

EASEMENT AGREEMENT

This Easement Agreement (this “Agreement”) is made effective as of the ____ day of April, 2020 (the “Effective Date”), by and between the **Massachusetts Department of Transportation**, a body corporate and politic and a public instrumentality of the Commonwealth created and governed by Mass. Gen. Laws c. 6C, with a principal place of business at 10 Park Plaza, Boston, Massachusetts, 02116 (“Grantor”) and the **City of Northampton**, Massachusetts, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts with a principal place of business at 210 Main Street, Northampton, MA (the “City” or the “Grantee”).

WHEREAS, Grantor, by its Highway Division, under Project No. 608326, intends to make improvements to, repair, and reconstruct the roadway and related facilities known as Damon Road, a public way in the City of Northampton, on behalf of the said City (“the Project”); and

WHEREAS, Grantor acquired title to the Connecticut River Main Line (the “Line”) in a deed from Pan Am Southern, LLC dated May 21, 2015, and recorded on May 22, 2015, in the Hampshire District Registry of Deeds (“Registry”) in Book 11945, Page 59 (“Grantor’s Property”); and

WHEREAS, the Project includes portions of Grantor’s Property located between approximately Railroad Valuation Station 960+85 and Station 961+85, as shown on a certain plan entitled “Right of Way and Track Map, Connecticut River R. R. Co., Operated by the Boston and Maine Railroad, Station 909+40 to Station 962+20”, and numbered Valuation Series V42.1M, Plan 19 (the “Railroad Plan”); and

WHEREAS, Grantor desires to grant to the City certain permanent and temporary rights in Grantor’s Property for the Project on the terms and conditions set forth in this Agreement.

NOW THEREFORE, for consideration of Ten Dollars and No/100 (\$ 10.00) paid to Grantor by Grantee (hereafter defined), and for other valuable consideration, including the covenants set forth herein, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easements.

Grantor hereby grants, and Grantee accepts:

- a) perpetual right and easement for all purposes for which public ways are used in the City of Northampton, including therewith the rights to install, construct, inspect, operate, maintain, repair, and replace the sidewalks and roadway serving as the public way and traffic signals and other related roadway facilities, in, on, and under the areas labelled as “E-1-C” containing 704 SF ± and “E-2-C” containing 1,501 SF ±; on the plan entitled “Alteration Plan of Damon Road and Bridge Road Prepared for the City of Northampton, Hampshire County” dated February 28, 2019, prepared by Greenman-Pedersen, Inc., and recorded on July 9, 2019 in the Hampshire County Registry of Deeds in Plan Book 245, Page 1, and as described in Exhibit A hereto.

- b) a perpetual right and easement to install, construct, inspect, operate, maintain, repair, and replace guard rails, highway signs, utilities and wall(s), in, on, and under the area labelled on the Plan as “GR-HS-PUE-W-2-C” containing 1,547 SF ±, as described in Exhibit A hereto; and
- c) a temporary right and easement for the purposes of constructing the improvements to Damon Road, including grading, general construction staging, laying of loam and seed, and any all other necessary ancillary purposes in connection with the Project in the area labelled as “TE-21” on the Plan, consisting of 547 SF ±, and as described in Exhibit A hereto.

The foregoing Temporary Easement shall automatically expire five (5) years from the date of recording of this Agreement without further action of either party necessary to effectuate termination, provided, however, that the aforesaid term may be extended with the consent of the Grantor, but only upon modification hereof signed by the Grantor and duly recorded with the Hampshire District Registry of Deeds.

2. Use. Grantee shall only use the Easement Areas for the purposes set forth herein. Grantee shall not cause or permit any trespass by Grantee or its employees, agents, or contractors (collectively, “Grantee’s Agents”) on parts of the Connecticut River Main Line outside the Easement Areas. Grantee shall neither store Hazardous Materials (as defined below) nor permit nuisances or encroachments to occur on the Easement Areas or on the Connecticut River Main Line and shall not build any temporary or permanent structure or store anything in the Easement Areas.

3. Grantee Acknowledgements. Grantee acknowledges that (i) the Easement Areas are part of an active railroad corridor operated and maintained by Pan Am Southern, LLC (“PAS” or “Designated Railroad”), pursuant to a certain retained rail freight easement and a certain operating agreement by and between Grantor and the Designated Railroad dated May 21, 2015 (“2015 Operating Agreement”); (ii) the National Railroad Passenger Corporation (hereinafter “Amtrak”) operates intercity passenger rail service over the Line, pursuant to a Host Railroad Agreement dated May 1, 2012 and all supplements and amendments thereto (hereinafter the “Amtrak Agreement”); (iii) Springfield Terminal Railway Company, Inc. (“STR”) provides rail freight services as a subsidiary of Pan Am Railways, Inc.; (iv) Grantor may in the future enter into licenses, leases, operating agreements, or other agreements with other railroads and/or rail service operators (collectively with PAS, Amtrak and STR, “Railroads”) to operate passenger, freight, or related rail services on the Connecticut River Main Line; (v) as an active railroad corridor there may be negative impacts directly or indirectly caused by the transportation activities and future operations of Grantor and/or the Railroads, including, without limitation, noise, odor, vibrations, electromagnetic fields, particles, pollution, and fumes (collectively, “Negative Impacts”), which may also have an impact on the Easement Areas; and (vi) Grantor makes no representations as to the condition, title, or any other matter related to the Easement or the Easement Areas.

4. Maintenance and Repairs of the Easement Areas.

- a) The rights granted hereunder are subject to Grantee's continuing obligation to maintain and repair the Easement Areas, in good and safe repair, and to preserve the safe and proper use of the Easement Areas, at its cost and expense, in accordance with the standards and requirements described herein ("Grantee's Work"). Maintenance shall include, without limitation, maintaining the pavement and other elements of the road, sidewalks and related facilities; removal of ice and snow from the Easement Areas; removal of debris from the Easement Areas; and removal of vegetation in the Easement Areas. From time to time, Grantor, the Railroads, Mass. Department of Public Utilities, Federal Rail Administration, or other regulatory bodies with jurisdiction may require that Grantee, at its cost and expense, undertake repairs and maintenance to achieve the foregoing standards and requirements. In no event shall Grantee or Grantee's Agents direct water, snow, ice or debris toward or onto the Grantor's remaining property, including the adjacent railroad right-of-way; Grantee shall be solely responsible for ensuring proper drainage within and along the Easement Areas, and for immediately addressing any damage or operational impacts caused by the transfer of water, snow, ice or debris onto Grantor's remaining property. Such maintenance and repair must also be accomplished in accordance with Grantor's and the Railroads' conditions, including terms and conditions for access to work; work plans that Grantee must provide at least thirty (30) days in advance of the proposed work start date describing the proposed work and materials to be used; evidence of such insurance as Grantor and the Railroads may require; safety plans; a timeline for the proposed work; a plan to hire the appropriate flagmen and others that may be needed to complete the work; and copies of all permits for the work, all satisfactory to Grantor and the Railroads, and to not unreasonably interfere with the proper and safe use of the Easement Areas by Grantor or the Railroads, and any other parties that Grantor allows to operate on and over the Easement Areas, and their respective successors and assigns. Any underground work shall also be subject to confirmation by Grantee with Dig Safe and any utility companies with facilities under the Easement Areas. Grantor and the Railroads shall have the right to inspect the Easement Areas at any time provided the inspections do not interfere with Grantee's use of the Easement Areas except in an emergency.
- b) Grantee shall indemnify and hold harmless Grantor and the Railroads against all fines, damages, costs, expenses, and other penalties for Grantee's failure to perform required repairs or maintenance or for violations of work plans or conditions caused by the acts or omissions of Grantee or any of Grantee's agents.
- c) If Grantee fails to perform any of the foregoing repairs or maintenance or capital improvements or other actions necessary in the Easement Areas, Grantor or the Railroads may undertake such work, and Grantee shall reimburse Grantor or the Railroads, as the case may be, for all costs and expenses incurred for such work.
- d) Notwithstanding anything to the contrary contained herein, Grantee shall not be responsible for maintaining the rail tracks or other railroad-related facilities in the Easement Areas but shall be responsible for the costs of any damage it causes to such tracks or facilities.

5. Termination of Easement for Transportation Purposes. Grantor's enabling statute requires that its assets be available for transportation uses; therefore, if all or part of the Easement Areas are needed solely for transportation purposes, Grantor may terminate the Easement with regard to one or all of the Easement Areas. Any termination and/or relocation shall require six (6) months' advance written notice to Grantee. A termination shall be effective upon Grantor's recording of a notice of termination with the Registry. Such termination shall not constitute a taking or eminent domain action by Grantor. Grantor shall not be responsible or liable for any direct, indirect, or consequential damages incurred by Grantee.

6. Subordination to Grantor and Railroads Operating Requirements. The Easements are subject and subordinate at all times to the requirements of Grantor and the Railroads that may be in effect from time to time to maintain public safety and Grantor's and the Railroads' operation of their transportation systems. Grantee's use of the Easement Areas shall not obstruct, delay or prevent Grantor's or the Railroads' operation of their transportation services and if it does, then such occupation, work, use or activity permitted must be stopped or delayed at the request of Grantor or the Railroads, which shall not constitute a temporary taking or eminent domain action. Neither Grantor nor the Railroads shall be responsible or liable for any direct, indirect, or consequential costs or damages incurred by Grantee as a result of any such interruption or delay or for any compensation to or relocation costs for Grantee.

7. Compliance with Laws. Grantee shall comply with all laws, rules, orders, regulations, and ordinances applicable to its use of the Easement Areas at its cost and expense. Grantee shall also be responsible, at its cost and expense, for obtaining and complying with any permits or approvals necessary to carry out its permitted activities hereunder.

8. Costs; Taxes. Grantee shall be responsible for the costs of Grantee's work in the Easement Areas and any required relocation of utilities due thereto and any taxes assessed against the Easement or the Easement Areas due to Grantee's use.

9. Indemnification and Release. Grantee shall indemnify and defend (at the option of Grantor), and save Grantor and the Railroads harmless from and against any liabilities, losses, damages, costs, expenses (including reasonable attorneys' or other professionals' expenses and fees), causes of action, claims, demands or judgments of any nature, including, without limitation, any related to any "environmental condition" or to "oil" and "hazardous materials" (as those terms are defined in federal or state environmental laws, collectively, "Hazardous Materials"), that may be imposed upon or incurred by or asserted against Grantor or the Railroads, as a result of any of the following:

- a) the exercise by Grantee or those claiming by, through or under Grantee of any rights or privileges hereunder;
- b) the use of the Easement Areas by Grantee or any of Grantee's Agents, including due to their use of the Easement Areas prior to the date hereof;

- c) the presence, discovery or revealing of any environmental condition including Hazardous Materials on the Easement Areas or other adjacent property of Grantor, which presence, discovery or revealing is a result of Grantee's or any of the Grantee's Agents' activities hereunder;
- d) the placement of or accidental release of any Hazardous Materials on, at, under, over, or associated with the Easement Areas (or other adjacent property of Grantor) by Grantee or any of Grantee's Agents, including without limitation contamination of the Easement Areas or other adjacent property of Grantor caused by any material of any nature flowing from the Easement Areas;
- e) any failure of Grantee or any of Grantee's Agents to perform or comply with any of the terms hereof.

Further, such indemnification includes the obligation of Grantee to perform, at Grantee's cost and expense and in accordance with any applicable laws, any required environmental response action within the Easement Areas or surrounding areas to the extent that such response action is required due to Grantee's use of the Easement Areas.

Grantee assumes all the risk of entry onto and use of the Easement Areas and hereby releases Grantor and the Railroads from any responsibility for any Grantee losses or damages related to the condition of the Easement Areas prior to the execution of this Easement Agreement. Grantee further covenants and agrees to not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action of any manner against Grantor or the Railroads relating to or arising from the condition of the Easement Areas prior to the execution hereof, Grantee's or any of Grantee's Agents' use of the Easement Areas, or any Negative Impacts.

The release and covenants of defense and indemnification for the benefit of Grantor shall not apply to the extent the "claim" arose because of Grantor's grossly negligent acts or omissions or willful misconduct.

The release and covenants of defense and indemnification for the benefit of the Railroads shall not apply to a Railroad to the extent the "claim" arose because of that Railroad's grossly negligent acts or omissions or willful misconduct.

The provisions of this Section shall survive the termination of this Easement.

10. Event of Default. If Grantee fails to comply with any term or condition herein (an "Event of Default"), Grantor may terminate this Easement after written notice from Grantor to Grantee of such Event of Default provided that Grantee shall have thirty (30) days from receipt of such notice to cure such Event of Default, except that if the Event of Default cannot with due diligence be cured within such thirty (30) day period, then so long as Grantee proceeds with due diligence to cure the same, the time within which Grantee must cure the same shall be extended for another thirty (30) days; provided, however, if the Event of Default threatens public safety or the ability of Grantor or a Railroad to operate its transportation system, then it shall be considered an emergency default and if Grantee does not affect an immediate cure, Grantor may use self-help

at the expense of Grantee and Grantee shall also pay an administrative fee equal to ten percent (10%) of such expenses.

11. Insurance. Grantee (and its contractors and their subcontractors performing work in either Easement Area) shall maintain the following insurance and provide Grantor with certificates of insurance and shall renew and replace any expired certificate, evidencing the insurance required hereunder, on which Grantor and the Railroads shall be listed as additional insureds as their interests may appear and which provide coverage as follows:

a) Commercial General Liability Insurance. Commercial General Liability Insurance for bodily injury and property damage, on an occurrence form, no less broad than ISO Form CG 2010 10 01. Coverage must include premises/operation and contractual liability subject to a minimum limit of One Million Dollars and 00/100 (\$1,000,000.00) per occurrence and Three Million Dollars and 00/100 (\$3,000,000.00) annual aggregate.

b) Workers' Compensation and Employers Liability Insurance. Workers' Compensation and Employers Liability Insurance including (i) workers' compensation insurance providing statutory coverage as required by the Commonwealth of Massachusetts and (ii) Employers Liability Insurance coverage with minimum limits of not less than Five Hundred Thousand Dollars and 00/100 (\$500,000.00) per accident.

c) Umbrella Liability Insurance. Umbrella Liability Insurance providing excess coverage over the primary general liability and employers liability coverages. Such coverage shall be written on an occurrence basis and be no less broad than the underlying coverages. The policy shall be subject to a minimum limit of Two Million Dollars and 00/100 (\$2,000,000.00) per occurrence and in the aggregate.

d) Automobile Liability Insurance. Automobile liability insurance with minimum limits of not less than One Million Dollars and 00/100 (\$1,000,000.00) covering all owned, non-owned, hired, or leased vehicles of Grantee used in the Easement Areas.

e) Railroad Protective Insurance. Whenever any of Grantee's Agents are doing work beyond routine maintenance in or around the Easement Areas, such Grantee's Agent must obtain Railroad Protective Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence covering bodily injury to or death of one person and injury to or destruction of property of any one person, and Ten Million Dollars (\$10,000,000) in aggregate for all damages arising out of bodily injury to or death of two or more persons in any one accident, and for all damages arising out of injury to or destruction of property. Grantor and the Railroads shall be named insureds on the railroad protective liability insurance policy.

The required insurance coverages shall be placed with companies licensed to write such insurance in the Commonwealth of Massachusetts and having a "Best's Insurance Reports" rating of A- VII or better, shall be kept in full force and effect at all times, shall be primary to and non-contributory to any insurance or self-insurance maintained by Grantor, and shall require that Grantor be given at least thirty (30) days advance written notice in the event of any cancellation or material adverse change in coverage. Grantor and the Railroads shall be named as additional insureds under the Commercial General Liability and Umbrella Insurance Policies. Waiver of

Subrogation in favor of Grantor and the Railroads must be included in all coverages listed above. Throughout the term of the Easement, Grantor shall be provided with the foregoing certificates of insurance. Grantee shall be responsible for any deviations or omissions in compliance with these requirements by any of its contractors. The foregoing insurance requirements are minimum limits and coverages and shall not be construed to limit the liability of Grantee or Grantee's insurers.

12. Existing Title Encumbrances. The Easement is subject to existing rights, restrictions, and easements of record; any state of facts a personal inspection or accurate survey would disclose; any existing leases, licenses, and agreements relating to the Easement Areas.

13. Assignment or Transfer. This Easement is appurtenant to the public way known as Damon Road and may not be assigned.

14. Bind and Inure. The obligations and benefits hereunder run with the land and are binding upon and inure to the benefit of the respective parties, their successors and assigns.

15. Waiver. A consent or waiver by Grantor to Grantee's breach of any covenant, condition, or obligation hereunder shall not be construed as a consent or waiver to a future breach of the same covenant, condition, or obligation or to a breach of any other covenant, condition, or obligation hereunder.

16. Severability. The invalidity of any provision or other part of this instrument shall not impair or affect the validity or enforceability of this instrument.

17. Notices. Any notices given hereunder shall be in writing and deemed to have been properly given if hand delivered or mailed by certified mail, return receipt requested, or by recognized overnight courier with postage prepaid. Notices shall be deemed given when delivered by messenger or overnight courier service on the date of the delivery or refusal of delivery or three days after deposited in certified United States mail, postage prepaid, return receipt requested.

If to Grantor: Massachusetts Department of Transportation
Ten Park Plaza, Room 4160
Boston, MA 02116-3969
Attention: Director of Railroad Properties
Rail and Transit Division

Copy to: Massachusetts Department of Transportation
Ten Park Plaza, Room 3510
Boston, MA 02116-3969
Attention: General Counsel

Massachusetts Department of Transportation
Ten Park Plaza, Room 4160
Boston, MA 02116-3969
Attention: Project Manager, Rail

If to Grantee: City of Northampton
City Hall
210 Main Street
Northampton, MA 01060
Attention: Mayor_____

Copy to: City of Northampton_____
City Hall_____
210 Main Street_____
Northampton, MA 01060
Attention: City Solicitor_____

18. Acceptance. The Grantee's Acceptance of this Grant of Easements and Easement Agreement is attached hereto and recorded herewith.

19. Governing Law. This instrument shall have the effect of a sealed instrument and shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

(Signature Pages to Follow)

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hand and seal
this _____ day of April, 2020.

Grantor:

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

By: _____

Name:

Title:

Commonwealth of Massachusetts

Suffolk County, ss. Boston

On the _____ day of _____, 2020, before me, the undersigned notary public, personally appeared _____, _____ of the Massachusetts Department of Transportation, proved to me through satisfactory evidence of identification, which was my personal knowledge, 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 as _____ of the Massachusetts Department of Transportation.

Notary Public

Print Name

My commission expires: _____

ACCEPTANCE OF EASEMENT

The Grantee, duly authorized by a vote of the Northampton City Council taken _____, 2020, hereby accepts the foregoing Grant of Easement and Easement Agreement from the Massachusetts Department of Transportation on this ____ day of _____, 2020, and by acceptance hereof agrees that it is bound by the terms and provisions hereof.

Grantee:

City of Northampton, Massachusetts

By: _____
Name: David J. Narkewicz
Title: Mayor

COMMONWEALTH OF MASSACHUSETTS

Hampshire County, ss.

On the ___ day of _____, 2020, before me, the undersigned notary public, personally appeared, David J. Narkewicz, Mayor of the City of Northampton, Massachusetts, proved to me through satisfactory evidence of 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 as Mayor of the City of Northampton, Massachusetts.

Notary Public

Print Name

My Commission expires: _____

Exhibit A

Northampton, Damon Road
MassDOT Project No. 608236

The parcels below are shown on a plan entitled, "Alteration Plan of Damon Road and Bridge Road Prepared for the City of Northampton, Hampshire County" dated February 28, 2019, prepared by Greenman-Pedersen, Inc., and recorded on July 9, 2019 in the Hampshire County Registry of Deeds in Plan Book 245, Page 1.

PARCEL E-1-C: A parcel of land supposed to be owned by Massachusetts Department of Transportation, adjoining the southerly location lines of the 1873 County layout and the 2015 City Alteration (LO. No. 8411) of Damon Road, and bounded by the line described as follows: Beginning at a point on the southerly location line of the 1873 County layout and the 2015 City Alteration (LO. No. 8411) of Damon Road, said point bearing S 20°51'32" E and being 19.43 feet distant from station 4+28.04 of the 2015 Damon Road baseline and extends thence, following said location line of the 1873 County layout southwesterly about 73 feet to a point on the property line dividing land of Massachusetts Department of Transportation and land of Timothy P. Banister and Tracy A. Banister: thence, leaving said location line and following said property line southeasterly about 10 feet; thence leaving said property line N 69°04'07" E about 75 feet to a point on the property line dividing land of Massachusetts Department of Transportation and land of Temp-Pro, Inc.; thence following said property line northwesterly about 3 feet to a point on the location line of the 2015 City Alteration (LO. No. 8411) of Damon Road; thence leaving said property line and following said location line southwesterly about 1 foot, and northwesterly about 7 feet to the point of beginning; containing about 704 square feet.

PARCEL E-2-C: A parcel of land supposed to be owned by Massachusetts Department of Transportation, adjoining the northerly location line of the 1935 City layout of Damon Road, and bounded by the line described as follows: Beginning at a point on the property line dividing land of Massachusetts Department of Transportation and land of William J. Kilbride, said point bearing N 20°51'32" W and being 48.54 feet distant from station 3+35.14 of the Damon Road baseline extension and extends thence, following said property line southeasterly about 19 feet to a point on the northerly location line of the 1935 City layout of Damon Road; thence leaving said property line and following said location line northeasterly about 84 feet to a point on the property line dividing land of Massachusetts Department of Transportation and land of Kerryman Partnership; thence leaving said location line and following said property line northwesterly about 18 feet; thence leaving said property line S 69°04'07" W about 73 feet; thence southwesterly by a curve to the right of radius 94.00 feet about 11 feet to the point of beginning; containing about 1,501 square feet.

PARCEL GR-HS-PUE-W-2-C: A parcel of land supposed to be owned by Massachusetts Department of Transportation, adjoining the location line of the 2019 City Alteration (Section B) of Damon Road, and bounded by the line described as follows: Beginning at a point on said location line of the 2019 City Alteration (Section B) of Damon Road and on the property line

dividing land of Massachusetts Department of Transportation and land of William J. Kilbride, said point bearing N 20°51'32" W and being 48.54 feet distant from station 3+35.14 of Damon Road Baseline Extension, and extends thence, leaving said location line and following said property line northwesterly about 14 feet; thence leaving the said property line N32°17'23"E about 2 feet; thence N37°14'06"W 13.74 feet; thence N52°45'54"E 6.00 feet; thence S37°13'05"E 13.52 feet; thence N69°04'07"E 71.25 feet; thence N17°58'07"W 13.15 feet; thence N72°01'53"E about 2 feet to a point on the property line dividing land of Massachusetts Department of Transportation and land of Kerryman Partnership; thence following said property line southeasterly about 31 feet to a point again on the location line of the 2019 City Alteration (Section B) of Damon Road; thence leaving said property line and following said location line S69°04'07"W about 73 feet; thence by a curve to the right of radius 94.00 feet about 11 feet to the point of beginning; containing about 1,547 square feet.

PARCEL TE-21: A parcel of land supposed to be owned by Massachusetts Department of Transportation, adjoining the location line of Section C of the 2019 City Alteration of Damon Road, and bounded by the line described as follows: Beginning at a point on the location line of Section C of the 2019 City Alteration of Damon Road, said point being on the property line dividing land of Massachusetts Department of Transportation and land of Timothy P. Banister and Tracy A. Banister: thence, leaving said location line and following said property line southeasterly about 9 feet; thence leaving said property line northeasterly about 14 feet, about 33 feet, and about 28 feet to a point on the property line dividing land of Massachusetts Department of Transportation and land of Temp-Pro, Inc.; thence following said property line northwesterly about 7 feet to a point again on the said location line; thence leaving said property line and following said location line S 69°04'07" W about 75 feet to the point of beginning; containing about 547 square feet.