

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
In the Matter of: )  
The Executive Office of )  
Transportation )  
\_\_\_\_\_)

Amended Administrative Consent Order  
Number: ACO-BO-00-7001-Amendment #2

**I. THE PARTIES**

1. The Department of Environmental Protection (“Department”) is a duly constituted agency of the Commonwealth of Massachusetts pursuant to M.G.L. c. 21A, §7, with a principal office at One Winter Street, Boston, Massachusetts. The Department’s authority to issue this Administrative Consent Order is conferred by M.G.L. c.111, section 142B, 310 CMR 7.00 et seq., and specifically 310 CMR 7.36 and 7.38.
2. The Executive Office of Transportation (“EOT”) is a duly constituted agency of the Commonwealth of Massachusetts pursuant to M.G.L. c. 6A with a principal office at Ten Park Plaza, Boston, Massachusetts. EOT and its agencies and authorities are responsible for ensuring compliance with 310 CMR 7.36 and 7.38.

**II. STATEMENT OF FACTS AND LAW**

1. The Department is responsible for the implementation and enforcement of the Massachusetts Clean Air Act, M.G.L. c. 111 §§ 142A – 142E and the regulations promulgated thereunder at 310 CMR 7.00.
2. EOT and its agencies and authorities are responsible for constructing, administering, and maintaining public transportation and highway infrastructure for the Commonwealth of Massachusetts, including the Central Artery/Tunnel Project (“CA/T”), pursuant to authority under M.G.L. c.81, c.161A, and c.6A section 19.
3. On September 1, 2000, the Department and EOT signed Administrative Consent Order Number: ACO-BO-00-7001 (the ACO), which includes projects and/or actions EOT agreed to implement. The ACO document was also a notice of noncompliance pursuant to M.G.L. c. 21A, §16 and 310 CMR 5.00 et seq. The ACO resolved violations of various public transit commitments required either directly by 310 CMR 7.36, or as conditions of an approval granted by the Department pursuant to 310 CMR 7.38, and resolved issues raised by a lawsuit filed by the Massachusetts Attorney General to enforce the Massachusetts Clean Air Act. The ACO was amended (See ACO-BO-00-71001-Amendment #1) on May 17, 2002 to clarify the provisions for the diesel retrofit of MBTA buses. In addition, after opportunity for public comment, DEP approved, in

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separate correspondence, project delays for Silver Line Phase I, compressed natural gas buses, Silver Line Phase II, and the Urban Ring DEIR/EIS.

4. Certain projects or actions have been delayed or are incomplete in violation of the ACO. Some violations are subject to statutory penalties for an amount up to \$25,000 per day pursuant to M.G.L. c.111, section 142B, and Civil Administrative Penalties for an amount up to \$25,000 per day pursuant to M.G.L. c.21A, §16 and 310 CMR 5.00 et seq; some violations are subject to penalties up to \$1,000 per day.
5. On November 29, 2004 the Department issued a Notice of Enforcement Conference asserting violations of the ACO as follows:
  - A. Silver Line Phase II – Service to Logan Airport was not in place by the required due date of 12/31/04
  - B. Orange Line – 18 Additional Cars were not in service by the required due date of 12/31/04.
  - C. Blue Line Platform Lengthening – Orient Heights, Maverick, State, and Government Center Stations did not accommodate six-car trains by the required due date of 12/31/04.
  - D. Blue Line/Red Line Connector – This project was not prioritized for funding in the Boston Regional Transportation Plan and the MBTA Capital Investment Program.
  - E. Green Line Extension to Medford Hills – This project was not prioritized for funding in the Boston Regional Transportation Plan and the MBTA Capital Investment Program.
  - F. Arborway Green Line Restoration – A schedule for design and construction of this project was not submitted by the required due date of 12/31/01.
  - G. MHD Construction Retrofit Program - The 2004 ACO annual report did not contain adequate information to determine EOT's compliance with this requirement.
6. On January 7, 10, 12, and 14, 2005, the Department and EOT met in an enforcement conference and agreed to the following:
  - A. It is in the public interest that EOT continues to work diligently to implement the transit commitments included herein to reduce vehicle miles traveled and air pollution, because delays in implementation directly affect air quality.

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- B. EOT and MBTA have acted in good faith, completing a significant number of the obligations required in the ACO, as detailed in Attachment A.
  - C. The funding, design, construction, and scheduling of large public transportation projects are complex and have many uncertainties and sometimes depend on agencies or events outside of EOT's control, which may lead to unintended delays.
  - D. For certain of the projects required by the ACO, further exploration and data collection indicates that completing the project as anticipated would result in fiscally unsound decisions. Reconsideration and evaluation of options to achieve the projects can be time consuming.
  - E. EOT has not always effectively communicated with the Department regarding delays and noncompliance.
  - F. EOT is in violation of certain requirements of the ACO as further detailed below.
7. Based upon information provided by EOT, the Department makes the following Findings of Fact:

### A. Silver Line Phase II and Service to Logan Airport

The notice of enforcement conference asserted that Silver Line Phase II was incomplete. On June 17, 2004, the Department approved an extension of the Silver Line Phase II project to December 31, 2004. EOT did complete the project as described in Section IV.8.A of the ACO on December 17, 2004, in advance of the December 31, 2004 deadline.

However, service to Logan Airport, with ridership estimated at 11.5% of the total Silver Line ridership, is only partially completed. Section IV. 8. C. of the ACO required EOT, as a joint project with the Massachusetts Port Authority ("Massport"), to complete an extension of the South Boston Transit way through the Ted Williams Tunnel to the individual airline terminals at Logan Airport by June 30, 2004.

Implementation of service to Logan Airport was complicated by the events of September 11, 2001. Massport's focus on the challenges following those events resulted in a delay in the MBTA and Massport reaching an agreement regarding access and vehicle needs. The MBTA and Massport entered into an Interagency Service Agreement on December 30, 2004. As of January 2, 2005, partial service to Logan Airport is in place with bus service to Logan from South Station on Sunday nights from 4-10 pm, during this peak weekend traffic period.

**B. Orange Line – 18 Additional Cars**

Section IV. 8. A. of the ACO required EOT to implement signal improvements on the Orange Line and to provide 18 additional Orange Line cars to increase capacity by December 31, 2004. The signal improvements were operational by 12/31/04.

The additional 18 cars have not been provided. The primary option identified by EOT for providing the additional Orange Line cars was the conversion of Blue Line cars, which would be made available due to a planned upgrading of the Blue Line Fleet. Over several months in 2002 into early 2003, the MBTA spent \$2 million on a study to determine the cost and infrastructure requirements of converting Blue Line cars for use on the Orange Line. The study indicated that the conversion of 18 cars would cost \$1 million per car for only eight-years of operation; the same number of new cars is estimated to cost \$2 million per car if programmed for purchase in 2015 when the useful life of the current cars expires. New cars purchased in 2015 are expected to last an average of 35 years.

Upon review of the results of the conversion study and in an effort to make a sound fiscal decision, the MBTA halted the conversion project and initiated an infrastructure study to evaluate what changes to the system (track, platforms, tunnels, bridges, maintenance facilities, etc) will be needed to accommodate new Orange Line trains. That study should be completed by May 1, 2005. Upon completion of the infrastructure study, the MBTA will determine the cost and schedule for procuring an entire new Orange Line fleet, as well as the cost and schedule for making infrastructure upgrades to accommodate the new fleet. The costs for the fleet and the infrastructure improvements will be programmed into the appropriate MBTA Capital Improvement Plan (CIP), a five-year rolling, fiscally constrained financial plan, to meet the 2015 service date.

**C. Blue Line Platform Lengthening**

Sections IV. 10. and 11. of the ACO accepted EOT's January 7, 1999 petition for delay of the Blue Line Platform Lengthening and Modernization Project from December 31, 1998 to December 31, 2001 and required a substitute project after the maximum three-year delay allowed for this project under 310 CMR 7.36. The acceptance of the delay established new dates for the completion of platform lengthening to accommodate six-car trains (by December 31, 2004) and station modernization with all stations to be modernized by December 31, 2008.

The Blue Line platform lengthening and modernization were not specifically quantified for their air quality benefit in the State Implementation Plan or in the ACO. However, it was agreed, and the Department continues to agree, that the project will have a positive impact on air quality due to improved, modernized stations and greater train capacity, both of which will promote additional ridership. EOT is providing an interim substitute project for the Blue Line. That substitution, which

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includes a series of bus service improvements on the north shore via the Ted Williams Tunnel, was timely implemented and the services will remain in place for the duration of the project delay.

To complete this requirement by December 31, 2004, EOT was required to have all ten stations lengthened and six-car trains operating at each station. EOT has completely installed new six-car platforms at Wonderland, Revere Beach, Suffolk Down, Wood Island, Airport and Aquarium Stations. Orient Heights, Maverick and Government Center Stations can accommodate six-car trains in their current condition, and require only minor modifications to accommodate additional passengers.

The State Street Station lengthening is incomplete. The delay on State Street Station is due, in part, to the difficulty in negotiating with the owner for an easement and access to the property at 60 State Street. To address this difficulty, the MBTA Board of Directors approved an order of taking for an underground easement and access to the building in September 2004. This taking allows the MBTA and its contractor to have access to the area as of February 7, 2005.

The MBTA contracted with Siemens to manufacture Blue Line vehicles. Siemens' major sub-contractor went out of business in late 2002. Siemens has replaced this sub-contractor, but the change resulted in vehicle delivery being delayed by about 18 months.

### **D. Blue Line/Red Line Connector and Green Line Extension to Medford Hills – Funding Prioritization**

EOT is in compliance with the ACO requirement to prioritize these projects for funding. In order for a transportation project to be prioritized for funding, it must survive several reviews, which occur in overlapping time cycles, by various entities and be included in certain federally required plans. Specifically, these two projects were first included in the 1994 Program for Mass Transit (PMT). Then, in 2000, EOT recommended for inclusion and the Boston MPO included, funding for the Blue Line/Red Line Connector and the Green Line Extension to Medford Hills in the fiscally constrained Regional Transportation Plan (RTP). At EOT's recommendation this prioritization for funding was continued by the Boston MPO in the 2003 update of the 2000 RTP and in the 2003 updated MBTA PMT. In addition, planning for these projects has been programmed in the MBTA Capital Investment Program ("CIP").

The Blue Line/Red Line Connector and the Green Line Extension to Medford Hills are included in the public process described below in Section III, F.

### **E. Arborway Green Line Restoration**

On November 7, 2001, DEP issued a finding that EOT had not demonstrated that the Arborway Green Line Restoration Project was infeasible under 310 CMR 7.36 and required that a schedule for design and construction of the project be provided to the Department by December 31, 2001. This schedule has not been provided; the MBTA's reason for not providing this schedule is that critical path items must be resolved before committing to a specific schedule. These items include development of a surface level operating plan that satisfactorily addresses the major public safety concerns raised by the City of Boston, resolution with the City of Boston, residents and business owners of surface design elements such as station accessibility, intersection improvements, roadway network changes, street parking, development of a construction management plan to ensure existing green line and roadway network remains operational during construction, while minimizing impacts on businesses and residents, development of a Green Line operations plan that adequately addresses operational capacity constraints in the Green Line tunnel. As an interim substitute, the MBTA is operating the Route 39 bus service at four-minute headways with 60 foot compressed natural gas buses.

On November 17, 2004, the Department and EOT agreed to enter into a joint public process to reevaluate and to make decisions on the three remaining transit projects, including the Arborway Green Line Restoration, taking into account new project selection criteria, while ensuring that equal or greater air quality benefits are achieved, as detailed below in Section III, F.

### **F. MHD Construction Retrofit Program**

The Massachusetts Highway Department ("MHD") was required to include construction equipment retrofit requirements into all of its large contracts advertised after 9/1/00. MHD has not implemented this requirement. In addition, MHD incorrectly stated that it had implemented this requirement in the 2003 and 2004 Annual Reports.

### **G. Urban Ring DEIR/EIS**

EOT filed the Urban Ring DEIR on November 30, 2004. The ACO required that both the DEIR and EIS be filed by the extension deadline of November 30, 2004. However, because the Federal Transit Administration ("FTA") required additional information in the EIS as of January 2003 and MEPA concluded that submission of the EIS was not required at the same time as the DEIR for MEPA purposes, EOT filed the DEIR on time and delayed only the EIS. Because of the late change in federal requirements the Department agrees that EOT is in compliance with this requirement.

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In a letter dated June 17, 2004, the Department approved an extension of the Urban Ring DEIR/EIS to November 30, 2004. EOT requested the extensions due to the fact that certain elements required by the Federal Transit Administration ("FTA") for the federal environmental review document were taking longer and were more complicated than previously anticipated. Specifically, the FTA required the MBTA to re-evaluate the procedure for measuring Transportation User Benefit and cost effectiveness. This work is performed by using the regional domain-forecasting model maintained by the Central Transportation Planning Staff ("CTPS"). This requirement applied to the Silver Line specifically, but because the same methodology is used on Urban Ring, the requirement applied to that project as well. Since that time CTPS and MBTA have made substantial progress in satisfying the FTA's requirements, but significant work is required to take the methodology and rerun the ridership-forecasting model and then take those results and integrate them into the federal environmental document.

EOT attempted to balance the requirement of the ACO and the need to provide the appropriate information in the federal environmental document by separating the state DEIR from the federal EIS. The issues addressed in the federal EIS involve calculating user benefit and cost effectiveness, which are critical factors for the FTA when deciding which projects across the country to fund and how to rank these projects. EOT asserts that these issues do not address the environmental impact of the project, these issues will not affect the adequacy of the DEIR. Although EOT did not request an amendment of the ACO to delay the EIS, the Department agrees that the additional requirements will not impact the state DEIR.

### III. DISPOSITION AND ORDER

1. As a result of discussions which have taken place between the Department and EOT, and without adjudication of, admission to, or agreement about any fact or law set forth above, the parties have agreed that it is in the public interest to enter into this Amendment (hereinafter "Consent order") to the ACO, rather than expend the time and resources necessary to adjudicate this matter.
2. Nothing in this Consent Order shall be construed as, or operate as, barring, diminishing, adjudicating, or in any way affecting 1) any legal or equitable right of the Department to issue any future Order with respect to EOT's compliance with this Consent Order or 2) any other claim, action, suit, cause of action, or demand which the Department may initiate with respect to any subject matter not covered by this Consent Order.
3. EOT consents to the issuance of this Consent Order and admits to the jurisdiction and authority of the Department to issue such Consent Order. EOT understands and hereby waives any right to appeal this Consent Order to Superior Court, or an administrative hearing before the Department, a tentative decision, judicial review, rehearing, re-argument and reconsideration of the issuance and/or the terms of this Consent Order, and to notice of any rights of review. This waiver does not extend to any other order issued by the Department or any other claim, action, suit, cause of action or demand which the

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Department or any other person may initiate with respect to the subject matter of this Consent Order.

4. The activities performed pursuant to this Consent Order shall be performed in accordance with all applicable federal, state and local laws, regulations and approvals.
5. This Consent Order shall apply to and be binding upon EOT and its agents or assigns. EOT agrees to provide a signed copy of this Consent Order to any agent or assign.
6. EOT shall not violate this Consent Order and shall not allow its agents, assigns or contractors to violate this Consent Order.
7. EOT agrees to the following revised schedules, mitigation projects, and penalties for violations of the ACO as follows:

### A. Silver Line Transit Service – Service to Logan Airport

1. **Revised Schedule:** MBTA will complete Silver Line service to Logan as follows:

By June 1, 2005 Complete Service will be in place and operating to Logan Airport. Complete Service includes the daily schedules and a one-seat ride from South Station to Logan Airport terminals as further defined in the MBTA's operating plan and its access agreement with Massport, as detailed in Attachment B.

2. **Penalty:** The penalty assessed for this delay is \$80,000.

### B. Orange Line – 18 Additional Cars

In its 2003 and 2004 annual report, MBTA projected that it would not meet the deadline for delivery of the 18 additional cars. In a 2003 letter the Department informed the MBTA that it would be in noncompliance with the December 31, 2004 deadline based upon its projection. The MBTA did not provide an alternative mitigation measure and a schedule that achieves a reduction in vehicle miles traveled (VMT) equal to or greater than the project pursuant to DEP's determination on the Amended Preconstruction Certification of the CA/THT project under 310 CMR 7.38 issued on 9/1/00.

1. **Mitigation project:**

**ECD Buses:** To mitigate the delay in the delivery of the Orange Line cars, the MBTA will purchase 85 Emission Controlled Diesel (ECD) buses at a cost of approximately \$32 million to replace 85 of the oldest buses in the fleet at the time of delivery ("1994 buses"). The new, cleaner, ECD buses will provide air quality



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benefits not available from the 85 1994 diesel buses. Replacement of the 85 1994 buses with the ECD buses will provide approximately 80 kg/day of NO<sub>x</sub> reductions due to improved emission controls. The buses will be equipped with on-board diagnostic (OBD) computer systems, which help to ensure that buses are timely and appropriately serviced. OBD computer systems identify when the engine system is not operating according to specification (e.g., is not operating at the specified temperature so that the Diesel Particulate Filter will not work properly, or when the filter is clogged). The OBD computer system provides information showing that the vehicle needs to be brought in for maintenance, via a "Check Engine" light illuminated on the operator's control panel. The MBTA will implement a Standard Operating Procedure (SOP) that directs the operator of the bus to notify the dispatcher that the "Check Engine" light is illuminated, upon which the dispatcher enters the information into the Bus Maintenance tracking system, which will direct the facility to bring the bus in for maintenance prior to its next use. The buses are also equipped with system controls that act as a fail-safe to prevent the bus from being used if such maintenance is needed and not performed.

### 2. **Revised Schedule:**

**ECD Buses:** EOT will seek MBTA Board approval no later than the March 31, 2005, MBTA Board meeting. Once approved, buses will be delivered by July 15, 2006. The new ECD buses will be deployed in the Orange Line corridor to replace older buses or to increase bus operation in that area. If not approved by the MBTA Board, EOT will submit an alternative equivalent mitigation project for review and approval by the Department, within 30 days of the MBTA Board's disapproval.

**Orange Line cars:** The MBTA's study evaluating infrastructure needs for a new Orange Line fleet will be complete by May 1, 2005. The MBTA will review the study and determine necessary infrastructure changes and Orange Line car requirements by December 1, 2006. The MBTA will then program for implementation in the appropriate CIP the purchase of a sufficient number of new Orange Line cars such that the total is 18 more cars (or the equivalent carrying capacity) than are in the fleet in 2005, on a time line consistent with replacement of existing Orange Line fleet at the end of the current cars' useful life (2015). By December 1, 2007, EOT will provide the Department with a schedule including additional milestones needed to bring a new Orange Line fleet into service by 2015.

### 3. **Penalty:** The penalty assessed for this delay is \$306,300.

**C. Blue Line Platform Lengthening and Modernization to Accommodate Six Car Trains: Orient Heights, Maverick, State, and Government Center Stations**

**1. Revised Schedule:**

MBTA will complete the minor modifications to Government Center, Maverick and Orient Heights by 12/31/05.

Consistent with its construction contract, the MBTA will complete the State Street Station platform extension to accommodate six-car trains by 12/31/05, or as set forth below:

Due to the delays in obtaining construction access to 60 State Street, the contractor may not be able to meet the 12/31/05 deadline. Additionally, it is not yet known what additional egress and fire safety requirements will be needed to open the longer platform before the full station is completed. Pursuant to the MBTA's contract, by 12/31/05 temporary emergency egress structure located at 53 State Street will be completed, as well as a temporary emergency egress use of the 60 State Street Entryway. If the contractor is unable to meet this deadline, EOT will provide the Department with its determination, and the reasons therefore, that the contractor cannot meet the deadline within 30 days of making such determination, but in no event later than the 12/31/05 completion date. In the event that EOT meets this reporting requirement, the completion date will automatically extend to 12/31/06. The requirement to complete modernization by December 2008 remains unchanged.

Delivery of the new Blue Line cars is due to begin in July 2006. MBTA will begin phasing in use of the new Blue Line cars as the new cars begin to arrive and will operate the new cars in six-car consists by 12/31/06.

**2. Penalty: The penalty assessed for this delay is \$3,900.**

**D. Blue Line/Red Line Connector and Green Line Extension to Medford Hills**

EOT was required to prioritize these projects for funding by 10/1/01. EOT is in compliance with these provisions of the ACO.

**1. Penalty: None**

**E. Arborway Green Line**

By December 31, 2001, MBTA was required to submit an Arborway Green Line Restoration schedule for design and construction. MBTA did not submit such schedule.

1. **Penalty:** The penalty for this delay is assessed at \$215,000 and is suspended pursuant to Section VI.
2. **Revised Schedule:** This project will be reviewed in the context of the public process detailed below in Section III. F. At the conclusion of that process, this project, or a substitution project providing equal or greater air quality benefits, will be implemented.

**F. Public Process:**

By letter dated November 17, 2004 the Department agreed to EOT's request to review the three remaining air quality transportation commitments (the Blue Line/Red Line Connector, Arborway Green Line and the Green Line Extension to Medford Hills) through a public process initiated at a public meeting on December 14, 2004. The purpose of that public meeting was "...to inform interested parties about the public process our agencies [EOT and DEP] will conduct to make decisions on the three remaining Central Artery/Tunnel project transit commitments." [November 17, 2004 correspondence from Commissioner Gollledge to Secretary Grabauskas]

Additional public meetings will take place in January or February 2005 in Somerville and Jamaica Plain, again to seek comment on the proposed public process to review the air quality benefits and to reevaluate the three remaining commitments. Within thirty (30) days after the receipt from the Department of the air quality target for the three projects, EOT shall schedule meetings for the applicable MPOs, and make available the criteria and the projects to be discussed at those meetings. The proposed public process matrix is attached hereto as Attachment C, and will be replaced with an updated matrix including estimated timelines following the Somerville and Jamaica Plain meetings in response to public comment.

**G. Funding:**

EOT will recommend for identification, in the 2005 State Transportation Improvement Program (STIP) that will be submitted for federal approval on or before October 31, 2005, the status of funding for the three projects or substitutions. If the appropriate federal agencies approve a later date for submittal

of the 2005 STIP, EOT shall submit it by that date. Federal approval of the plan will be indicated by the release of federal funds for Federal FY 06. As outlined in a letter dated September 11, 2003, from Secretary Grabauskas to the Division Administrator of the Federal Highway Administration, the Boston MPO has assumed that the legal commitments for the remaining projects are the responsibility of the state and not the MBTA. Based on this letter, EOT is responsible for identifying the funding of these projects, or any applicable substitution, to the satisfaction of the relevant federal agencies in order to continue to qualify for federal transportation funds. EOT shall continue to recommend for prioritization the projects agreed to in this Consent Order in the MBTA Capital Improvement Plan, the long term transportation plan for the applicable region, and if necessary, the appropriate Transportation Improvement Program. With respect to the three projects subject to the public review process set out above in Section III, F (Public Process), EOT will include these projects in such prioritization, unless as a result of the public process, other projects are substituted for any of the three projects.

#### H. MHD Construction Retrofit Program

1. **Revised Schedule: Starting on March 15, 2005, MHD will include the following diesel retrofit specification for construction equipment when advertising contracts:**

The contractor shall certify that all large non-road (greater than 50 horsepower) diesel construction equipment used in this contract has emission control devices installed, such as oxidation catalysts or particulate filters, on the exhaust system side of the diesel combustion engine equipment.

The Status Reports required in Section V will include the results of this specification including each contract awarded, the number of vehicles subject to the specification and the number of vehicles retrofitted by vehicle type.

2. **Penalty: The penalty for this delay is assessed at \$1,400,000.**

#### I. Urban Ring DEIR/EIS

1. **Revised Schedule:** EOT has submitted drafts of the modeling proposal to meet FTA's new requirements and expects FTA's response within a few months. Pending acceptance of the modeling revisions by the FTA, the draft EIS will be submitted by October 31 2005, provided that the Commonwealth has identified the source of 50% non-federal matching funds, as required by FTA.

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The Status Reports required in Section V will include updates regarding EOT's progress with the modeling, status on obtaining state matching funds and FTA's response to the draft EIS.

8. DEP concludes, in view of:
  - a. the various legitimate reasons for delay of the transit projects as set forth in Section II, 7;
  - b. the substantial mitigation proposed by EOT and accepted by DEP;
  - c. the Supplemental Environmental Project proposed by EOT and accepted by DEP;
  - d. the new schedules and stipulated penalties if EOT fails to meet them; and
  - e. the avoidance of extended dispute negotiations which would only further delay implementation of the public transportation projects identified herein.

that this ACO is in the public interest and represents changes that will result in equal or greater air quality benefits than the underlying commitments would have absent this agreement.

### IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The Department has determined that it is appropriate to include a Supplemental Environmental Project ("SEP") in the resolution of this matter. Such SEP is included for the purpose of mitigating the administrative penalty and not in lieu thereof. The terms of the SEP are set forth below.
2. Fairmont Line Stations: To address ridership in the Orange Line corridor, EOT will ensure that design is completed for the new Four Corners Station on the Fairmont Line, a project which, while conceptually discussed, was not a previous commitment and had never had any implementation dates associated with it. The cost of completing the design for the new station is estimated at \$1,100,000. In addition, EOT will award contracts for station modernization on the Uphams Corner and Morton Street stations of the Fairmont Line. The upgrades of these stations are estimated at \$6,800,000 and \$7,200,000 respectively.

All three stations will include improved parking spaces, lighting and signage, bus shelters for inter-modal transfers, and be integrated into the adjacent business and residential centers, all of which will promote increased ridership, thereby decreasing VMTs and reducing air pollution. The new station and the station modernizations will provide commuter rail service to a currently underserved community, which does not currently have access to the commuter rail line that runs through the community. The Uphams Corner and Morton Street Station will provide 40 additional parking

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spaces, while the Four Corner Station is anticipated to have 30 to 40 spaces. Most important, however, is that these stations are located directly in high density, transit dependant neighborhoods and the stations will predominantly be walk-in stations, as opposed to access by automobile. These three stations are projected to have nearly 2,000 weekday boardings even with the relatively small number of parking spaces.

3. Schedule: Contracts will be awarded for the upgrades of Uphams Corners and Morton Street stations by 12/31/05. Design will be completed for the new Four Corners Station by 12/31/07.
4. EOT hereby certifies that, as of the effective date of this Consent Order, EOT is not required to perform the actions of the SEP by: (1) any contractual or other legal obligation; (2) any federal, state or local law or regulation; or (3) any agreement, grant or as injunctive relief.
5. Failure to perform and complete the SEP in accordance with this Consent Order shall subject EOT to the Stipulated Penalties provisions set forth in this Consent Order and assessment of suspended penalties.
6. In the event the cost of performing and completing the Fairmont Line Station projects in accordance with the provisions of this paragraph is less than \$1,720,000, Respondent shall pay to the Commonwealth as a civil administrative penalty the difference between \$1,720,000 and the actual amount expended. Such penalty shall be paid on or before the due date for the SEP Completion Report as set forth in Section V Reporting Requirements and payment shall be made in the manner set forth in Section VI of this Consent Order.
7. EOT shall state in a prominent manner whenever it publicizes the SEP, or the results thereof, that the SEP was undertaken, or is being undertaken, as part of the resolution of an environmental enforcement action by the Department.

### V. REPORTING REQUIREMENTS:

1. By March 1, 2005, EOT shall submit to the Department status reports containing detailed project schedules, benchmarks and milestones, and appropriate documentation to demonstrate that the projects in this ACO amendment, as listed below, will be completed by the deadlines contained in the ACO amendment.
  - a. Silver Line Service to Logan Airport (June 1, 2005)
  - b. Orange Line – 18 additional cars, or their equivalent carrying capacity (January 1, 2015)
  - c. Purchase and Delivery of 85 ECD Buses (July 15, 2006)
  - d. Blue Line Platform Lengthening and Modernization and operation of Six Car Trains (December 31, 2006)

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- e. MHD Construction Retrofit Program (contract specification requirements in place by March 15, 2005)
  - f. Urban Ring draft EIS
2. Until such time that each project in this Consent Order is complete and operational and confirmed in writing by the Department, EOT shall submit updated status reports to the Department for each project by the first day of every other month beginning May 1, 2005, as may be modified by the Department in writing from time to time. Such status reports will include supplemental information quantifying the air quality benefits of each project. Simultaneously with each submittal, EOT shall post each status report on a MBTA's environmental webpage and distribute copies of the status reports to the ACO distribution list.
  3. SEP Completion Report: Within thirty (30) days of awarding the Fairmont Line Station contracts described in Section IV above, EOT shall submit to the Department a SEP Completion Report, which shall document the Fairmont Line Station projects by including: (1) verifications that the notice to proceed with work has been issued, the date of such issuance and construction completion dates; (2) estimation of the air quality benefits that will be gained, or air pollution avoided, over a two year period due to the earlier awarding of the contracts for the Uphams Corner and Morton Street contracts, and the new station at Four Corners; (3) a certification that EOT implemented the SEP in accordance with the provisions of this Consent Order.
  4. All reports will be delivered in hand or by first class mail to:

Christine Kirby  
DEP  
1 Winter Street  
Boston, MA 02108

## VI. PAYMENT OF PENALTIES

1. EOT shall pay to the Commonwealth the sum of \$100,000 within sixty (60) days of the effective date of this Consent Order as a civil administrative penalty for the violations identified in Section III above, or pursuant to a payment plan approved by the Department within that time period.
2. The Department has determined that it is appropriate to include a Supplemental Environmental Project ("SEP") in the resolution of this matter. Such SEP described in Section IV is included for the purpose of mitigating the administrative penalty and not in lieu thereof. The estimated value of the SEP is approximately \$15,100,000, mitigating approximately \$1,600,000 of the administrative penalty.

3. If EOT violates any provision of this Consent Order, EOT shall pay to the Commonwealth an additional \$215,000 within thirty (30) days of the date the Department issues EOT a written demand for payment.

## VII. STIPULATED PENALTIES

1. In addition to the penalties in Section VI above, if the Department determines that EOT, or its employees, agents or contractors has violated this Consent Order, it shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule:

### Class I Penalties:

Period of Violation	Penalty Per Day
1 <sup>st</sup> through 7 <sup>th</sup> day	\$ 1,000
8 <sup>th</sup> through 30 <sup>th</sup> day	\$ 5,000
31 <sup>st</sup> through 60 <sup>th</sup> day	\$10,000
61 <sup>st</sup> day and thereafter	\$25,000

### Class II Penalties:

Period of Violation	Penalty Per Day
1 <sup>st</sup> through 7 <sup>th</sup> day	\$ 500
8 <sup>th</sup> through 30 <sup>th</sup> day	\$ 750
31 <sup>st</sup> day and thereafter	\$1,000

2. Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day EOT corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified EOT of a violation or act of noncompliance.
3. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date the Department issues EOT a written demand for payment. Specifically, EOT shall pay such stipulated penalties by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts, and shall clearly print the name EOT- ACO-BO-007001-Amendment#2", on the face of the payment, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982



## Amended Administrative Consent Order: ACO-BO-00-7001-Amendment #2

At the same time, EOT shall deliver a copy of the payment to:

Christine Kirby  
DEP  
1 Winter Street  
Boston, MA 02108

4. If a court judgment is necessary to execute a claim for such stipulated penalties under this paragraph, EOT agrees to assent to the entry of such judgment. The stipulated civil administrative penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of EOT's failure to comply with the requirements of this Consent Order. In the event the Department collects alternative civil administrative penalties, EOT shall not be required to pay such stipulated penalties pursuant to this Consent Order.

### **VIII. NON WAIVER**

Failure on the part of the Department to complain of action or non-action on the part of EOT shall not constitute a waiver by the Department of any of its rights hereunder. Furthermore, no waiver by the Department of any provision herein shall be construed as a waiver of any other provision herein.

### **IX. SEVERABILITY**

If any term or provision of this Amendment to the ACO, or the application thereof, to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Amendment to the ACO, and the application thereof, shall not be affected thereby, and each remaining term and provision shall be valid and enforceable to the fullest extent permitted by law.

### **X. SAVINGS CLAUSE**

This Amendment shall not in any way alter or waive the remaining provisions of the original ACO signed September 1, 2000, and the first Amendment shall remain in force.

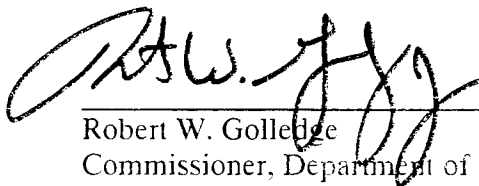
**7. EFFECTIVE DATE**

The Amendment to the ACO shall be effective on the date of the last signature set forth below. Each undersigned representative hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Amendment to the ACO and to legally bind the party on whose behalf such representative is signing to this Amendment to the ACO.

 Date: 1/26/05

Daniel A. Grabauskas

Secretary, Executive Office of Transportation

 Date: January 26, 2005

Robert W. Golledge

Commissioner, Department of Environmental Protection

Attachment A

**EOT has completed, or is in compliance with the following commitments:**

Silver Line: EOT has completed Phase I of the Silver Line Project, completing the first phase of the Washington Street transit service using 40' CNG vehicles from Dudley Square to Downtown Crossing in July 2002. New 60' CNG vehicles were introduced in Spring 2003.

Phase II: Complete.

Phase III: EOT is in compliance with Phase III, completing the preliminary design for the connection between Section A and Section B of the Silver line transit service (tunnel between South Station, Boylston Street and the New England Medical Center) sufficient under current standards for an application for federal funding by December 31, 2004.

EOT has met the ACO requirement to add 20,000 new park and ride spaces throughout the region.

EOT has completed and implemented service at four Worcester stations two years ahead of the ACO schedule.

EOT has demonstrated an increase in peak period bus capacity of 12,000 by December 2000

EOT purchased and brought into service 358 new CNG buses and ECD buses. Additionally, EOT rebuilt all 400 of the Zero series diesel bus engines, retrofit them with diesel particulate filters and now uses Ultra Low Sulfur Diesel on all of the diesel fleet.

EOT implemented the diesel construction retrofit requirement on all MBTA construction projects advertised since January 1, 2001.

EOT completely re-modernized Blue Line Stations at Aquarium and Airport Station (in addition to the four completed prior to the ACO) to accommodate six car trains.

EOT implemented Orange Line Signal Improvements that allow for improved headways. EOT continues to implement Orange Line Signal Improvements to improve safety and reliability, though these improvements are not part of the ACO transit commitments.

The Greenbush Line was originally due to be completed in 1996, by letter dated December 27, 1996, the Department approved a 3-year delay pursuant to 310 CMR 7.36(3). The ACO, Section IV, 11, confirmed the delay, but required offsets after 1999 until the project is complete. The off-sets implemented by EOT are still in place, and will remain in place until the Greenbush Line is completed include: Hingham ferry service, improved service on the Haverhill Commuter Rail Line; Salem to Boston Express Bus Service; New Reverse Commute Service from Alewife to Burlington on Route 351; Grafton Station on the Worcester Line; Four new stations on the Worcester Line (up until December 31, 2004); New Commuter Rail Service at JFK/UMASS. The Greenbush Line is on track for operation to begin in June of 2007

Attachment B

**Composite Exhibit B  
Description of Silver Line Airport Service**

**Hours of Service**

In general, Airport Silver Line Service will begin at approximately 5am and will end at approximately midnight.

**Headways**

In Phase II, Airport service will operate at 10-minute intervals during Airport peak periods, and 15-minute intervals during Airport off-peak periods.

**Peak Demand Periods**

Peak periods, in terms of Airport operations, refer to peak demand periods at Logan Airport. These periods are preliminarily defined as shown below.

**Weekdays**

Peak: 7:00am to 7:59pm  
Off Peak: Beginning of service to 6:59am  
8:00pm to end of service

**Weekends**

Peak None  
Off Peak Beginning of service to end of service

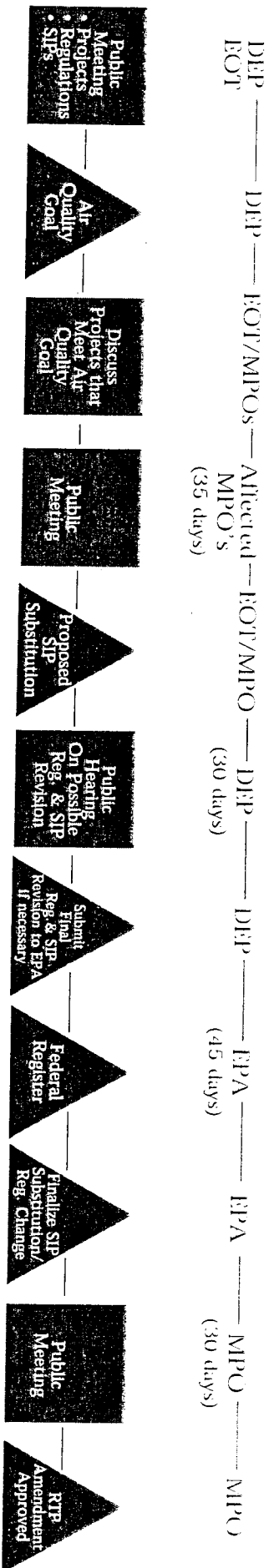
**Peak Seasonal Demand Weeks**

Peak Hours: Beginning of service to end of service  
Off Peak Hours: None

Logan Airport experiences Peak Seasonal Passenger Demand during the following weeks:

- New Year's
- February school vacation week
- April school vacation week
- Easter
- Memorial Day
- July 4<sup>th</sup>
- Labor Day
- Columbus Day
- Veteran's Day
- Thanksgiving
- Christmas

## Re-evaluation Process for the Three Remaining Central Artery/Tunnel Project Air Quality Mitigation Transit Commitments



▲ = Milestones

Note: To the extent appropriate, public process will be conducted jointly.