

**LICENSE AGREEMENT
BETWEEN
GREATER PORTLAND TRANSIT DISTRICT
AND
TOWN OF FALMOUTH**

THIS LICENSE AGREEMENT made this ___ day of _____, 2016, by and between the **TOWN OF FALMOUTH**, a body politic and corporate having its municipal offices located at 271 Falmouth Rd, Falmouth, Maine, 04105 (hereinafter "**TOWN**"), and **GREATER PORTLAND TRANSIT DISTRICT**, a regional transportation district pursuant to Maine law, having its principal place of business at Portland, Maine (hereinafter "**METRO**").

W I T N E S S E T H:

WHEREAS, the **TOWN** is the owner of certain properties within the Route One right of way in Falmouth near the Shaw’s shopping plaza (244 Route 1), near the Walmart shopping plaza (204 Route 1) and near the intersection of Fundy Road (hereinafter collectively referred to as the “Property”), as shown in more detail on Sheet 11, Sheet 12 and Sheet 13, respectively, of Exhibit A attached hereto; and

WHEREAS, **METRO** desires to locate a bus transit shelter (hereinafter the “Shelter”) on the Property and the Town has agreed to permit the construction, operation and maintenance of said Shelter by **METRO** on the Property; and

WHEREAS, **METRO**, with the **TOWN**’s authorization, will construct a concrete pad on the Property in preparation for the installation of the Shelter; and

WHEREAS, **METRO** has agreed to and will construct, monitor, maintain, and clean the Shelter and the immediate surrounding area at its sole expense; and

WHEREAS, METRO will own said concrete pad and Shelter and the **TOWN** owns the Property.

NOW, THEREFORE, in consideration of the mutual promises made by each Party to the other, the Parties covenant and agree as follows:

1. Grant of License. The TOWN hereby grants to METRO and its agents or contractors a non-exclusive license to construct, use, operate, maintain and repair the Shelter on the Property for purposes related to its transportation services. This license shall include a right of access to the Property for such purposes; provided, however, that METRO may only use the Property to the extent such use does not interfere with the TOWN's regular business operations and the use and enjoyment of the Property by the TOWN and its residents or visitors. Use of the Property shall not include the placement of a trash receptacle within the Shelter or elsewhere on the Property unless specifically authorized in writing by the non-requesting Party. Said access to the Property by METRO shall be limited to access to the Shelter and the area immediately surrounding the Shelter and shall be limited to means of access that do not substantially interfere with traffic along Route One or other access to the Property by other users. METRO, its employees and agents may enter the Property at their own risk, and accept the Property in its present "As Is" condition and understand that hidden hazards may exist. The approximate location of the Shelter and the access thereto granted by this License is shown on a site plans attached hereto as Exhibit A and incorporated herein. The precise location of the Shelter will be determined by its construction and shall be limited thereto, except as otherwise agreed herein. The TOWN may use the Property and grant rights to others to use the Property to the extent that such use shall not substantially interfere with METRO's use and enjoyment of the Shelter. Nothing contained in this License shall be deemed a

waiver by the TOWN of any legal right to collect any costs or fees from any other party using the Property.

2. Maintenance. The TOWN may maintain the Property in such condition and repair as the TOWN, in its sole discretion, shall desire. The TOWN has no obligation to maintain the Property for the benefit of METRO. METRO, at its sole cost and expense, shall be required to maintain and repair the Shelter in good and working order. Such maintenance shall include, but may not be limited to, periodic cleaning generally and removal of litter and other debris from the Shelter and the area immediately surrounding the Shelter. Maintenance shall also include removal of graffiti and removal and treatment of snow and ice inside and on the exterior of the Shelter. It shall be the sole responsibility of METRO to ensure that the cleaning, maintenance and repair obligations set forth herein are met; provided, however, that the TOWN may report to METRO when it becomes aware that any cleaning, maintenance or repair obligations as set forth in this Paragraph have not been met. In the event that METRO fails to maintain and repair the Shelter in good working order for five (5) days after the TOWN delivers written notice to METRO of the need for such cleaning, maintenance or repair, the TOWN may undertake work on the Shelter, and deliver to METRO a bill for cleaning, maintenance or repair costs, and within fifteen (15) days after receipt of such bill for such costs, METRO shall pay to the TOWN the costs set forth in such bill.

Regular repair and maintenance work must be (i) performed in good and workmanlike order by licensed (as applicable) and insured professionals, (ii) conducted between the hours of 9:00 AM and 4:00 PM on weekdays and from 9:00 AM to 5:00 PM on

weekends, unless otherwise agreed to by the TOWN in advance, (iii) completed to equal or better than existing standards, and (iv) completed promptly after commencement. Any and all contractors performing work on the Property shall carry general liability insurance in amounts of not less than \$400,000 and name the TOWN as an additional insured. Said contractors shall provide certificates of insurance to the TOWN prior to performing such work. METRO shall provide the TOWN with advance notice whenever it intends to access the Property for purposes of cleaning, maintenance or repair. Notification hereunder may be done by telephone or email to such person as may be designated by the TOWN.

3. Supply of Electricity. The TOWN shall permit METRO to tie in to and/or access the TOWN's existing power supply through the installation of underground conduit in the TOWN's right of way in order to ensure that the Shelter is reasonably illuminated for its purposes. METRO shall be responsible for the costs and work associated with such connection, including any excavation necessary to accomplish the same and installation of any necessary equipment, materials and/or fixtures. The TOWN shall be responsible for the electricity transmission and distribution charges associated with METRO's use of such lights.

4. Replacement. In the event that METRO determines replacement of the Shelter is necessary for any reason, other than as required in paragraph 9 below, METRO shall be solely responsible for all costs associated with such replacement, including, but not limited to, the removal of the existing structure, repair to or preparation of the surrounding Property made necessary by such removal or replacement, and construction

of a new structure. The TOWN shall not be responsible for any costs associated with the removal or replacement of the Shelter at any time.

5. Governmental Approvals. It is understood and agreed that METRO's ability to use the Property and the Shelter shall be contingent upon its obtaining all licenses, certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities for use of the Property and/or the Shelter by METRO as set forth herein. The TOWN shall reasonably cooperate with METRO in its effort to obtain such approvals. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to METRO is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (iii) METRO determines that such Governmental Approvals may not be obtained in a timely manner, either Party shall have the right to terminate this License in accordance with Section 8 below. Notice of the TOWN's exercise of its right to terminate shall be given to METRO pursuant to Section 12 below.

6. Insurance. METRO shall obtain and maintain comprehensive general liability insurance with liability limits of not less than four hundred thousand dollars (\$400,000) throughout the term of this Agreement to fully protect, pay, reimburse and indemnify the TOWN from any and all liability as outlined in Paragraph 7 below. METRO shall also obtain and maintain property and casualty insurance with any endorsements that may be required by the TOWN insuring against loss or damage to the Property at full replacement cost. All such insurance policies shall name the TOWN as an additional insured and shall be

issued by an insurance company authorized to do business in the State of Maine. METRO shall provide a certificate of such insurance to the TOWN, and all such certificates shall state that in the event of cancellation or material change, written notification shall be given to each of the insureds at least thirty (30) days in advance of such cancellation or material change.

7. Indemnification. METRO hereby releases the TOWN from liability for any act done or omitted by the TOWN in the performance of its obligations and duties hereunder. METRO further agrees to defend, indemnify and hold the TOWN, its officers, agents, successors, assigns, employees and/or subcontractors harmless against any and all liabilities, causes of action, judgments, claims or demands, including attorney's fees and costs for personal injury (including death) or property damage arising out of or caused by the performance of or failure to perform the obligations set forth in this Agreement. The liabilities outlined in this paragraph shall include claims for injury to persons or property, negligence, nuisance, mechanics' and materialmen's liens, workers' compensation and unemployment taxes, fines and penalties, and environmental damages.

8. Right to Terminate. This Agreement shall terminate upon removal of the Shelter by **METRO** from the Property, or, upon sale of the Property by the **TOWN**, whichever occurs sooner. Additionally, five years from the date of execution of this Agreement, the Agreement may be terminated by either Party for convenience upon 45 days written notice. Should the **TOWN** wish to terminate the Agreement prior to five years from the date of execution of the Agreement, the **TOWN** shall pay **METRO** the sum of \$500.00. If this Agreement is terminated for a reason other than the removal of the Shelter by

METRO, then METRO shall within ninety (90) days following such termination remove the Shelter and all associated equipment, fixtures and concrete pad, and restore the Property to its original condition, reasonable wear and tear excepted. If such removal is not completed within ninety (90) days of termination, the TOWN reserves the right to remove the Shelter and all associated fixtures and to dispose of it as the TOWN deems fit. METRO shall be liable to the TOWN for all expenses incurred by the TOWN by reason of METRO's failure to remove its property in a timely manner hereunder.

9. Relocation. In the event that the **TOWN** must, in the interest of public health, safety and welfare, make improvements to the area where the Shelter is situated, the **TOWN** may require **METRO** to relocate the Shelter to a mutually agreed upon location that will impair **METRO's** operations to the least practicable extent. Unless the need to relocate the Shelter is an emergency, the **TOWN** shall provide **METRO** with at least 45 days' notice of said relocation.

10. Advertisements. Neither Party shall, without prior written consent of the other, install any advertisements in or on the Shelter that are not **METRO** or **TOWN** related. Upon request by the **TOWN**, **METRO** shall remove any non **METRO** or non **TOWN** related advertising posted in or on the Shelter.

11. Assignment. **TOWN** shall notify **METRO** in writing of any sale or other assignment of its interest in the Property on which the Shelter is located at least 45 days prior to any such sale or assignment. **METRO** shall not be permitted to assign its rights under this License to any other party without the prior written consent of the **TOWN**, in its sole discretion.

12. Notice. All notices or reporting authorized or required under this Agreement shall be deemed to be sufficient if sent by U.S. Certified mail, return receipt requested, as follows:

If to **METRO**:

General Manager
Greater Portland Transit District
114 Valley Street
Portland, ME 04102

If to **TOWN**:

Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth, ME 04105

13. Dispute Resolution. Except as otherwise agreed by the Parties in writing, all disputes, claims, counterclaims and other matters in question between **METRO** and the **TOWN** arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction. This Agreement is made and shall be construed under the laws of the State of Maine, without regard to its conflicts of laws principles. Except as otherwise expressly agreed by the Parties in writing, exclusive venue for any such civil action shall be in Maine.

14. Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations. This Agreement may not be modified except in writing executed by the parties hereto.

IN WITNESS WHEREOF, the said **GREATER PORTLAND TRANSIT DISTRICT** has caused this License Agreement to be signed and sealed by Gregory Jordan, its General

Manager, thereunto duly authorized, and the said **TOWN OF FALMOUTH** has caused this Agreement to be signed and sealed by Nathan Poore, its Town Manager, thereunto duly authorized, on the day and year first above written.

WITNESS:

**GREATER PORTLAND TRANSIT
DISTRICT**

By: _____
Gregory Jordan, General Manager

WITNESS:

TOWN OF FALMOUTH

By: _____
Nathan Poore, Town Manager