# AGREEMENT TO USE MBTA PROPERTY FOR THE PURPOSE OF FILMING A MOTION PICTURE

This Agreement, dated this \_\_\_th day of\_\_\_\_\_, 2021 (the “Effective Date”), is made by and between Massachusetts Bay Transportation Authority (the “MBTA”), and [CORPORATION. NAME] (the “Producer”), a [CORPORATION.TYPE] and having an address at [PRINCIPAL.ADDRESS].

RECITALS

WHEREAS, the Producer is seeking permission to enter upon and use the MBTA property, located at \_\_\_\_\_\_\_\_\_\_\_\_\_, Massachusetts, as shown in Exhibit A (the “Property”), for the purpose of filming a motion picture currently entitled \_\_\_\_\_\_\_\_\_\_\_”, and has submitted to the MBTA a \_\_\_\_\_\_\_\_ detailing all those portions of the Work that will require modification and alteration of the Property, which letter is attached hereto as Exhibit B (collectively, the “Work”); and

WHEREAS, upon the terms and subject to the conditions of this Agreement, the MBTA is willing to grant the Producer permission to enter upon and use the Property for the purpose of filming the Work and to thereafter publish and promote the Work, without limitation except as provided herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Duration of Agreement.** The Producer’s permission to enter upon and use the Property under the terms of this Agreement will begin **on or about \_\_\_\_\_\_\_\_\_\_\_\_\_\_**, and will continue until the Work has been completed or **until** \_\_\_\_\_\_\_\_\_\_\_ whichever date comes first. The production schedule, outline, and/or overview is attached hereto as Exhibit C. Any extension of the term of this Agreement shall be effective only if the parties mutually agree in writing to such extension.
2. **Rights Granted to Producer.**
	1. The MBTA agrees to grant the Producer and the Producer’s employees, agents, independent producers, contractors and suppliers, permission to enter upon and use the Property for the purpose of performing the Work. Producer understand and agrees to the following terms and conditions:
		1. Producer shall adhere to the terms and conditions of the \_\_\_\_\_\_\_\_\_\_\_ Department’s letter dated \_\_\_\_\_\_\_\_\_, attached hereto as Exhibit E.
		2. Producer shall adhere to the terms and conditions of the \_\_\_\_\_\_\_\_\_\_Department’s letter dated \_\_\_\_\_\_\_\_\_\_, attached hereto as Exhibit F
		3. Producer shall hire, and at its sole cost and expense, cover all the costs of hiring MBTA staff, including, without limitation, transit officer(s), supervisors, and flaggers, as required by the MBTA and KCS.

In the event of a conflict between the conditions stated in this Section 2 and other provisions of this Agreement. whichever provisions are more restrictive of Producer or impose a higher standard on Producer shall control.

1. The MBTA also agrees to grant the Producer and its employees, agents, independent producers, contractors and suppliers, permission to place on the Property facilities and equipment necessary to perform the Work, including cameras and lights, provided, however, that such facilities and equipment do not interfere with any of the MBTA operations or cause any significant damage to any MBTA property.
2. The MBTA also agrees to grant the Producer and its employees, agents, independent producers, contractors and suppliers, permission modify and alter the Property facilities and equipment in connection with the Work, but only to the extent as detailed in Exhibit B, provided, however, that such modifications and alterations shall neither interfere with the MBTA’s operations nor cause any significant damage to any MBTA property. No further alterations or modifications of the Property beyond that detailed in Exhibit B are permitted.
3. The MBTA agrees that the Producer and its employees, agents, independent producers, contractors and suppliers have the sole and exclusive right to publish, promote, duplicate and/or recreate all film, photographs, videotapes, digital recordings and/or sound recordings taken in connection with its performance of the Work, with the express

exception of any film, photographs, videotapes, digital recordings and/or sound recordings containing the MBTA’s name or logo or any other proprietary information belonging to the MBTA, including its “T” symbol. **The MBTA expressly does not grant the Producer the right to use its name or logo or any other proprietary information belonging to the MBTA, including its “T” symbol, unless the parties otherwise agree in writing.**

1. Except as noted in Paragraph 2.(d) above, and subject to the laws of the Commonwealth of Massachusetts, all rights of every kind in and to all photographs and/or sound recordings made hereunder (including, but not limited to, the right to exhibit any and all scenes photographed and/or recorded at and of the Property or reproduction of the Property in all media now known or hereafter devised throughout the universe in perpetuity) shall be and remain vested in Producer, its successors, assigns and licensees, and neither the MBTA nor any tenant, or other party now or hereafter having an interest in the Property, shall have any right of action against Producer or any other party arising out of any use of said photographs and/or sound recordings whether or not such use is, or may be claimed to be defamatory, untrue, or censurable in nature and the MBTA, any tenant, and any other party now or hereafter having an interest in the Property, hereby waives any and all rights of privacy, publicity, or any other rights of a similar nature in connection with the exploitation of any such photography and/or sound recordings.
2. **Payment.** The Producer shall pay the MBTA by check within 24 hours following the execution of this Agreement as detailed in the Project Cost Summary, attached hereto as Exhibit D.

**Responsibility for the Work.** To the extent the Work does not require MBTA supervision, the Work shall be conducted under the exclusive direction and control of the Producer, who is solely responsible for determining the scope and manner of the Work. Any knowledge that the MBTA acquires regarding the Work shall not make the MBTA responsible or liable for errors, acts or omissions in the Work. Notwithstanding the foregoing to the contrary and without limiting the generality of the foregoing, the MBTA and the Producer acknowledge that the MBTA possesses knowledge of portions of the Work that will require the Producer to use, alter, and modify the Property in the ways specified on Exhibit B, which shall in no way make the MBTA responsible or liable for errors, acts, or omissions in the Work. Except for the portions of the Work specified in Exhibit B, the MBTA shall neither have control nor charge of means, methods, techniques, sequences, procedures, safety precautions or programs implemented in connection with the Work, and MBTA shall not be responsible for the acts or omissions of Producer, its employees, agents, independent producers, contractors and suppliers, or any other person performing any of the Work and for which Producer is legally liable.

Producer shall indemnify absolutely the MBTA in the event of the MBTA becoming liable in any dispute related in any way to Producer’s presence in or around the Property, except to the extent that such liability is the result of the gross negligence or willful misconduct of the MBTA.

1. **Responsibilities of Producer.**
	1. The Producer shall exercise all due diligence and care with regard to its use of the Property. The Producer shall perform its Work, including without limitation all those portions detailed on Exhibit B, on the Property in strict compliance with all applicable federal, state and local statutes, ordinances, codes, rules and regulations. Under no circumstances shall the MBTA be responsible or liable for errors, acts or omissions of the Producer regarding its use of the Property.
	2. The Producer is solely liable for, and shall promptly pay, all taxes, licenses, costs, expenses and fees of every nature incurred by or imposed on the Producer in the course of the Work, including but not limited to the Payment provided for in Section 3 of and Exhibit D to this Agreement, and the cost of any other labor, materials or other elements used in the Work.
	3. Upon completion of the Work, the Producer agrees to leave the Property in as good condition as received, including removing any property, facilities or equipment the Producer placed at the Property in connection with the Work.
2. **Safety.** The Producer shall be fully responsible for and shall implement all health, safety, and preservation precautions required for the Work. Without limiting the generality of the foregoing, the Producer shall comply with all applicable laws, ordinances, rules, regulations and orders issued by a public authority, whether federal, state, local or otherwise, including but not limited to, the Federal Transit Administration and the Occupational Safety, the Health Administration.
3. **Insurance.**
	1. During the term of this Agreement, the Producer shall maintain at a minimum:
4. **Commercial General Liability Insurance**: Insuring the Producer, the MBTA, KCS, any other company operating on the rights-of-way (collectively, except for the MBTA, the “Railroad Companies”), the Premises, and all activities allowed hereunder as well as Producer’s indemnification obligations contained in this Agreement with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars ($1,000,000.00) per occurrence and Three Million Dollars ($3,000,000.00) in aggregate. Umbrella liability coverage with limits of not less than Ten Million Dollars ($10,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA, KCS, and the Railroad Companies as additional insureds.

ii. **Worker’s Compensation Insurance**: Insuring all persons employed by Producer in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against the MBTA, KCS, or the Premises with limits of liability of not less than those required by Massachusetts General Laws, Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. Each of Producer’s subcontractors and consultants shall have similar policies covering their employees.

* + - 1. **Railroad Liability Insurance**: While working within fifty (50) feet of the tracks on the right of way, insuring the MBTA, KCS, and the Railroad Companies as named insureds with limits of not less than Five Million Dollars ($5,000,000.00) per occurrence and Ten Million Dollars ($10,000,000.00) in aggregate combined bodily injury property damage. KCS shall be provided with an original policy of Railroad Protective Liability Insurance and the MBTA and the remaining Railroad Companies shall be provided with certificates of insurance.
			2. **Automotive Liability Insurance**: Automobile liability insurance with limits of not less than One Million Dollars ($1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of Producer and its consultants and contractors that are used in the activities permitted hereunder.
			3. Such other insurance as the MBTA may reasonably request in writing.
	1. The Producer shall furnish the MBTA with certificates of insurance evidencing the required coverage and naming the MBTA, KCS, and the Railroad Companies as additional insureds, as their interests may appear. Each insurance policy shall include the provision that should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. All of the Producer’s insurance shall be primary and non-contributory for any claims arising out of Producer’s services. The Producer shall provide the MBTA with a vicarious liability endorsement for the Producer’s Workers’ Compensation policy, as applicable. Producer and, where applicable, Producer’s payroll services company waive all rights of subrogation for recovery of damages to the extent those damages are covered by commercial general liability, business, auto liability, workers’ compensation or employers’ liability insurance maintained pursuant to this agreement.
	2. Nothing contained in this Agreement shall in any way act as a limitation of the Producer’s liability for damage or injury, including death, which arises out of or is the result of the Producer’s acts or omissions under this Agreement, or the acts or omissions of Producer’s employees, agents, independent producers, contractors and suppliers.
1. **Indemnification; Hold Harmless.**
	1. The Producer, for itself and on behalf of its agents, employees, independent producers, contractors, suppliers, subsidiaries, affiliates and sub-consultants, shall indemnify, defend and hold the MBTA, KCS, the Railroad Companies, and their agents, consultants, officers, directors, representatives, employees, assigns and successors-in-interest (“Indemnitees”), harmless to the fullest extent provided by law from and against any and all losses, reasonable and verifiable expenses, reasonable and verifiable costs, damages, claims, demands, fines, penalties, liens, suits and any and all causes of action, including but not limited to reasonable outside attorneys’ fees and costs of collection, pertaining to or in any way arising out of this Agreement and asserted against the MBTA or any Indemnitee by any person (including without limitation, any claims by the Indemnitees own employees) for injury to persons including death, or for loss of or damage to property or the loss of use thereof, to the extent caused in whole or in part by the acts or omissions of the Producer, or any of the Producer’s agents, employees, independent producers, contractors, suppliers, subsidiaries, affiliates and sub-consultants or other persons or entities for whose acts the Producer may be liable. The indemnification required by this Section 8 shall not be limited in any way by the limits, terms or conditions of any insurance policy. Producer will defend all such claims at its own cost and expense and reimburse the Indemnitees for any reasonable outside attorneys’ fees incurred by the Indemnitees with respect to any such claim. The parties specifically agree that this indemnification also includes indemnification against and from any and all claims and suits, and any and all liability for loss or expense arising from or incidental to or in connection with any and all environmental damage caused by the Work, including any environmental damage stemming from the transportation or disposal of any debris resulting from the Work.

Notwithstanding the foregoing, the Producer shall not be required to indemnify or defend the Indemnitees or their agents, consultants, officers, directors, representatives, employees, assigns or successors-in-interest against claims resulting from the sole gross negligence or willful misconduct of the Indemnitees.

* 1. Except to the extent due to the gross negligence or willful misconduct of the Indemnitees, notwithstanding any other provision of this Agreement, Producer shall be solely liable for, and shall indemnify absolutely the Indemnitees for any exposure, assessment, penalty, or other liability resulting from the enforcement action of any Federal, state, or local governmental entity, including any assessments related to workplace safety that relate to the performance of the Work in any way whatsoever. These shall include, but not be limited to, citations, violations, penalties, or other enforcement actions by the Federal Transit Administration, Occupational Health and Safety Administration, and the Massachusetts Department of Environmental Protection.
	2. The Producer shall pay for all costs associated with the Work, including but not limited to costs for labor, materials and equipment, and all costs related to the disposal of debris associated with the Work, and Producer shall defend and indemnify the Indemitees against and save them harmless from and against any and all claims, suits or liens therefore brought by the Producer’s subcontractors, consultants, agents or employees, or any other person or entity, except to the extent due to the gross negligence or willful misconduct of the Indemnitees.
	3. The provisions of this Section 8 shall survive the termination of this Agreement.
1. **Damages.** The Producer expressly agrees to reimburse the MBTA for any liquidated, consequential or other damages that any third party may assess against the MBTA or which are incurred by the MBTA and which are attributable to or caused by the Producer’s acts or omissions. In no event shall the MBTA be liable for any liquidated, consequential or other damages that the Producer may incur in connection with this Agreement or the subject matter hereof.
2. **Termination.** Either party may terminate this Agreement upon ten (10) days’ written notice to the other party hereto. Notwithstanding any other provision of this Agreement, the MBTA may terminate this Agreement if the Producer fails to make any payments in accordance with this Agreement after reasonable notice and opportunity for Producer to cure such alleged non-payment. In no event shall the MBTA be liable to the Producer for any damages, whether special, consequential or otherwise, that the Producer may incur as a result of the MBTA’s termination of this Agreement in accordance with the terms hereof.
3. **Representations and Warranties of the Producer.** The Producer hereby represents and warrants to the MBTA that:
	1. The Producer is duly authorized to do business under the laws of the Commonwealth of Massachusetts.
	2. The Producer has full power and authority to enter into and perform this Agreement.
	3. The execution and performance of this Agreement will not violate or result in a default, either immediately or with the giving of notice or the passage of time, under any other material agreement by which the Producer is bound.
	4. The person executing this Agreement on behalf of the Producer is duly authorized to do so under the laws, articles of incorporation, bylaws or other governing instrument applicable to the Producer.
	5. Neither this Agreement nor any other document delivered by the Producer knowingly contains an untrue statement of material fact or omits a statement of material fact necessary, under the circumstances, to make it not misleading.
4. **Representations and Warranties of the MBTA.** The MBTA makes no representations, and expressly disclaims any and all other warranties, with respect to the quality of workmanship of any services provided for the Producer under this Agreement. The provisions of this Section 12 expressly survive the termination of this Agreement.
5. **Status.** The Producer specifically agrees that it is not an agent, employee or joint venture partner of the MBTA.
6. **Venue.** Any action, suit or other legal proceeding with respect to this Agreement shall be brought in the Superior Courts for the Commonwealth of Massachusetts. The parties consent to and accept the exclusive jurisdiction of the state Courts of the Commonwealth of Massachusetts and waive any objection (including any objection to venue or any objection based upon the grounds of forum non conveniens) which might be asserted in defense of any such action, suit or other legal proceeding brought in Massachusetts state court. Service of process in any such action, suit or other legal proceeding may be made by mailing copies thereof by registered or certified mail to the address provided for the giving of notices hereunder or in any manner permitted by law.
7. **Governing Law.** This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law principles.
8. **Severability.** In the event that any part, term or provision of this Agreement not essential to the overall purpose of this Agreement is determined by a court of competent jurisdiction to be unlawful or unenforceable, the validity and enforceability of the remaining portions or provisions shall not be affected thereby.
9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and shall supersede all previous agreements or understandings with respect to the subject matter hereof. No oral statement or prior written matter will have any force or effect. The parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement shall not be modified except in writing signed by both parties.
10. **Headings.** The headings used in this Agreement are included solely for convenience and shall not be used in connection with the interpretation hereof.
11. **Assignment.** The Producer may not assign, transfer or delegate its rights, obligations or duties under this Agreement without the express written consent of the MBTA.
12. **Successors and Assigns.** This Agreement shall be binding upon the heirs, court-appointed representatives, assigns and successors of the parties hereto.
13. **Notice**. Notice shall be deemed to have been duly served if delivered to the individual or individuals identified below in person, by recognized national overnight courier service or by registered or certified mail.

If to the MBTA: Attn: Deputy Chief Real Estate Officer

Massachusetts Bay Transportation Authority Ten Park Plaza, Room 2310

Boston, MA 02116

*With copy to*: Attn: General Counsel

Massachusetts Bay Transportation Authority Ten Park Plaza, Room 3510

Boston, MA 02116

If to Producer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their proper officers or duly authorized agents as of the day and year first above written.

THE MBTA:

|  |
| --- |
| MASSACHUSETTS BAY TRANSPORTATION AUTHORITY |
|  |  |
| By: |  |
| Name: | David Lepore |
| Title: | Deputy Chief Real Estate Officer |

PRODUCER:

|  |
| --- |
|  |
|  |  |
| By: |  |
| Name (print): |  |
| Title: |  |

# EXHIBIT A

# The Property

# EXHIBIT B

# EXHIBIT C

Production Schedule

Preparation:

Date:

Duration:

Shoot:

Date:

Duration:

Wrap:

Date:

Duration:

# EXHIBIT D

Project Cost Summary

Fee for shoot:

Time:

Estimated Police Detail –

Estimated Cost from Safety Personnel –

Estimated Cost from Keolis Commuter Services – Railroad Personnel, Railroad Management, and Materials & Support Items: $\_\_\_\_\_\_\_\_

\***All estimated fees above are quoted on the information provided, as provided, and are subject to increase if the Work lasts longer than as described in Exhibit C**\*

Check should be payable to Massachusetts Bay Transportation Authority and sent to:

Massachusetts Realty Group

Attn: Licensing Director, Brian Clarizia

20 Park Plaza, Suite 1120

Boston, MA 02116

**EXHIBIT D**

**EXHIBIT E**

**EXHIBIT F**