

NO. DACA33-3-01-009

**DEPARTMENT OF THE ARMY LICENSE
DEVENS RESERVE FORCES TRAINING AREA
WORCESTER COUNTY, MASSACHUSETTS**

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under and by the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this license will not be against the public interest, hereby grants to the **COMMONWEALTH OF MASSACHUSETTS, HIGHWAY DEPARTMENT**, hereinafter referred to as the grantee, a license to use as a temporary work area (for construction activities in connection with the expansion of the existing Jackson Road entrance/exit to the existing Route 2 interchange from Devens RFTA), hereinafter referred to as the facilities, over, across, in and upon approximately 53,387 square feet of land (or 1.22 acres), as identified in Exhibits A and B, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions:

1. TERM

This license is granted for a term of three years beginning October 15, 2000 and ending October 14, 2003 but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license shall be the construction, operation, and maintenance of the premises for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the grantee, to Massachusetts Highway Department, Attn: Right-of-Way, 10 Park Plaza, Room 6160, Boston, MA 02116, and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751; or as from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

**MASS. HIGHWAY DEPARTMENT
TRANSPORTATION BLDG.
10 PARK PLAZA
ROOM 6160
BOSTON, MASS 02116**

5. SUPERVISION BY THE INSTALLATION COMMANDER

The use and occupation of the premises shall be subject to the general supervision and approval of the Installation Commander, Devens Reserve Forces Training Area, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances, and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises;
- c. subject to other outgrants of the United States on the premises;
- d. personal to the grantee, and this license, or any interest herein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payments shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore the property to a condition satisfactory to said officer.

11. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. RESTORATION

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

13. NON-DISCRIMINATION

a. The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion.

b. The grantee, by acceptance of this license is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42

U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 DFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

14. TERMINATION

This license may be terminated by the grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event said notice is not given at least ten (10) days prior to the rental due date, the grantee shall be required to pay the consideration for the period shown in the Condition of CONSIDERATION.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

16. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Waters Act (33 U.S.C. § 1344).

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this 13 day of February, 2001.

UNITED STATES OF AMERICA

Rosalie A. Teberjan
Witness
Samuel B. Greditz
Witness

Joseph M. Redlinger
Joseph M. Redlinger
Chief, Real Estate Division
U.S. Army Corps of Engineers
New England District

THIS LICENSE is also executed by the grantee this 1st day of November, 2000.

COMMONWEALTH OF MASSACHUSETTS
HIGHWAY DEPARTMENT

Christopher A. Quinn
Witness
Charles H. [Signature]
Witness

By: [Signature]
Name
Commissioner

CERTIFICATE OF AUTHORITY

I, Christopher A. Quinn, certify that I am the
Counsel of the Commonwealth of Massachusetts,
 Highway Department, the entity which executed the foregoing
 instrument with the United States of America; that
Matthew J. Anello who executed said instrument was then
Commissioner of said Commonwealth of Massachusetts,
 Highway Department and was duly authorized to execute said
 instrument on behalf of the Commonwealth of Massachusetts,
 Highway Department, that I know the signature of said
Matthew J. Anello; and that the signature affixed to such
 instrument is genuine.

WITNESS WHEREOF, I have hereunto set my hand this 15th day
 of November, 2000.

Signed: Christopher A. Quinn

Title: Counsel

BOUNDARY DESCRIPTION**Route 2/Jackson Road Interchange Easement**

A certain parcel of land, proposed to be held in easement for highway purposes, located in the town of Lancaster, County of Worcester, and the Commonwealth of Massachusetts. Beginning at a stone bound found at the northerly corner of said parcel on the southwesterly sideline of Route 2;

- Thence S 47°47'04" E, one hundred sixty and 642/1000 (160.642) meters along the sideline of an existing highway easement on the land now or formerly of the United States of America, Department of the Army, to an iron rod to be set;
- Thence along a non-tangent curve to the right with a radius of one hundred fifty and 000/1000 (150.000) meters, a length of one hundred fourteen and 482/1000 (114.482) meters to a stone bound to be set;
- Thence N 44°58'43" W, seventy-two and 619/1000 (72.619) meters to a stone bound to be set. The last two courses being along the land now or formerly of the United States of America, Department of the Army;
- Thence N 70°11'26" E, thirty-seven and 283/100 (37.283) meters along the land now or formerly of the Commonwealth of Massachusetts to the point of beginning.

Said Easement containing 4965± square meters and shown on a plan entitled "Plan of Easement Route 2/Jackson Road Interchange Lancaster, MA" prepared by Howe Surveying Associates, Inc. dated May 2, 2000 to be recorded.

