JOSEPH A. CURTATONE
MAYOR

CITY OF SOMERVILLE, MASSACHUSETTS
COMMUNITY PRESERVATION COMMITTEE
FY18 FUNDING CYCLE
ELIGIBILITY DETERMINATION FORM

Submit an electronic copy (fillable PDF available at www.somervillema.gov/CPA) no later than **5:00pm Wednesday, September 20, 2017** to: Kristen Stelljes, kstelljes@somervillema.gov. [Download and save file before you begin typing to ensure work is saved.]

PROJECT NAME: Communiuty Path Landscape Design - Supplemental funding to address tree canopy health and stratagize for removal of invasives.

PROJECT LOCATION: Somerville Community Path - Cambridge line to Lowell Street

APPLICANT(S) NAME / ORGANIZATION: City of Somerville Department of Parks and Open Space

CONTACT PERSON: Arn Franzen

MAILING ADDRESS: City Hall, 3rd floor, 93 Highland Avenue, Somerville, MA 02143

PHONE: Office: 617-625-6600 x2545

EMAIL: afranzen@somervillema.gov

Please indicate (X) all categories that apply to this project (at least one). For more detailed information on these categories, refer to the "Community Preservation Act Funding Allowable Uses" chart on the next page.

	Open Space	Recreational Land	Historic Resources	Community Housing (blended projects only)
Acquisition				
Creation				
Preservation				
Support				
Rehabilitation/ Restoration		X		

PROPERTY OWNERSHIP:

Legal Property Owner of Record (if applicable): Mass DOT

Is the owner the applicant? Yes No

If No, does the applicant have site control or written consent of the property owner to submit an application? City of Somerville must be co-applicant on all projects on City property.

Yes (Attach documentation)

No (Project will be deemed ineligible for this applicant)

FOR HISTORIC RESOURCES PROJECTS:

Is the resource in a Local Historic District and/or listed on the State Register of Historic Places? Yes No

(you can check designation at mhc-macris.net)

If no, has the Somerville Historic Preservation Commission made a determination that the resource is significant? Yes No

PROJECT SUMMARY:

This request is for additional funding for landscape design of improvements to the community path.

At the request of the City and the Friends of the Community Path, the CPC previously agreed to provide $75,000 in funding for landscape improvements of the Community Path including: 1) drainage improvements through surface interventions, such as bioswales and raingardens, and 2) installation(s) that reveal the history of the Path as a railroad bed.

However, after staff discussions regarding the scope of work to be included in the RFP, it was agreed that additional work and funding should be included to 1) develop a strategy for the removal of Japanese Knotweed and other invasives, and 2) to analize the composition of the tree canopy, and make reccomendations for to improve it's health and diversity.

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PROJECT STATUS (What community need is this trying to address and what level of planning has already been undertaken to inform the proposed project?)**:**

The Somerville Community Path is loved for both the recreational opportunities it provides as Somerville's largest open space and for the unique experiences users can have as they travel the Path. It is also one of the few forested landscapes in the city where visitors have contact the natural world, and where there are opportunities for bird habitat and other natural flora and fauna.

Therefore, in conjunction with to the landscape improvements previously authorized, this additional funding will enable the landscape consultant to study and provide short and long term ecological restoration strategies which will improve the health of the path's tree canopy, understory and herbaceous layers, and which will help to prevent habitat loss.

More specifically the consultant will identify and review the species and health of all trees and make recommendations for selective removals, and new plantings. Removals are intended to include dead and unhealthy trees, as well as selective removals of invasives like Norway Maple, and Ailanthuss. New plantings will include species that are appropriate to the local environment.

In addition, invasive species like Japanese Knotweed will be mapped and a plan for their removal shall be incorporated in the scope of work.

FOR CPC USE: Date Received 9/20/17 Date Reviewed 9/27/17 Date Applicant Notified 9/29/17

Eligible Potentially Eligible Not Eligible More Information Needed

COMMENTS:

TRA
Transit Realty Associates

March 23, 2012

Anne Thomas, Special Counsel
City of Somerville
93 Highland Avenue
Somerville, MA 02143

RE: ATC Lease

Dear Ms. Thomas:

Enclosed for your information and records is one (1) fully executed original ATC lease between the MBTA and the City of Somerville. This lease takes the place of existing licenses and easements covering the existing Community Path already in use from Cedar Street to the Cambridge City line and includes the new section from Cedar Street to Lowell Street that will be constructed in the near future.

If you have any questions, feel free to contact me.

Sincerely,

Robert W. LaVita
Senior Project Manager

Enclosure

77 Franklin Street, 9th Floor | Boston, MA 02110 | **Phone** 617.482.2525 | **Fax** 617.482.0210 | ***www.TransitRealty.com***

ALTERNATIVE TRANSPORTATION CORRIDOR LEASE AGREEMENT

BY AND BETWEEN

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

AND

THE CITY OF SOMERVILLE

MARCH 2012

[ONLY FOR RIGHTS-OF-WAY NOT IN ACTIVE USE]

ALTERNATIVE TRANSPORTATION CORRIDOR

LEASE AGREEMENT BETWEEN

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

AND

CITY OF SOMERVILLE

This Lease Agreement (hereinafter referred to as the "Lease" or the "Agreement") entered into as of the 20th day of **March, 2012** by and between the Massachusetts Bay Transportation Authority, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, established pursuant to M.G.L.C. 161A, having its usual place of business at Ten Park Plaza, Boston, Massachusetts 02116 (hereinafter referred to as the "MBTA") and the City of Somerville, of Middlesex County, a Massachusetts municipal corporation, having its usual place of business at 93 Highland Avenue, Somerville, Massachusetts 02143 (hereinafter referred to as the "MUNICIPALITY").

WITNESSETH THAT:

1. Agreement

In consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

2. Premises

The Premises consist of the parcel or parcels of land described in Exhibit A attached hereto, consisting generally of that certain railroad right of way known as the **Community Path** in the MUNICIPALITY. Within the Premises the MUNICIPALITY shall, with the consent of the MBTA, which shall not be unreasonably withheld or delayed, designate a contiguous corridor (the "Corridor") within which the uses permitted hereby shall be located.

3. Use of Premises

Subject to the terms and conditions herein, the MBTA hereby leases the Premises to the MUNICIPALITY for use as follows:

(a) The Corridor is to be used for purposes of the installation, operation, maintenance and use of a rail-trail as defined M.G.L. C.82 §35A and in the definition of Owner or Operator in M.G.L.C. 21E§2, and as amended from time to time, and as further defined under M.G.L.C.21E§2(d)(1), as a property converted from a former use as a railroad right-of-way to a revitalized use as a publicly owned, improved and maintained corridor for bicycle, pedestrian and other non-motorized public transportation, recreation and associated purposes and

(b) The remainder of the Premises shall be further be used solely by the Municipality exclusively to access, construct and maintain the Corridor, for ancillary uses which provide no revenue or other tangible benefit, and for such other uses as MBTA may permit by prior written consent.

Notwithstanding the preceding, this Lease is not intended to transfer land or easements for purposes protected by or to create a perpetual right to any use that may be subject to protection by Article XCVII (97), as amended of the Amendments to the Constitution of the Commonwealth of Massachusetts or by legislation enacted to pursuant thereto.

The MBTA reserves the right to reasonably require the MUNICIPALITY to install improvements (including but not limited to signs) designed to prevent or discourage those using the Corridor from entering onto the remainder of the Premises. The Corridor shall be open to the public, and no fee or other consideration shall be charged for use of the Premises.

The Municipality will diligently act to secure funds necessary to fulfill its obligations under the Lease for the design, bidding and the construction of the rail-trail project. The Municipality acknowledges that a failure to undertake efforts to secure funds may negate the municipal liability exemption for rail trails under M.G.L.C. 21E§2, and as amended from time to time

The Municipality also agrees that it will provide its plans for the use of the site sixty (60) days prior to the bidding to the MBTA for its approval, said approval which shall not be unreasonably withheld provided that the use is consistent with paragraph 3(a) and (3(b), above. If the plans for the site are not consistent with paragraph 3(a) and 3(b), above, the MBTA reserves the right to void the lease and demand return of the property. Said use shall also comply with the current (as of the commencement of construction) MA DEP Best Management Practices:

No testing shall be made of the soil by the Municipality on the Premises and no soil shall be removed from the Premises until this lease has been fully executed and entered into by an official Municipal authority (Exhibit C) and the MBTA, unless necessary to respond to a release of Hazardous Materials on the Premises as described in Exhibit D. The Municipality shall be responsible for all costs associated with any such testing.

4. Term

The Term of this Lease shall be for a period of ninety-nine (99) years beginning on the date hereof; except that the MBTA may terminate this Lease upon two (2) years' written notice to the MUNICIPALITY, as provided by M.G.L. C.82 §35A. The Municipality acknowledges that that the Premises or a major portion thereof may be necessary for active railroad or other transportation purposes in the future. The MBTA may terminate this Agreement for the greater public good other than the Transportation Enhancement (the defined ATC) and the MBTA will not be required to provide any reimbursement whatsoever for said termination. The MBTA may also terminate this Lease with respect

to any part of the non-Corridor portion of the Premises with one (1) year's written notice for any reason so long as the use to be made of that portion will not substantially interfere with the public use of the Corridor for the uses stated above.

5. Condition of the Premises

The MUNICIPALITY has inspected the Premises, accepts the Premises "as is", and agrees the Premises are suitable for MUNICIPALITY's intended use. The MBTA makes no warranty of any kind, express or implied, as to the condition of the Premises or its suitability for the above uses. The MUNICIPALITY assumes all risk of entry on the Premises, including, but not limited to the presence of oil or hazardous material, if any, as defined in M.G.L.C. 21E, as amended from time to time.

6. Terms and Conditions of Lease

This Lease is subject to the following terms and conditions:

6.1 Indemnification and Release of MBTA

(a) The Municipality will not be required to indemnify the MBTA, unless specifically required by Federal law in connection with any grant for construction of a rail-trail, provided the Municipality has purchased environmental insurance naming the MBTA as an additional insured with minimum coverage limits of $3,000,000.00 per incident, a maximum deduction of $50,000.00 per incident, and a term of at least 5 years. If the Municipality is unable to or chooses not to purchase environmental insurance consistent with the aforementioned terms the following provisions will apply;

(1) the MUNICIPALITY, in accordance with official Municipal approval (Exhibit D), agrees to indemnify (to the extent permitted by law) defend (at the option of the MBTA) and save the MBTA harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever including, without limitation, any accident, injury to, or death of any person or any damage to property occurring on the Premises (or any part thereof) or caused by something occurring on the Premises or that may be imposed upon, incurred by, or asserted against the MBTA by reason of any of the following occurrences:

(a) the activities of the MUNICIPALITY, members of the public or others present on the Premises; or

(b) the discovery of pre-existing Hazardous Materials, defined below, or the release of any Hazardous Materials on the Premises (or other property of the MBTA adjacent to the Premises) which is a result of (i) the MUNICIPALITY'S activities hereunder including the activities of those present from time to time on the Premises, or (ii) the migration from land now or previously owned, leased, occupied

or operated by the MUNICIPALITY or for which the MUNICIPALITY is a potentially responsible party as defined under Chapter 21E, defined below; or

(2) any failure of the MUNICIPALITY to perform or comply with any of the terms hereof, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the activities or any part thereof.

Notwithstanding anything in the previous paragraph, the MUNICIPALITY does not agree to indemnify the MBTA for claims arising from natural or man-made disasters, injuries that occurred prior to the execution of this Lease, war, civil unrest or claims arising from the exercise of rights expressly reserved by the MBTA under this agreement.

"Hazardous Materials" is defined to be "oil," "hazardous materials," or "hazardous wastes" as those terms are defined in Massachusetts General Laws Chapter 21E ("Chapter 21E"), as from time to time amended, and the regulations promulgated pursuant thereto, including the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP") and as further defined in all other applicable state and Federal laws regarding Hazardous Materials.

For the purposes of this Lease, the term "applicable laws" with regard to environmental laws and/or Hazardous Materials means, without limitation, all applicable laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, of all governments, departments, and offices relating in any way to the control and/or abatement of environmental pollution and environmental hazards that now or at any time hereafter may be applicable.

(3) The MUNICIPALITY hereby releases the MBTA from any responsibility for the MUNICIPALITY'S losses or damages related to the condition of the Premises. The MUNICIPALITY covenants and agrees that it will not assert or bring, nor cause any third party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or fourth-party claim) (hereinafter "Claims") against the MBTA including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's illness or death relating to, or arising from, the MUNICIPALITY'S use of the Premises (or the use of the Premises by those permitted onto the Premises by the MUNICIPALITY) pursuant to this Lease.

(4) The MUNICIPALITY shall be timely notified, in writing, by the MBTA of the assertion of any claim against it that the MUNICIPALITY has agreed to indemnify as stated above (the "Indemnified Claim").

(a) If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, the MUNICIPALITY shall cooperate therewith and reimburse the MBTA for all reasonable costs and expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by the MBTA in connection with the MBTA's defense of the Indemnified Claim against it and/or the conduct of all response actions, including, without limitation, those required by Chapter 21E and the MCP.

(b) If the MBTA decides to have the MUNICIPALITY defend the claim or handle the response action, the MBTA shall notify the MUNICIPALITY of that decision in writing, and the MUNICIPALITY shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA is fully indemnified by the MUNICIPALITY and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the MUNICIPALITY on behalf of the MBTA or any other action that would materially prejudice the rights of the MBTA without the MBTA's express written approval. The MBTA may at any time assume defense of any claim by notice to the Municipality and shall cooperate with the MUNICIPALITY in the defense of any Indemnified Claim.

If any response action due to the presence of Hazardous Materials or the threat of release of Hazardous Materials onto the Premises (or other property of the MBTA which abuts the Premises) is performed by the MUNICIPALITY, the response action shall be performed in accordance with Section 6.2.

If the MBTA determines in good faith for any reason, any indemnification herein of the MBTA by the MUNICIPALITY proves ineffective, the MBTA shall have the right to immediately terminate this Lease. The provisions of this Section 6.1 shall survive the termination or expiration of this Lease.

(c) For purposes of this Section, the term "MBTA" shall include the MBTA and its directors, officers, employees, agents and any legislatively approved entity that may succeed the MBTA. For the purposes of This Section the term "MBTA" expressly does not include easement holders, MBTA lessees, or licensees or successors to any real property of the MBTA

through sale, exchange or gift.

(d) The MBTA reserves the right to lease, assign, pledge and otherwise alienate all or part of the premises to third parties ("Third party Transferee's") and to retain all consideration therefore; provided that such lease, license, mortgage, assignment, or other facility of transfer is conditioned upon any third Party Transferee: (a) not unreasonably interfering with the Municipality's use of the Premises and (b) fulfilling obligations to provide the Municipality insurance under Section 9.2. Any such transfer shall not relive the MBTA or the Third Party Transferee from any obligations it may have under this Agreement.

6.2 Remediation Obligation of the MUNICIPALITY

During the design, construction and operation of the rail trail, the Municipality shall follow the provisions of BMP's for Controlling Exposure to Soil during the Development or Rail Trails promulgated by the Massachusetts Department of Environmental protection in March 2004.

Whenever the MUNICIPALITY is responsible for the remediation of Hazardous Materials on or below the Premises by law or pursuant to this Lease, the MUNICIPALITY, upon written demand of the MBTA, shall conduct at its sole cost and expense (or, at the MBTA's election, reimburse the MBTA for the cost and expense incurred by the MBTA in connection with the MBTA'S conduct of), all response actions required by Chapter 21E and the MCP with respect to the Hazardous Materials (including the hiring of a Licensed Site Professional).

Any such response action, if performed by the MUNICIPALITY, shall be performed in accordance with Chapter 21E, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by the MBTA, shall be completed in a timely manner to the reasonable satisfaction of the MBTA, and shall allow the MBTA to use the Premises, and/or adjacent or contiguous property, for its present use and/or any future use that the MBTA deems appropriate. The MUNICIPALITY shall also be responsible for the reasonable costs incurred by the MBTA in hiring consultants to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results. Such costs shall be presumed to be reasonable if the MBTA (1) provides the MUNICIPALITY with a notice that it intends to hire a consultant, a scope of work and a budget and (2) solicits three (3) price proposals from three (3) eligible consultants.

For purposes of this Section, the term "MBTA" shall include the MBTA, and its directors, officers, employees, agents and any legislatively approved entity that may exceed the MBTA. Additionally, for purposes of this Section the "MBTA" does not include easement holders, MBTA lessees, or licensees or successors to any real property of the MBTA through sale, assignment, pledge, mortgage, exchange or gift.

6.3 Insurance

Prior to entry hereunder, and during the Term hereof, the MUNICIPALITY and its consultants and contractors shall provide the MBTA, hereof, insurance *(notwithstanding the environmental insurance required pursuant to Section 6.1 above)* for the activities permitted hereunder and the MUNICIPALITY's covenant of indemnification in Section 6.1(a)(1) and 6.1(a)(3) hereinabove, with companies that are reasonably acceptable to the MBTA, as stated below, and which provide minimum liability coverage as follows:

(a) Commercial General Liability Insurance

Insuring the MBTA and the Premises and all activities allowed hereunder as well as the MUNICIPALITY'S indemnification obligations contained in Section 6.1(a)(1) and 6.1(a)(3) with a minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million ($1,000,000.00) Dollars per occurrence and Three Million ($3,000,000.00) Dollars in aggregate. Umbrella liability coverage with limits of not less than Two Million ($2,000,000.00) Dollars covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims-made basis) and name the MUNICIPALITY, MBTA and others hereinafter designated as additional insureds as their interests may appear. Such insurance may be subject to standard exclusions found in property and general liability insurance policies.

(b) Worker's Compensation Insurance

(i) For all Municipal contractors, insuring all persons employed by the MUNICIPALITY in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against the MBTA or the Premises with limits of liability of not less than those required by Massachusetts General Laws Chapter 152 as amended. The policy shall contain a clause waiving the company's right to subrogation against the MBTA if such a policy is commercial available, and

(ii) For all MUNICIPAL employees by providing evidence of an active workmen's compensation program for MUNICIPAL workers funded by the MUNICIPALITY, a copy of which is attached.

(c) Automobile Liability Insurance

Automobile liability insurance with limits of not less than One Million ($1,000,000.00) Dollars covering all owned, non-owned, hired, rented or leased vehicles or the MUNICIPALITY.

The required insurance coverage's herein specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better; shall be taken out before the Lease is commenced and be kept in full force and effect throughout the term of the Lease; shall be primary to and non-contributory to any coverages maintained by the MBTA; and shall require the MBTA be given at least thirty (30) days' advance notice in the event of any cancellation or materially adverse change in coverage. Prior to the inception date of the Lease and throughout the term, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies

are in place and provide coverage as required. The required insurance coverage's herein specified may be increased from time to time upon notice by the MBTA to such coverage's as the MBTA may then customarily require for similar circumstances. Each of the MUNICIPALITY's contractors and agents whole employees enter onto the Premises shall have similar policies covering their employees. The MUNICIPALITY shall be responsible for seeing that its contractors and consultants are properly covered by insurance.

In the event of the cancellation of any policy during the term of this Lease, or the failure to keep in effect the insurance required by this section, the MBTA may, without further notice and at its option, procure or renew such insurance on account of the MUNICIPALITY. The MUNICIPALITY agrees to repay such MBTA expense, with interest thereon at the rate of eighteen (18%) percent annually as an additional fee.

Notwithstanding any other provision of this section 6.3, the MUNICIPALITY reserves the right to propose to meet the requirement by adding such insurance coverage to existing policies subject to the terms and conditions of those existing policies or to obtain new policies containing terms and conditions generally included in policies provided to municipalities in Massachusetts.

6.4. Compliance with Laws

The MUNICIPALITY shall comply with, and shall cause all work performed to comply with, all applicable Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances. The MUNICIPALITY shall also be responsible for obtaining any and all applicable Federal, state, and/or local permits and/or approvals necessary to carry out the activities permitted hereunder.

6.5 Special Conditions

This agreement is subject to the Special Conditions provided in Exhibit E which is incorporated herein by reference.

7. Maintenance

During the Term hereof, the MUNICIPALITY shall keep, repair, manage, operate, and maintain the entire Premises in good and clean order, operation, condition and repair. Except for any claim of damage arising from the exercise by the MBTA of the rights reserved to it, the MBTA shall have no responsibility whatsoever for the maintenance, repair or the condition of the Premises.

8. Utilities

Except as reasonably necessary for the operation of the alternative transportation use of the Corridor, no utilities shall be installed on the Premises by the MUNICIPALITY without the approval of the MBTA.

9. Reservation of Rights

9.1 Non-Exclusivity

(a) The MBTA makes no representations or warranty, express or implied, that the MUNICIPALITY shall have sole or exclusive use of the Premises. In the event other licenses, leases or easements have been or are granted or exist by reservations in deeds, the MUNICIPALITY shall be responsible for coordinating its work and activities with that of other licensees, grantees and other parties with interests in the Premises. The MBTA shall not be liable for delays, obstructions, or like occurrences affecting the MUNICIPALITY, arising out of the work of the MBTA or other licensees, grantees or parties in interest; provided, however, that the MBTA shall make reasonable efforts to mitigate impacts on the Use of the Premises. The MBTA will make a list available to the Municipality of any and all leases or licenses along the Corridor designated under this Lease.

(b) The MUNICIPALITY'S rights herein are granted subject to existing, easements, and rights of record to the extent that such easements rights and takings are still in effect and applicable. The MBTA explicitly reserves the right to all uses of the Premises not herein granted to the MUNICIPALITY, except that the MBTA shall not (and shall not grant to others the right to) do anything on the Premises that shall materially impede the permitted Use of the Premises except temporarily (e.g. while a pipe line is being installed or repaired).

The Municipality's rights herein are granted subject to existing leases and licenses to the extent that such rights are still in effect and applicable. The MBTA hereby agrees to provide the Municipality with copies of the documents that establish the location and term of existing licenses and leases. Upon completing a 25% design of the proposed rail trail, the MUNICIPALITY may request that the MBTA exercise any rights it may have to modify or terminate an existing lease or license that would prevent the creation of a contiguous Corridor. The MBTA shall make all reasonable attempts to fulfill such requests to create a contiguous corridor.

(c) The MUNICIPALITY expressly agrees that any revenues obtained from the leasing, licensing, or the granting of rights for any use of the Premises to any utility or other entity shall belong solely to the MBTA.

The MUNICIPALITY shall not be entitled to impose any fees, charges, requirements for betterments, linkage payments or other benefits to the MUNICIPALITY on any lessee, licensee or grantee of the MBTA or any other party either for installations on the Premises or on public way crossings along the Premises (except those fees normally charged by the MUNICIPALITY for engineering and environmental review, if any). If despite this section the MUNICIPALITY does receive some such benefit, then the MBTA shall be paid the fair market value of that benefit by the MUNICIPALITY.

(d) The Municipality expressly agrees that if there is any encroachment onto the Premises by a third-party, the MBTA will have the sole right to cure said encroachment and to obtain revenue from such cure or to permit such encroachment, provided that such cure does not substantially interfere with the Municipality's use of the Corridor. Notwithstanding the preceding, to the extent that the encroachment is on the Corridor, then the Municipality shall have the right to expel such encroacher.

9.2 Utility and Communication Lines and Emergency Access

The MBTA expressly reserves all of its rights in the Premises for itself, its successors and assigns, to install, maintain, repair, replace and remove aerial, surface and subsurface utility and communication lines, wires, antennas and conduits in, on, under or above the Premises as well as the right to lease, license and/or grant easements for such utility and communication rights to third parties; except that the MUNICIPALITY shall have the rights specifically granted herein. The MBTA shall take all necessary safety measures including, but not by way of limitation, notification to the MUNICIPALITY of its intention to perform (or have performed) such installation and/or maintenance, the erection of barricades, as shall be reasonably required to protect persons performing such work and construction, as well as members of the public, from injury or damage caused by, or resulting from, any entry, work or construction performed by the MBTA or its contractors, licensees, lessees, grantees (and their contractors) pursuant to this Section. The MBTA shall, at its cost and expense, return the Premises to a condition in which the Premises can be used for the purposes for which they were used before the work pursuant to this paragraph, if its contractors, licensee, lessees, or grantees, as the case may be, fail to do so.

Prior to entry, the MBTA shall require that any contractor, licensee, lessee or grantees provide the Municipality, during the Term thereof, insurance of the activities permitted by the MBTA, to the same extent and on the same terms that the MBTA is insured. The Municipality shall be named as an additional insured on any general liability policy. All policies shall waive the right of subrogation for any claim that may be made against the Municipality.

10. <u>Security and Operations</u>

The MBTA shall have no obligation to provide security services or lighting at the Corridor. The MUNICIPALITY shall be responsible for providing public safety and emergency services for the Corridor. The MUNICIPALITY may install lighting and adopt time of use and other restrictions applicable to the public.

11. <u>Default</u>

If the MUNICIPALITY defaults under any of its covenants and obligations contained in this Lease including, without limitation, the failure to fully indemnify the MBTA and its related parties as provided in Section 6.1, and such default is not cured by the

MUNICIPALITY within thirty (30) days after notice, the MBTA may elect, in order to preserve the public's usage and access to the Premises and to ensure the public's safety, security and enjoyment, to pursue any or all of the following remedies: (i); without obligation, cure said default, which cure may include, without limitation, entry upon the Premises for purposes of maintenance thereof, and invoice the MUNICIPALITY for the cost of such cure, which invoice the MUNICIPALITY shall promptly pay; (ii) if the MUNICIPALITY shall continue to remain in default and/or fail to pay the MBTA after such notice, the MBTA may remove the custody and management of the Premises from the MUNICIPALITY in accordance with the provisions of this Lease and transfer said management and control of the Premises by a new lease agreement to another qualified party for that period remaining under this Lease as provided in Section 4, and the MBTA shall seek reimbursement from the MUNICIPALITY of all necessary and reasonable costs of management so incurred by the MBTA; and/or (iii) seek specific performance or other equitable relief from a court of competent jurisdiction and exercise any available remedy at law or in equity. In the event the MBTA shall seek removal of the MUNICIPALITY from the management and control of the Premises, no party other than the MUNICIPALITY shall be deemed qualified to assume such management and control, without the prior written approval of the Massachusetts Highway Department and the Federal Highway Administration (FHWA), in acknowledgement of the significant federal-aid investments in the construction of the rail-trail by the MUNICIPALITY undertaken as required under FHWA transportation enhancement policies and guidelines. In any event the Premises shall remain as an alternative transportation corridor in keeping with Section 3 [Use of Premises (Supra)] and provide for the access and enjoyment for the public for the duration of the Term as defined in Section 4, under the management and control of the MBTA, if necessary, until the execution of a new lease agreement or some other preliminary agreement by the MBTA with another duly selected qualified party. The MBTA shall exercise its right to block access to the Premises from the public only in the event of a continuing public safety situation and the failure of the MUNICIPALITY to undertake immediate action. No delay or failure by the MBTA in exercising its rights and remedies in any one instance shall constitute a waiver of such rights and remedies in any other instance. MBTA's remedies hereunder shall be cumulative and not exclusive to any other available remedy.

12. Condition of the Premises at Termination

The MUNICIPALITY agrees to deliver up the Premises to the MBTA at the expiration of the Term hereof in as good condition as the Premises were after the MUNICIPALITY-installed improvements were made, reasonable wear and tear excepted. Notwithstanding the preceding, if the MBTA is terminating this Lease because it plans to use the Premises for transportation purposes, the MBTA may require The MUNICIPALITY to restore the Premises to the grade existing at the commencement of this Lease.

13. Existing Utilities

The Municipality acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of the scope of work. The Municipality shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. To the extent the MBTA, or parties acting in behalf of the MBTA, locate and mark railroad utilities in the railroad rights of way and appurtenant thereto, the Municipality shall be responsible for payment to such parties for such services which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the railroad line(s) or used in connection with services or operations of the MBTA. Any damage to such utilities caused by the Municipality shall be the sole responsibility of the Municipality. If the Municipality does not immediately repair any utilities it has damaged, the MBTA, without being under any obligation to do so and without waiving the Municipality's obligation hereunder, may repair any utilities damaged by the Municipality immediately and without notice in case of emergency. In the event the MBTA exercises such right, the Municipality shall pay to the MBTA immediately upon demand all of the MBTA's cost of performing such repairs plus a fee equal to twenty-five percent of the MBTA's cost of performing such repairs to reimburse the MBTA for its administrative costs.

The MBTA reserves the right to remove the rail infrastructure and agrees that if it chooses to do so, said removal shall be within 180 days of the date the MUNICIPALITY notifies the MBTA to be the date of the trail construction commencement. The MUNICIPALITY shall be responsible for removal and disposal of all other rail infrastructure.

14. Notice of Project Completion and Record Drawings

Upon completion of its work, the Municipality shall provide written notice ("Notice of Project Completion") to the MBTA Railroad Operations Department of the date of project completion. The Municipality shall also provide the MBTA Railroad Operations Department with one reproducible "As-Built" copy of each approved construction drawing marked to indicate all changes and deviations from the original approved plans and recording the final conditions of the Premises ("Record Drawings") upon completion of the work authorized hereunder. All Record Drawings shall be received and accepted by the MBTA prior to final inspection. The Notice of Project Completion and the Record Drawings shall be delivered to:

Chief, Engineering and Maintenance
MBTA Railroad Operations Department
32 Cobble Hill Road
Somerville, MA 02143

15. Results

If the Municipality conducts certain investigations on MBTA owned land, then the Municipality agrees to provide to the MBTA, at no cost, a copy of the results of such investigations (including data and analysis) and all other work conducted under this Lease in both hard copy form and in a digital format specified by the MBTA regardless of whether the report was prepared by the Municipality, its agent, consultant or contractor, or prepared on behalf of the Municipality. All results and reports shall be provided to the MBTA within ten (10) days of receipt by the Municipality. The Municipality agrees to consult with the MBTA prior to contacting any governmental entity, regarding any information, results of analysis or reports regarding the Premises. The Municipality shall give the MBTA a copy of any reports or notifications, including but not limited to release notifications, prior to submitting the same to any governmental entity.

16. Construction and Access Plan

The Municipality shall submit a plan and detailed specifications (including the materials to be used) and the proposed methods of performing the work, or any part thereof (the "Plan") to the MBTA. The Municipality shall not enter the Premises until the Plan has been approved by the MBTA, which approval shall not be unreasonably withheld. The scope of work for said construction, installation, maintenance, operation and/or replacement will be more fully defined in the approved Plan, which approved Plan will automatically be incorporated herein by reference and made part of this Lease. The Municipality shall also provide the MBTA with a detailed schedule of times when the Municipality, its employees, contractors, subcontractors, or agents would like to be on the Premises to undertake the scope of work (the "Access Plan"). The MBTA shall have full power to make a final determination of when the Municipality may be on the Premises as it is necessary to coordinate the work of all those desiring or having the right to access the Premises.

17. Contracts for Improvements

All contracts for the construction or installation of the improvements at the Premises shall require:

(a) that all contractors and subcontractors provide labor that can work in harmony with other elements of labor employed or to be employed at or near the Premises.

(b) insurance coverage and suretyship reasonably satisfactory to the MBTA:

(c) that all contractors or subcontractors comply with all applicable provisions of this Lease; and

(d) performance bonds and payment bonds in form and substance satisfactory to the MBTA, each of which shall name the MBTA, as an additional obligee and which shall be in the penal sum equal to the amount of the Municipality's construction contracts.

18. Notices

All notices required or permitted to be given hereunder shall be in writing and addressed as follows:

In the case of the MBTA to:

Massachusetts Bay Transportation Authority
10 Park Plaza, Room 5750
Boston, Massachusetts 02116
Attn: Assistant General Manager for Development

With a copy to:
MBTA Railroad Operations Directorate
Section Chief, Engineering and Maintenance
32 Cobble Hill Road
Somerville, Massachusetts 02143

With a copy to:
DESIGNATED REPRESENTATIVE
Transit Realty Associates, LLC
20 Winthrop Square
Boston, Massachusetts 02110
Attn: General Counsel

And in the case of the MUNICIPALITY to:

Joseph A. Curtatone, Mayor
City Hall
93 Highland Avenue
Somerville, MA 02143

With a copy to:

Francis X. Wright, Jr., City Solicitor
Law Department, City Hall
93 Highland Avenue
Somerville, MA 02143

With a copy to:

Michael F. Glavin, Executive Director
Office of Strategic Planning & Community Development
City Hall
93 Highland Avenue
Somerville, MA 02143

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (hereinafter "Notice"), shall be in writing and shall be deemed to have been properly given when deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described above or when delivered by messenger or overnight mail service to the correct addressee. Notice shall be deemed received when actually received or when the proffered Notice has been refused by the Addressee. The signature of an employee, servant or agent of the Addressee shall be determinative on the issue of actual receipt.

The MUNICIPALITY and the MBTA shall, at any time and from time to time, have the right to specify as their proper addresses for purposes of this Lease any other address or addresses giving fifteen (15) days' written notice thereof to the other party.

19. Nondiscrimination

With respect to its exercise of all rights and privileges herein granted, the MUNICIPALITY shall undertake affirmative action as required by Federal and State laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless otherwise exempted therefrom. The MUNICIPALITY agrees that it shall comply with any and all required affirmative action plans submitted pursuant to the directives of any Federal agency and in accordance with applicable Federal law and applicable state laws, rules and regulations.

The MUNICIPALITY shall use reasonable efforts to contact, encourage and utilize minority and female business enterprises in the procurements of materials and services under this Lease.

The MUNICIPALITY shall not discriminate against any person, employee or applicant for employment because of race, color, religion, creed, national origin, age, sex, sexual orientation, disability/handicap or veteran status in its activities at the Premises, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors or subcontractors.

20. Work In Harmony

The MUNICIPALITY agrees that in any work performed in or about the Premises, it will employ only labor which can work in harmony with all elements of labor being employed by the MBTA on or adjacent to the Premises.

21. Assignment

The MUNICIPALITY shall not, without the prior written consent of the MBTA, transfer or assign this Lease or any part hereof. Such consent may be withheld in the sole discretion of the MBTA.

22. Entire Agreement

This Lease contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties hereto with respect to the subject matter hereof not embodied herein shall be of any force or effect.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto, each for itself, its successors and assigns, have caused these presents to be executed, as a sealed instrument, by its officers, thereunto duly authorized.

Approved as to Form:

Francis X. Wright, Jr., City Solicitor

CITY OF SOMERVILLE

BY: _____
Joseph A. Curtatone, Mayor

Approved as to Form:

Gerald K. Kelley
Acting General Counsel

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

BY: _____
Jonathan R. Davis.
Acting General Manager
and Rail Trail Administrator

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. March 20, 2012

On this 20th day of March, 2012 before me, the undersigned notary public, personally appeared Jonathan R. Davis, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding page, and acknowledged to me that he signed it voluntarily for its stated purpose as Acting General Manager of the Massachusetts Bay Transportation Authority.

NANCY E. COTTER
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
MY COMMISSION EXPIRES SEPT. 13, 2013

Nancy E. Cotter
Notary Public

Print Name: NANCY E. COTTER

My Commission expires: 9-13-2013

5J

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. March 5, 2012

On this 5TH day of March, 2012 before me, the undersigned notary public, personally appeared Joseph A. Curtatone, proved to me through satisfactory evidence of identification, which was personal knowledge of the individual, to be the person whose name is signed on the preceding page, and acknowledged to me that he signed it voluntarily for its stated purpose as Mayor of the City of Somerville.

Nancy D Aylward

Notary Public

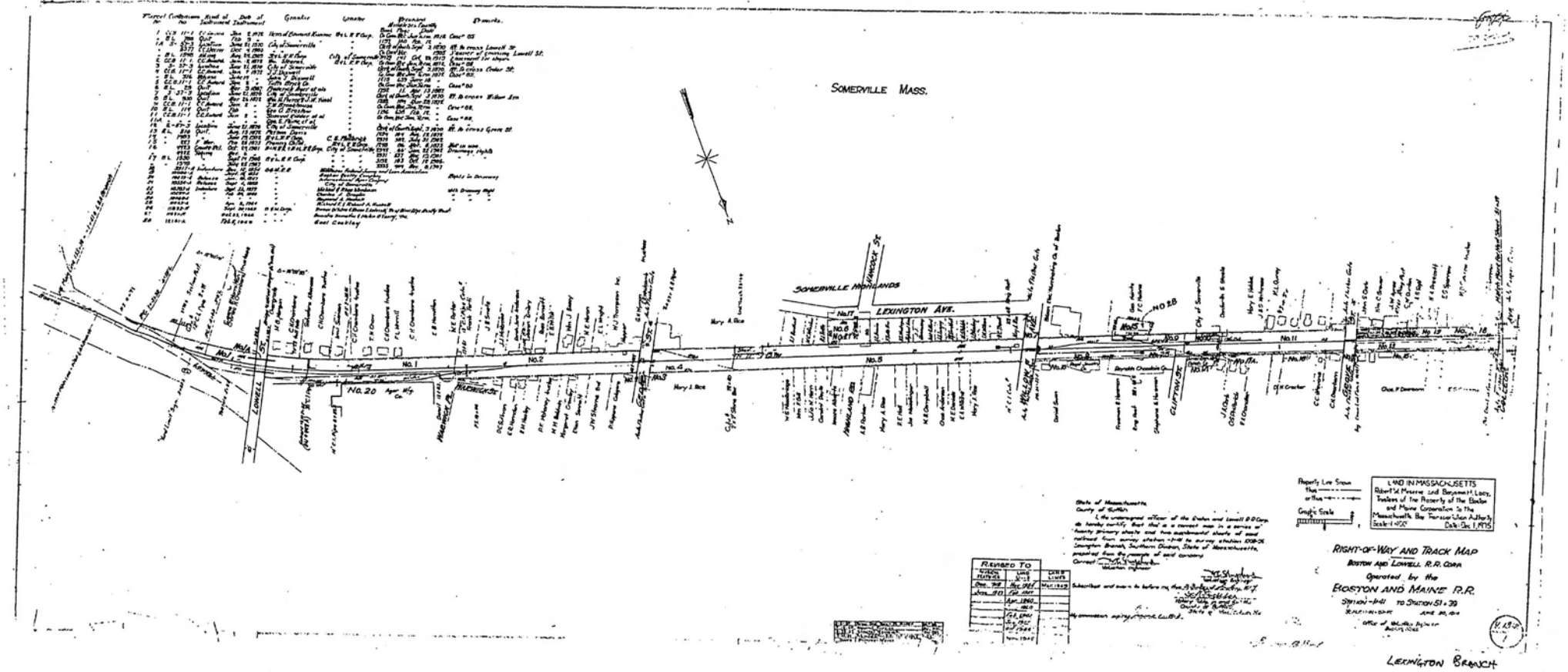
Print Name: _____

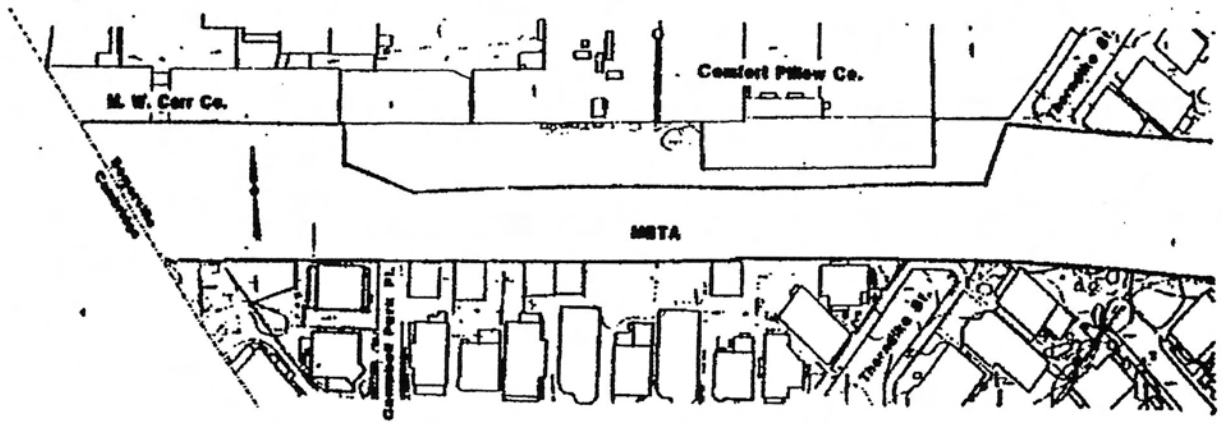
NANCY D. AYLWARD
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
September 28, 2018

My Commission expires: _____

EXHIBIT A

PROPERTY DESCRIPTION


SOMERVILLE MASS.
SOMERVILLE HIGHLANDS
LEXINGTON AVE.
LOWELL ST.
HAWKINS ST.
CLIFTON ST.
WILLOW AVE.
GROVE ST.
No. 1
No. 2
No. 4
No. 5
No. 8
No. 11
No. 13
No. 18
No. 20
No. 28
Property Line Shown
Graphic Scale
LAND IN MASSACHUSETTS
Robert M. Meserve and Benjamin H. Lacy, Trustees of the Property of the Boston and Maine Corporation to the Massachusetts Bay Transportation Authority
Scale 1:400
Date: Dec. 1, 1975
RIGHT-OF-WAY AND TRACK MAP
BOSTON AND LOWELL R.R. CORP.
Operated by the
BOSTON AND MAINE R.R.
STATION 1+41 TO STATION 51+39
LEXINGTON BRANCH
REVISED TO
State of Massachusetts
County of Suffolk

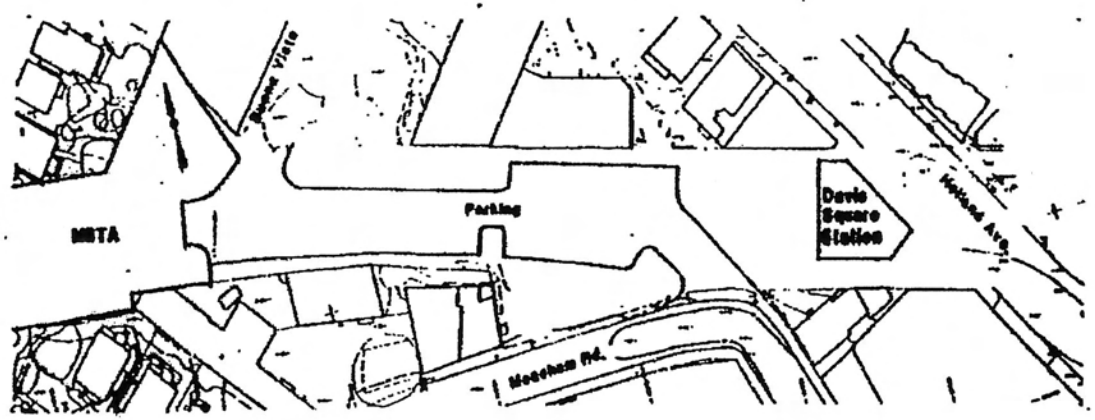


See Sheet 2

B 19208 P 536

EXHIBIT A
page 1

Limit of MBTA Right-of-Way in Somerville ———
Red Line Extension NW Davis Square to Alewife
Tunnel Cover Landscaping



Limit of MBTA Right-of-Way in Somerville ———
Red Line Extension NW Davis Square to Alewife
Tunnel Cover Landscaping

Sheet 2 of 2

B18209 P517

EXHIBIT A
Page 2

EXHIBIT B

MUNICIPAL BOARD VOTE

CITY OF SOMERVILLE, MASSACHUSETTS
BOARD OF ALDERMEN

Docket # 192407
Mayor's Request
Miscellaneous Mayor's Request

Regular Meeting 2/9/2012
Item ID 4774

SUMMARY: Requesting that this Board review and approve the attached MBTA lease relating to the Community Path.

COMPLETE TEXT:
See Attached

RESULT:	**APPROVED. [7 TO 3]**
AYES:	Connolly, Desmond, Sullivan, Roche, Heuston, O'Donovan, Lafuente
NAYS:	William A. White Jr., Thomas F. Taylor, Rebekah Gewirtz
ABSENT:	Robert C. Trane

ADOPTED BY THE BOARD OF ALDERMEN OF THE CITY OF SOMERVILLE, MASSACHUSETTS, AT A REGULAR MEETING ON THE 9th DAY OF FEBRUARY, 2012.

ATTEST:

John J. Long, City Clerk

CITY OF SOMERVILLE

In Board of Aldermen _____

ORDERED:

The City of Somerville shall enter into a lease with the Massachusetts Bay Transportation Authority (MBTA) for certain premises to be used as a rail trail for bicycle, pedestrian and other non-motorized public transportation, recreation and associated purposes, and ancillary uses which provide no revenue or other tangible benefit to the City, and for such other uses as the MBTA may permit by prior written consent.

EXHIBIT C

WORKMEN'S COMPENSATION LETTER

CITY OF SOMERVILLE, MASSACHUSETTS
PERSONNEL DEPARTMENT
JOSEPH A. CURTATONE
MAYOR

SARAH KLOOS
DIRECTOR OF PERSONNEL

March 1, 2012

Jonathan R. Davis
Acting General Manager and Rail Trail Administrator
Massachusetts Bay Transportation Authority
10 Park Plaza
Boston MA 02116

Re: Alternative Transportation Corridor Lease Agreement: Somerville Workmen's Compensation Program

Dear Mr. Davis:

I am writing on behalf of the City of Somerville in relation to the Workmen's Compensation provision of Section 6.3(b)(ii) of the Alternative Transportation Corridor Lease Agreement between the MBTA and the City.

The City has an active, self-insured workmen's compensation program for all employees, whether union or non-union. The program has an office at City Hall, Personnel Department, 93 Highland Avenue, Somerville, MA 02143. The phone number is 617-625-6600, x.3307. The City allocated $400,000 in the Fiscal Year 2012 to pay workmen compensation claims. The amount of claims paid varies from year to year based on the number and seriousness of injuries.

If you require any additional information regarding this program please contact me at skloos@somervillema.gov.

Yours very truly,

Sarah Kloos
Director of Personnel

EXHIBIT D

MBTA BOARD OF DIRECTORS VOTE

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

Board of Directors
Transportation Building
Ten Park Plaza
Boston, Massachusetts 02116

I, Yolanda L. Reed, Recording Secretary of the Board of Directors of the Massachusetts Bay Transportation Authority, hereby certify that, at a Meeting of the Board of Directors of the Massachusetts Bay Transportation Authority, acting under the provisions of Chapter 161A of the General Laws, as amended to date, duly called and held on the third day of November 2010, at which a quorum was present, the following Vote was adopted:

> **VOTED:** That the General Manager be, and he hereby is, authorized to execute in the name of and on behalf of the Authority, and in a form approved by the General Counsel, to enter into a Ninety-nine (99) year Long Term Lease Agreement, and any and all other instruments deemed necessary for the long term lease of MBTA right of way consisting of approximately 1.2 miles extending from Lowell Street to the Cambridge City Line with the City of Somerville for nominal consideration and solely for use as an Alternative Transportation Corridor open to the public. Said Lease Agreement and any other necessary instruments and documents shall contain such other terms and conditions as determined to be necessary and/or advisable by the General Counsel.

A true copy.

Attest: November 4, 2010

Yolanda L. Reed
Recording Secretary
Board of Directors of the
Massachusetts Bay Transportation
Authority