

**MEMORANDUM OF AGREEMENT by and BETWEEN
THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
and
THE CITY OF SOMERVILLE**

This Memorandum of Agreement (“**MOA**”) is dated as of this ____th day of _____ by and between the Massachusetts Bay Transportation Authority (“**MBTA**”), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts existing pursuant to Massachusetts General Laws, Chapter 161A, as amended, with offices at Ten Park Plaza, Boston, Massachusetts 02116, and the City of Somerville (“**COS**”), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts with offices at City Hall, 93 Highland Avenue, Somerville, MA 02143. The **MBTA** and **COS** shall hereinafter sometimes be referred to individually as a “**Party**” and collectively as the “**Parties**”. For purposes of this Agreement, “**COS**” may also refer to the Somerville Redevelopment Authority.

Whereas, the parties entered into a Memorandum of Agreement dated July 26, 2012 setting forth their respective commitments and obligations relating to construction of the Green Line Extension (“**GLX**”) (“**2012 MOA**”), which 2012 MOA, and all amendments thereto remain in full force and effect; and

Whereas, because the Commonwealth and the MBTA committed to a phased approach to GLX, the 2012 MOA dealt more particularly with Phases 1, 2, and 2A, and specifically the timeline and respective obligations of the parties regarding the Union Square Green Line station, including but not limited to acquisition of necessary property rights; and

Whereas, the parties are now ready to set forth the respective obligations of the parties relating to the prosecution of Phase 4 work along the Lowell Commuter Rail right-of-way, and specifically in the proposed Gilman Square Station area, and

Whereas, the parties wish to memorialize their respective goals and obligations concerning construction and operation of the Gilman Square Station, subject to the availability of MBTA funding;

NOW THEREFORE, in consideration of the promises and mutually dependent covenants set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the **MBTA** and **COS** agree as follows:

ARTICLE I: CITY OBLIGATIONS

1.1 **COS** shall convey to the MBTA, for one dollar: (i) a permanent exclusive volumetric easement for the Gilman Square Station headhouse and pick-up/drop-off area, and related appurtenant facilities which shall be limited in upper elevation, above which elevation **COS** shall

retain air rights, in the land shown as “Permanent Volumetric Easement Area” on a plan attached as **Exhibit A, Sheet 1**; (ii) a permanent exclusive volumetric easement for rail right of way including track and appurtenant improvements in the land shown as Permanent Volumetric Easement Area 2 on a plan attached as **Exhibit A, Sheet 2**; (iii) a permanent exclusive volumetric easement for a traction power substation, retaining wall, bike shelters, station egress and appurtenant improvements in the land, which shall be limited in upper elevation, above which elevation **COS** shall retain air rights, shown as Permanent Volumetric Easement Area 3 on a plan attached as **Exhibit A, Sheet 3**; and (iv) a permanent easement behind Somerville High School and City Hall for Gilman Square Station egress and a retaining wall, which shall be limited in upper elevation, above which elevation **COS** shall retain air rights, shown as “Permanent Volumetric Easement Area 4” on **Exhibit A, Sheet 4**. The easement areas described in (i) through (iv) above shall be collectively referred to herein as “Permanent Volumetric Easement Areas”. **COS** and the **MBTA** may amend this Agreement regarding the elevation and volume of the Permanent Volumetric Easement Areas, (b) **COS** shall convey to the **MBTA** temporary easements shown as “Temporary Easement Area 1”, “Temporary Easement Area 2”, and “Temporary Easement Area 3” on a plan attached as **Exhibit B**, for construction of a traction power substation, retaining wall, bike shelters, and station egress. Such Temporary Easement Areas shall terminate on the Termination Date, as defined in Section 1.2.

1.2 (a) **COS** shall convey to the **MBTA**, for one dollar, a temporary easement in the land shown as “Temporary Easement Area” on a plan attached as **Exhibit C**, for the limited purpose of construction staging, storage, and laydown for the construction of the Gilman Square and Lowell Street stations, and appurtenant improvements. Such Temporary Easement Area shall terminate on the first to occur of: (i) nine (9) months after the date of commencement of pre-revenue testing for Phase 4; or (ii) 90 days after the date of first fare collection at Gilman Square Station (“Termination Date”). At its option, after 30 days notice to the **MBTA**, **COS** shall have the right to remove any and all materials remaining on the Temporary Easement Area after such Termination Date, and **MBTA** shall be responsible for any costs incurred by **COS** in the removal, storage or disposal of any such materials remaining on this site after such date. **MBTA** agrees to take all commercially reasonable actions to require its contractor to vacate the Temporary Easement Area on or before the Termination Date, and to take, at its sole cost, such commercially reasonable actions to cause its contractor to vacate the Temporary Easement Area in the event that its contractor continues to occupy the Temporary Easement Area after the Termination Date. Any such Temporary Easement shall require **MBTA** and/or its contractor, when vacating the site, to leave it in a condition that does not create a hazard to public safety.

(b) **COS** shall convey to the **MBTA**, for one dollar, a temporary easement on a parcel of land on Skilton Avenue “Skilton Temporary Easement Area” shown more particularly on **Exhibit D**, for the limited purpose of constructing a retaining wall and a dog park. On or before the Termination Date, as defined herein, the **MBTA** or its contractor shall have commenced construction on the Skilton Temporary Easement Area of the dog park described in Section 2.4, with such construction reaching substantial completion within six (6) months after the Termination Date.

1.3 All easements, deeds, licenses or other necessary conveyance documents shall be in form and substance reasonably acceptable to **COS** and the **MBTA**.

1.4 **COS** shall provide **MBTA** with a document from the Somerville Historic Preservation Commission allowing demolition of the Homan's Building located at 350 Medford Street, Somerville.

1.5 In lieu of the signalized intersection design proposed by the **MBTA**, **COS** shall undertake the redesign and engineering of an un-signalized intersection at Medford, Marshall and Pearl Streets ("Square-about") envisioned as part of the October 2012-January 2013 Somerville by Design process. The Square-about shall be designed to be fully ADA compliant. **COS** shall undertake construction of the Square-about, which shall be phased simultaneously with the construction of the Gilman Square Station and completed on or before the opening of the Gilman Square Station. **COS** shall obtain all permits and approvals for the Square-about. The limit of the **COS** Square-about construction work shall be easterly of the west curblin of Medford Street.

1.6 **COS** acknowledges that **COS**' Square-about intersection design may result in a lower level of service than the signalized intersection design submitted by the **MBTA** as part of the Final Environmental Impact Report. **COS** will provide a letter to the **MBTA** stating that intersection improvements at Gilman Square Station included in the Environmental Reports are not required.

ARTICLE II: MBTA OBLIGATIONS

- 2.1 **MBTA** obtained approval, under Section 106 of the National Historic Preservation Act, for demolition of the Homan's Building located at 350 Medford Street, Somerville. **MBTA** shall work with **COS** Planning Staff, and the **COS** Historic Preservation Commission to document and/or preserve certain historically-significant elements of the Homan's Building, in particular, the lion's head and surrounding architectural stone details that frame the entry door. The **MBTA** will move these elements to a location selected by **COS** for storage by **COS** at its cost. The parties acknowledge that extraction of these features may require the consultation and oversight of a preservation mason. After such approval and after removal of all stored **COS** property in the building, by **COS**, the **MBTA** will, at its sole cost, conduct environmental remediation of the building and demolish the building, to grade, not including foundations and slab.
- 2.2 Subsequent to the conveyance by **COS** of the Permanent Volumetric Easement Areas, Permanent Easement Areas, Temporary Easement Area and Skilton Temporary Easement Area, the **MBTA** shall undertake remediation of such Easement Areas in accordance with Sections 3.1, 3.2, 3.3 and 2.1.
- 2.3 Subsequent to the conveyance by **COS** of the easements in accordance with Article I, contingent upon the award of a full funding grant agreement by the Federal Transit Administration and approval by the MassDOT Board of Directors as necessary, the **MBTA** shall construct the proposed Gilman Square and Lowell Street Stations.
- 2.4 In consultation with **COS**, the **MBTA** shall design and construct a dog park with a double fence of black vinyl-coated chainlink fencing, a water feature with a dog spout,

landscaping, lighting, a gazebo or other shade element, and a minimum of four benches after its contractor has completed construction of the retaining wall in the vicinity of the Skilton Temporary Easement Area. **COS** shall own, operate and maintain the dog park and dog park improvements. **COS** shall defend, indemnify and hold harmless the MBTA from any claim arising out of the use of the dog park and the dog park improvements.

- 2.5 The **MBTA** shall provide **COS** in a timely fashion with copies of any surveys, appraisals, title reports, design work, and environmental information already completed or to be completed by the **MBTA** or its consultants.
- 2.6 The **MBTA** shall notify **COS** of all public meetings concerning Gilman Square and Lowell Street Stations. Said notice shall be provided to **COS** at the time said public meetings are scheduled. The **MBTA** will meet with **COS** in a timely fashion concerning the design of the Stations, the pickup-dropoff areas, traffic signalization, and roadway improvements ancillary to the Stations. The **MBTA** shall provide to **COS** in a timely fashion a full set of plans and specifications for Gilman Square and Lowell Street Stations for **COS**' review and comment. **COS** shall submit comments or suggestions within 30 days of receipt of such plans and specifications. The **MBTA** shall consider in good faith any comments and suggestions submitted by **COS** with respect to such submissions.
- 2.7 Subsequent to the execution of this MOA, the **MBTA** and **COS** shall enter into a separate agreement, subject to the approval of the MBTA General Manager and MBTA Board of Directors, outlining a process for the conveyance of air rights for development over a portion of the Lowell Commuter Rail ROW, including the consideration to be paid by **COS**, with boundaries to be mutually agreed upon but potentially connecting the Permanent Volumetric Easement Areas and the Temporary Easement Area, the final boundaries to be determined as part of such air rights agreement. Such conveyance will occur when **COS** has a bona fide developer or developers with the experience, capacity, and willingness to construct such air rights development(s) and the **MBTA** has determined in its reasonable judgment that the proposed air rights development(s) will be feasible and safe, applying criteria customarily applied to air rights development(s) over operating railroad rights-of-way.

ARTICLE III: ALLOCATION OF COSTS

- 3.1 The **MBTA** shall be solely responsible for the cost of demolition of the building on the Skilton Temporary Easement Area, as well as the costs of remediation, and clearing of the Skilton Avenue parcel.
- 3.2 **COS** shall be solely responsible for the cost of removal and disposal of all stored property in the Homan's Building. **MBTA** shall be solely responsible for the cost of

demolition, remediation, and clearing of the Homan's Building and parcel, as provided in Section 2.1.

3.3 The **MBTA** shall be solely responsible for remediating the Permanent Volumetric, Permanent and Temporary Easement Areas, including remediation of any environmental conditions discovered or released as a result of MBTA or its contractors' activities on such Easement Areas, to the level required under G.L. c. 21E and the Massachusetts Contingency Plan at 310 CMR 40.00 et seq. for their intended use for transportation purposes. The **MBTA** shall be solely responsible for remediating the Skilton Temporary Easement Area to the level required under G.L. c. 21E and the Massachusetts Contingency Plan at 310 CMR 40.00 et seq. for its intended use as a park for dogs and people. The **MBTA** shall be solely responsible for the costs of any such remediation and shall not look to **COS** for payment of or participation in such site assessment, cleanup, and remediation costs. The MBTA shall not be responsible for environmental remediation of any land beyond the Easement Areas, except to the extent that the activities of MBTA or its contractors on the Easement Areas have resulted in release of hazardous material or created an environmental condition requiring response and/or remediation on land beyond the Easement Areas.

ARTICLE IV: RESERVATION OF RIGHTS

- 4.1 **COS** reserves the right to include the Permanent Volumetric, Permanent and Temporary Easement Areas within the boundaries of any Master Plan, District Improvement Financing ("DIF") District, Urban Renewal District, Infrastructure Incentive Investment ("I-Cubed") Project, and/or such other district, program, project, plan, or other mechanism as may now or in the future enable **COS**, in its sole judgment, to incentivize development in the Gilman Square and Lowell Street/Magoun Square neighborhood of Somerville. **COS** reserves the right to offer the Temporary Easement Area for development during the use and occupancy of the site by the **MBTA** and/or its contractor. The Temporary Easement Area shall not be available for development until the Termination Date. Certain actions and obligations of **COS** hereunder may be subject to a vote of the Board of Aldermen and as such are expressly conditioned upon such approval.
- 4.2 **COS** reserves development air rights over the Permanent Volumetric Easement Areas including, without limitation, development air rights over any part of the Station structure and/or appurtenant facilities located within the Permanent Volumetric or Permanent Easement Areas. Unless otherwise agreed by the parties in writing, any development above the station shall not be supported by or modify the station structure.

ARTICLE V: DEFAULT/NOTICE

In the event of any default hereunder, written notice of shall be served on the defaulting Party by certified or registered mail, postage prepaid, return receipt requested, or by Express Mail or FedEx or some other nationally recognized overnight delivery method with a tracking receipt, addressed to the Party to whom it is to be given or served at its address as follows:

If to the **MBTA**: Mark E. Boyle
Assistant General Manager for Real Estate and Asset Development
MBTA
10 Park Plaza
Boston, MA 02116

with a copy to: General Counsel MassDOT and MBTA

If to **COS**: Joseph A. Curtatone, Mayor
City Hall – Mayor’s Office
93 Highland Avenue
Somerville, MA 02143

with a copy to: Francis X. Wright, Jr., City Solicitor
City Hall – Law Department
93 Highland Avenue
Somerville, MA 02143

ARTICLE VI: GENERAL PROVISIONS

- 6.1 Amendments in Writing. No change to this MOA shall be effective unless it is in writing and signed by all **Parties**.
- 6.2 Cooperation. Each **Party** shall cooperate in furnishing information and documents to the other **Parties**, including without limitation, execution of all necessary and/or appropriate documents to accomplish such **Party’s** respective obligations as stated in this MOA.
- 6.3 Successors and Assigns. This MOA shall be binding upon and inure to the benefit of the **Parties** hereto and their respective successors and assigns.
- 6.4 Non-Discrimination. No **Party** shall discriminate against any employee or applicant for employment because of race, religion, creed, ancestry, color, sex, sexual orientation, gender identity, genetic information, age, disability, national origin, or military veteran status.
- 6.5 Members of Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this MOA or to any benefit arising therefrom.
- 6.6 Conflict of Interest. No member, officer, or employee of the **MBTA** or **COS** during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this MOA.
- 6.7 Indemnification. Each **Party** shall indemnify, defend and save harmless the other **Parties** and all their officers, agents, and employees against all suits, claims, or liability

of every name and nature for or due to any injuries to persons or damage to property arising out of or in consequence of the acts or omissions of such **Party**, its employees, consultants, representatives, agents or contractors in the performance of work performed or services rendered under or relating to the terms of this MOA or failure to comply with the terms and conditions of this MOA.

- 6.8 Governing Law. This MOA shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
- 6.9 Counterparts. This MOA may be executed in multiple counterparts, each of which shall be deemed an original.
- 6.10 Exhibits. Exhibits A-D attached hereto are hereby incorporated as part of the MOA.

SIGNATURE PAGES FOLLOW

Witness our hands and seals on the day and year first written above.

Approved as to form:

Paige Scott Reed
General Counsel MassDOT and MBTA

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

Beverly A. Scott, Ph.D.
General Manager and
Rail & Transit Administrator

Witness our hands and seals on the day and year first written above.

Approved as to form:

Francis X. Wright, Jr., City Solicitor

CITY OF SOMERVILLE

Joseph A. Curtatone
Mayor

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D