(a) Maintenance Space and Dumpster Space (185 Kneeland Street and Parcel 27A). For the Term of the Lease, or until Lessor provides the Permanent Maintenance Facility (as defined below), Lessor shall provide to Lessee (i) reasonably adequate interior and exterior space at the Lessor's property known as 185 Kneeland Street (outside the building) and adjacent to 185 Kneeland Street for storage of maintenance and operations equipment and materials and for the performance of repair work (the "Maintenance Space") and (ii) space on the premises at 185 Kneeland Street solely for the purpose of locating one or more dumpsters to be used in connection with the collection and removal of waste, including garbage, recycling and compost from the Leased Premises (the "Dumpster Space"). The location of the Maintenance Space and the Dumpster Space are shown on the plan attached hereto as **Exhibit D**.

(b) Garage Space (128 North Street). For the Term of the Lease or at least until Lessor provides the Permanent Maintenance Facility, Lessor shall provide to Lessee garage space at Lessor's property located at 128 North Street for Lessee's use as a garage and maintenance facility for the Leased Premises (the "Garage Space"). In the event that it becomes necessary in Lessor's determination for Lessee to vacate the Garage Space before Lessor has provided the Permanent Maintenance Facility, Lessor shall relocate Lessee to garage and maintenance space that is reasonably comparable to the current Garage Space in generally the same geographic location, as determined by Lessor in its sole discretion. In the event that it becomes necessary in Lessor's determination for Lessee to vacate the Garage Space after Lessor has provided the Permanent Maintenance Facility, Lessor shall use commercially reasonable efforts to relocate Lessee to garage and maintenance space that is reasonably comparable to the current Garage Space in generally the same geographic location, as determined by Lessor in its sole discretion.

Lessee may store gasoline within the Maintenance Space and the Garage Space provided that all such gasoline is stored in accordance with all laws including, without limitation, the ordinances of the City of Boston. Lessee may perform composting activities within the Maintenance Space and the Garage Space, provided, however, that Lessor may, upon at least sixty (60) days' notice, require Lessee to cease storing gasoline and/or performing composting activities within the Maintenance Space and the Garage Space. In such circumstances, (i) Lessor will provide or cause the Commonwealth to provide to Lessee one or more replacement areas of reasonably comparable utility for the storage of gasoline and/or the performance of composting activities (as applicable), and (ii) Lessee shall be solely responsible for any of its relocation costs.

(c) Office Space (185 Kneeland Street). Pursuant to the terms of the Funding Agreement, Lessor has agreed to provide to Lessee for the term of the Funding Agreement reasonably adequate interior space at the Lessor's property at 185 Kneeland Street, Boston (the "Office Space") for Lessee's use as an operations facility for the Leased Premises, provided, however, that Lessor may, pursuant to the terms of the Funding Agreement and in compliance with conditions set forth therein, require Lessee to vacate the Office Space prior to the expiration or earlier termination of the Funding Agreement by providing the Conservancy with a Notice to Vacate the Office Space.

(d) Permanent Maintenance Facility. As provided in the Act, Lessor agrees to construct or provide or to cause the Commonwealth to provide for the Lessee's use one or more permanent maintenance facilities for the storage of equipment and materials to be used by Lessee for the maintenance and operation of the Leased Premises (the "Permanent Maintenance Facility"). The Permanent Maintenance Facility shall provide at least 7,000 square feet of usable indoor space and 22,000 square feet of usable outdoor space, including a dumpster area, and shall replace the Maintenance Space and the Dumpster Space described in paragraph (a) above. When the Permanent Maintenance Facility is provided, the parties shall execute an amendment to this Lease in a form reasonably acceptable to Lessor and Lessee, incorporating provisions for the leasing of the Permanent Maintenance Facility to Lessee.

SECTION 4.2. Lessee's Use of MassDOT-Provided Facilities. Lessee's use of the Office Space, the Maintenance Space and the Dumpster Space, and the Garage Space shall be subject to the reasonable rules and regulations of Lessor. In the event that it becomes necessary in Lessor's determination for the Lessee to vacate the Office Space, the Maintenance Space, the Dumpster Space, and/or the Garage Space, Lessor may require the Lessee vacate such space, provided however that Lessor shall provide Lessee with at least six months written notice to Lessee (such notice for any of the foregoing, a "Notice to Vacate"), and subject to the conditions set forth in Section 4.1. In the event that Lessor issues such Notice to Vacate with respect to the Maintenance Space and/or the Dumpster Space, Lessor shall provide or cause the Commonwealth to provide to Lessee replacement maintenance space and or dumpster space of reasonably comparable size, location, and utility as determined by Lessor in its sole discretion. Lessee shall be responsible for any of its relocation costs from the Maintenance Space or the Dumpster Space. In the event that Lessor provides Lessee with a Notice to Vacate the Office Space, the terms of the Funding Agreement shall dictate the continuing obligations and responsibilities of the parties with respect to the Office Space and, if applicable, any replacement office space. Lessee shall be responsible for any of its relocation costs with respect to the Office Space.

SECTION 4.3. Lessee's Obligations. Except as otherwise expressly provided herein or in the Act, Lessee shall operate, manage, maintain, improve and program the Leased Premises in accordance with the Act, the terms of this Lease, and Lessee's rules and regulations, and shall be responsible for all costs associated with any of the foregoing. The Lessee shall not interfere with (i) the safe and efficient operation of the Metropolitan Highway System, and (ii) except as may be permitted by the City, the operation of the City Layout (as defined in the Act). The Lessee covenants and agrees that it shall not cause any unlawful conduct in the course of, or as a result of, the performance of its responsibilities under this Lease.

SECTION 4.4. Performance. Lessee shall operate, manage, maintain, improve and program the Leased Premises as a first-class public space with safeguards for public safety and long-term maintenance and use, consistent with the Act and in compliance with the Park Use Guidelines (collectively, the “Park Quality”).

(a) Snow and Ice Removal on Adjacent Sidewalks. In addition to Lessee’s obligation for snow and ice removal within the Leased Premises pursuant to its general maintenance obligations under this Lease, Lessee shall remove all accumulations of snow and ice from all sidewalks and paved walking areas immediately adjacent to (but outside of) the Leased Premises.

(b) Limited Rights and Responsibility on Certain Parcels. Notwithstanding any provision of this Lease to the contrary, Lessee shall perform maintenance of the horticultural elements (i.e., lawns, trees, planting beds, etc.) on and within the following parcels within the Leased Premises identified on **Exhibit A** (the “Limited Care Parcels”) and shall be permitted to program such parcels, but shall not otherwise be permitted or required to operate or maintain such parcels:

- Parcel C
- Parcel D1
- Parcel D2
- Parcel D3 (horticultural elements to be maintained include the planting beds behind the fences)
- Parcel E
- Parcel G1
- Parcel G2
- Parcel H
- Parcel J1
- Parcel J2

SECTION 4.5. Dewey Square Right-of-Way. Lessee shall not locate, place or deposit (or cause to be located, placed or deposited), whether temporarily or permanently, any equipment, vehicles, furniture, snow, ice or other items or materials within the Dewey Square Right-of-Way and shall not otherwise impede or obstruct the ability of pedestrians to pass and repass within or across all or any portion of the Dewey Square Right-of-Way. The parties acknowledge that the Massachusetts Bay Transportation Authority (the “MBTA”) has agreed to shovel accumulations of snow and ice from the Dewey Square Right-of-Way (the “MBTA Agreement”). Lessee shall not be responsible for shoveling snow and ice within the Dewey Square Right-of-Way. The parties further acknowledge and agree that the MBTA shall be permitted, in coordination with Lessee, to shovel snow and ice from the Dewey Square Right-of-Way onto other portions of Parcel 22A (which parcel is shown on Exhibit A) that are outside of the Dewey Square Right-of-Way.

SECTION 4.6. Lessee Solely Responsible for Performance. Lessor and Lessee covenant and agree that: (i) neither the Department’s approval nor deemed approval or acceptance of the Park Use Guidelines shall create any liability in Lessor for any purpose; and (ii) the review and approval rights of the Department set forth herein are for the sole benefit of the Department and,

as between the Parties hereto, Lessee shall bear sole responsibility for the operation, management, maintenance, improvement and programming of the Leased Premises, except as set forth herein.

SECTION 4.7. Determination of Satisfactory Completion of Obligations by the Lessee. For purposes of this Lease, the Chief Engineer shall serve as the authorized representative of the Lessor for the purposes of determining whether the Lessee has fulfilled its obligations under this Lease.

SECTION 4.8. Payment for Fixed and Other Improvements – No Liens. The Parties agree that the Leased Premises are public property and shall be used for public purposes described in the Act. Therefore, in no event shall any work related to Fixed Improvements or any other improvements constructed by, or on behalf of Lessee, or Lessor's approval thereof, give rise to any lien on the Leased Premises.

SECTION 4.9. Title to Fixed Improvements. Upon the expiration or earlier termination of the Term of this Lease, however the same occurs, title to all Fixed Improvements shall automatically vest in Lessor (title remaining in Lessee until such expiration or earlier termination), and shall be free of any right, title, interest or estate of Lessee therein, and Lessor shall be the sole and absolute owner thereof, free of any right, title, interest or estate of Lessee therein, without the execution of any further instrument and without payment of any money or other consideration therefor. Promptly upon request by Lessor, Lessee shall execute, acknowledge and deliver to Lessor such further assurances of title as Lessor may reasonably require. Lessee hereby grants, releases, transfers, sets over, assigns and conveys to Lessor all of its right, title and interest in and to the Fixed Improvements effective upon the termination or expiration of this Lease. During the Term, Lessee shall be the sole and absolute owner of the Fixed Improvements; and nothing herein shall adversely affect Lessee's title to the Fixed Improvements and any other improvements on or to the Leased Premises and the right that Lessee may have to quiet enjoyment and possession so long as this Lease shall continue in force and effect.

SECTION 4.10. Coordination with and Priority of Metropolitan Highway System Operation and Maintenance. Lessor and Lessee shall use reasonable efforts to coordinate their activities at, on, under or in the vicinity of the Leased Premises. Lessee's activities in connection with this Lease shall not materially adversely affect the operation and maintenance of the Metropolitan Highway System in any way. In the event the Lessor determines, in its sole discretion, that certain activities proposed by Lessee will have a material adverse effect on the safe and efficient use, operation, maintenance, replacement, safety, layout or design of the Metropolitan Highway System, or the health, safety and convenience of the motoring public, the Lessor shall so inform the Lessee and Lessee shall cease such activity or take other appropriate action to remedy the situation to Lessor's reasonable satisfaction.

SECTION 4.11. Lessee's Obligations under the Act. Lessee agrees to undertake all of its obligations mandated by the Act, including without limitation its obligations regarding community participation stipulated in the Act. Lessee has adopted rules and regulations, set forth in the Park Use Guidelines dated June 2010, revised March 2016, a copy of which is attached as **Exhibit B**, governing conduct and activity within the Leased Premises. Future material

amendments to the Park Use Guidelines must be approved by the Board, subject to the approval of the Department, which approval shall not be unreasonably withheld or delayed.

ARTICLE 5.

UTILITIES

SECTION 5.1. Utilities. Lessee and Lessor acknowledge that electricity and water service are currently provided to the Leased Premises and that Lessor is the named customer with respect to the meters for such services (collectively, the “Existing Utilities”). Lessee may use and access the Existing Utilities to the extent reasonably necessary for the operation of the Leased Premises in accordance with this Lease. During the term of the Funding Agreement, Lessor agrees to pay the costs billed to Lessor by the applicable utility providers as a result of Lessee’s use of Existing Utilities up to the amounts and as set forth in the Funding Agreement, and Lessee shall be responsible for any billed amounts that exceed the caps in the Funding Agreement on Lessor’s required payments for these utilities. Lessee shall maintain the infrastructure comprising the Existing Utilities to the extent that the same are part of the Leased Premises, but Lessee shall not be permitted to modify the infrastructure comprising the Existing Utilities without the consent of Lessor.

Lessee shall make all arrangements with governmental authorities and public utilities for the provision of, and payment for, utility services (other than the Existing Utilities) used on or provided to the Leased Premises, including, without limitation, oil, gas, cable, and telephone service, and the installation, maintenance, use and servicing thereof. Except as set forth above in this Section 5.1 during the term of the Funding Agreement, Lessor shall have no obligation for payment of any utility services required for the operation, management, maintenance, improvement and programming of the Leased Premises. The Parties agree that they shall cooperate in seeking favorable treatment, including discounts or free service, from the Boston Water & Sewer Commission, Eversource and other utility providers.

ARTICLE 6.

PERMITTING

SECTION 6.1. Permitting. Lessee shall be solely responsible, in coordination with the applicable permitting authority of the City, for issuing permits to third parties for programs, events and other uses of the Leased Premises requiring permission by permit. All such permitting shall be undertaken pursuant to the Conservancy’s rules and regulations and the requirements of the City’s permitting authority. The Department will provide reasonable assistance with such permitting activity at no cost to the Department. To the extent required, the Department will seek, with the Conservancy’s support and assistance, any approval required from the Federal Highway Administration for any permitted uses under this Lease.

SECTION 6.2. Notice to Lessor. The Lessor reserves the right to prohibit any activity to be performed, undertaken or conducted on the Leased Premises whether pursuant to a permit or otherwise that the Lessor believes, in its sole discretion, could have a material adverse effect on the safe and efficient use, operation, maintenance, replacement, safety, layout or design of the

Metropolitan Highway System, or the health, safety and convenience of the motoring public. Lessee shall notify Lessor and request written approval for any activity that, in view of the information known by Lessee or reasonably available to Lessee, could reasonably be anticipated to cause a material adverse effect on the safe and efficient use, operation, maintenance, replacement, safety, layout or design of the Metropolitan Highway System or the health, safety and convenience of the motoring public. Lessor has the right to notify Lessee that such activity cannot proceed, because in Lessor's discretion it has determined that the activity may cause one or more of the material adverse effects described above. Notwithstanding the Lessor's right to object to any proposed activity that may cause a material adverse effect as described above no liability shall be created in Lessor for any purpose arising out of the activities, or due to the Lessor's failure to prohibit such activities or the Lessor's decision as to whether to exercise such right.

SECTION 6.3. Public Use. Lessor's lease of the Leased Premises to the Lessee is intended to promote the public's use of the Leased Premises for the purposes described in M.G.L. c. 21, §17C.

SECTION 6.4. Utility and Construction Permits. Lessor will be responsible for issuing Work Permits to utilities, contractors and other entities seeking to perform construction-related activities in the Leased Premises. Lessor shall provide timely notice to Lessee of such permit requests and coordinate to minimize disruption for both public usage and Lessee's operations on the Leased Premises. The routine operation, maintenance, management and programming of the Leased Premises by Lessee shall not require such Work Permit.

SECTION 6.5. Coordination of Permit Activities. Lessor and Lessee shall use reasonable efforts to coordinate permit activities at, on, under or in the vicinity of the Leased Premises.

ARTICLE 7.

INSURANCE; CASUALTY

SECTION 7.1. General Insurance Requirements. Lessee shall maintain throughout the Term of this Lease, at its sole cost and expense, adequate insurance to cover the Leased Premises against loss due to casualty and third party liability, but in no event shall coverage be less than the minimum coverage types and amounts described in Section 7.2 below.

SECTION 7.2. Minimum Coverage Types and Amounts.

(a) Workers Compensation and Employer's Liability. Lessee shall maintain worker's compensation insurance for all employees in accordance with Chapter 152 of the Massachusetts General Laws and employer's liability coverage with a limit of not less than \$500,000 per occurrence.

(b) Automobile Liability Insurance. Lessee shall maintain automobile liability coverage, and umbrella liability insurance if necessary, covering all of Lessee's owned, hired, rented and non-owned vehicles with limits of not less than \$2,000,000 combined for bodily injury and property damage liability.

(c) Commercial General Liability Insurance. Lessee shall maintain commercial general liability insurance on an occurrence form, and umbrella liability insurance if necessary, covering liability for bodily injury, property damage, and personal injury arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, sudden and accidental pollution, and blanket contractual liability, with limits of not less than \$5,000,000 combined for bodily injury and property damage liability.

(d) Commercial Property Insurance. Lessee shall maintain commercial property insurance covering all structures, fixtures, and equipment included as part of the Leased Premises (excluding all buildings, structures and components of the Metropolitan Highway System noted on **Exhibit A**) against all risks of physical damage or loss (including but not limited to loss due to fire, explosion, vandalism and malicious mischief, strike, riots and civil commotion and water damage) on a replacement value basis. Such insurance shall include an agreed amount endorsement.

SECTION 7.3. Other Insurance Requirements.

(a) All insurance policies required in Section 7.2(b), and (c) above shall be endorsed to name the Lessor, its board members, officers and employees as additional insured parties.

(b) All insurance policies required in Section 7.2(b), (c) and (d) above shall be endorsed to waive the insurer's right of subrogation against the Lessor, its board members, officers and employees.

(c) The insurance policies required in Section 7.2(b) and (c) above shall be endorsed to state that Lessee's policies shall be primary and Lessor's insurance shall be excess and non-contributory.

(d) All insurance required hereunder shall be underwritten by insurance companies authorized to do business in the Commonwealth of Massachusetts and having a Best's Rating of not less than A-(minus).

(e) At all times during the term of this Lease and prior to taking possession of the Leased Premises, Lessee shall provide Lessor with certificates of insurance evidencing the placement of the required coverages. Such certificates shall contain an unequivocal provision that Lessor shall be given 30 days advance written notice of non-renewal or cancellation with respect to any of the policies.

SECTION 7.4. Release and Waiver of Subrogation. The aforesaid minimum limits of insurance policies shall in no event limit the liability of Lessee hereunder. Subject to the provisions of the following sentence, Lessor and Lessee mutually agree that, with respect to any property loss, the one suffering said property loss releases the other of and from any and all claims with respect to such property loss that are covered by valid and collectable insurance policies; and they further mutually agree that they shall instruct their respective insurance companies to include provisions in their property insurance policies whereby each Party shall have no right of subrogation against the other to such extent on account thereof. Nothing

contained in this Section shall be deemed to modify or otherwise affect releases elsewhere herein contained of either Party for claims.

ARTICLE 8.

ADDITIONAL COVENANTS

SECTION 8.1. Maintenance and Restoration of the Leased Premises.

(a) The Lessee shall maintain the Leased Premises and Fixed Improvements in accordance with the Park Quality set forth in Section 4.3. The Lessee shall pay and be responsible for the repair of any and all damage or breakage to the Fixed Improvements and the Leased Premises resulting from acts of vandalism or the acts of the Lessee or others, as well as from the intentional acts or negligence of the Lessee or that of its agents, invitees, or servants. All repairs shall be made by the Lessee in a manner so as to restore the Fixed Improvements and the Leased Premises to substantially their condition prior to the damage. To the extent that any such damage (or other need for repair or replacement) is covered by any warranty held by the Lessor, Lessor hereby assigns such warranty rights to Lessee and agrees to assist Lessee in enforcing such rights against the warrantor. Notwithstanding anything herein to the contrary, the Lessee shall not be responsible for (i) damage to the Fixed Improvements and Leased Premises caused by subsurface conditions associated with the design, construction, operation, maintenance, repair, improvement or replacement of the Metropolitan Highway System or (ii) damage to the Metropolitan Highway System caused by any defective condition of the Fixed Improvements or the Leased Premises existing at the Original Lease Execution Date.

(b) The Lessee shall keep the Fixed Improvements, the Leased Premises, the Office Space, the Maintenance Space, the Garage Space and the Dumpster Area reasonably clean and free of debris. All food or solid waste must be picked up from the Leased Premises and deposited and removed from the Leased Premises in appropriate trash containers and the Lessee shall not sweep or wash any food or solid waste from the Leased Premises into any drain, adjacent sidewalk or plaza or waterway.

(a) The Parties shall neither cause nor suffer any waste of the Fixed Improvements, the Leased Premises, the Office Space, the Maintenance Space, the Garage Space or the Dumpster Area, nor conduct any illegal activity thereon.

SECTION 8.2. Capital Repairs and Replacements.

(a) During the term of this Lease, and in accordance with and subject to the terms of the Funding Agreement, Lessee shall develop, subject to Lessor's review and approval, a 5-year capital improvement plan (the "Capital Plan") to ensure that the Leased Premises and Fixed Improvements are maintained in a continuing state of good repair during the term of the Lease. Lessor shall fund the approved Capital Plan for the term of the Funding Agreement subject to the terms of the Funding Agreement. Lessee shall consult with Lessor in developing a proposed capital plan and submit an initial Capital Plan for Lessor's approval before January 1, 2018 and thereafter shall submit updated Capital Plans for approval on or before January 1 of each year.

In addition to its obligation to provide proposed Capital Plans to Lessor for Lessor's approval, Lessee shall notify Lessor of the need for any capital repair or replacement for which Lessee believes Lessor is responsible as soon as reasonably possible after Lessee first becomes aware of the need for such capital repair or replacement. Notwithstanding any provision of this Lease or the Funding Agreement to the contrary, Lessor shall have no obligation to reimburse Lessee for any costs incurred by Lessee for any capital repair or replacement for which Lessor may otherwise be responsible unless such capital repair or replacement is contained in an approved Capital Plan or Lessor and Lessee otherwise agree in writing to such reimbursement prior to Lessee's commencement of such capital repair or replacement. Lessor may also choose to fund emergency capital repairs not reflected in any capital plan as provided under and according to the provisions of the Funding Agreement.

(b) Notwithstanding any provision of this Section 8.2 or the Funding Agreement to the contrary, Lessor shall not be responsible to the extent that the need for any repair or replacement is due to the failure of Lessee to fulfill its maintenance obligations under this Lease or due to the negligence or intentional acts of Lessee.

SECTION 8.3. Lessor's Right to Inspect. Throughout the Term, Lessor shall have the right at any time to inspect the Leased Premises, the Fixed Improvements, the Office Space, the Maintenance Space, the Garage Space, and/or the Dumpster Area. The Lessee shall remedy immediately any deficiencies in appearance and/or condition as the Lessor may report to the Lessee, consistent with the Park Quality. Notwithstanding Lessor's right to inspect, Lessor shall have no affirmative obligation to perform inspections of any aspect of the Leased Premises, the Fixed Improvements, the Office Space, the Maintenance Space, the Garage Space, or the Dumpster Space or of the Lessee's activities.

SECTION 8.4. Federal Highway Interest. The Parties acknowledge that the Leased Premises and Fixed Improvements have been constructed within the limits of an established state highway layout and any non-highway use of the Leased Premises 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.

SECTION 8.5. Funding Agreement. The specific terms of Lessor's commitments to provide financial assistance to Lessee toward operating or capital expenses or utility costs, or through the provision of the Office Space, shall be as set forth in the Funding Agreement between the parties and the MOU.

SECTION 8.6. Audit Right. Upon written request to the Lessee, the Lessor shall have the right to review and inspect any and all records of the Lessee relating to its obligations under this Lease, except to the extent prohibited by law. The Lessee shall make such records available for such review and inspection within ten business (10) days of the Lessor's request therefor.

SECTION 8.7. Annual Report. Not later than one hundred twenty (120) days following the end of each fiscal year of Lessee, Lessee shall deliver a report regarding its use and expenditure of funds during such fiscal year as may be required by the Act.

ARTICLE 9.

HAZARDOUS MATERIALS

SECTION 9.1. Hazardous Materials.

(a) Without limiting any of Lessee's obligations under this Lease, the Lessee, its employees, representatives, agents, servants and invitees, shall not use, generate, store, release, or dispose of, on, under or about the Leased Premises, or on any structures located thereon, or on, under, or about the Office Space, Maintenance Space, Garage Space or Dumpster Space (collectively, "In-Kind Space") from any source whatsoever, or transport to or from the Leased Premises, any hazardous wastes, toxic substances or related materials ("hazardous materials") in any manner, or permit third parties to do any of the foregoing, without express written authorization from the Lessor or as otherwise permitted in Section 4.1 regarding storage of gasoline; provided however that Lessee may use and store, in all events in compliance with all applicable environmental laws and regulations, those hazardous materials necessary for Lessee to perform its maintenance and operational responsibilities as set forth in this Lease. For purposes of this Article 9, "hazardous material" shall include but not be limited to substances defined as "hazardous materials," "hazardous substances," "hazardous waste," "toxic substances," "pollutants," or "contaminants" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9301 et seq.; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 et seq.; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6903 et seq.; or applicable federal and Massachusetts law now or hereafter enacted including all other regulations and policies adopted or publications promulgated thereunder, provided that "hazardous materials" as used in this Lease shall not mean materials that are otherwise permitted by law.

(b) In the event of any release of oil or hazardous material at or from the Leased Premises, in addition to providing any regulatory notice required by state or federal law, the Lessee shall provide notice of any such release to the Lessor as soon as practicable thereafter, but not more than three (3) hours following Lessee's discovery of any such release. Notice shall be given to the Department's Director of Environmental Engineering, District Six, by telephone at a number to be provided by the Lessor to the Lessee and updated as necessary from time to time, and/or by email at an email address to be provided by the Lessor to the Lessee and updated as necessary from time to time. Notice also must be given in writing within twelve (12) hours, deposited in the United States mail, certified, return receipt requested, postage prepaid, and addressed as follows:

Director of Environmental Engineering, District Six
Massachusetts Department of Transportation
185 Kneeland Street, 8th Floor
Boston, MA 02111

ARTICLE 10.

INDEMNIFICATION

SECTION 10.1. Indemnification.

(a) The Lessee covenants and agrees to defend, indemnify, and hold harmless the Lessor, including its board members, officers, employees, agents, representatives, contractors and sub-contractors, from and against any and all claims, liabilities, losses, damages, penalties, fines, forfeitures, demands, causes of action, suits, judgments, costs and expenses (including, but not limited to, reasonable attorney's fees and costs of litigation), arising out of the negligence, or willful misconduct, directly or indirectly, of the Lessee, its employees, agents, representatives, contractors, and subcontractors, or by any other person acting for or by permission of the Lessee, or any right or privilege hereby granted, excepting any such liability arising solely out of a negligent act or willful misconduct of the Lessor, its officers, employees, agents, representatives, contractors and sub-contractors. This indemnification agreement is between the Lessor and Lessee only, and is not intended in any way to grant rights to any third party, including but not limited to, a claim of indemnity under any theory of liability arising from acts, conduct or omissions of members of the general public using the Leased Premises.

(b) Without in any way limiting the scope of the foregoing or any other part of this Lease, and except to the extent that oil or hazardous materials existed on or within the Leased Premises or the In-Kind Space prior to the Original Lease Execution Date of this Lease, or were caused by the sole acts or omissions of the Lessor, the indemnification obligation of the Lessee shall include, but not be limited to: (a) claims of third parties (including governmental agencies) regarding the release of oil or hazardous materials on or within the Leased Premises or the In-Kind Space by the Lessee, its employees, representatives, agents, contractors or subcontractors; (b) expenses, including reasonable fees of attorneys and experts related to reporting the existence of oil or hazardous materials to any governmental agency arising from such a release by Lessee, or its employees, agents, contractors or subcontractors; or (c) any and all expenses or obligation, including reasonable attorneys' fees, incurred at, before or after any trial or appeal therefrom or administrative proceeding or appeal therefrom whether or not taxable as costs, including without limitation, attorneys' fees, witness fees (expert or otherwise), deposition costs, copying and telephone charges or other expenses.

(c) To the extent permitted by law, the Lessor covenants and agrees to defend, indemnify, and hold harmless the Lessee, including its board members, officers, employees, agents, representatives, contractors and sub-contractors, from and against any and all claims, liabilities, losses, damages, penalties, fines, forfeitures, demands, causes of action suits, judgments, costs and expenses (including, but not limited to, reasonable attorney's fees and costs of litigation), that may be imposed upon or incurred by or asserted against the Lessee or any of the foregoing by reason of any accident, injury to, or death of any person or any damage to property during the term hereof caused by or in any way related to the design, construction, operation, maintenance, repair, improvement or replacement of the Metropolitan Highway System, including without limitation any work performed or rights and easements exercised in accordance with Section 3.5 hereof.

(d) The Lessor or the Lessee shall give notice of any claim subject to the provisions of this Section to the other Party hereto within thirty (30) days of the date on which the Lessor or the Lessee gains actual knowledge of a claim or of a potential claim.

ARTICLE 11.

QUALIFICATIONS AND COMPLIANCE WITH APPLICABLE LAWS

SECTION 11.1. Qualifications. The Lessee covenants that it is qualified to occupy and use the Leased Premises for the purpose set forth herein and has obtained or will obtain all requisite approvals, and/or permits for such purpose.

SECTION 11.2. Compliance with Applicable Laws. The Lessee shall comply at all times throughout the Term with all federal, state, and local laws, regulations, ordinances, and permits with jurisdiction over and applicable to the Leased Premises and the In-Kind Space and their use.

ARTICLE 12.

ASSIGNMENT AND SUBLEASING

SECTION 12.1. Assignment and Subleasing. No transfer (by assignment, sublease or otherwise) of all or any part of Lessee's rights under this Lease or of Lessee's interest in the leasehold estate created hereby or the Leased Premises or the In-Kind Space shall be made or suffered, unless expressly authorized by act of the General Court of the Commonwealth. Nothing in this Article 12 or this Lease shall be construed to prevent the Lessee from entering into contracts, licenses, subcontracts or other agreements with third parties to fulfill its obligations under the Act or the terms of this Lease.

ARTICLE 13.

DISPUTE RESOLUTION

SECTION 13.1. Settlement of Disputes. Except as otherwise provided in Article 15, the Parties shall resolve all disputes relating to the subject matter of this Lease according to the procedures set forth in this Article.

SECTION 13.2. Informal Consideration by the Parties. Both Parties to this Lease shall make every reasonable effort to settle any dispute concerning the interpretation, application or enforcement of this Lease by prompt and diligent discussions and negotiations. Any dispute that cannot be resolved within thirty (30) days after it arises (or such other time as the Parties may agree in writing) shall be submitted to the Department's Secretary and the Conservancy's Executive Director. These individuals shall discuss and attempt to resolve the dispute. If the dispute still remains unresolved fifteen (15) days after its referral to the Secretary and Executive Director, the matter shall be submitted to mediation in accordance with Section 13.3 hereof.

SECTION 13.3. Mediation. The Parties jointly agree to submit any dispute which has not been resolved in accordance with the procedures provided in Section 13.1 and Section 13.2 to an independent mediator under this Section.

(a) The Parties shall jointly select an independent mediator within twenty-one (21) calendar days after the submittal of a dispute under this paragraph. The independent mediator shall be properly qualified in the subject matter of the dispute. In the event the Parties are unable to agree upon a mediator, the mediator shall be selected by alternative strikes by each Party from a list of five mediators provided by the American Arbitration Association.

(b) The independent mediator shall meet with the Parties within twenty-one (21) calendar days after his or her selection to attempt to mediate and resolve the dispute. If mediation efforts are unsuccessful after sixty (60) days, the mediator shall, after consideration of the Parties' positions and written submittals (if so requested), issue written recommendations for resolution of the dispute. Any such written submittals shall be postmarked by the 10th calendar day after the Parties' last meeting with the mediator. The recommendations of the independent mediator shall be issued within thirty (30) calendar days after the later of the conclusion of mediation or the submittal of written positions. All meetings and proceedings shall be held in Boston, Massachusetts, at a time and location acceptable to both Parties.

(c) If a Party rejects the recommendations issued, either Party may pursue all legal remedies available to it by filing an action with the Superior Court for Suffolk County, Massachusetts. All offers, documents and statements, whether oral or written, made or produced in the course of mediation by either of the Parties, their agents, experts or attorneys, or by the mediator, shall be treated as confidential and inadmissible for any purpose, including impeachment of witnesses, in any litigation or other proceeding involving the Parties, provided that evidence which is discovered by means other than documents and statements made or produced in the course of mediation shall not be rendered inadmissible or non-discoverable.

(d) The costs and expenses of the independent mediator shall be shared equally by the Parties. The provisions of this Section may be enforced by any court of competent jurisdiction.

SECTION 13.4. Injunctive Relief. Notwithstanding any contrary provisions of this Agreement, if either Party believes that the other Party has failed to perform any covenant or obligation under this Lease regarding a matter of substantial importance which, if not promptly corrected, will cause irreparable injury, the aggrieved Party may take such legal action as it deems appropriate and may file immediately any and all pleadings with the Superior Court for Suffolk County, Massachusetts, to secure an injunction of such action or inaction pending resolution of the matter pursuant to the dispute resolution procedures set forth in this Section.

ARTICLE 14.

FORCE MAJEURE

SECTION 14.1. Force Majeure. Each Party will be excused from performance of any of its obligations to the other under this Lease, where such non-performance is caused by

any event beyond the non-performing Party's control which shall include, without limitation, any Acts of God, order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality (but not an order, rule or regulation of the Lessee or Lessor); natural disaster; or civil disorder, provided, however, that the Party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such event in the shortest practical time. For purposes of this Lease, an Act of God means any weather condition or other natural phenomenon beyond the power of the Lessee to control, provided that a rain, windstorm or other weather condition of normal intensity, based on National Weather Service reports for the previous five (5) year period, shall not be considered an Act of God.

ARTICLE 15.

DEFAULT AND TERMINATION

SECTION 15.1. Default.

- (a) The occurrence of any of the following shall mean and constitute an "Event of Default" under this Lease:
- (i) Subject to paragraph (b) of this Section, Lessor or Lessee fails to fulfill any of its respective obligations under the Act or this Lease; or
 - (ii) All or substantially all of Lessee's leasehold estate shall be taken on execution or by other process of law; or
 - (iii) Lessee executes an assignment for the benefit of creditors or similar document; or
 - (iv) Any court of competent jurisdiction issues an attachment of Lessee's leasehold interest and the same is not discharged, dismissed or bonded within ninety (90) days after Lessee receives written notice thereof; or
 - (v) Lessee admits in writing to being, or is finally adjudicated to be, insolvent; or
 - (vi) A receiver, guardian, conservator, trustee, custodian or similar officer is appointed for any part of the property of Lessee and the same is not discharged within ninety (90) days; or
 - (vii) Subject to paragraphs (e-f) of this Section, the Board does not cure a failure in compliance with the applicable provisions of the state's Open Meeting Law or Public Records Law (as both terms are hereinafter defined); or
 - (viii) A petition under any insolvency or bankruptcy law, including a petition for reorganization, is filed by Lessee or against Lessee and, in the latter case, the same is not dismissed within ninety (90) days.

(b) In the event one Party claims that a failure described in clause (i) of paragraph (a) of this Section has occurred, it shall provide the other Party with written notice of the circumstances giving rise to such failure, setting forth in reasonable detail the basis for such claim. Unless such failure shall be cured to the satisfaction of the Party giving such notice within thirty (30) days following receipt of such notice by the other Party, the Parties shall attempt to resolve such dispute in accordance with the procedures provided in Section 13.2 and Section 13.3 hereof. If such failure remains uncured or unresolved to the satisfaction of the Party giving notice of default upon completion of such procedures, such Party shall have the right by written notice to the other Party to declare such failure an Event of Default hereunder.

(c) If an Event of Default shall have occurred hereunder and be continuing, the non-defaulting Party shall have the right to terminate this Lease in accordance with Section 15.2 hereof and/or to pursue self-help, specific performance, and/or any other available legal remedy.

(d) Notwithstanding any other provision of this Lease concerning cure periods, Lessor may cure any presumed default for the account of Lessee after such notice to Lessee, if any, if Lessor determines, in its reasonable discretion, that curing prior to the expiration of the applicable cure period is necessary to prevent damage to the Leased Premises, or to prevent injury to persons, or to ensure the safe and efficient use, operation and maintenance of the Metropolitan Highway System, or the safety of the motoring public on the surface roads in the vicinity of or adjoining the Leased Premises. In such circumstances, Lessor shall have the right to seek reimbursement from Lessee of reasonable costs incurred by the Lessor to cure such default.

(e) The Board, except when meeting (i) in executive session, as permitted by subsection (A) of section 21 of M.G.L. Chapter 30A, or (ii) to discuss fundraising and non-governmental revenue issues and opportunities, including but not limited to fundraising prospects, fundraising or grant agreements, or fundraising strategy, shall comply with sections 18 to 25, inclusive, of said chapter 30A (collectively, the "Open Meeting Law"). Material failure of the Board to comply with the requirements of the foregoing sentence that is not cured within thirty (30) days or as ordered by the Attorney General of the Commonwealth of Massachusetts shall be a default under this Lease and shall be subject to such remedies for default set forth in this Lease including, without limitation, termination of this Lease.

(f) The Board shall comply with the requirements of clause Twenty-sixth of section 7 of chapter 4 and section 10 of chapter 66 of the Massachusetts General Laws (collectively, the "Public Records Law"), except with respect to records pertaining to potential contributions and any donations received by the Conservancy from a private individual, corporation or any other private source. Material failure of the Board to comply with the requirements of the foregoing sentence that is not cured within thirty (30) days or as ordered by the Secretary of the Commonwealth of Massachusetts or the Attorney General of the Commonwealth of Massachusetts shall be a default under this Lease and shall be subject to such remedies for default set forth in this Lease including, without limitation, termination of this Lease.

SECTION 15.2. Termination.

(a) By Mutual Agreement. This Lease may be terminated by mutual agreement of the Parties, upon such terms and condition as the Parties may mutually agree to. Such termination shall be effective in accordance with a written agreement by the Parties. Termination under this section shall not constitute a waiver of the rights of either Party to damages or other remedies related to this Lease, except to the extent that the agreement terminating this Lease so specifies.

(b) For an Event of Default by Lessee. If an Event of Default on the part of the Lessee shall have occurred hereunder and be continuing beyond any cure periods provided in Section 15.1 above, Lessor may, by written notice to Lessee, terminate this Lease.

(c) For an Event of Default by Lessor. If an Event of Default on the part of the Lessor shall have occurred hereunder and be continuing beyond any cure periods provided in Section 15.1 above, Lessee may, by written notice to Lessor, terminate this Lease.

(d) For Lack of Financial Resources. Lessee may, by ninety (90) days advance written notice to Lessor, terminate this Lease and/or any extensions thereof before the expiration of the Term hereof if Lessee lacks sufficient financial resources available to operate, maintain, and repair the Leased Premises and Fixed Improvements in accordance with this Lease.

SECTION 15.3. Remedies Cumulative. The specific remedies to which the Parties may resort under this Lease, and all other rights and remedies of the Parties now or hereafter existing by agreement, at law and/or in equity are cumulative, and any two or more may be exercised at the same time.

ARTICLE 16.

MISCELLANEOUS PROVISIONS

SECTION 16.1. Quiet Enjoyment. Lessor covenants and agrees that so long as Lessee observes and complies with all of its other obligations, covenants, stipulations and agreements under this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises for the Term of this Lease, without interruption or disturbance from Lessor or Persons claiming through or under Lessor, subject, however, to the provisions of this Lease, including, without limitation any rights reserved by Lessor hereunder. This covenant of quiet enjoyment is in lieu of any other covenant express or implied.

SECTION 16.2. Notices. Except as provided in Section 6.2 and Section 9.1(b) above, every notice, demand, consent, approval or other instrument required or permitted to be given under this Lease shall be in writing, and delivered by messenger, overnight courier service that provides evidence of receipt or mail (if by certified mail, with return receipt requested), addressed as follows:

If to the Lessor:

Secretary of Transportation
Massachusetts Department of Transportation

If to the Lessee:

Executive Director
Rose Fitzgerald Kennedy Conservancy

Suite 4160 - Ten Park Plaza
Boston, MA 02116

185 Kneeland Street
Boston, MA 02111

with copies to:

Assistant Secretary
Office of Real Estate and Asset Development
Massachusetts Department of Transportation
Ten Park Plaza
Boston, MA 02116

with copies to:

Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110-3333
Attention: Peter N. Kochansky, Esq.

with copies to

General Counsel
Massachusetts Department of Transportation
Ten Park Plaza
Boston, MA 02116

or in the case of either party to such other address as that party from time to time shall have designated by written notice given to the other party. All such notices shall be effective upon receipt or refusal of delivery, whichever shall first occur.

SECTION 16.3. Notice of Lease. Lessor and Lessee agree that they will not record this Lease. Both Parties shall upon the request of either, execute, acknowledge and deliver a notice of lease in statutory form, and at the termination of this Lease, for whatever cause, a recordable notice of termination of lease.

SECTION 16.4. Estoppel Certificates. Within fifteen (15) days of either party's request, the other agrees to execute, acknowledge and deliver a statement in writing certifying whether this Lease is in full effect (or if there has been any amendment whether the same is in full effect as amended and stating the amendment or amendments), any other information concerning performance, defaults, construction, tenancy, possession or other matters of reasonable interest to prospective lenders, purchasers, assignees and sublessees. Both Parties agree that any such statement may be relied upon by any Person to whom the same is delivered.

SECTION 16.5. Relationship of the Parties. Nothing contained herein shall be construed as creating the relationship of principal and agent or of partnership or of joint venture between Lessor and Lessee, it being understood and agreed that no provision contained herein, or any acts of the Parties hereto, shall be deemed to create any relationship between the Parties hereto other than the relationship of Lessor and Lessee.

SECTION 16.6. Applicable Law and Construction. This Lease may be executed in counterparts, shall be construed as a sealed instrument in accordance with the laws of The Commonwealth of Massachusetts and the Parties agree that any action hereunder shall be brought in the courts of the Commonwealth. If any provision of this Lease shall to any extent be invalid, the remainder of this Lease shall not be affected thereby. This Lease and the Funding Agreement and the MOU contain all of the agreements between Lessor and Lessee relating in

any way to the Leased Premises and In-Kind Space and supersede all prior agreements and dealings between the Lessor and Lessee. This Lease may be amended only by instruments in writing executed and delivered by both Lessor and Lessee. The provisions of this Lease shall bind Lessor and Lessee and their respective successors and assigns, and shall inure to the benefit of Lessor and its successors and assigns and of Lessee and its permitted successors and assigns. The titles of the Articles and Sections contained herein are for convenience only and shall not be considered a part of the Lease. The enumeration of specific examples of a general provision shall not be construed as a limitation of the general provision. The expense of performing any obligation of Lessee shall be paid and borne solely by Lessee. This Lease and all consents, notices, approvals and all other related documents may be reproduced by any party by photographic, microfilm, microfiche or other reproduction process and the originals may be destroyed; and each party agrees that any reproductions shall be as admissible in evidence in any judicial or administrative proceeding as the original itself (whether or not the original is in existence and whether or not reproduction was made in the regular course of business), and that any further reproduction of such reproduction shall likewise be admissible.

SECTION 16.7. No Waiver. The failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option unless this Lease specifies otherwise. No waiver, change, modification or discharge by either Party hereto of any provision in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Lessor and Lessee. No approvals by Lessor under this Lease constitute in any manner a waiver by Lessor of Lessee's responsibilities set forth herein.

SECTION 16.8. Rule Against Perpetuities. If any circumstance of fact or rule of law shall forbid or frustrate the vesting in Lessor of title to the Fixed Improvements, then notwithstanding any other terms of this Lease such vesting of title shall occur not later than twenty-one (21) years after the death of the last surviving of the now living lineal descendants of the late Rose Fitzgerald Kennedy, mother of President John F. Kennedy.

SECTION 16.9. Time of the Essence. Time is of the essence of each and every covenant and each and every date herein contained.

SECTION 16.10. Submission Not An Offer. The submission of this Lease for examination does not constitute an offer to lease, it being understood that neither Lessor nor Lessee shall be legally bound by this Lease unless and until this Lease has been executed and delivered by both Lessor and Lessee.


SECTION 16.11. Business Day. If any date contemplated under this Lease shall not fall on a "Business Day" (a "Business Day" being defined as any day other than a Saturday, Sunday, day on which commercial banks in Boston, Massachusetts are authorized or required by law to remain closed or legal holiday recognized by Lessor), then such date shall be extended to the next succeeding Business Day.

Remainder of Page Intentionally Blank – Signatures on Following Page.

IN WITNESS WHEREOF, the Secretary and Chief Executive Officer of the Lessor has executed and delivered this Lease in the name and on behalf of the MASSACHUSETTS DEPARTMENT OF TRANSPORTATION and the Executive Director of the Lessee has executed and delivered this Lease in the name and on behalf of the ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY, INC., in each case as an instrument under seal, all as of the Effective Date.

LESSOR:

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

By: 
Name: Stephanie Pollack
Title: MassDOT Secretary and CEO

Approved as to form


Lauren D. Armstrong
Deputy General Counsel for Real Estate

LESSEE:

ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY, INC.

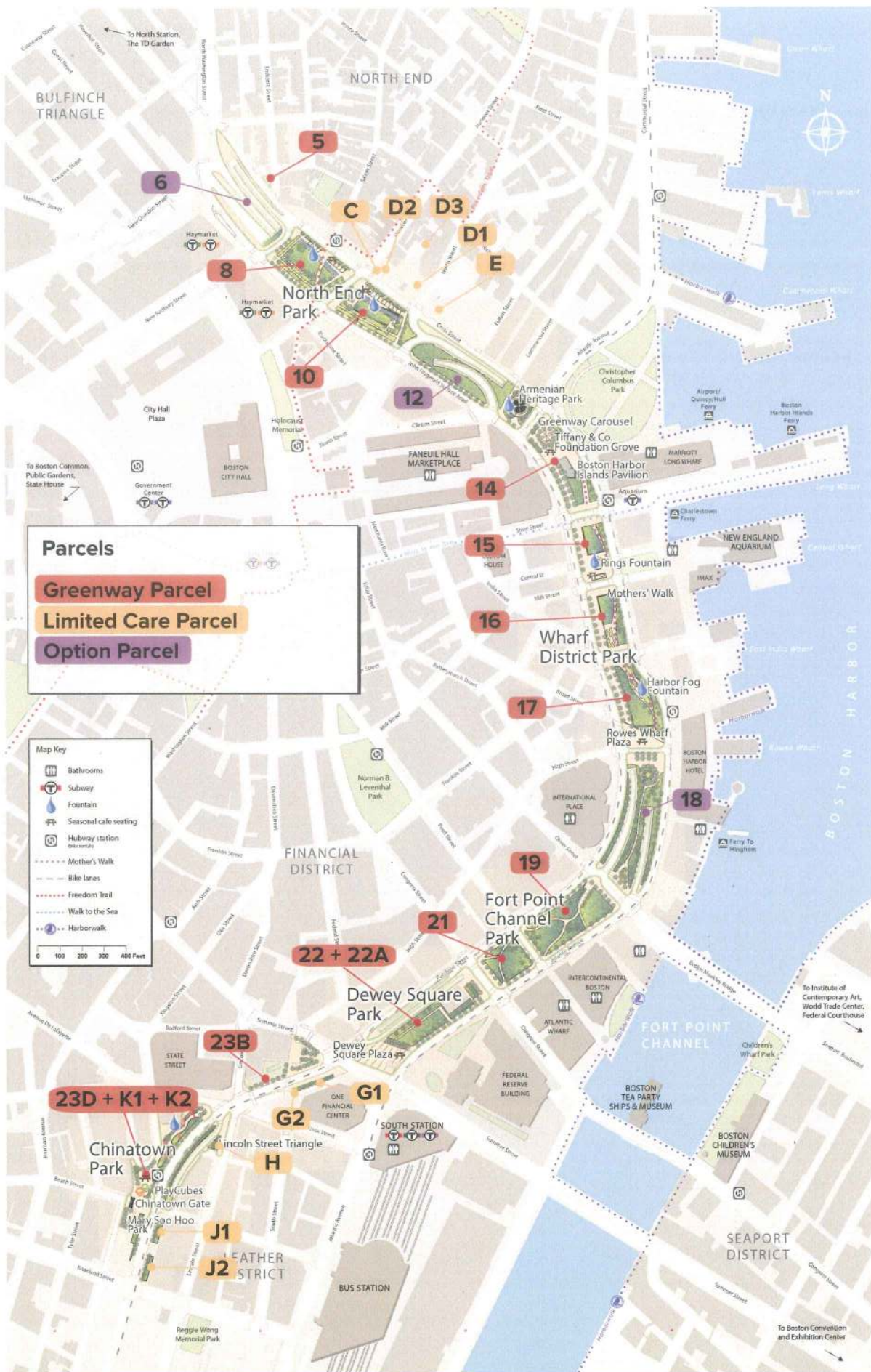
By: 
Name: Jesse Brackenbury
Title: Executive Director

Exhibit A

Leased Premises

(see attached)

PARCELS AS SHOWN ON PLAN ATTACHED AS PART OF THIS EXHIBIT A	DEFINED TERMS IN THE LEASE
Parcel 5	Greenway Parcel
Parcel 6	Option Parcel
Parcel 8	Greenway Parcel
Parcel 10	Greenway Parcel
Parcel 12	Option Parcel
Parcel 14	Greenway Parcel
Parcel 15	Greenway Parcel
Parcel 16	Greenway Parcel
Parcel 17	Greenway Parcel
Parcel 18	Option Parcel
Parcel 19	Greenway Parcel
Parcel 21	Greenway Parcel
Parcel 22+22A	Greenway Parcel
Parcel 23B	Greenway Parcel
Parcel 23D+K1+K2	Greenway Parcel
Parcel C	Limited Care Parcel
Parcel D1	Limited Care Parcel
Parcel D2	Limited Care Parcel
Parcel D3	Limited Care Parcel
Parcel E	Limited Care Parcel
Parcel G1	Limited Care Parcel
Parcel G2	Limited Care Parcel
Parcel H	Limited Care Parcel
Parcel J1	Limited Care Parcel
Parcel J2	Limited Care Parcel



The Rose Fitzgerald Kennedy Greenway

THE GREENWAY
Rose Kennedy Greenway.org

Exhibit B

Park Use Guidelines

(see attached)



185 Kneeland Street
Boston, MA 02111
617.292.0020

Rose Kennedy Greenway Park Use Guidelines for Public Programming, Special Events and General Use

Rose Fitzgerald Kennedy Greenway Conservancy, Inc.
Adopted: June 2010; Revised March 2017

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 - A. PROGRAMMING VISION AND PRINCIPLES
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I. BACKGROUND ON THE ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY, INC.

The Conservancy is the designated steward of the Rose Kennedy Greenway, a mile-and-a-half of contemporary parks in the heart of Boston that connect people and the city with beauty and fun. The non-profit Conservancy maintains, programs, and improves The Greenway on behalf of the public and in partnership with the Commonwealth of Massachusetts.

The Massachusetts Department of Transportation (MassDOT), which owns the land that comprises The Greenway, has entered into a lease agreement with the Conservancy for the management, maintenance and operation of The Greenway (the MassDOT Lease), in accordance with Chapter 306 of the Acts of 2008, as amended by Chapter 242 of the Acts of 2012 (the Enabling Act).

II. PUBLIC USE AND ENJOYMENT

A. DEFINITION OF GREENWAY PARK PROPERTY

The Greenway park property governed by these Park Use Guidelines is defined by the Enabling Act and by the MassDOT Lease. These documents can be found on the Conservancy website: www.rosekennedygreenway.org.

B. OPEN HOURS AND PARK REGULATIONS; EMERGENCY CONTACT

1. **Park Operating Hours:** To maintain a safe and secure environment at all times, general operating hours for The Greenway parks are from 7:00 AM to 11:00 PM. No park use, except for pedestrian passage through The Greenway along the park paths, is allowed from 11PM-7AM, except with the specific prior approval of the Conservancy.
2. **Park Operating Rules and Regulations:** Certain park rules are posted in The Greenway for the information of park visitors. Use of The Greenway shall be in accordance with the following rules and regulations, as well as all applicable City and State laws, ordinances, regulations, and policies.

a. ***Organized Athletics, Fitness Classes:*** Please note that there are no athletic facilities on The Greenway. To avoid wear and tear on the parks and probable conflict with other park users, organized sports, fitness classes, and other repetitive, active uses of The Greenway shall be permitted only with the specific prior approval of the Conservancy. Please see Section III for event permit details.

b. ***Unauthorized Vehicles:*** To ensure the public's safety and protect park furniture and planting beds, skateboards, segways, rollerblades, bicycles, Pedi cabs, scooters, personal motorized devices and horse-drawn carriages are prohibited. Driving these vehicles or unauthorized vehicles of any type is prohibited in the parks. Motorized personal devices required by persons with impaired mobility are permitted. Park visitors with a bicycle, skateboard, scooter, etc. must dismount and walk with it while in the parks. Bike lanes are located on the public streets that run along either side of The Greenway; use Atlantic Avenue for northbound travel and Surface Road for southbound travel.

The Conservancy works with MassDOT, the City of Boston, and other public and private stakeholders to increase accommodation for bicycles along The Greenway corridor.

c. ***Pets:*** To ensure clean, safe spaces for a wide variety of users, strict on-leash and clean-up policies will be enforced within The Greenway. "Clean up after your pet" practices are required. Dogs and other pets are not permitted in any of the park fountains, water features, or planting beds. Per City ordinance, dogs must be kept on a leash no longer than eight feet. Conservancy staff reserve the right to ban specific dogs or other pets from the premises at their discretion if such animals pose a hazard

or nuisance.

- d. Littering, Dumping, and Unattended Property: Littering in the park is prohibited. Park users shall utilize receptacles provided for the disposal of refuse. No person shall deposit household or commercial refuse in any park receptacle. No person shall store or leave unattended personal belongings within or adjacent to any Greenway park.
- e. Obstruction of Sitting Areas and Open Areas: No person shall use benches, other seating areas, or open space, for storing or maintaining belongings or other materials, or otherwise use such areas for other than their intended use, so as to interfere with their use by other persons.
- f. Fountains and Water Features, Park Buildings, Monuments, Structures: No person shall use any fountain, water feature, drinking fountain, or any other water within the park for the purpose of washing or cleaning himself or herself, his or her clothing or other personal belongings, or for washing any animal under his or her control. It is prohibited for any person to spit or expectorate in or upon any fountain or water feature, or park building, monument or structure.
- g. Trees and Other Vegetation: It is unlawful for any person to cut, injure, deface or damage any tree or plant on park property. No signs or related hardware (ropes, wires, nails, staples, etc.) are to be attached to any tree. Pets, bicycles, and other vehicles shall not be tied, locked, or otherwise attached to any tree or plant. No chemicals, cleaners, pesticides, or other liquids are to be deposited in the park. BBQ's, portable gas grills, heat generating equipment, and materials shall not be placed near any tree trunks or under the branches of any tree. Because the tree root zone is critical to the overall health of the tree, particular attention will be paid to protection of this vulnerable area from vehicles, turf aeration, material storage, special event equipment, heavy pedestrian traffic and dog damage.
- h. Disorderly Behavior: Disorderly behavior in the park, including but not limited to the examples set forth below, is prohibited:
 - vandalism;
 - obstructing or rendering dangerous any part of a park or park path, or otherwise obstructing pedestrian traffic;
 - fighting or assaulting any person;
 - sexual activity;
 - any course of conduct or act that endanger the safety of others;
 - throwing stones or any other objects;
 - setting fires or dropping a lighted match, cigarette, cigar or other burning substance; and
 - having or discharging any firecracker or fireworks.
- i. Alcohol: Alcohol consumption in the parks is prohibited except with the prior approval of the Conservancy and any City agencies or departments responsible for licensing such consumption. Permits for serving or consuming alcohol must be obtained and all

applicable City and state laws, ordinances, rules, and regulations apply.

- j. Smoking:* Smoking is prohibited in all Greenway parks. Cigarette “butlers” are located in key areas at popular entrances to the parks.
- k. Glass:* Due to safety concerns, no glass containers are allowed in Greenway parks without prior approval of the Conservancy.
- l. Care of Park Infrastructure and Plant Materials:* The following rules are in effect in order to protect The Greenway parks and the safety of park visitors:
 - Seating is restricted to grass areas, park furniture, benches and walls designed for such purpose (granite and seawall areas). It is prohibited to sit, lie, or climb on any balustrade, railing, fence, wall, roof, monument, fountain, shrub, tree or other park element not meant to accommodate seating. Lying down on park benches is prohibited.
 - Visitors shall not enter any flower bed or restricted lawn; or dig up, cut, break, remove, deface, defile, or take part of any tree, shrub plant, turf, rock, gravel, soil, building, structure, fence, railing, sign or other thing connected affixed to or located within the parks.
 - For lawn health, the Conservancy shall from time to time close lawns for aeration, over-seeding, rest, and recovery.
 - It is forbidden to disturb any bird's nest, eggs or young of any wildlife; injure or take possession of any wild animal or bird; or set any trap or snare.
- m. Photography and filming:* Use of The Greenway for commercial photography/film/videography, or other such use that is potentially disruptive to regular park use, must apply for a permit from the Conservancy. See Section III for application procedures. Permission from any individuals photographed or filmed for commercial purposes must be obtained. Photographers must leave the park space as they found it and must adhere to all other park rules.

- 3. **Public Safety, Emergencies:** Policing in the park is performed by the Boston Police Department. For emergency assistance, please call 911.

III. PUBLIC PROGRAMS AND EVENTS: GUIDELINES AND APPLICATION PROCESS

A. PROGRAMMING VISION AND PRINCIPLES

These guidelines provide a framework both to assist those wishing to hold events on The Greenway with useful planning information, and to ensure continual informal enjoyment of the parks.

As keeper of this public park, the Conservancy's primary goal is to keep the park open for public use. The Greenway Conservancy curates innovative park experiences, consistent with its stewardship of a beautiful and welcoming Greenway. The Conservancy balances park activation—such as fitness classes, concerts, markets, performances, exhibits, celebrations, and other events and gatherings – with the need to ensure passive enjoyment of the park and to provide excellent care of the horticultural collections, the sidewalks and paved areas, the fountains, and the lawns. Regularly scheduled festivals, concerts, markets, and events, are open and free to the public; these free events numbered ~400 in 2016. The Conservancy works collaboratively with companies, organizations, and other groups seeking to hold public events on The Greenway; the Conservancy itself organizes and funds a limited number of activities and events.

Demonstrations and other expressions of free speech on The Greenway are guaranteed by the Constitution of the United States, subject to such reasonable regulations as the Conservancy and/or the City of Boston may apply consistent with these Guidelines and applicable law. Demonstrations and the exercise of free speech rights taking place at or near programs, events, or other activities are allowed so long as such protest is not disruptive to such activity. Rules for public assembly established by the City of Boston will apply. If a demonstration or other expression of free speech requires any set up (including but not limited to tables and chairs, tents, podiums, or amplified sound), a permit is required from the Conservancy and any other applicable City agencies or departments.

The Conservancy may accommodate appropriate fee-based and private uses. For example, the Conservancy permits and/or operates park-appropriate revenue-generating uses, such as food vending and The Greenway Carousel at the Tiffany & Co. Foundation Grove.

- The Conservancy may permit public, ticketed events such as performances, but they will annually be fewer than 10% of the number of free Greenway events. Public, ticketed event proposals must propose to share revenue with the Conservancy to financially benefit The Greenway.
- The Conservancy may issue temporary licenses for private use of small areas of park space (<2000 SF and <5 hours in duration). Private licensed uses will incur fees to financially benefit The Greenway.
- Any event that is not free and open to the public must be planned to minimize disruption of public access and enjoyment of The Greenway. At all times, at least 90% of Greenway

acreage will be available for public enjoyment.

- The Conservancy may hold up to four fundraisers annually in the parks to benefit The Greenway.

The Conservancy may permit events or grant private licenses that depart from these guidelines only with advance written approval from MassDOT.

B. APPLICATION PROCESS - RESERVATIONS, PERMITS AND EVENT MANAGEMENT COSTS

The event permitting process is designed to manage the overall park schedule, maintain a balance in park activation, protect park infrastructure, and avoid conflicts with existing permitted events or with scheduled maintenance by the MassDOT or the Conservancy. Any use of The Greenway requiring a permit under other provisions of these Guidelines shall be subject to this Section III (B). In general, all public and private classes, performances, exhibits, celebrations, and other events and gatherings requiring set up of tables, chairs, booths, tents, or any other equipment, require a permit as set forth herein, as does the sale or promotion of any product or service within The Greenway. The Conservancy reserves the right to require a permit for any other use of The Greenway that may interfere with the public's use and enjoyment of the parks or with The Conservancy's or MassDOT's maintenance of the parks, or that may cause excessive wear or damage to The Greenway.

If the Conservancy grants an event permit, the applicant shall be subject to the Conservancy's rules and regulations, to all applicable federal, state and City laws, ordinances, regulations, and policies, and to the specific terms of such permit.

Permit application process

The first step is to submit a Reservation Form to the Conservancy (www.rosekennedygreenway.org/events/event-proposal.htm). An individual applicant must be at least 18 years of age.

See the maps of each park in Appendix A for easy visual reference and dimensions. Guidance on appropriate locations for different events will be provided by Conservancy staff during the event approval process.

Larger events may then be required to obtain permits through the City of Boston's Special Events process. Applicants are responsible for securing all necessary permits and approvals from the applicable City departments, which may include, but are not limited to, Boston Police Department, the Boston Fire Department, the Boston Inspectional Services Department, and the Boston Entertainment Licensing Board. Conservancy staff will work with the event organizer, assisting them with the process. The City of Boston's special event permit is accessible at www.cityofboston.gov/arts/guidelines.asp

Conservancy Staff Assistance

Park programming is overseen by the Conservancy staff. The Conservancy coordinates with

MassDOT and all appropriate City departments, including the Boston Parks and Recreation Department, the Boston Police Department, the Boston Fire Department and EMT Services, the Department of Transportation, the Health Department, the Special Events Office, and any other City entities that regulate events.

At least one Conservancy staff person is assigned to each event leading up to and during an event. Conservancy services may include:

- on-site meetings and visits to review program needs;
- assistance to obtain appropriate permits;
- telephone and email correspondence;
- marketing and community outreach;
- on-site staffing during the event installation; and,
- break down and additional clean up as required.

Insurance

Insurance coverage (including workers comp, auto, general liability, and umbrella insurance) will be required for most events. If the Conservancy requires insurance, the City of Boston, MassDOT, and the Rose Fitzgerald Kennedy Greenway Conservancy, Inc. must be named as additional insured. On a case by case basis a bond or other security may be required to cover the costs of possible cleanup, repair of damage, and equipment removal.

Information about public programming

Information about public programming will be distributed through the use of the Conservancy website, periodic brochures and postcards, direct community outreach at community meetings, Conservancy public meetings, and Conservancy social media channels.

Event Management Fees

Based on the nature, size, type of organizational entity, and needs of an event, some fees are required. Revenue generated from fees helps offset the costs of the Conservancy's free programming on The Greenway.

Fees are determined by the following factors, among other considerations:

- Whether the event is corporate, promotional, informational, non-profit, or neighborhood-based;
- The duration and complexity of planning, permitting, load-in and load-out procedures requiring the presence of one or more Conservancy staff beyond normal working hours to assist; and,
- Size of the event. For example, large events using a bigger portion of the park and requiring staff time, permitting and planning, furniture moving and so forth will be subject to a higher fee.

If fees represent a financial hardship for an organizer of a non-commercial event with a significant public benefit, the applicant organization may request special financial assistance from the

Conservancy.

A fee schedule is presented to the Board annually for approval. It generally includes—but is not limited to—the following categories (amounts listed as reference are applicable in 2017:

- 1) Non-Refundable Application Fee – paid at time of event proposal submission to the Conservancy
 - a. Discounted fee for non-profit organizations [2017 fee: \$25]
 - b. Fee for for-profit organizations [2017 fee: \$100]Applications not submitted at least 30 days in advance of the proposed event date will be subject to an additional fee. [2017 fee: \$50].
- 2) Furniture Moving – The Greenway has hundreds of moveable tables, chairs and umbrellas in in the park. Should furniture need to be relocated, a fee will be charged based on the labor required. [2017 range: \$300 - \$800]
- 3) Programs staff support – Should Conservancy programs staff be required either after normal business hours or on weekends, an hourly fee will apply. [2017 rate: \$50/hour for non-profit organizations, \$100/hour for for-profit organizations]
- 4) Commercial and promotional activities - Should an organizer or vendor wish to offer product samples or promote a product, service, or organization, a fee will be charged. The fee will vary based on duration, location, footprint, and nature of event.
 - a. Sampling and Promotion – Proposals for giveaways/promotions will be assessed to assure general public enjoyment of the park. Certain set-ups, footprints, and locations may not be possible. Fees will be assessed to assure that there is benefit to The Greenway. [2017 rate: beginning at \$350/hour for Dewey Square Park weekdays, \$275/hour for Wharf District and North End Parks and \$150/hour for other times and locations.]
 - b. Markets – The Greenway hosts park-appropriate commercial markets, such as farmers' markets or artisans' markets. Fees will be based on a revenue-share. [2017 rev-share: 20-25% for-profits organizers, 5-15% non-profit organizers.]
 - c. Other events including commerce – For events with a money-making component for the organizer, a fee will be charged so that there is also a financial benefit to The Greenway. Fees can be structured as an upfront flat amount or as a revenue share, depending on the nature of the event.
- 5) Deposits for damage and cleaning – If a program or event 1) has an expected attendance of more than 1,000 participants, 2) is recurring or 3) proposes to use lawn areas on The Greenway, the Conservancy reserves the right to require a deposit in advance of the event. Lawn replacement and hardscape cleaning fees are on a per-square foot basis, and deposits will be based on the size of the event and the footprint of lawn or hardscape used. [2017 lawn replacement rate: \$10 per square foot.] All park grounds must be protected from damage during load-in, load-out, and throughout your event. We will work with you to devise an appropriate protection plan. Event organizers are required to leave the park in as good condition as when they began load-in. If trash, debris or additional clean-up is required, the Conservancy may also charge an hourly rate for clean-up in excess of the deposit. [2017 rate: \$300/hour.]

A 50% deposit of the total estimated costs is required three weeks in advance of the event. Final payments are due no later than the start of set-up for the event or program on The Greenway.

C. EVENT POLICIES

ADA Compliance

All events must comply with the Americans with Disabilities Act (ADA) standards. The Greenway is ADA-accessible.

Alcohol

Unless expressly permitted by the Conservancy (and subject to City approvals), the consumption of alcohol is prohibited. Alcohol has been permitted for Conservancy fundraisers and for a limited number of public events.

Amplified Sound

Applicants for event permits must comply with City of Boston sound ordinances relating to amplified sound, including the payment of all applicable fees. Your event may be subject to sound metering for compliance with state and local law.

Catering & Food Preparation

All food uses must comply with relevant city and state health and safety policies and procedures, and pay all applicable fees.

Clean up, Trash Removal & Recycling

The applicant is responsible for site cleanup. The site shall be cleared and cleaned immediately following the event. All waste generated from an event must be bagged and removed from the park at the end of the event. Trash cannot be left next to garbage cans or on the curb. If you need assistance with identifying trash removal and recycling services, please contact the Conservancy. Plaza areas that were used should be swept with brooms & dustpans (metal rakes or other tools that may cause damage are not permitted for clean-up) and washed as needed. Power washing can be performed by the Conservancy or its approved contractor at an additional cost.

Decoration & Event Signage

- Arrangements may be made with the Conservancy's Events Coordinator to display banners or signs.
- The size and location of decorations must be approved by the Conservancy.
- No decorations, signs or related hardware (ropes, wires, nails, staples, etc.) may be affixed to any trees, plants, or other surfaces, walls, or built structures within the parks.
- Because of clean-up issues and the health of small animals, decorating with, and throwing of small confetti-like items such as rice, birdseed, glitter, confetti, rose petals, etc., is not permitted.
- Due to the negative impact on wildlife and the marine environment, balloons are not permitted on The Greenway.
- Unless expressly permitted (and subject to City approvals), fireworks, candles, pyrotechnics and explosives of any kind are not allowed on the premises.

Documentation

The permit holder must have the original approved permit and all documentation required by the City of Boston in their possession at the site while the event is taking place.

Electricity

Electrical needs will be assessed when the applicant makes a site visit with Conservancy staff. Most of the parks in The Greenway are equipped with electricity. It is the responsibility of the applicant to supply additional electricity if needed. Note that use of a generator requires a special permit from the Boston Fire Department. All equipment for the event, electrical cords, speakers, etc. shall meet the Massachusetts electrical code.

Inclement Weather

The Conservancy encourages lawn use as part of an event for seating and low impact infrastructure (e.g. lawn games, light furniture). Locating equipment (e.g., tents, stages, flooring, tarps, ballast, etc.) on lawns is prohibited without the specific prior approval of the Conservancy. Event organizers planning to use a lawn area as a part of an event must also have an alternate plan in case the approved lawn area becomes unavailable. The availability of all lawn areas depends on weather conditions for the duration of the event from set-up through breakdown. In case of wet conditions, the Conservancy will determine whether the event is to be modified, cancelled or postponed in as timely a manner as possible, but often within 24 hours prior to the event.

Lawn Rest

The regular use of a park for special events causes wear and tear, requiring special maintenance on lawns and other surfaces. The Conservancy reserves the right to limit or relocate an event, depending on the nature of the event, size, and location. The Greenway's lawn care and use management strategies are designed to ensure that the park will continue to be used and enjoyed for many years to come. Key strategies include:

- Lawns are closed when they need to recover from heavy use during large events, when they are especially susceptible to damage (such as when the turf is dormant or wet), and for necessary maintenance.
- Activities and behaviors that can significantly impact the lawns are prohibited (organized sports like soccer or football, vehicles on lawns, etc.)
- Active use of lawns (fitness classes) are rotated regularly to allow sections of turf to recuperate.

Lighting

While the parks are generally well lit, any additional lighting must be permitted by the Conservancy and costs are the responsibility of the applicant. All additional lights need to be free standing, may not be attached to any park infrastructure and need to be aimed carefully so as not to negatively impact abutters.

Parking & Public Transportation

There is no parking on The Greenway. Getting to and from all portions of The Greenway is very convenient by public transportation, please check our website at www.rosekennedygreenway.org for details. For directions from the closest MBTA station, please see the specification pages for each individual park in Appendix A.

Restrooms

There are no public restrooms on The Greenway. Portable toilets may be required for certain events, and costs are the responsibility of the applicant. Public restrooms are located in North Station, South Station, and Faneuil Hall Marketplace, among other locations.

Recycling

In keeping with the Conservancy's commitment to environmentally responsible practices, at special events hosted by any third parties, we strongly encourage recycling of all products that are used in the parks. Visitors must be able to easily separate their trash from recycling.

Staging, Tents and Other Structures

Placement of staging, tents, lighting, portable toilets, and other structures requires approval from the Conservancy prior to event. All canopies must be weighted instead of staked to avoid damage to electrical, irrigation, and water lines. A stage must be free-standing and not attach to any existing structures for support. No nails or staples shall be attached to any existing surface. Surfaces, including lawns, must be protected at all times. Plywood sheets or other protective barriers must be placed on the ground underneath the stage. Flooring may also be required for certain activities. All permitted equipment for the event, including electrical cords, speakers, pop-tents, etc. must be secured/weighted to keep the public safe at all times.

Tents, decorations or other equipment must be installed and removed the day of the activity, unless permission is granted by the Conservancy in advance. A detailed schedule for event load in and load out is required no later than 15 days before an approved event. The Conservancy will not be responsible for any decorations, signs or other items left after an event. Security for event equipment, decorations, etc. is the responsibility of the event organizer and may be required by the Conservancy.

After an event is over, if any event infrastructure remains after the agreed upon removal time, a per-hour charge will be assessed to the permit holder until the tent and/or other equipment is removed. [2017 rate: beginning at \$300/hour].

Vehicular Access

There is no vehicular access in any of The Greenway parks without approval from the Conservancy. Proposals should request vehicular access in the event application to the Conservancy, understanding the spaces and access are limited and priority must be given to pedestrian usage of the park. Generally, later or last minute requests cannot be authorized. If approved, commercial auto insurance will be required.

Water

There is no access to potable water on The Greenway, apart from a drinking fountain located on Parcel 14 between Clinton and State Streets. All drinking water must be provided by the event organizer. Water and other liquids used at events must be properly disposed of off-site and not in planting beds or lawns.

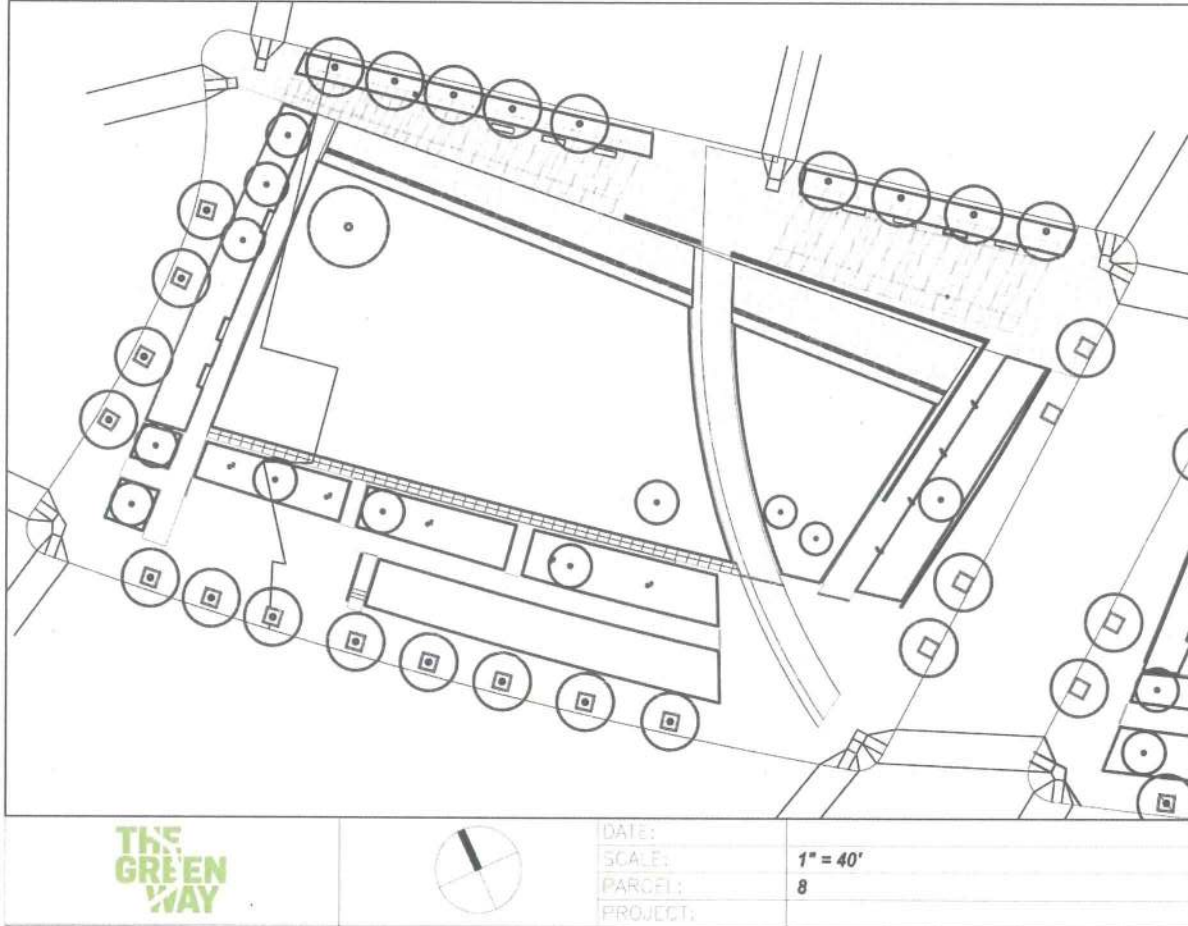
IV. APPENDIX: MAPS OF THE ROSE KENNEDY GREENWAY PARKS

Parks are identified by north/south cross streets.



North End Parks

Parcel 8



North End Parks

Accessible by MBTA:

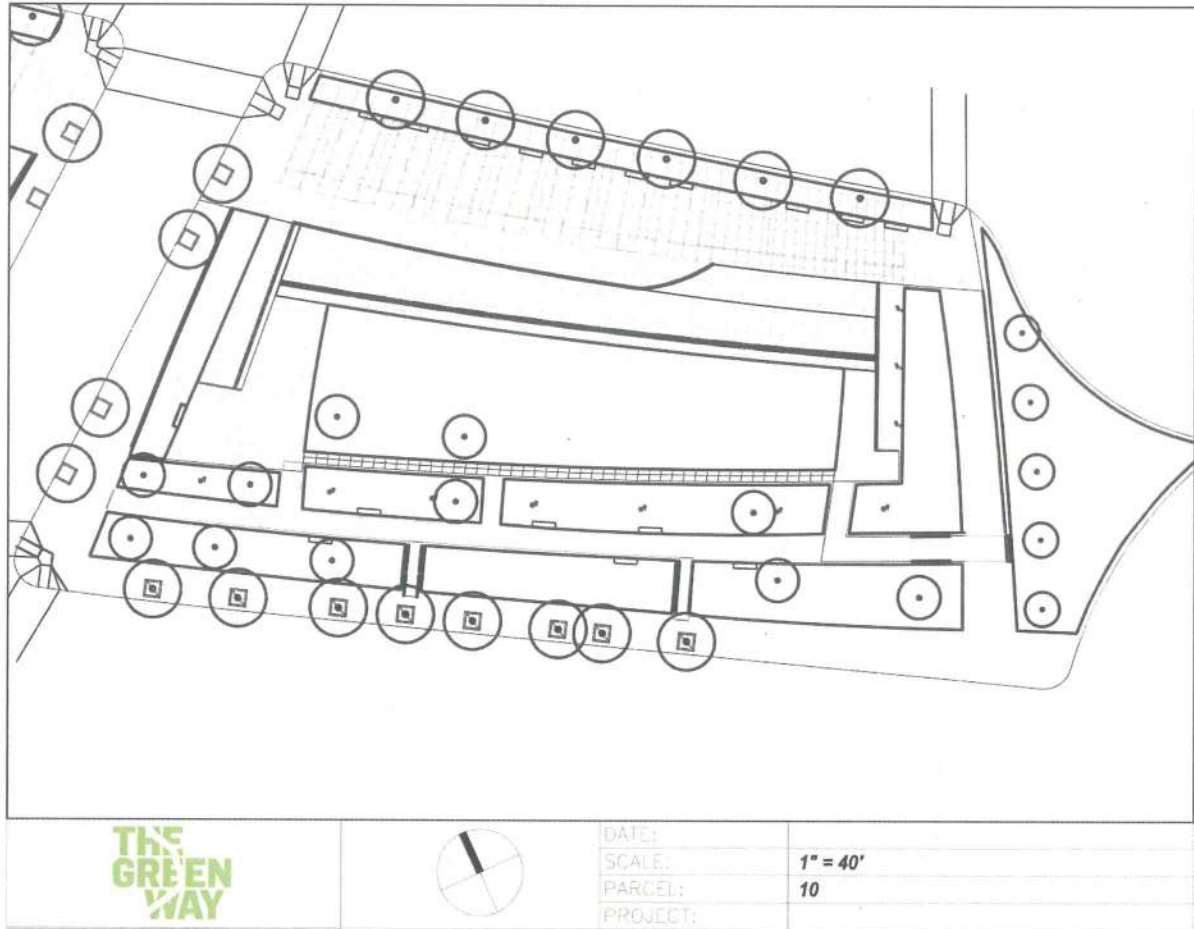
Orange Line: Haymarket Station

Green Line: Haymarket Station

Purple Line: North Station

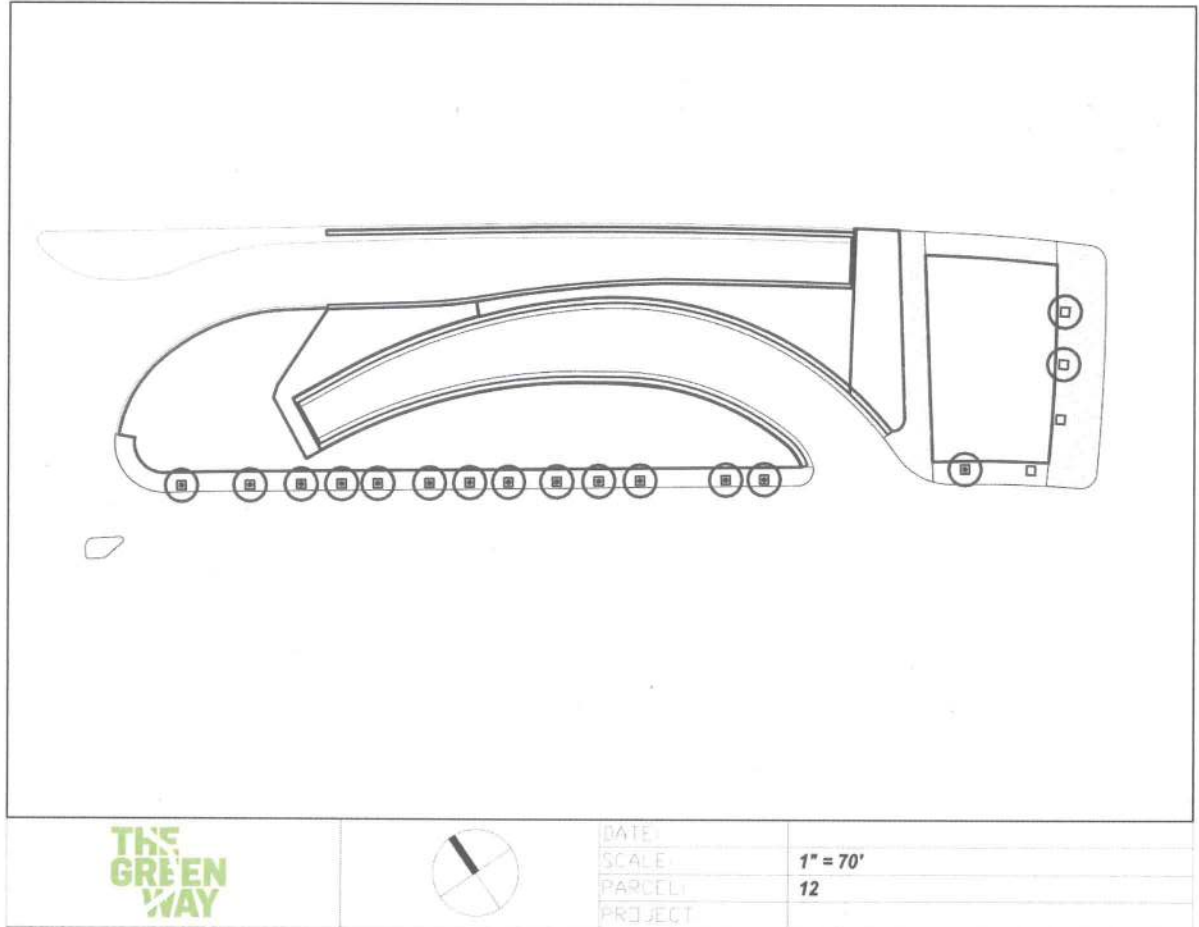
Blue Line: Aquarium Station

Parcel 10



Ramp Parcel

Parcel 12

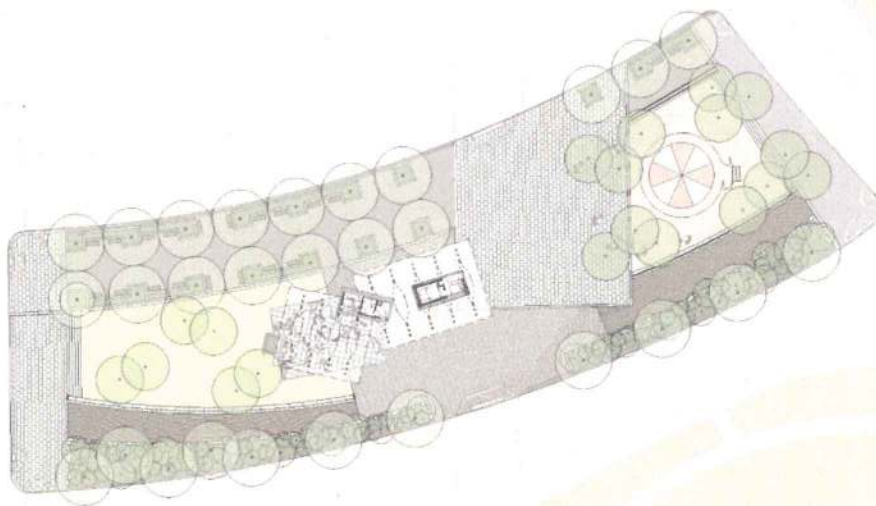


Wharf District Parks

Accessible by MBTA:

Orange Line: State Street Station
Green Line: Government Center Station
Purple Line: North and South Stations
Blue Line: Aquarium Station
Red Line: South Station

Atlantic Avenue and Christopher Columbus Park to State Street



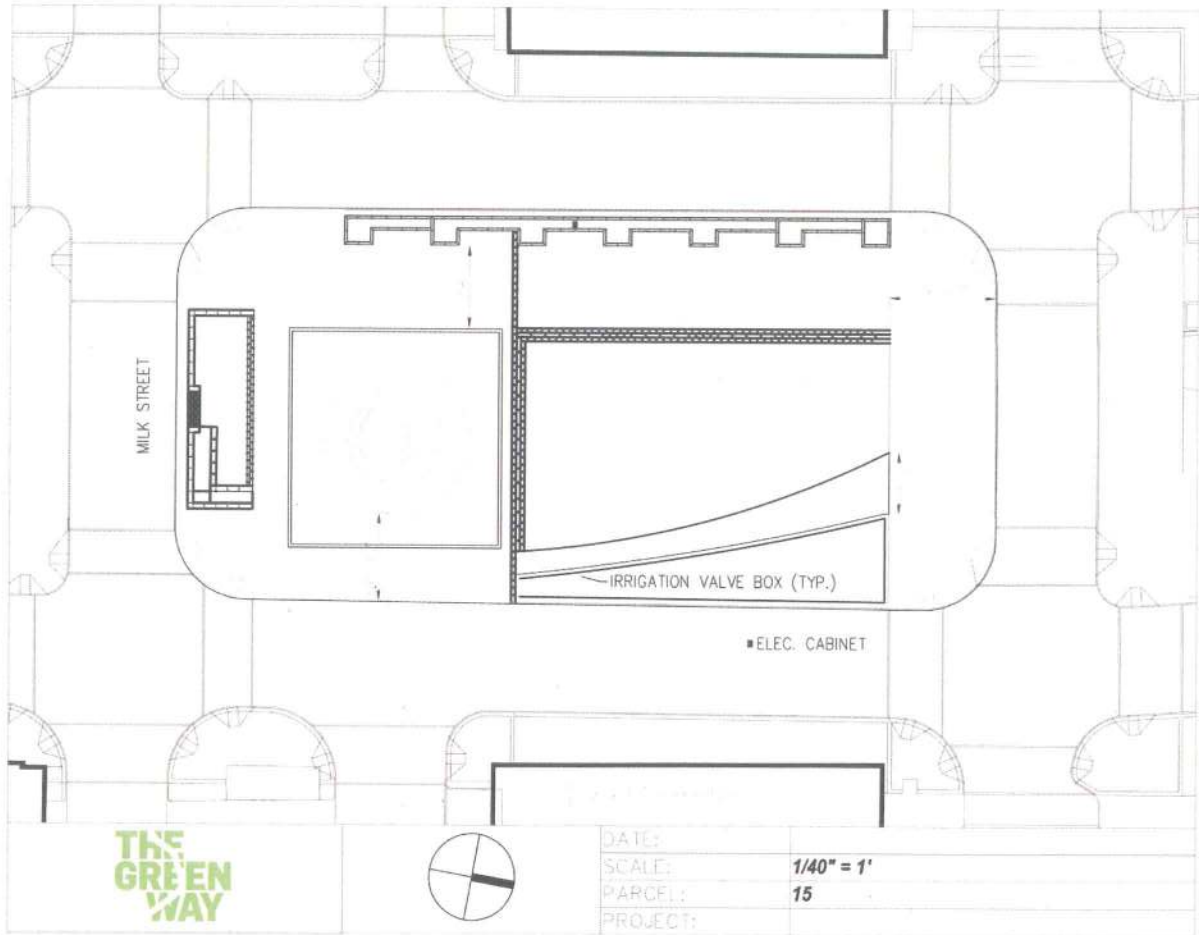
THE
GREEN
WAY



DATE	
SCALE	1" = 25'
SOURCE	14
PROJECT	

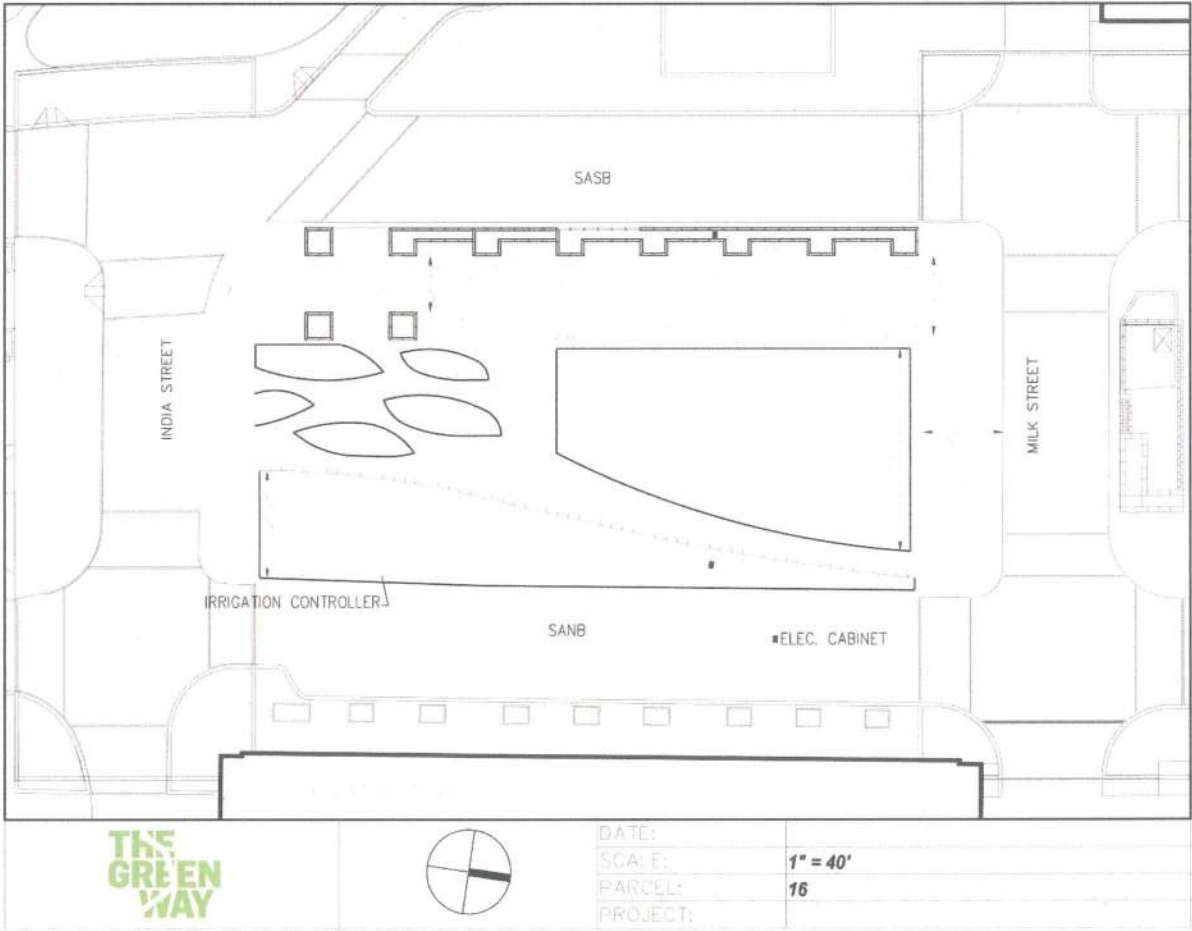
Wharf District Parks

State Street and Central Street



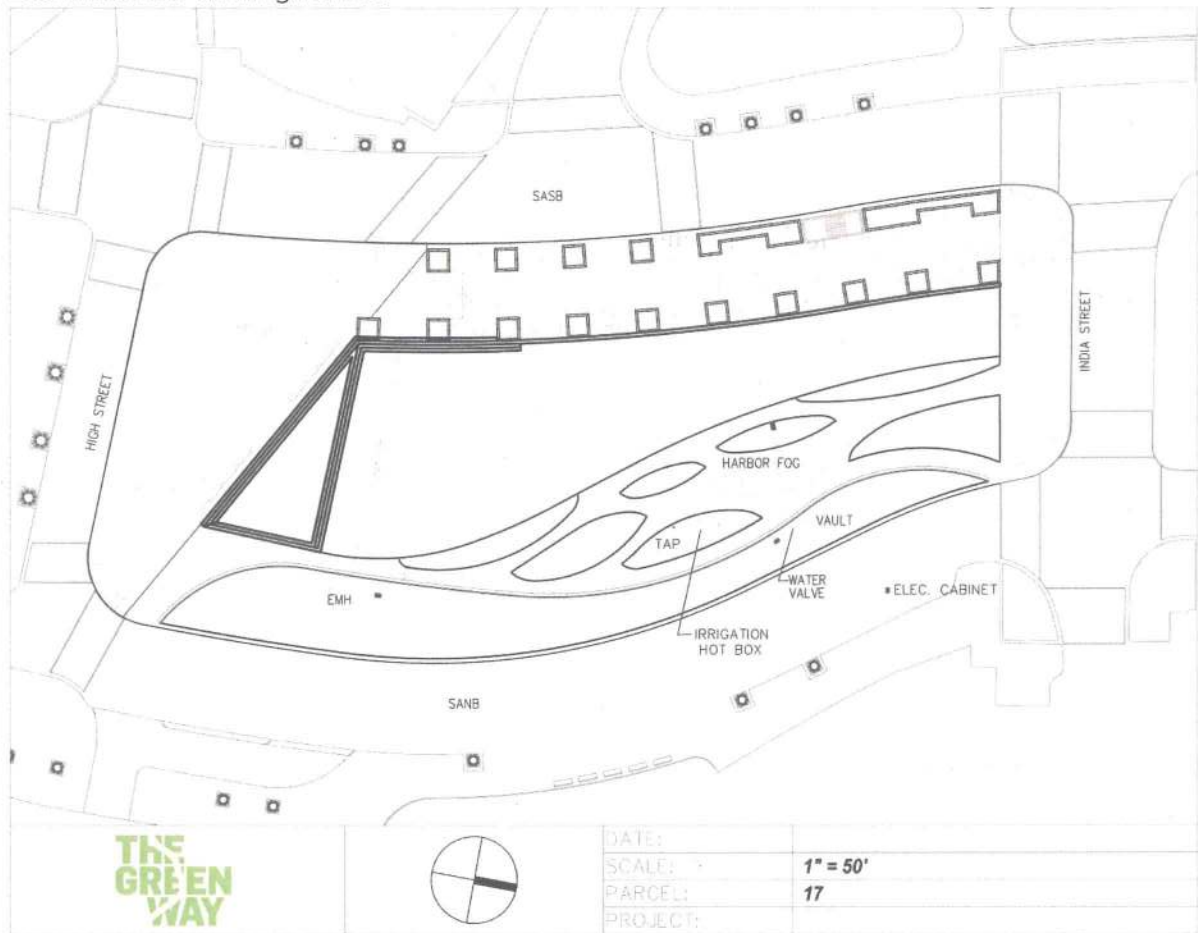
Wharf District Parks

Central Street and East India Row



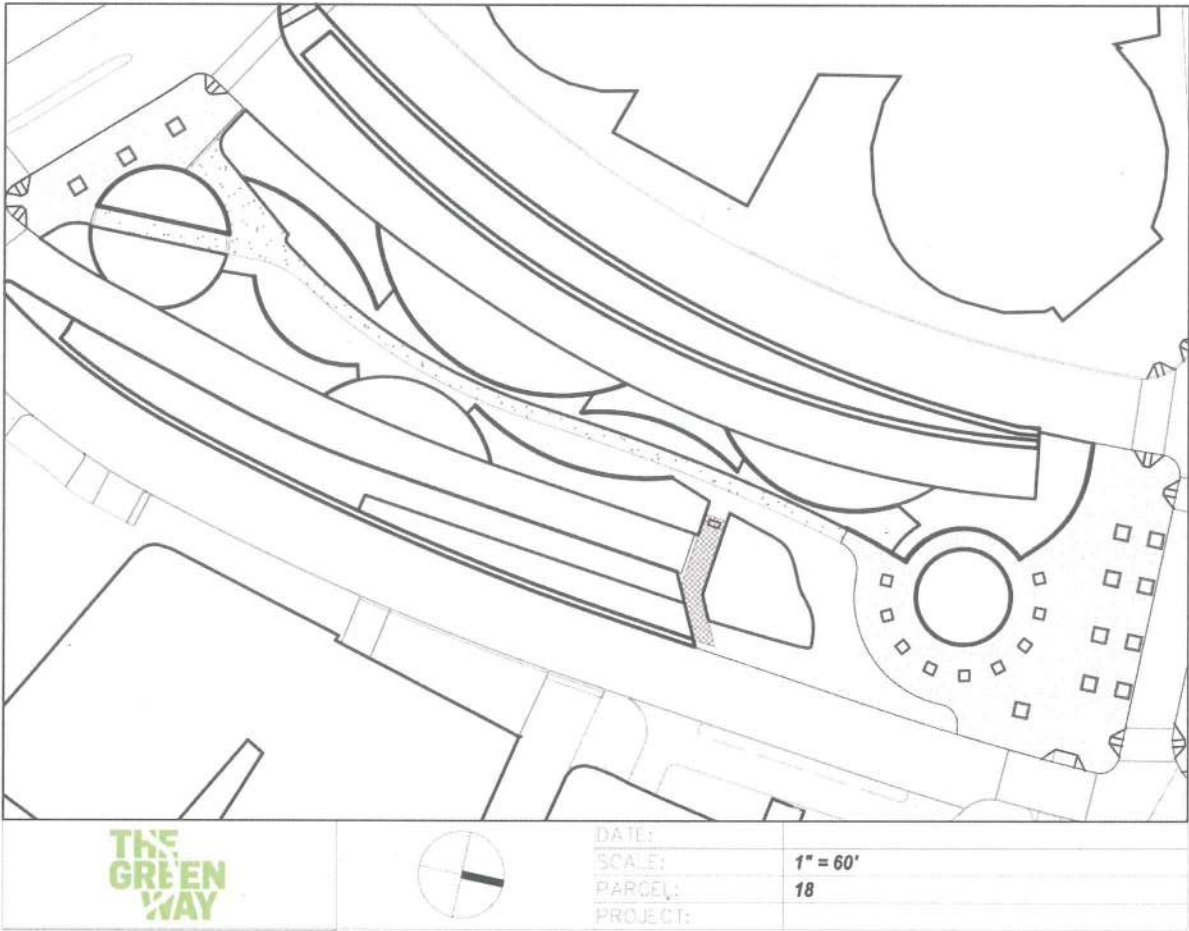
Wharf District Parks

East India Row and High Street



Wharf District Parks

High Street and Oliver Street



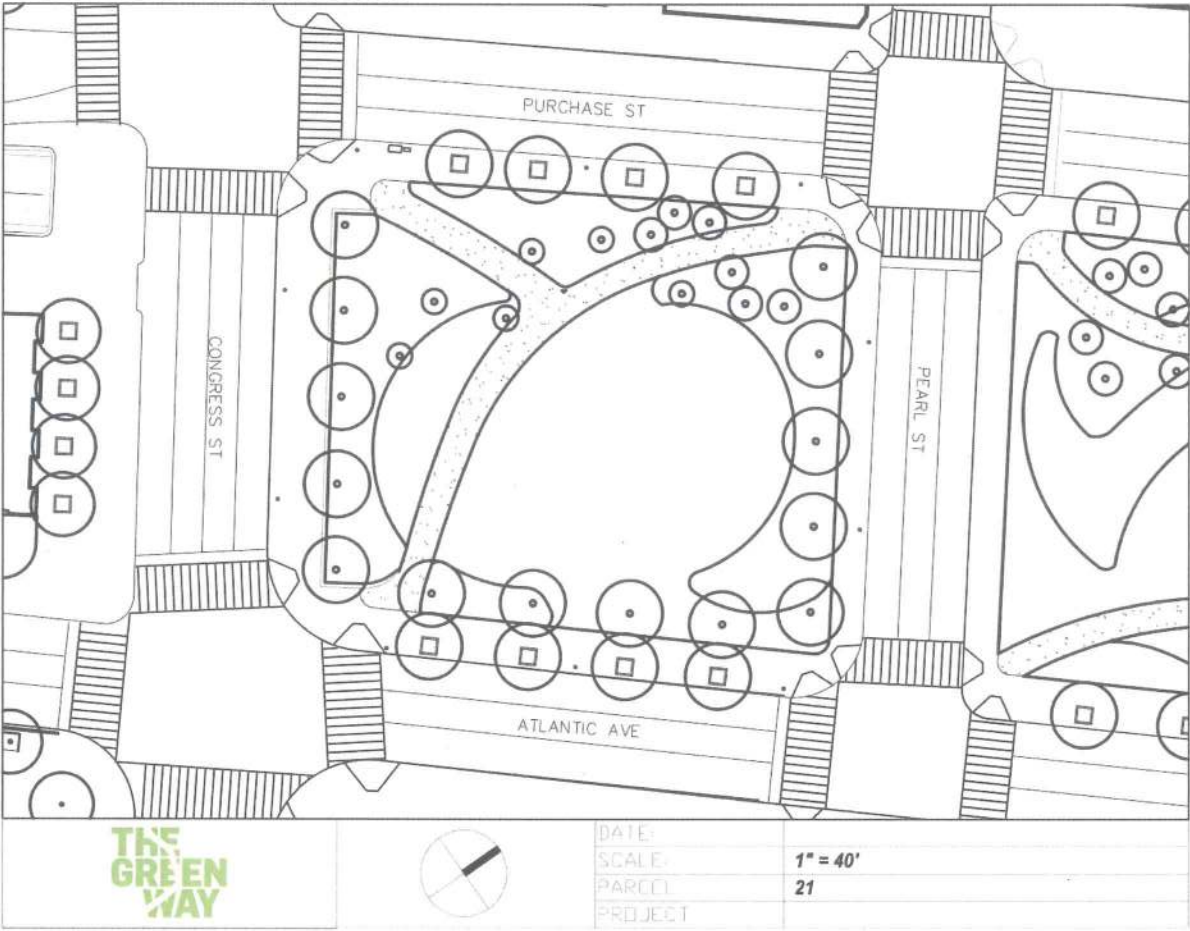
Fort Point Channel Parks

Oliver Street and Pearl Street



Fort Point Channel Parks

Pearl Street and Congress Street



Dewey Square Park

Accessible by MBTA:

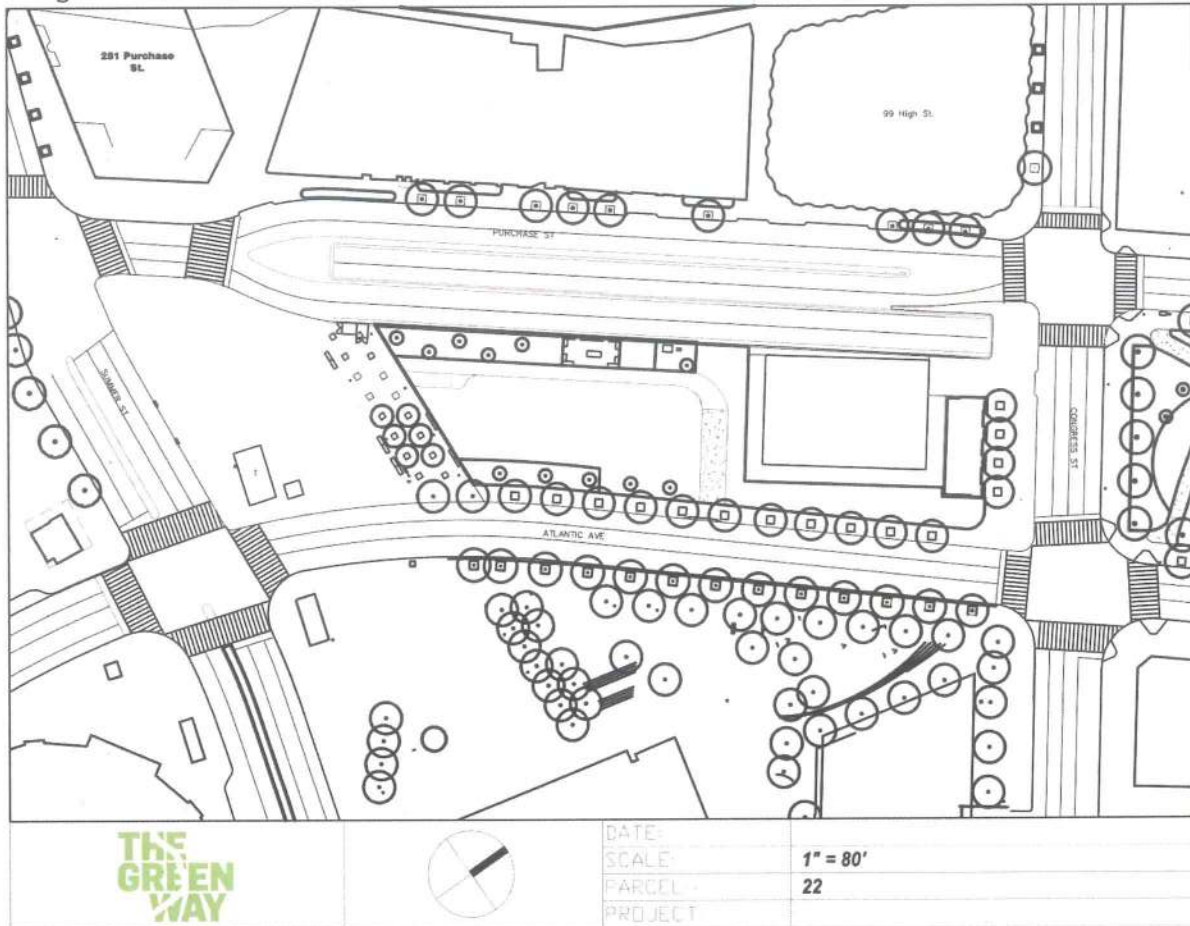
Orange Line: Downtown Crossing,

Red Line: South Station

Purple Line: South Station

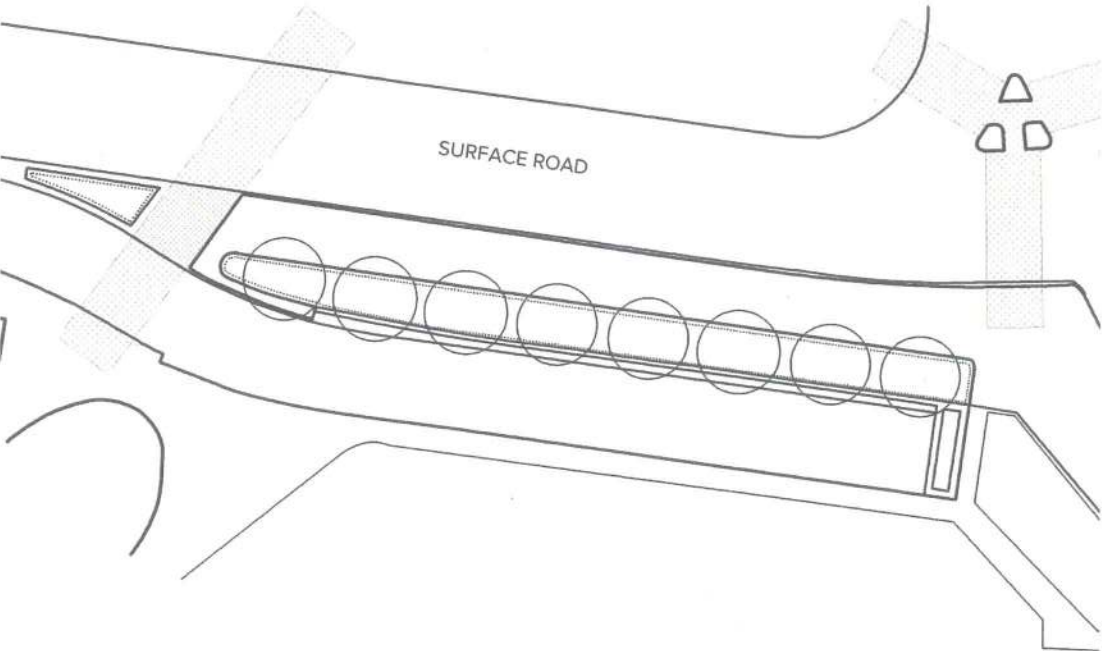
Silver Line: South Station

Congress Street and Summer Street



Parcel G

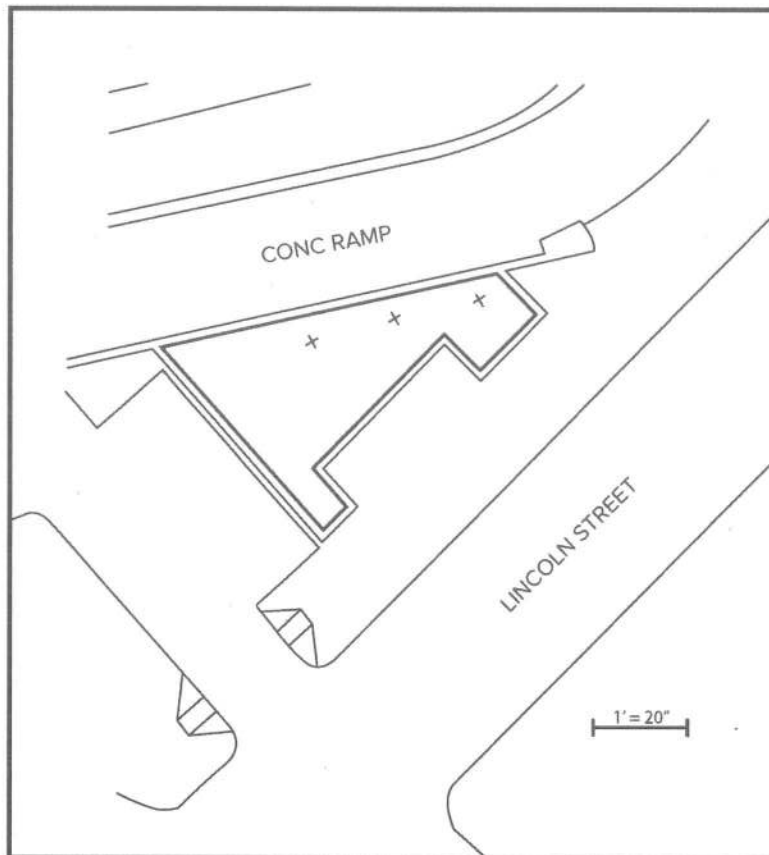
Surface Road



		DATE:	
		SCALE:	1" = 40"
		PARCEL:	G
		PROJECT:	

Parcel H

Lincoln Street and Tufts Street



THE
GREEN
WAY



DATE:	
SCALE:	1" = 20'
PARCEL:	H
PROJECT:	

Chinatown Park

Accessible by MBTA:

Orange Line: Chinatown Station

Red Line: South Station

Purple Line: South Station

Silver Line: South Station

Essex Street and Beach Street



Exhibit C

Dewey Square Right-of-Way

(see attached)

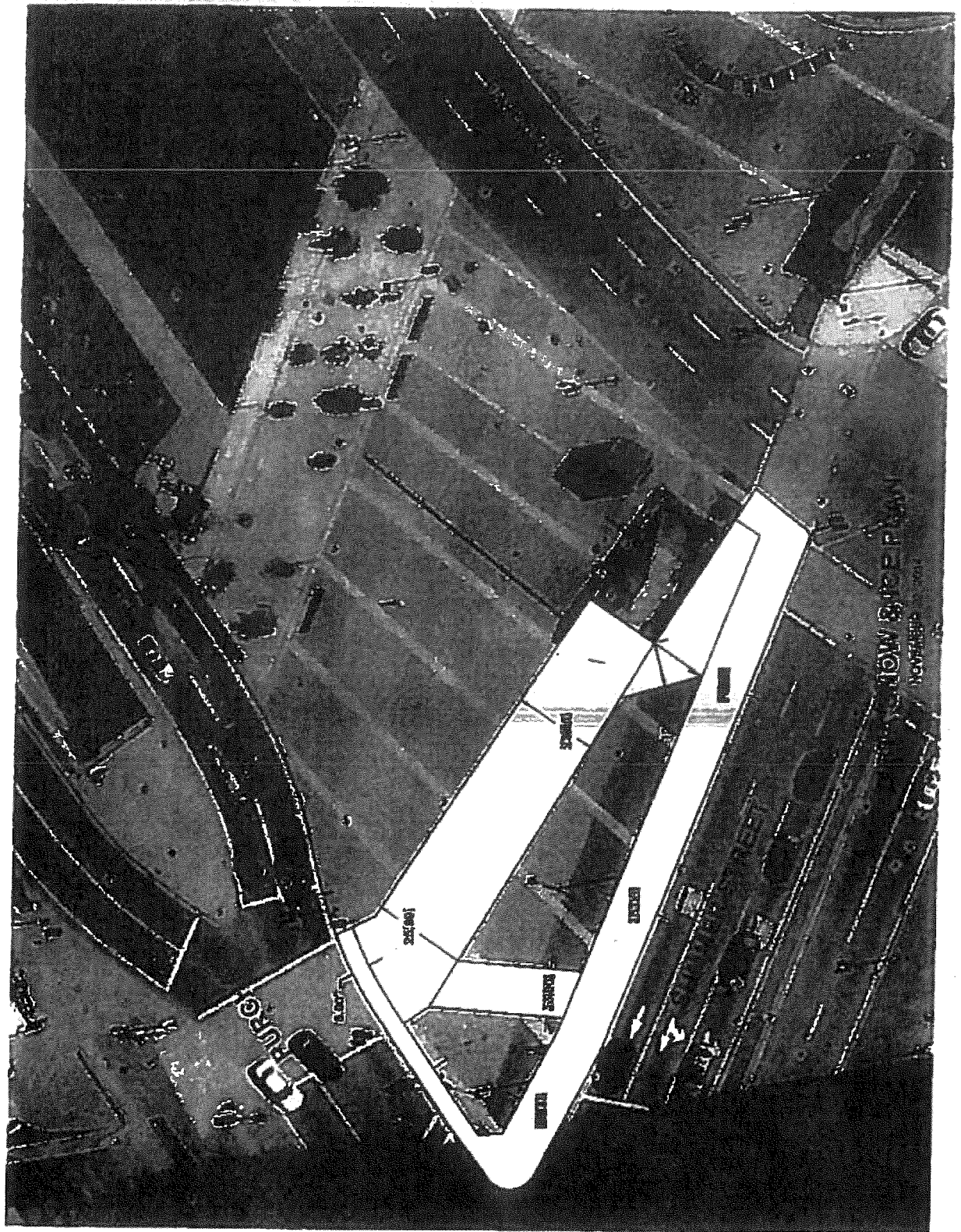


Exhibit D

Maintenance Space and Dumpster Space

