



Residential Sound Insulation Program Homeowner Participation Agreement

This Homeowner Participation Agreement, effective this ____ day of _____, 20__, by and between the Massachusetts Port Authority (MASSPORT) and _____ (“Homeowner”), owner(s) of record of the property at _____, Massachusetts _____ (“Property”), (collectively the “Parties”).

WHEREAS, MASSPORT is the owner and operator of Boston-Logan International Airport (“Boston Logan”, “BOS” or the “Airport”) in East Boston, Massachusetts and has undertaken a Residential Sound Insulation Program (“RSIP” or the “Program”) to reduce aircraft generated noise levels located within the Program area near the Airport; and

WHEREAS the Property is owned by Homeowner as described in **Exhibit B** attached hereto; and

WHEREAS, the Property meets certain interior noise level criteria established by the Federal Aviation Administration (“FAA”), which qualifies the Property for certain sound insulation treatments; and

WHEREAS, the Parties have agreed on terms regarding the sound insulation treatments and construction including (i) work to be done to the Property; (ii) access to the Property; and (iii) duties and responsibilities of Homeowner and MASSPORT; and

WHEREAS, the Parties acknowledge that this Agreement includes certain provisions required under the FAA grant agreement with MASSPORT for the RSIP.

NOW THEREFORE, the Parties hereto agree as follows:

I. SOUND INSULATION TREATMENTS TO THE PROPERTY

1. MASSPORT will contract with a qualified building contractor (“Contractor”) to perform the sound insulation treatments (“Treatments” or “Contracted Work”), as described in **Exhibit A** (Scope of Work), attached hereto and made part of this Agreement.
2. The Homeowner acknowledges that they have been shown and given a choice of Treatments and has agreed to the Treatments set forth in **Exhibit A**. The design of these treatments (“Design Specifications”) has been developed by MASSPORT’S consultant Jones Payne Architect and Planners, Inc. (“Consultant”), to reduce interior noise to a level established by the FAA for the Boston Logan RSIP in accordance with the Airport Improvement Program (AIP) Handbook, FAA Advisory Circular 5100.38D. These program requirements are located on the FAA website at the following address: http://www.faa.gov/airports/aip/aip_handbook/
3. The Homeowner has reviewed and agreed to the Design Specifications. MASSPORT’S Consultant will provide supervision and inspection of the Contracted Work to ensure the quality of the work and compliance with the Design Specifications. The Homeowner agrees to cooperate with the Contractor in obtaining any necessary permits for the

Contracted Work, the cost of which will be incurred by the Contractor. The Homeowner will be provided with a copy of the Building Permit secured for the Contracted Work prior to any work being done in accordance with the Permit and this Agreement.

4. The Homeowner agrees that all paneled wall treatments, window/door casings, moldings, trim, and other fixtures shall be finished as described in the Design Specifications. The Contractor will paint new trim and wallboard to match existing paint colors and, where work is being done on part of a wall, the full wall will be repainted to match the existing paint color.
5. The Contractor will be required to accept responsibility for carrying out the Contracted Work according to the Design Specifications. As required under Massachusetts law, the Contractor will be required to post bonds and carry insurance, including liability coverage for personal injury and property damage in amounts no less than \$1,000,000 per occurrence.
6. The Homeowner shall hold the Contractor solely responsible for any damage during the course of the Contracted Work. Any problems, deficiencies, or damage in connection with the Treatments must be brought to the attention of the Contractor and the Consultant as soon as possible in writing. The Contractor and the Consultant will respond to all reported problems and exercise all reasonable measures to resolve problems in a timely and satisfactory manner. Problems that cannot be resolved by the Contractor and the Consultant will be referred to MASSPORT under the provisions of Paragraph 23 hereof.
7. When all the Contracted Work is complete in accordance with the Design Specifications; all permits have been closed; Contractor certifies the "punch list" items have been completed; Homeowner has been instructed on the operation, adjustment, and maintenance of the projects, equipment, and systems; Contractor submits all warranties and operation and maintenance manuals and construction photographs; and the Consultant will give final approval ("Final Approval") to the Contractor. The Contractor and the Consultant will address any incomplete work to ensure compliance with the Design Specifications. In the event the Homeowner feels that the work does not comply with the Design Specifications, the Consultant will refer the issue to MASSPORT under the provisions of Paragraph 23 hereof.

II. ADDITIONAL WORK OUTSIDE THE SCOPE OF THE CONTRACTED WORK

8. The Homeowner shall not enter into a separate agreement with Contractor or Consultant regarding changes to the Scope of Work or hire any other Contractor or Consultant to perform additional work that would affect the sound insulation of the Property prior to the Final Approval of the Contracted Work without the prior written approval of MASSPORT.
9. Routine maintenance activities or emergency repair needed to maintain habitability within the home shall not be restricted, but the Homeowner must give reasonably advanced, written notification to MASSPORT, the Consultant, and the Contractor of any such work.
10. The Homeowner agrees that any work performed by any contractor or by the Homeowner subsequent to the completion of the Contracted Work that intentionally or unintentionally affects the sound insulation of the Property shall invalidate any warranties, which may be provided by the Contractor.

11. Wallpapering and window treatments shall be the Homeowner's responsibility.
12. If existing casings, moldings, trim, or paneling are damaged, they will be replaced by matching replacements if commercially available, or the closest matching substitute that is available. Woodwork, trim, and paneling beyond that required for effective sound insulation treatment will not be included in the Contracted Work.
13. The Homeowner agrees not to conduct any finish work, such as painting or wall papering or any other interior modifications until the Contracted Work has received Final Approval.

III. ACCESS TO THE HOME

14. The Homeowner agrees to provide reasonable access to the Property to the Consultant, the Contractor, and MASSPORT representatives. Access may be required to evaluate existing conditions and to take noise measurements before and after the construction. Access may also be required 1) for measuring by contract bidders during the pre-Construction phase, 2) for Construction-related activities by the Contractor, the Consultant, and MASSPORT representatives and 3) for post-construction quality assessment by the Contractor, the Consultant, and MASSPORT representatives during Construction. Failure to provide access to the Property may result in termination of this Agreement and exclusion from the Program.
15. All access to the Property will be at reasonable times and only by appointment with the Homeowner. The Contractor will only enter the Property with the Homeowner's express consent. The Homeowner agrees that the Homeowner or another responsible adult will be present at all times when MASSPORT'S Consultant, Contractors or MASSPORT representatives are in the Property. Homeowner, Contractor, the Consultant and MASSPORT representatives will follow COVID-19 safety protocols as designated by local, state, or federal agencies.
16. The Contractor will provide the Homeowner with a schedule for Construction. The Homeowner agrees that Homeowner or Homeowner's representative (18 years or older) will be present at the Property for approximately four (4) but not more than ten (10) consecutive business days from 8:00 a.m. to 5:00 p.m. for the Contracted Work to occur. In addition, the Homeowner will provide access to the Contractor, as needed, to correct and finish any punch list items in the ten (10) business days following Construction.

IV. PREPARATION AND PROTECTION OF PROPERTY

17. MASSPORT accepts no responsibility for any preexisting Building Code violations. The Homeowner agrees to correct existing Building Code violations, if any, identified on **Exhibit A** before the start of the Contracted Work. The cost of correcting these violations shall be solely the Homeowner's responsibility. The Consultant will verify the correction of code violations before any Contracted Work begins. If Homeowner does not correct the violations or if the existing condition would make completion of the Program unsafe and/or impractical, MASSPORT will not be required to complete the Contracted Work and will restore any portion of the Property the Contracted Work may have disturbed to a condition substantially the same as existing before the Contracted Work.

18. The Homeowner agrees to perform any and all preliminary work necessary to prepare the home for Construction, such as removing all draperies, blinds or shades, and associated hardware, fittings, and dressings, and moving furniture, as directed by the Consultant.
19. The Consultant and Contractor shall take reasonable precautions to safeguard the home against damage resulting from their work. The Homeowner agrees to cover all furniture, appliances, and electronic equipment such as televisions, entertainment systems, or computers, to protect them from dust and debris and to remove and store all valuables in a safe, secure location. The Homeowner agrees to maintain homeowner's insurance coverage for personal injury and property damage for the duration of Construction on the Property.
20. Homeowner shall be required to inform the Consultant and Contractor of lead paint or asbestos in the Property that Homeowner is aware exists prior to the beginning of the Contracted Work. If lead paint or asbestos is observed by the Consultant or Contractor within the Contracted Work area, as described in **Exhibit A**, the Contractor will be responsible for removing all lead paint and asbestos from the area. The cost of the abatement of lead paint or asbestos from the Contracted Work area shall be the responsibility of MASSPORT. All abatement, sealing, removal, containment, and disposal shall be done by a contractor licensed by the Commonwealth of Massachusetts, and in accordance with U.S. Environmental Protection Agency, Commonwealth of Massachusetts, and local government rules, regulations, and laws, as amended. Homeowner shall be responsible for the testing, abatement and associated costs of lead paint or asbestos in the Property that is not within the Contracted Work area.

V. AIR COOLING/VENTILATION SYSTEM

21. The Homeowner understands that the approved Design Specifications may include changes or additions to the existing heating, air-cooling, and/or ventilation system. The Homeowner understands that implementation of these changes or additions may alter (increase or decrease) the home's operating costs, and that any such operating expenses shall be solely the Homeowner's responsibility. The Homeowner also understands that there may be maintenance costs associated with the proper functioning of any installed system. The Homeowner hereby assumes full responsibility for the maintenance, operation, and utility cost of all cooling or ventilation system components installed, purchased, or constructed as part of this Agreement. Neither the FAA nor MASSPORT bears any responsibility for the maintenance, operation, or utility cost of these systems.
22. The Homeowner hereby acknowledges that the Contracted Work performed under this Agreement may increase the tax-assessed value of the home. The Homeowner agrees that the Homeowner is solely responsible for any such increase in tax-assessed value and will not hold the FAA or MASSPORT responsible for any increased property tax or assessment.

VI. NON-RECOURSE AND INDEMNITY PROVISIONS

23. In the event of a dispute between the Homeowner and the Contractor as to the Contracted Work or the Treatments, including, but not limited to, the extent, quality, and/or completion of the work, the Consultant shall refer the issue in writing to MASSPORT for resolution. MASSPORT representatives may meet with the Homeowner, the Consultant, and the Contractor, separately or together, to negotiate a

resolution in the best interest of the Parties. MASSPORT may: (i) subject to availability of funding, authorize additional work; (ii) confirm Final Approval of the Treatments without additional work; or (iii) in its sole discretion, take such other steps as MASSPORT deemed to be necessary and appropriate. The decision of MASSPORT as to the remedy to be provided and the date of Final Approval shall be final. The provisions of this Section shall survive termination of this Agreement.

24. The Contractor will be required to provide a warranty covering its work for a period of one (1) year from Final Approval at which time any repairs or adjustments shall be the responsibility of the Homeowner. The Homeowner will be provided with any manufacturer warranties for installed products at the time of Final Approval. If the Homeowner detects a fault in the Contracted Work within the warranty period, it shall be the Homeowner's responsibility to inform the Contractor at once in writing, with notice given to MASSPORT. The Homeowner shall deal directly with the Contractor with respect to warranty claims.
25. Homeowner agrees that the extent of the recourse Homeowner has against MASSPORT for any claims related to the work is limited to those for property damage caused directly by the negligence or willful misconduct of MASSPORT. Homeowner agrees that MASSPORT nor its Consultant or Contractor shall be responsible for damage due to pre-existing Property conditions, and the proposed treatments are not intended to repair, improve or address such pre-existing conditions. This paragraph shall survive expiration or earlier termination of this Agreement.
26. The Homeowner agrees and acknowledges that any and all claims arising from the fault or negligence of the Contractor or Consultant, including but not limited to actions for personal or bodily injury, and property damage, that may arise as a result of this Agreement shall be made against the Contractor or Consultant, and Homeowner shall hold MASSPORT harmless from any and all such claims, suits, or liabilities.
27. The Homeowner hereby agrees to reimburse MASSPORT for any costs, expenses, or damages affiliated with Contracted Work arising from the Homeowner's fault or negligence. Such costs, expenses, or damages include, but are not limited to, claims arising out of failure to provide access to the Property, delaying Contracted Work, and damaging any materials or equipment during Contracted Work.
28. MASSPORT and MASSPORT'S Consultant have confidence in the ability of the RSIP to improve the quality of life in your home. However, MASSPORT, Consultant and Contractor make no representation that the Treatments will result in any specific reduction in noise level or will meet any recommended FAA noise standard.

VII. COMPLIANCE WITH THE FAA GRANT AGREEMENT

29. Portions of the funds for the Contracted Work are provided under a grant from the FAA. If grant funds are not available, MASSPORT is not obligated to continue the Program or perform the Contracted Work that has not yet commenced. MASSPORT will restore any portion of the Property the Contracted Work may have disturbed to a condition substantially the same as existing before the Contracted Work. This Agreement between MASSPORT and the Homeowner is subject to the terms and provisions of the FAA Grant Agreement including but not limited to:

- (1) The Homeowner must inspect the work during and after completion, as the FAA or MASSPORT may reasonably request, and inform MASSPORT'S Consultant in writing of any work that does not comply with the Design Specifications.
- (2) The Homeowner is responsible for maintenance and operation of the items installed, purchased, or constructed under this Agreement. Neither the FAA nor MASSPORT bears any responsibility for the maintenance, operation, or replacement of these items.
- (3) If federal funds for the Contracted Work are transferred by MASSPORT to the Homeowner or the owner's agent, the Homeowner shall agree to maintain and make available to the FAA or MASSPORT, upon reasonable request, records disclosing the amount of funds received and the disposition of those funds. *(NOTE: Funds will not be transferred directly to the Homeowner by MASSPORT on this project, but this clause is required under the FAA Grant Agreement.)*
- (4) Any right to sue or otherwise make a claim against MASSPORT for adverse noise impact will be abrogated if the Homeowner or his family members, agents, invitees, heirs, or successors in interest deliberately or willfully reduce the effectiveness of the Treatments during the useful life of such Treatments. This obligation shall remain in effect through the useful life of the Treatments, but not to exceed 20 years from the date of MASSPORT'S acceptance of the FAA grant for the project.

VIII. MISCELLANEOUS

30. This Agreement, including exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any prior or inconsistent agreements, negotiations, representations, and promises, written or oral. This Agreement may be amended or modified only by written instrument executed by MASSPORT and Homeowner.
31. MASSPORT may terminate this Agreement prior to commencement of the Contracted Work by providing written notice to the Homeowner. The Homeowner may withdraw from the Program by providing MASSPORT thirty (30) days notice. In the event Homeowner withdraws from the Program before the completion of the Contracted Work, the Homeowner shall reimburse MASSPORT for expenditures and MASSPORT shall have no obligation to continue work after the date of the written notice of withdraw nor shall MASSPORT be required to restore the Property to its preexisting condition.
32. Any delay in or failure of performance by either party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such party, including, but not limited to, fire, flood, acts of war, acts of God, floods or other casualties, epidemics, pandemics, quarantine, restrictions, adverse weather conditions, power outages, telecommunication system failures, and governmental restrictions or intervention.
33. All notices required to be given hereunder shall be in writing and shall be deemed duly given, (i) when sent via electronic mail or facsimile (with a confirmation copy by certified mail, hand delivery or overnight courier, as provided herein); or (ii) when mailed, certified mail, return receipt requested; or (iii) when hand delivered; or (iv) when received or refused, if sent by a nationally recognized overnight courier, to the following addresses:

If intended for the Authority, addressed to:
Capital Programs
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, Massachusetts 02128-2909

With a copy to:
Chief Legal Counsel
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, Massachusetts 02128-2909

If intended for the Homeowner, addressed to:

34. This Agreement and the rights and obligations of the Parties hereto shall be governed in accordance with the laws of the Commonwealth of Massachusetts.
35. **THE PARTIES HERETO WAIVE TRIAL BY JURY AS TO ANY AND ALL CLAIMS, DISPUTES AND CAUSES OF ACTION ARISING OUT OF THIS AGREEMENT.**
36. If any term of this Agreement is held by any court or other judicial tribunal with competent jurisdiction to be illegal, invalid, or otherwise unenforceable, it shall be severed from the remaining terms which shall remain in full force and effect.
37. All the covenants, stipulations, agreements, and obligations set forth in this Agreement shall extend to and be binding upon the legal representatives, heirs, successors, and assigns of the respective Parties hereto.
38. This Agreement may be executed in multiple counterparts, each of which shall be an original, and so executed shall constitute one Agreement binding on all the Parties hereto. The Parties agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as a manual signature. Delivery of a copy of this Agreement bearing an original or electronic signature by facsimile, electronic mail in portable document format ('pdf'), digital signature software application or any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing a manual or electronic signature.

IX. EXHIBITS

- A. Exhibit A: Scope of Work
- B. Exhibit B: Property Title documents

In Witness Whereof, the parties have executed this Agreement as of the date first above written.

HOMEOWNER(S)

Signature

Name

Signature

Name

MASSACHUSETTS PORT AUTHORITY

Ann Buckley
Assistant Secretary-Treasurer