

GRANT OF EASEMENT AGREEMENT

This GRANT OF EASEMENT AGREEMENT (this “Agreement”) is made as of April _____, 2019 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.

The City and the MBTA are each referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

A. The City is the owner in fee simple of certain properties in various locations in Somerville, Middlesex County, Massachusetts, including air rights above the surface of the properties, all as more particularly described in Exhibit A attached hereto and incorporated herein; and

B. The MBTA is in the process of designing and constructing an extension to its transit facility known as the Green Line from its current terminus in Cambridge, Massachusetts in two branches, one to Union Square in Somerville and one through Somerville to Medford, Massachusetts (“the Project”); and

C. The City and the MBTA have agreed that the City will grant to the MBTA for nominal consideration certain permanent and temporary rights in land that the MBTA has determined are necessary to design and construct, and to thereafter operate, maintain, repair, and replace the Project (collectively, as set forth in this Agreement, the “Rights in Land”); and

D. On April 11, 2019, 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 a document granting the Rights in Land to the MBTA in connection with the

Project. A true and correct copy of the vote of the City Council is attached to this Agreement as Exhibit B; and

F. The General Manager of the MBTA has been authorized to accept the Rights in Land and the terms of this Agreement by the governing body of the MBTA; and

G. The Rights in Land include permanent exclusive volumetric easements to be located on the parcels known as Parcels MB 215-PE-1, MB-215-PVE-2, MB-216-PE-1, MB-297-PVE-1, MB-433-PE-1, MB-434-PE-1, and MB-434-PVE-2 (the “Permanent Easements”), and temporary access and construction easements to be located on the parcels known as Parcels MB-210-TE-1, MB-212-TE-1, MB-215-TE-1, MB-216-TE-1, MB-271-TE-1, MB-271-TE-2, and MB-297-TE-1, MB-433-TE-1, and MB-434-TE-1 (the “Temporary Easements”), all as more particularly described on Exhibit A.

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 City hereby grants to the MBTA the following rights and easements, as more particularly described below and subject to the terms and conditions set forth in this Agreement:

AGREEMENT

1. Grant of Permanent Easements.

- a. The City hereby gives, grants, bargains, sells and conveys to the MBTA, its successors and assigns, the permanent right and easement for i) the purposes of designing, constructing and thereafter operating, maintaining, repairing, and replacing the Project, including the construction and operation of a traction power substation, and ii) for all purposes in which the MBTA has been authorized to engage, including, without limitation, the provision of all services related to subway and commuter rail services over the areas shown as parcels MB 215-PE-1, MB-215-PVE-2, MB-216-PE-1, MB-297-PVE-1, MB-433-PE-1, MB-434-PE-1, and MB-434-PVE-2 on that certain plan of land entitled “LAND ACQUISITION PLAN – CITY OF SOMERVILLE MIDDLESEX COUNTY,” prepared by Bryant Associates, Inc., consisting of ten sheets dated March 29, 2019 (the “Plan”) and recorded with this Agreement in the Middlesex South District Registry of Deeds (the “Registry”), and more particularly described in Exhibit A (such parcels, the “Permanent Easement Areas”).

- b. The Permanent Easement Areas are limited horizontally as shown on the Plan and vertically by the bottommost and topmost element necessary for the MBTA to use the Permanent Easement Areas for the purposes set forth in this Agreement; provided, however that the extent of such vertical limits are subject to the review of the City Engineer consistent with the City's rights to review the Project.
- c. The Parties acknowledge that the City does not convey, and reserves for itself and its successors and assigns, the use of all that land beneath and above the Permanent Easement Areas, including, without limitation, development air rights over any part of the station structure or appurtenant 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, and provided, further, that, except as otherwise agreed by the General Manager of the MBTA and the City in writing, no such use above any station located within the limits of a Permanent Easement Area shall be supported by or modify the station structure.
- d. Notwithstanding the foregoing, the MBTA use of the Permanent Easement Areas identified as parcels MB-297-PVE-1, MB 215-PVE-2 and MB-434-PVE-1 shall be limited to the right to install and to thereafter use, maintain, repair and replace tiebacks ("Tiebacks") within such areas. By its execution of this Agreement, the City agrees that the use of such areas for the Tiebacks does not interfere with the City's use of the underlying fee interest. In the event that the Tiebacks unreasonably interfere with the City's use of the underlying fee interest in the future, the MBTA shall, at its option, either: (a) modify the Tiebacks at its sole cost and expense to eliminate the interference; or (b) pay to the City the reasonable estimated costs to modify the Tiebacks in an amount agreed to with the City; provided, however, that the City and the MBTA shall consult in good faith with the objective of limiting the expense related to any such modification.

2. Grant of Temporary Easements.

- a. The City hereby gives, grants, bargains, sells and conveys to the MBTA, its successors and assigns, the temporary right and easement for all purposes related to the design and construction of the Project, including, without limitation, access and egress purposes, over the areas shown as parcels MB-210-TE-1, MB-212-TE-1, MB-215-TE-1, MB-216-TE-1, MB-271-TE-1, MB-271-TE-2, MB-297-TE-1, MB-433-

TE-1, and MB-434-TE-1 on the Plan, and more particularly described in Exhibit A (such parcels, the “Temporary Easement Areas”).

- a. Except as set forth in Section 2(b) below with respect to parcel MB-216-TE-1, the Temporary Easements within the Temporary Easement Areas shall be effective as of the date of the recording of this Agreement with the Registry and shall terminate on the date of commencement of the MBTA’s pre-revenue testing of the Project (the “Termination Date”) as evidenced by the recording with the Registry by the MBTA of a certificate duly executed by the General Manager of the MBTA or his assignee.
- b. Not later than July 1, 2019, the MBTA shall construct and turn over to the City, for the City’s exclusive use, a parking area on a portion of parcel MB-216-TE-1 (the “City Parking Area”) consistent with a design that has been approved by the City. From and after such date, the MBTA’s rights within the limits of parcel MB-216-TE-1 that make up the “City Parking Area” shall automatically terminate without further action by either the City or the MBTA.
- c. The MBTA shall vacate and remove all of its personal property and all other materials from the Temporary Easement Areas not later than the Termination Date. When vacating the Temporary Easement Areas, the MBTA shall leave such areas in a condition that does not create a hazard to public safety.
- d. The MBTA agrees to take all commercially reasonable actions to vacate the Temporary Easement Areas on or before the Termination Date, and to take, at its sole cost, such commercially reasonable actions to cause its agents to vacate the Temporary Easement Areas in the event that its contractor continues to occupy the Temporary Easement Areas after the Termination Date.
- e. At its option, after thirty (30) days’ notice to the MBTA, the City shall have the right to remove any and all materials remaining on the Temporary Easement Areas after the Termination Date, and the MBTA shall be responsible for any costs incurred by City in the removal, storage or disposal of any such materials remaining on this site after such date.
- f. The City reserves the right to offer the Temporary Easement Areas for development during the term of the Temporary Easements; provided, however, that the Temporary Easement Areas shall not be available for development until the Termination Date.

3. Construction Coordination with City. Construction of the Project in the Gilman Square area is expected to occur concurrently with construction of the new Somerville High School (“SHS”). The City will require shared access to and use of the Rights in Land to complete certain portions of SHS construction. When sequencing construction of the Project in the vicinity of the SHS, the MBTA agrees to take reasonable measures to accommodate the City’s goal of avoiding creating physical barriers to the completion of SHS construction. The City agrees to prioritize construction of portions of SHS dependent upon existing conditions in the Permanent Easement Areas and Temporary Easement Areas to avoid impactful delays to the construction of the Project. The Parties agree to collaborate in sequencing construction activities and promoting mutual access to the Rights in Land to complete both projects in a timely manner.
4. Permission to Install and Maintain Tiebacks and Other Project Elements in City Streets. Subject to the issuance of a permit from the City’s City Engineer in each instance, the City hereby agrees that the MBTA, its successors and assigns, shall have the permanent right to install and thereafter use, operate, maintain, repair and replace tiebacks and other Project elements within public ways in the City for the purpose of constructing and thereafter operating, maintaining, repairing, and replacing the Project. The MBTA’s rights to install such tiebacks and other Project elements pursuant to this Section 4 shall become effective upon the issuance of the permit from the City Engineer, which permit shall not be unreasonably withheld, to be issued if the City Engineer reasonably concludes that the tiebacks or such other Project element does not unreasonably interfere with City’s uses of the applicable public way.
5. Oil and Hazardous Materials within the Temporary and Permanent Easement Areas. As between the City and the MBTA, the MBTA shall be solely responsible for the costs of remediating the Permanent Easement Areas and Temporary Easement Areas as may be necessary to accommodate the Project and shall not look to the City for payment of or participation in the assessment, cleanup or remediation costs of such Permanent Easement Areas and Temporary Easement Areas. The MBTA shall not be responsible for environmental remediation of any land beyond the Permanent Easement Areas and Temporary Easement Areas, except to the extent that the activities of the MBTA on the Permanent Easement Areas and Temporary Easement Areas have resulted in release of oil or hazardous materials (as those terms are defined in 310 CMR 40.00 et. seq.) or have created an environmental condition requiring response and/or remediation on land beyond the Permanent Easement Areas and Temporary Easement Areas.
6. Inclusion in Development Districts. The City reserves the right to include the land on which the Rights in Land are located within the boundaries of any Master Plan, District

Improvement Financing District, Urban Renewal District, area to be included as part of the Infrastructure Investment Incentive Program, and/or any such other district, program, project, plan, or other mechanism as may now or in the future be lawfully established that will enable the City, in its sole judgment, to incentivize development in the neighborhoods of Somerville.

7. Successors and Assigns; Provisions to Run With the Land. Except as otherwise expressly provided herein, the provisions of this Agreement 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 Agreement shall be covenants running with the land.
8. Extent of Purposes of the Rights in Land. The Parties acknowledge that the purposes included within the scope of the Rights in Land granted in this Agreement include all purposes related to the Project, including use of the Right in Land for tracks, ties, platforms and other station elements, electricity and other utility needs, power substations, bicycle storage, access and egress, the right to pass and repass by vehicle (including construction and commercial vehicles) and on foot, pick-up and drop off purposes and for all other purposes in which the MBTA has been authorized to engage, including, without limitation, the provision of rapid transit and commuter rail service.
9. Amendments. Each of the Parties hereto agrees not to withhold or unreasonably delay its agreement to any amendments to this Agreement 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 Agreement.
10. Governing Law. This Agreement 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.
11. Counterparts. The Parties hereby agree that this Agreement 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.
12. Notices. All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing and addressed as follows (or at any other address which any of the Parties may designate by notice):

If to MBTA: Mr. John Dalton, Program Manager
Green Line Extension Project
MBTA
10 Park Plaza
Boston, MA 02116

and to: Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 3910
Boston, MA 02116
Attn: General Manager

and to: Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 5720
Boston, MA 02116
Attn: Chief of Real Estate

If to City: City of Somerville
City Hall
93 Highland Ave.
Somerville, MA 02143
Attention: Mayor

with a copy to: City of Somerville
City Hall
93 Highland Ave.
Somerville, MA 02143
Attention: City Solicitor

For the City's title to the Permanent Easement Areas and the Temporary Easement Areas granted by this Agreement, see the references as set forth on the Plan.

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

GRANTOR:

CITY OF SOMERVILLE

By:_____

Name:

Its:

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of April , 2019, before me, the undersigned notary public, personally appeared _____, as _____ 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

Approved as to Form:

By: _____
Marie Breen
General Counsel MassDOT and MBTA

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of April, 2019, 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.....Description of the Rights in Land

B.....City of Somerville City Council Vote