

**FIRST AMENDMENT TO GRANT OF
EASEMENT AGREEMENT**

This FIRST AMENDMENT TO GRANT OF EASEMENT AGREEMENT (this “Amendment”) is made as of May _____, 2022 by and between the **City of Somerville** (“City”), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, with a usual place of business at City Hall, 93 Highland Avenue, Somerville, MA 02143, and the **Massachusetts Bay Transportation Authority** (“MBTA”), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts duly established and existing pursuant to Massachusetts General Laws, Chapter 161A, having a usual place of business of Ten Park Plaza, Boston, MA 02116.

RECITALS

- A. By “Grant of Easement Agreement” dated as of April 24, 2019 and recorded with the Middlesex South District Registry of Deeds in Book 72773, Page 526 (the “Easement Agreement”), the City granted certain Rights in Land to the MBTA as more particularly detailed in the Easement Agreement and shown on a plan recorded with the Registry as Plan No. 481 of 2019 (the “Easement Plan”); and
- B. The Parties have agreed to make certain changes to the Easement Agreement as set forth in this Amendment; and

C. On May _____, 2022, at a duly noticed meeting of the City of Somerville City Council at which a quorum was present, the City Council voted to authorize the Mayor of the City to execute this Amendment. A true and correct copy of the vote of the City Council is attached to this Amendment as Exhibit A; and

D. The General Manager of the MBTA is authorized to execute this Amendment by on behalf of the MBTA.

NOW, THEREFORE, in consideration of One Dollar and 00/100 (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to amend the Easement Agreement as provided for below.

AMENDMENT

1. Grant of Additional Permanent Easement.

The City hereby gives, grants, bargains, sells and conveys to the MBTA, its successors and assigns, the permanent right and easement for the purposes of constructing and thereafter operating, maintaining, repairing, and replacing a subsurface utility line within the area shown on and described as Parcel MB-216-PE-2 on the sketch attached to and made a part of this Amendment as Exhibit B. Such additional permanent easement shall be considered a “Permanent Easement” and such area shown and described on Exhibit B shall be considered a “Permanent Easement Area” as those terms are defined and used in the Easement Agreement.

2. Consent to Use Parcel MB-216-PE-1.

- a. The MBTA acknowledges that the Permanent Easement Areas granted to the MBTA in the Easement Agreement and in this Amendment are limited horizontally as shown on the Easement Plan and vertically by the bottommost and topmost element necessary for the MBTA to use the Permanent Easement Areas for the purposes set forth therein;
- b. The MBTA further acknowledges that the Easement Agreement did not (and this Amendment does not) include the use of all that land beneath and above the Permanent Easement Areas, including, without limitation, development air rights over any facility that may be located within the Permanent Easement Areas; provided, however, that the use of any such land below or beneath the Permanent Easement Areas shall be subject to the prior written approval of the General Manager of the MBTA or his assignee to be issued if the General Manager or his assignee concludes that such use does not interfere with MBTA’s uses of the Permanent Easement Areas;

- c. Consistent with the terms of the Easement Agreement, the General Manager of the MBTA hereby issues its prior approval as so required and confirms that the City shall be permitted to use Parcel MB-216-PE-1 for the construction, operation, repair and maintenance of a stormwater discharge line (the “City’s Drainage Line”) from the City’s adjacent property to the MBTA’s stormwater discharge facility (the “MBTA’s Drainage Facility”), together with the right to interconnect with, and discharge into, the MBTA Drainage Facility; provided, however, that all such activities by the City shall be subject to compliance with the requirements of Exhibit C.
3. Successors and Assigns; Provisions to Run With the Land. Except as otherwise expressly provided herein, the provisions of this Amendment shall inure to the benefit of and be binding upon the Parties and their lawful successors, assigns, customers, tenants, licensees, invitees, and guests and the provisions of this Amendment shall be covenants running with the land.
4. Amendments. Each of the Parties hereto agrees not to withhold or unreasonably delay its agreement to any amendments to this Amendment from time to time requested by the other Party; provided, however, that neither Party shall be obligated to enter into any amendment that would have a materially adverse effect upon the rights, interests and privileges of such party under this Amendment.
5. Governing Law. This Amendment shall be governed by and construed according to the laws of the Commonwealth of Massachusetts and is executed as a sealed instrument under Massachusetts law.
6. Defined Terms; Consistency with Easement Agreement. Capitalized terms used in this Amendment and not otherwise defined shall have the meanings ascribed to them in the Easement Agreement. The Parties acknowledge that this Amendment shall be read, interpreted and enforced in a manner consistent with the Easement Agreement in every respect, and that the term “Amendment” includes the exhibits to this instrument.
7. Counterparts. The Parties hereby agree that this Amendment may be executed in one or more counterparts, each of which shall be deemed an original document but shall together constitute one and the same agreement.
8. Notices. All notices, requests, demands, elections, consents, approvals and other communications hereunder shall be provided in the same manner as is called for in the Easement Agreement.

For the City’s title to land affected by this Amendment, see deed of James. A. P. Homans, Trustee of Homans Associates Realty Trust, to the City of Somerville dated November 19, 1998 and recorded with the Middlesex South District Registry of Deeds in Book 29644, Page 603.

IN WITNESS WHEREOF, the Parties have executed this Amendment under seal as of the day and year first written above.

GRANTOR:

CITY OF SOMERVILLE

By: _____
Name: Katjana Ballantyne
Its: Mayor

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ___ day of May, 2022, before me, the undersigned notary public, personally appeared Katjana Ballantyne, as Mayor of the City of Somerville, proved to me through satisfactory identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose in such capacity.

Notary Public
My commission expires:

[Signatures Continued on Following Page]

GRANTEE:

**MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY**

By: _____
Steve Poftak
General Manager

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ___ day of May, 2022, before me, the undersigned notary public, personally appeared Steve Poftak, as General Manager of the Massachusetts Bay Transportation Authority, proved to me through satisfactory identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose in such capacity.

Notary Public
My commission expires:

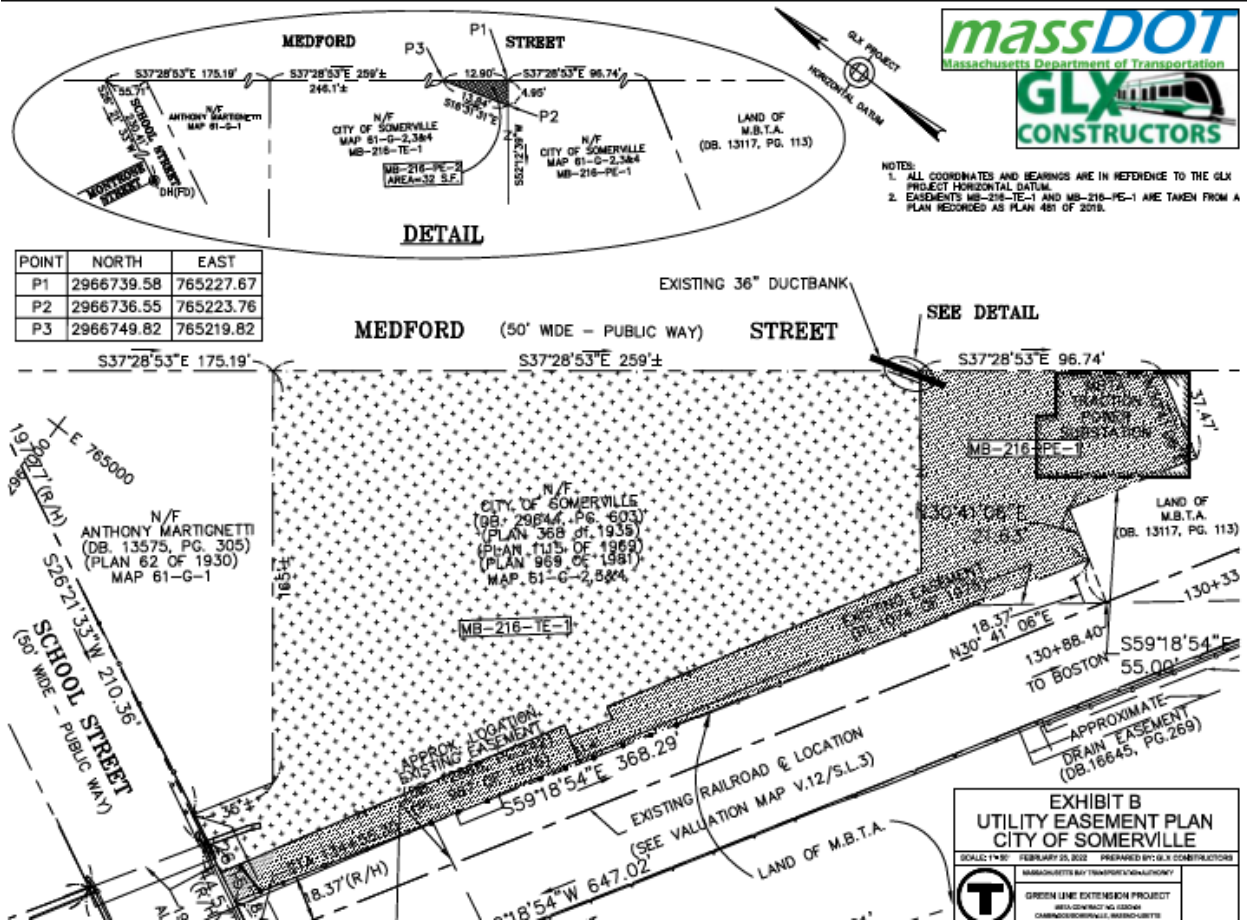
List of Exhibits:

- A.....City of Somerville City Council Vote
- B.....Easement Plan and Legal Description of Parcel MB-216-PE-2
- C.....Requirements Pertaining to City’s Use of and Access to Parcel MB-216-PE-1

EXHIBIT A
City of Somerville City Council Vote

EXHIBIT B

Easement Plan and Legal Description of Parcel MB-216-PE-2



Beginning at a point on the southwesterly side of Medford Street about 378.48 feet southeasterly from School Street, and being 96.74 feet northwesterly of the corner of land now or formerly of the Massachusetts Bay Transportation Authority and land now or formerly of the City of Somerville.

Thence S 52-12-39 W 4.95 feet along said land of the City of Somerville,

Thence continuing N 16-31-31 W 13.84 feet along said land of the City of Somerville,

Thence S 37-28-53 E 12.90' along Medford Street to the point of beginning.

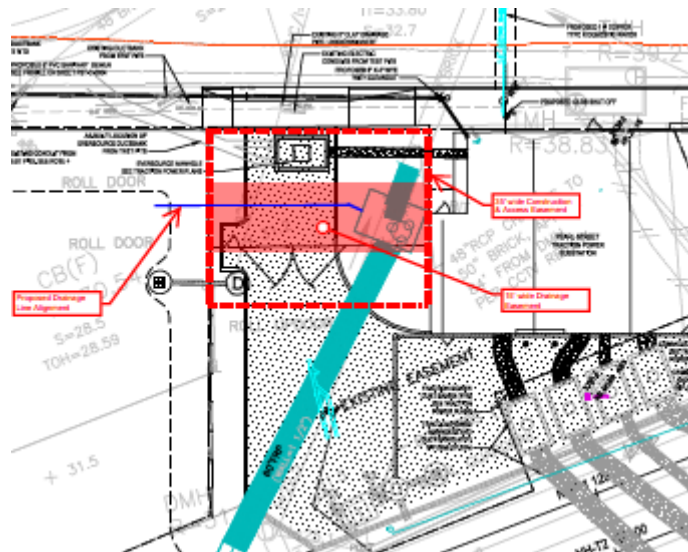
Said easement contains 32 square feet of area.

EXHIBIT C

Requirements Pertaining to City's Use of and Access to Parcel MB-216-PE-1 (the "Easement Area")

A. Introductory Matters

1. *Purpose.* This Exhibit governs the terms and conditions under which the City will be authorized to: (a) construct the City's Drainage Line; and (b) connect the City's Drainage Line to, and discharge from the City's Drainage Line into, the MBTA's Drainage Facility, each as shown below¹. Once constructed, the City shall thereafter be authorized to operate, repair, maintain and replace the City's Drainage Line consistent with this Amendment.



2. *Defined Terms*

- (a) Capitalized terms used in this Exhibit and not defined shall have the meaning ascribed to them in the Amendment.
- (b) The Parties use and adopt the following additional defined terms:
- Applicable Laws and Regulations – All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.
 - Business Day – Monday through Friday, excluding Federal holidays.
 - Good Industry Practice – Any of the practices, methods and acts engaged in or approved by a significant portion of the water and sewer industry during the

¹ This might have too much information on it – not sure we want a specific temporary easement, for example.

relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- Governmental Authority – Any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power.
- Reasonable Efforts – With respect to an action required to be attempted or taken by a Party, efforts that are timely and consistent with Good Industry Practice.

3. *Responsibilities of the Parties.*

- (a) The MBTA shall construct, operate, and maintain the MBTA's Drainage Facility in accordance with its then applicable standards.
- (b) The City, at its option, may construct, operate, and maintain the City's Drainage Line in accordance with Applicable Laws and Regulations, this Amendment, and with Good Industry Practice. Use of the City's Drainage Line shall be subject to the pre-conditions in this Amendment as may be modified by subsequent agreement.
- (c) Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own and shall be responsible for the safe installation, maintenance, repair, and condition of their respective drainage facilities.

4. *Ownership, Metering, and Priority.*

- (a) The MBTA shall be the sole owner of, and shall be solely responsible for measuring the use of and flow within, the MBTA's Drainage Facility, except insofar as the City is responsible for measuring depth within the MBTA's Drainage Facility to control operations of the City's Drainage Line. The City shall be the sole owner of, and shall be solely responsible for measuring the use of and flow within, the City's Drainage Line.
- (b) The MBTA shall have priority in the use of the MBTA's Drainage Facility. The

City shall have the right to use and connect to the MBTA's Drainage Facility with the City's Drainage Line subject to the requirements of this Amendment.

B. Plans and Specifications

1. *Provision of Plans and Specifications.* The City acknowledges that it has sufficient data, plans and specifications applicable to the MBTA's Drainage Facility so as to enable it to design the City's Drainage Line. To the extent they are developed by such Party, as-built or record plans shall be made available to the other Party for review and information. Upon receipt of written notice, each Party shall use Reasonable Efforts to make available to the other, copies of interim and modified plans, specifications, and shop drawings generated during the design and construction of the MBTA's Drainage Facility and the City's Drainage Line.

2. *MBTA Approval of the City's Drainage Line.* The City's construction, reconstruction or alteration of the City's Drainage Line shall be subject to the prior written approval of the MBTA, which shall not be unreasonably withheld. The City shall provide the MBTA with plans and specifications for the City's Drainage Line on a schedule sufficiently in advance so as to permit the MBTA to review such plans, and shall inform the MBTA of any proposed material deviation from the terms of any approved plans, which deviation shall be subject to the MBTA's prior approval. The MBTA agrees to waive any MBTA-imposed fees in connection with the review of such plans.

C. Inspection, Testing, and Right of Access

1. *Equipment Testing and Inspection.* Prior to the commencement of construction of the City's Drainage Line, the City shall have the right to review MBTA testing data and, at its option, to conduct inspection and testing of the MBTA's Drainage Facility. The City shall provide the MBTA with a "Testing and Inspection Work Plan" detailing the work it is proposing at least thirty (30) Business Days prior to any planned inspection and the MBTA shall set a Business Day for such inspection and testing. Each Party shall send qualified personnel to inspect and observe the inspection and testing at its own cost and expense. The City shall provide the MBTA a written test report when such testing and inspection are completed. In the event that any test is not successfully completed, the City will take such actions as are necessary in order to successfully complete such test and notify the MBTA of its successful completion.

2. *Right of Access.*

(a) The City's access to the Easement Area for the purpose of installing or doing work on the City's Drainage Line shall be subject to not less than thirty (30) day prior notice to the MBTA and shall be subject to such reasonable limitations on access as the MBTA may require.

(b) At reasonable hours, and upon reasonable notice, or at any time with

contemporaneous notice in the event of an emergency or hazardous condition, the MBTA shall have access to the City's Drainage Line for any reasonable purpose in connection with this Amendment.

- (c) Subject to the additional requirements set forth in section 2(a) above regarding construction work, at reasonable hours, and upon reasonable notice, or at any time with contemporaneous notice in the event of an emergency or hazardous conditions, the City shall have access to the Easement Area and to MBTA's Drainage Facility for any reasonable purpose in connection with this Amendment.

D. Conditions of Connection to and Use of the MBTA Drainage Facility

1. *Acknowledgement of Limited Capacity.* The City acknowledges that the MBTA's Drainage Facility have been designed and constructed to accommodate the MBTA's use without regard to the City's Drainage Line. The MBTA makes no representation as to the extent to which the MBTA's Drainage Facility can accommodate additional stormwater flow. The MBTA acknowledges that the City's combined sewer system into which the MBTA's Drainage Facility discharges has limited capacity and the City makes no representation that capacity in that system to accommodate the flows from the MBTA's Drainage Facility will remain unchanged.

2. *Protocol and Use of the MBTA Drainage Facility.* Use of the MBTA's Drainage Facility by the City shall only be permitted following the MBTA's determination that: (a) the additional stormwater to be conveyed through the MBTA's Drainage Facility is of an acceptable quality and would not cause flooding to exceed the top of rail elevation on any MBTA rail line during a fifty (50) -year storm event; and (b) the MBTA's Drainage Facility could accommodate such stormwater without interference on any MBTA facility and would otherwise remain fully operational and compliant with applicable law and any permits or approvals issued in connection with the MBTA Drainage Facility. The MBTA shall make such determinations in cooperation with the City by use of the MBTA's hydraulic model and by review of such information provided to the MBTA by the City or information otherwise available to the MBTA, which model and information shall be shared with the City. The MBTA's review of the City's Drainage Line shall consider the systemwide benefits to the City's combined sewer system into which the MBTA's Drainage Facility discharges (i.e., discharge from the City's Drainage Line will reduce capacity constraints in the combined sewer system thereby enabling discharge from the MBTA's Drainage Facility).

3. *Additional Conditions*

- (a) Inflow from the City's Drainage Line shall not cause backflow from structure GS100 into the MBTA's Drainage Facility. The City shall submit peak depth of water anticipated in the GS100 manhole during a 24-hour 1% storm event (100-year design storm) demonstrating water levels in GS100 do not exceed the elevation of the MBTA inlet invert (elevation 22.58) for review and acceptance by MBTA in advance of any construction.
- (b) Installation of the wall opening for the proposed pipe connection shall avoid cutting or exposing reinforcing steel in the GS100 manhole walls. The City shall

field verify actual reinforcing bar locations prior to installing the wall opening in the manhole, and shall maintain 2-inches clear between pipe opening and existing reinforcing bars. The City shall submit a sketch for review and acceptance by MBTA in advance of any construction.

- (c) The City shall install an ASTM C 923 resilient pipe connector or similar into the manhole wall to prevent water leakage at the pipe connection.
- (d) The City shall submit wall opening size and elevation, and manhole connection details for review and acceptance by MBTA in advance of any construction.
- (e) The City shall repair and/or replace to MBTA's satisfaction any MBTA property disturbed/damaged as a result of the City's activities within the Easement Area.
- (f) The City shall require any party it authorizes to do work within the Easement Area to comply with the requirements of this Amendment and to provide to the MBTA insurance and indemnification protection acceptable to the MBTA.

E. Effective Date and Temporary Disconnection

1. *Term of Agreement.*

This Amendment shall become effective on the Effective Date.

2. *Temporary Disconnection.* The Parties acknowledge that temporary disconnection between the MBTA's Drainage Facility and the City's Drainage Line may be necessary from time to time, but shall continue only for so long as reasonably necessary under Good Industry Practice and consistent with this Amendment. In the event of a planned disconnection, notice shall be provided a minimum of two (2) weeks in advance. In the event of an unplanned disconnection, notification shall be provided contemporaneously. The Parties agree to update each other as to any changes in their respective emergency contact calldown protocols. The MBTA shall not be liable to the City for any damages whatsoever related to temporary disconnections.

F. Cost Responsibility

Each Party shall be responsible for its own costs, of whatever type, incurred in connection with this Amendment. For the avoidance of doubt, there shall be no cost to the City for the right to install and thereafter connect to the MBTA's Drainage Facility.