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AUDITOR OF THE COMMONWEALTH

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NO. 2007-0510-3C2

**INDEPENDENT STATE AUDITOR'S REPORT
ON CERTAIN ACTIVITIES OF THE
CENTRAL ARTERY/THIRD HARBOR TUNNEL PROJECT'S
OUTSTANDING FUNDING ISSUE WITH THE
MASSACHUSETTS PORT AUTHORITY
DECEMBER 2002 THROUGH DECEMBER 2007**

**OFFICIAL AUDIT
REPORT
JUNE 10, 2008**

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The Central Artery/Third Harbor Tunnel (CA/T) Project is a major 7.5-mile interstate highway project designed to significantly reduce traffic congestion in downtown Boston through the construction of an eight-to ten-lane underground Central Artery, a four-lane underwater tunnel that crosses Boston Harbor, and a commercial traffic by-pass road through South Boston. CA/T construction, which began in 1991, was 99% complete as of November 2007. Construction extends from the I-93 Massachusetts Avenue Interchange in the south, to beyond the Leonard P. Zakim Bunker Hill Bridge over the Charles River in the north, and from the Massachusetts Turnpike Interchange by the Fort Point Channel in the west, under the Boston Harbor via the Ted Williams Tunnel to Logan International Airport and Route 1A in the east.

In 1989, CA/T Project management estimated that the Project, as then configured, would cost \$4.4 billion and would be completed in 1998. The Project's cost estimate and completion date has been the subject of much controversy over the years due to a number of revisions made to those estimates. As of May 2007, CA/T Project officials estimate the total cost of the Project to be \$14.798 billion.

This interim report reviewed Massport's decision to withhold payments for roadways constructed by the CA/T project that serve Logan Airport, and the resulting financial cost to the Commonwealth. To date, the Office of the State Auditor has issued 22 interim reports identifying significant inaccurate, unnecessary, excessive and avoidable project costs, as well as available savings opportunities.

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UNTIMELY REMEDIAL REPAIRS OF CA/T CONSTRUCTED ROADWAYS TO BE TRANSFERRED TO MASSPORT HAS RESULTED IN ADDITIONAL STATE FINANCING COSTS OF AT LEAST \$8.3 MILLION

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The Commonwealth of Massachusetts incurred additional financing costs of at least \$8.3 million because the CA/T Project, Massport and other concerned state entities have not resolved long-standing construction quality issues involving highway and tunnel segments servicing Logan Airport that, although constructed by the CA/T Project, provided substantial benefit to Massport. CA/T Project management and Massport officials should act expeditiously to resolve the outstanding repair issues and complete the scheduled payments to terminate the resulting ongoing costs to the Commonwealth. In addition, CA/T Project officials should initiate cost recovery actions against contractors and others it deems responsible for the unacceptable original construction work.

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INTRODUCTION

Background

The Central Artery/Third Harbor Tunnel (CA/T) Project is a major 7.5-mile interstate highway Project designed to significantly reduce traffic congestion in downtown Boston through construction of an eight-to ten-lane underground Central Artery, a four-lane underwater tunnel that crosses Boston Harbor, and a commercial traffic by-pass road through South Boston. CA/T construction, which began in 1991, was 99% complete as of November 2007. Construction extends from the I-93 Massachusetts Avenue Interchange in the south, to beyond the Leonard P. Zakim Bunker Hill Bridge over the Charles River in the north, and from the Massachusetts Turnpike Interchange by the Fort Point Channel in the west, under the Boston Harbor via the Ted Williams Tunnel to Logan International Airport and Route 1A in the east.

In 1984, the Massachusetts Highway Department (MHD) awarded a contract to the joint venture of Bechtel/Parsons Brinckerhoff (B/PB) to manage CA/T Project design and construction activities. B/PB had responsibility for project management, preliminary design, final design management, procurement, construction management and environmental services. The Massachusetts Turnpike Authority (MTA) assumed management of the CA/T Project under state law enacted in March 1997.

In 1989, CA/T Project management estimated that the Project, as then configured, would cost \$4.4 billion and would be completed in 1998. The Project's cost estimate and completion date has been the subject of much controversy over the years due to a number of revisions made to those estimates. As of May 2007, CA/T Project officials estimate the total cost of the Project to be \$14.798 billion.

This interim report reviewed Massport's decision to withhold payments for roadways constructed by the CA/T project that serve Logan Airport, and the resulting financial costs to the Commonwealth. To date, the Office of the State Auditor has issued 22 interim reports identifying significant inaccurate, unnecessary, excessive and avoidable project costs, as well as available savings opportunities.

Funding Legislation

A series of legislative acts discussed below required Massport to pay a total of \$365 million to the Central Artery/Tunnel Project (CA/T) for the construction of various roadway and tunnel segments that service Logan International Airport. These segments, although built by the CA/T Project, provided substantial benefit to Massport, who owns and operates the airport.

Under Chapter 102 of the Acts of 1995, Massport entered into a Memorandum of Understanding with the Executive Office for Administration and Finance (A&F) to purchase various segments of the Metropolitan Highway System (MHS) that serve Logan International Airport for \$200 million. This legislation required that the parties enter into an agreement to facilitate the sale and transfer of these roadway assets. The Roadway Transfer Agreement signed on March 23, 1999 met this requirement by defining the terms and conditions for the roadway asset transfer between the parties. The Agreement required Massport to make scheduled payments to the Executive Office for Administration and Finance (A&F) for the purpose of repaying the Commonwealth of Massachusetts for funds that were temporarily borrowed by Massport to acquire the roadways.

A second legislative act, Chapter 3 of the Acts of 1997, required Massport to purchase an additional \$100 million of roadway segments identified by the Joint Asset Assessment Study Group created to identify additional roadway segments constructed by the CA/T Project that primarily serve Logan International Airport.

A third legislative act, Chapter 87, Section 10, of the Acts of 2000, required Massport to purchase access ramps from the Ted Williams Tunnel that exclusively serve Logan International Airport for an additional \$65,000,000. Our audit was conducted to assess the CA/T Project's activities in resolving long-standing quality issues which needed to be resolved prior to the asset transfer, which resulted in the Massachusetts Port Authority's decision to withhold the final \$50,000,000 installment payment for roadways constructed by the CA/T project that service Logan International Airport, to determine what efforts have been made by these parties to date, and to identify what further efforts are necessary to resolve the situation.

Audit Scope, Objectives, and Methodology

In order to accomplish our objective, we employed several audit tests and procedures during our examination. We reviewed applicable state legislation, legal agreements, contracts, and official

statements. In addition, we interviewed officials at the Massachusetts Turnpike Authority and the CA/T project, the Massachusetts Port Authority, the Office of the State Treasurer, the Executive Office for Administration and Finance, and the Federal Highway Administration, and reviewed cost records, correspondence files, and other documents, including internal reports and external consultant studies. Our examination was made in accordance with applicable generally accepted government auditing standards for performance audits.

AUDIT RESULTS

UNTIMELY REMEDIAL REPAIRS OF CA/T CONSTRUCTED ROADWAYS TO BE TRANSFERRED TO MASSPORT HAS RESULTED IN ADDITIONAL STATE FINANCING COSTS OF AT LEAST \$8.3 MILLION

The Commonwealth of Massachusetts incurred additional financing costs of at least \$8.3 million because the CA/T Project, in concert with Massport and other concerned state entities, has not resolved long-standing construction quality issues involving highway and tunnel segments servicing Logan Airport that, although constructed by the CA/T Project, provided substantial benefit to Massport. CA/T Project management and Massport officials should act expeditiously to resolve the outstanding repair issues and complete the scheduled payments to eliminate further costs to the Commonwealth. In addition, CA/T Project officials should initiate cost recovery actions against contractors and others it deems responsible for the unacceptable original construction work.

Construction Issues

At the time the funding legislation was enacted, all of the roadways that would be acquired by Massport were fully designed and under construction, which, according to Massport, limited its input and oversight abilities. After conducting its own inspections in the late 1990's, Massport notified CA/T Project officials of a number of construction items that they considered deficient or incomplete. Despite years of project meetings and various informal communications, the construction problems remained unresolved. As far back as June 5, 2003, Massport notified the Executive Office for Administration and Finance (A&F) and the Office of the State Treasurer that it was making the SFY 2003 payment of \$104,914,000 in good faith, but that none of the roadways to be acquired were acceptable for transfer to them per the terms of the Roadway Agreement. After making the SFY 2004 payment of \$50,000,000, Massport officials again notified the State Treasurer's Office that the construction problems still remained, and asked for their assistance to resolve them. In 2005, Massport declined to make the final scheduled payment of \$50,000,000 for SFY 2005, citing section 6(b) of the Transfer Agreement under which they claim that the final payment was not due and payable until all open construction deficiencies were satisfactorily corrected and the actual ownership transfer was completed. See Appendices I and II for pictures of tunnel wall leakage and Logan ramp roadway cracks.

According to Massport, construction is not completed under the Transfer Agreement until all construction deficiencies have been corrected to the satisfaction of the Project and Massport. Further, Massport advised us that despite their efforts to resolve these issues with the CA/T Project, the Project has not delivered the completed roadway segments in a satisfactory condition to Massport by the dates specified in the Transfer Agreement. Whether the work of the original contractor, project management, or normal usage over time caused or exacerbated the need for construction repairs, the issue has been contentious throughout the intervening years. In January 2007 the CA/T Project and Massport established the MTA/MPA Roadway Task Force to review and resolve the long-standing construction repair issues.

Massport officials advised us that by May 2007, some progress had been made, but that approximately \$12 million in remedial work remained to be performed before the roadways would be acceptable to them. We subsequently met with CA/T officials who agreed that the resolution process was progressing, but that the cost of the remedial work was no more than \$4.6 million. Although the final cost of the repairs is still an open issue, both parties stated that the remedial work was expected to be completed by December 2007. At the conclusion of our fieldwork, CA/T and Massport officials advised us that the repairs would not be completed until April 2008.

Financial Impacts

We were advised by the State Treasurer's Office that because Massport was unable to access capital markets for a period of time after the September 11, 2001 terrorist attacks, the Commonwealth of Massachusetts funded the money owed by Massport to the CA/T project, with the state to be repaid from Revenue Bond proceeds issued by Massport. Although Massport eventually made all of the payments through Payment # 6 (see schedule below), they delayed making payments # 5 and # 6 and declined to make the final scheduled # 7 payment for \$50,000,000 because the construction deficiencies had not been corrected to their satisfaction. This condition continued to exist until the start of our review in May 2007.

Repayment Schedule and Additional Interest Costs**As of November 30, 2007**

Payment No.	Payment Due Date	Actual Payment Date	Scheduled Payment Amount	Actual Payment Amount	Additional State Borrowing Costs
Payments 1-4 (Essentially on-time)	Pre 2002	Pre 2002	\$160,086,000	\$160,086,000	-
Payment 5	12/31/2002	6/9/2003	\$104,914,000	\$104,914,000	\$1,494,665
Payment 6	12/31/2003	8/5/2005	\$50,000,000	\$50,000,000	\$2,595,548
Payment 7	12/31/2004 {	6/16/2007	\$50,000,000 {	\$25,100,000	\$3,993,493
		7/22/2007		\$12,500,000	\$79,816
Unpaid Balance as of 11/30/2007				\$12,400,000	\$143,534
Totals			\$365,000,000	\$365,000,000	

Total Additional State Borrowing Costs Due to Late
or Unpaid Installments:

\$8,307,056

On August 7, 2006 the State Treasurer apprised the Governor of the financial consequences to the Commonwealth of the funding stalemate and requested his assistance to resolve the issue. The letter stated that:

Massport was scheduled to make a payment to the Central Artery Project for a section of tunnel that leads to Logan Airport. After September 11, 2001, Massport was unable to access the bond market and the Commonwealth agreed to front these payments to the Central Artery Project on behalf of Massport. Now, nearly five years later, due to a disagreement between Massport and the Central Artery Project over a punch list¹, Massport still has not reimbursed the Commonwealth, which remains out \$50 million.

¹A list of minor incomplete or unsatisfactory items that do not materially impair the usefulness of the work for its intended purpose. Under the terms of the contract, the work can be considered substantially completed, but the punch list items must be completed or corrected prior to final acceptance of the contract work. Massport strongly believes that a number of these items are significant construction and safety concerns.

Because the Commonwealth is the only party financially affected by this dispute, neither side has an incentive to resolve the matter. Any future solution that replicates this dynamic, such as fronting third party or Turnpike Authority payments, could create a similar impasse, and harm the Commonwealth's cash position.

Despite the renewed effort by CA/T and Massport to resolve the issue in early 2007, no additional payments occurred until June 2007 when Massport made a \$25.1 million payment to A&F in partial settlement of the obligation. This payment occurred about one month after the State Auditor's Office notified Massport that we were reviewing the rationale for the withholding of the \$50 million payment. That payment was followed by an additional payment one month later (July 2007) of \$12.5 million, leaving a current balance of \$12.4 million as of November 2007. According to CA/T Project officials, only about \$4.6 million is needed to cover the remedial work. Based on this assertion, the withholding of the \$7.8 million may be excessive.

In summary, the Commonwealth of Massachusetts incurred additional finance costs of at least \$8.3 million because the CA/T Project, Massport and other concerned state entities have not resolved long-standing construction quality issues involving highway and tunnel components that serve Logan Airport.

Conclusion

CA/T Project management, in concert with Massport officials, should act expeditiously to resolve all outstanding construction issues and complete the scheduled payments to terminate the ongoing costs to the Commonwealth resulting from this impasse. In addition, Project officials should consider cost recovery actions against contractors deemed responsible for the unacceptable construction work.

Recommendations

We recommend that MTA/MPA Roadway Task Force officials work to resolve the long-standing remedial repair issues and the amount of funding needed to complete that work. Any of the withheld funds not needed for repairs should be repaid immediately to the Commonwealth. If timely resolution is not achieved, the matter should be elevated to the Board of Director level of both Authorities. We also recommend that CA/T project officials consider

cost recovery actions to recover the remedial repair costs from those contractors deemed responsible for the unacceptable construction work.

Auditee's Response

Massachusetts Turnpike Authority

MTA's Executive Director advised us that he does not agree with the overall premise of the report and believes that MTA neither caused nor is responsible for the additional costs caused by the timing of Massport's payments to the Commonwealth. He provided additional comments relative to Massport's ongoing efforts to resolve these issues, and indicated that the work would not be completed until this summer. Lastly, he stated that the cost of the repairs determined to be the result of defective work will be pursued against the responsible party. See Appendix III for a copy of the Executive Director's reply.

Massachusetts Port Authority

The CEO/Executive Director for Massport advised us that while the CA/T Project, Massachusetts Highway Department, Massachusetts Turnpike Authority, and Massport have been working together for years to resolve the longstanding construction quality issues involving the Roadways to be transferred to them under the Roadway Transfer Agreement, Massport has acted in good faith to meet its payment obligations while also acting within its rights under the Agreement to withhold certain amounts, given the Massachusetts Turnpike Authority's failure to fulfill its performance obligations under the Agreement. He also commented that the parties are working expeditiously and cooperatively to resolve the remaining outstanding issues. The CEO/Executive Director also provided us with the following summary comments:

Massport respectfully requests that the report recognize Massport's good faith efforts to meet its payment obligations under the Transfer Agreement by paying \$192,514,000 to A&F despite that amount not being due and payable, while also acting within its rights under the Transfer Agreement to protect its interests by holding \$12.4 million, given MTA's failure to fulfill its performance obligations.

Massport respectfully differs with the characterization of the payment due dates for Fiscal Years 2003, 2004 and 2005 shown on page 6 of the report, since these payments are not yet due under the Transfer Agreement, and respectfully requests that the report recognize that Massport has met all of its contractual, legal and financial obligations under the Transfer Agreement.

Massport respectfully requests that the report recognize that Massport has no information on CA/T's \$4.6 million cost estimate, and cannot explain the difference

between the two estimates. Massport also respectfully reiterates that \$204,914,000 is not due and payable under Section 6(b) of the Transfer Agreement until MTA fulfills its obligations, yet Massport has paid all but \$12.4 million of that amount in good faith and in the spirit of its obligations under the Transfer Agreement.

Lastly, Massport respectfully requests that the report recognize Massport's duty to require that MTA fulfill its obligations under the Transfer Agreement, and its prudence in completing its due diligence via inspections, tests and the like to ensure that the Massport Roadways are completed in accordance with the Transfer Agreement, and are safe for use by the traveling public, before paying the remaining \$12.4 million of the total purchase price. Massport also respectfully requests that the report acknowledge that the parties continue to work expeditiously toward resolution of the construction issues so that MTA can transfer ownership of the roadways to Massport.

Massport added that they were pleased that MTA/CAT is committed to completing the remedial work by April 2008. See Appendix IV for a copy of the CEO/Executive Director's reply.

Auditor's Reply

Although the MTA does not agree with the overall premise of this report, it is clear that completing construction so that the transfer of ownership of the roadways can take place is primarily the MTA's responsibility. The lengthy delay in accomplishing this has to a great extent resulted in the additional interest costs to the Commonwealth discussed in this report. The MTA's response also indicated that any cost of repairs determined to be the result of defective work would be pursued against the responsible party. We concur with Massport's response that they acted appropriately in their efforts to gain compliance with the provisions of the Transfer Agreement. Both Massport and the MTA have indicated that they are now working together cooperatively and have made significant progress to resolve the outstanding construction repair issues that will facilitate ownership transfer. Current projections estimate that the transfer will be completed this summer.

APPENDIX I

Tunnel Wall Leakage



DCP_0014
Wall leakage

APPENDIX II

Logan Ramp Roadwork Cracks



DCP_0033
Logan ramp TA/D overlay cracks

APPENDIX III**Response to Draft Audit Report from the Executive Director of the
Massachusetts Turnpike Authority****MASSACHUSETTS TURNPIKE AUTHORITY**

State Transportation Building, 10 Park Plaza, Suite 4160, Boston, Massachusetts 02116
(617) 248-2800

March 7, 2008

Paul Sweeney, Director
Division of Contract Audits
Office of the State Auditor
One Winter Street, 9th Floor
Boston, MA 02108

Re: Draft Audit Report on certain activities of the Central Artery/Tunnel Project's
Outstanding Funding Issue with the Massachusetts Port Authority, December
2002 through December 2007.

Dear Mr. Sweeney:

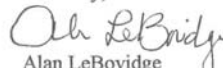
Thank you for the opportunity to provide comments on the draft audit referenced above. The Massachusetts Turnpike Authority (Authority) has reviewed the draft audit and does not agree with the overall premise of the report and believes it neither caused nor is responsible for the additional costs caused by the timing of Massport's payments to the Commonwealth.

We also offer the following comments to the audit's conclusion and recommendations:

- The Authority is working closely with the Massachusetts Highway Department (MHD) to support MHD's transfer of ownership of CA/T roadways to Massport. This includes participation in weekly transfer meetings with the Executive Office of Transportation to address and resolve issues required for CA/T ownership transfers, including transfer of roadway assets from MHD to Massport.
- The Authority has also been working cooperatively with both MHD and Massport to resolve construction and repair issues. The Authority meets bi-weekly with Massport and we have made significant progress in closing open issues. We anticipate that work associated with these issues will be completed this summer. The Authority, Massport and MHD recently entered into two agreements to resolve open repair issues and facilitate the ownership transfers: an August 9, 2007 agreement addresses certain wearing surface repairs and a September 19, 2007 agreement completes certain pre-transfer testing and inspections.
- Any costs of repairs determined to be the result of defective work will be pursued against the responsible party.

Again, we thank you for the opportunity to comment on the draft audit.

Sincerely,


Alan LeBovidge
Executive Director



Operator of the Turnpike,
Metropolitan Highway System, Ted Williams, Thomas P. O'Neill, Jr., Sumner and Callahan Tunnels
www.masspike.com

APPENDIX IV

Response to Draft Audit Report from the CEO/Executive Director of Massport



Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Telephone (617) 428-2800
www.massport.com

March 14, 2008

Mr. Paul Sweeney, Director
Division of Contract Audits
Office of the State Auditor
One Winter Street, 9th Floor
Boston, MA 02108

**RE: Draft Audit Report on Certain Activities of the Central Artery/
Third Harbor Tunnel Project's Outstanding Funding Issue with the
Massachusetts Port Authority, December 2002 through December 2007**

Dear Mr. Sweeney:

Thank you for the additional time that you afforded the Massachusetts Port Authority to review the above-noted Draft Audit Report that you sent to me on February 12, 2008 (the "Draft Audit Report"). In response, I note the following general comments:

(1) While the Central Artery/Third Harbor Tunnel Project ("CA/T"), Massachusetts Port Authority ("Massport"), Massachusetts Turnpike Authority ("MTA") and Massachusetts Highway Department ("MHD") have been working together for years to resolve long-standing construction quality issues involving roadway assets being constructed at Logan International Airport by CA/T (the "Massport Roadways") as required under the Roadway Transfer Agreement dated March 23, 1999 (as amended, the "Transfer Agreement"), Massport has acted in good faith to meet its payment obligations under the Transfer Agreement while also acting within its rights under the Transfer Agreement to withhold certain amounts given MTA's failure to fulfill its own performance obligations under the Transfer Agreement.

(2) CA/T, MTA, MHD and Massport project managers and staff are working expeditiously and cooperatively in order to resolve the outstanding construction quality repair issues involving the Massport Roadways.

(3) Massport is not a party to any of CA/T's contracts related to the Massport Roadways and, therefore, is not in a position to initiate cost recovery actions against contractors and others that CA/T deems responsible for the unacceptable construction work.

In further response, I have attached additional specific information intended to clarify certain issues raised in the Draft Audit Report, and ask that you consider this information as you prepare your final audit report on this matter.

Operating


Boston Logan International Airport • Port of Boston general cargo and passenger terminals • Tobin Memorial Bridge • Hanscom Field • Boston Fish Pier • Commonwealth Pier (site of the World Trade Center Boston) • Worcester Regional Airport

RECYCLED PAPER

Mr. Paul Sweeney, Director
Division of Contract Audits
March 14, 2008
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I hope that this response is helpful. If you should require further assistance, please feel free to contact Gail Titus at (617) 568-1084. Thank you again for your cooperation.

Sincerely,


Thomas J. Kinton, Jr.
CEO & Executive Director

Enclosure

cc: G. Hertz, S. Sleiman, G. Titus, D. Mackey, S. Allie (w/ encl.)

Attachment to March 14, 2008 Letter from Thomas J. Kinton, Jr. to Paul Sweeney regarding Draft Audit Report

The information set forth below is intended to clarify the following issues raised in the Draft Audit Report:

1. Parties' Rights and Obligations under Roadway Transfer Agreement. As you know, Massport, MTA, MHD, and the Executive Office of Administration and Finance for the Commonwealth of Massachusetts ("A&F") entered into the Roadway Transfer Agreement dated as of March 23, 1999, which was amended on October 27, 1999, and further amended on January 29, 2001 (together, the "Transfer Agreement"). Section 3(a) of the Transfer Agreement requires MTA's design and construction of the Massport Roadways at Logan International Airport in accordance with the Transfer Agreement, and Section 4(b) requires MTA's transfer of ownership of the Massport Roadways upon completion to Massport. **The Transfer Agreement contemplated that MTA would complete construction and transfer ownership of the Massport Roadways to Massport no later than December 31, 2004.** Upon MTA's completion of construction of the Massport Roadways in accordance with the Transfer Agreement, and transfer of ownership of the Massport Roadways to Massport in accordance with the Transfer Agreement, Massport is required under Section 6 of the Transfer Agreement to make installment payments to A&F totaling \$365 million based on an installment schedule included as Exhibit C to the Transfer Agreement.

To date, MTA has not fulfilled its obligations under Sections 3(a) and 4(b) of the Transfer Agreement – that is, MTA has not yet completed construction and transferred ownership of the Massport Roadways to Massport. By contrast, Massport has to date paid a total of \$352,600,000 to A&F in good faith and in the spirit of its obligations under Section 6 of the Transfer Agreement, even though it has maintained that the three remaining installment payments for Fiscal Years 2003, 2004 and 2005 (totaling \$204,914,000) are not due and payable under Section 6(b) of the Transfer Agreement until MTA fulfills those obligations.

Consistent with its rights under Sections 6(b) and 8(b)(1) of the Transfer Agreement, Massport continues to hold \$12.4 million of that \$204,914,000 total until MTA completes construction and transfers ownership of the Massport Roadways to Massport in accordance with its obligations under the Transfer Agreement. Massport has already paid the difference - \$192,514,000 – to A&F in good faith while maintaining its position that said amount (and the aforementioned \$12.4 million amount) is not due and payable.

Summary: Massport respectfully requests that the Report recognize Massport's good faith efforts to meet its payment obligations under the Transfer Agreement by paying \$192,514,000 to A&F despite that amount not being due and payable, while also acting within its rights under the Transfer Agreement to protect its interests by holding \$12.4 million given MTA's failure to fulfill its performance obligations.

2. Due Dates for Fiscal Year 2003, 2004 and 2005 Installment Payments. Section 6(b) of the Transfer Agreement addresses the due dates for these payments as follows: "Notwithstanding any provision of this Agreement to the contrary, all or a portion of the

payments from the Port Authority scheduled to be due under Exhibit C in fiscal years 2003, 2004 and 2005, respectively, shall not be due until construction of the components or segments of the Massport Roadways... have been *completed* in accordance with this Agreement and the Transfer of Ownership of such components or segments to the Port Authority has been completed in accordance with the terms of this Agreement.” (*emphasis added*) Section 4(b) of the Transfer Agreement defines *completion* as “the completion of all punchlist items in a manner satisfactory to MHD or the Turnpike Authority, if applicable, and the Port Authority ...”.

Therefore, by the specific terms of the Transfer Agreement, the aforementioned payments for Fiscal Years 2003, 2004 and 2005 are not due until MTA completes construction and transfer ownership of the Massport Roadways to Massport, all in accordance with MTA’s obligations under the Transfer Agreement. Massport has made this point in the June 5, 2003 and August 15, 2005 letters provided previously to your office, and cited in the Report. Most recently, by letter to the State Treasurer’s Office and A&F dated October 12, 2007 (a copy of which is attached for your review), Massport reiterated this position.

Summary: Massport respectfully differs with the characterization of the payment due dates for Fiscal Years 2003, 2004 and 2005 shown on page 6 of the Report since these payments are not yet due under the Transfer Agreement, and respectfully requests that the Report recognize that Massport has met all of its contractual, legal and financial obligations under the Transfer Agreement.

3. MTA’s and Massport’s Cost Estimates for Completion of the Remedial Work. The Report indicates that, as of May 2007, Massport estimated that “approximately \$12 million in remedial work remained to be performed before the roadways would be acceptable to them.” The Report also indicates that, according to Central Artery/Third Harbor Tunnel (“CA/T”) officials, “the cost of the remedial work was no more than \$4.6 million.” Based on the CA/T’s assertion, and considering the \$12.4 million currently being held by Massport, the Report observes that “the withholding of \$7.8 million may be excessive”, and recommends that “[a]ny of the withheld funds not needed for repairs should be repaid immediately to the Commonwealth.”

To date, none of the parties to the Transfer Agreement has objected to Massport’s cost estimate. Since Massport has no information concerning CA/T’s \$4.6 million cost estimate, it is difficult for Massport to explain the difference between that estimate and Massport’s estimate. The Report does not indicate whether your office received any detailed cost estimate information from CA/T for purposes of this Report.

Summary: Massport respectfully requests that the Report recognize that Massport has no information on CA/T’s \$4.6 million cost estimate, and cannot explain the difference between the two estimates. Massport also respectfully reiterates the larger point (as noted in Section 1, above) that \$204,914,000 is not due and payable under Section 6(b) of the Transfer Agreement until MTA fulfills its obligations, yet Massport has paid all but \$12.4 million of that amount in good faith and in the spirit of its obligations under the Transfer Agreement.

4. Massport's Right and Duty to Complete Sufficient Due Diligence. Massport has a variety of legal, contractual, fiduciary and operational duties in connection with its operation of Logan International Airport. Among them is to acquire any asset – and certainly one as significant as the Massport Roadways - in the condition for which it contracted, and to ensure that the asset is safe for members of the public who travel in and through the Airport. Throughout the term of the Transfer Agreement and its dealings with MTA, MHD and the CA/T, Massport has been mindful of these duties. Indeed, the Report recognizes that Massport has notified CA/T officials since the late-1990s of a number of deficient and incomplete construction items, and that the construction problems remain unresolved despite years of project meetings and various communications.

Certainly, the July 10, 2006 accident in the I-90 Connector focused Massport's efforts even more, just as it did the Commonwealth's efforts with regard to its post-accident inspections and tests of the entire CA/T Project. In furtherance of its duties, and in an effort to focus MTA's efforts in addressing long-standing construction quality issues involving the Massport Roadways, Massport outlined these issues in a July 24, 2006 letter to MTA, and subsequently shared with MTA the results of tests and inspections performed on the Massport Roadways by Massport and its consultants. Shortly thereafter, in an effort to facilitate completion of the remedial repairs and transfer of ownership, Massport initiated the MTA/MPA Roadway Taskforce. Since then, some progress has been made, and Massport has completed tests, inspections, and some remedial repairs using its own forces so that the Massport Roadways in question would be in an acceptable condition to Massport prior to transfer of ownership. The parties continue to work expeditiously toward resolution of construction issues, and Massport is pleased that CA/T has committed to completing the remedial work by April 2008 so that ownership of the Massport Roadways can be transferred to Massport promptly thereafter in accordance with the Transfer Agreement.

Summary: Massport respectfully requests that the Report recognize Massport's duty to require that MTA fulfill its obligations under the Transfer Agreement, and its prudence in completing its due diligence via inspections, tests and the like to ensure that the Massport Roadways are completed in accordance with the Transfer Agreement, and are safe for use by the traveling public, before paying the remaining \$12.4 million of the total purchase price. Massport also respectfully requests that the Report acknowledge that the parties continue to work expeditiously toward resolution of the construction issues so that MTA can transfer ownership of the roadways to Massport.