

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to accept Permanent and Temporary Easements from the Lowell Regional Transit Authority (the "LRTA") to the City of Lowell pertaining to the City's project, known as Lord Overpass Project, which involves among other things, the widening, repair and improvements to Thorndike Street.

BE IT VOTED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City Manager be and hereby is authorized on behalf of the City of Lowell, to accept Permanent and Temporary Easements from the Lowell Regional Transit Authority (the "LRTA") to the City of Lowell pertaining to the City's project, known as Lord Overpass Project, which involves among other things, the widening, repair and improvements to Thorndike Street in accordance with the Easement plan attached hereto and made a part hereof and referred to as Exhibit "A". Said Easements shall be in the form or substantially the form attached hereto and referred to as Exhibit "B".

BE IT FURTHER VOTED:

That the City Manager be and hereby is authorized to execute any and all documents pertaining to the Lord Overpass Project related to the Permanent and Temporary Easements from the Lowell Regional Transit Authority (the "LRTA").

BE IT FURTHER VOTED:

That the City of Lowell shall record said easements at the Registry of Deeds.

Property Address, Thorndike Street, Lowell, MA

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is entered into on this _____ day of _____, 20__ by and between the **Lowell Regional Transit Authority** (the "LRTA"), a body corporate and politic of the Commonwealth of Massachusetts established pursuant to Massachusetts General Laws Chapter 161B, having an address at 145 Thorndike Street, Lowell, Massachusetts 01852, and the **City of Lowell** (the "City"), a Massachusetts municipal corporation, having an address of 375 Merrimack Street, Lowell, Massachusetts 01852.

Recitals

WHEREAS, the LRTA is the owner of property located at 115 Thorndike Street, Lowell, Massachusetts, and described more particularly in a deed recorded with the Middlesex North Registry of Deeds (the "Registry") in Book _____, Page _____ (the "LRTA Land");

WHEREAS, the LRTA leases land adjacent to the LRTA Land from the Massachusetts Bay Transit Authority (the "MBTA"), which leased property is described in instruments recorded with the Registry in Book 2226, Page 326, Book 2468, Pages 710, 713, and 7171, and Book 2746, Page 251 (the "Leased Property"), pursuant to lease dated May 1, 1999 and effective December 24, 1999, notice of which is recorded with the Registry in Book 10629, Page 25 (as it may be amended from time to time, "Lease").

WHEREAS, the City is undertaking a project, known as Lord Overpass Project, which involves, among other things, the widening, repair and improvements to Thorndike Street, which is adjacent to the LRTA Land and the Leased Property (the "Thorndike Reconstruction");

WHEREAS, the City requested that the LRTA grant the City permanent and temporary easements on portions of the LRTA Land and the Leased Property (together, the "LRTA Property") for public way and construction purposes; and

WHEREAS, the LRTA is amenable to granting the City said easements on portions of the LRTA Property on the terms and conditions set forth herein.

NOW, THEREFORE, for consideration of One Dollar (\$1.00), the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LRTA hereby grants to the City the following rights and easements in, on, and under the portions of the LRTA Property described below (collectively, the "Easement Areas"), subject to the provisions hereinafter set forth:

11B11

Agreement

1. Grant of Easements.

(a) Roadway Easements. A permanent non-exclusive easement in the portions of the LRTA Property shown as "Parcel No. E-4" (5 s.f.±), "Parcel No. E-5" (92 s.f.±), "Parcel No. E-6" (1,133 s.f.±), and "Parcel No. E-7" (325 s.f.±) (collectively, the "Permanent Roadway Areas") on a plan of land entitled "Plan of Road in the City of Lowell Middlesex County", dated _____, prepared by the City of Lowell, and recorded herewith in Plan Book _____, Page _____ (the "Plan"), for all purposes for which public ways are used in the City of Lowell, including, without limitation, for the purposes of constructing, installing, inspecting, operating, maintaining, repairing, removing, replacing and/or relocating, rights of way and any and all structures and facilities necessary or convenient to support the same, or related thereto, including, without limitation, rights of way, sidewalks, guardrails, support or retaining walls, signs, drains, water, sewer, electrical, telephone, cable and gas lines, and any related structures, facilities and/or other appurtenances (as may be now or hereinafter installed within the Roadway Easement Premises, the "Roadway Facilities"). The City will alter the layout of Thorndike Street to include the Permanent Roadway Areas within said layout;

(b) Retaining Wall. A permanent non-exclusive easement in, on and under the portion of the LRTA Property shown on the Plan as "Parcel No. W-1" (288 s.f.±) (the "Wall Area") for the purposes of demolishing the retaining wall currently located thereon and constructing a new retaining wall within the Wall Area and for the purpose of installing, inspecting, maintaining, repairing, removing, replacing and relocating water supply pipes and any facilities and/or appurtenances associated therewith within the Wall Area and to do all other acts incidental thereto. The City will ensure that the removal of the existing wall and/or the new wall does not threaten the integrity of the buildings and/or other improvements located adjacent to or near the Wall Area and shall be solely responsible for and shall promptly repair any damage occurring or relating to the City's use of the Wall Area; and

(c) Temporary Construction Easements. Exclusive temporary construction easements in, on, over, under and along the portion of the LRTA Property shown on the Plan as "Parcel No. TE-7" (3,621 s.f.±) and "Parcel TE-8" (1,056 s.f.±) (together, the "Temporary Construction Areas"), for the purpose of undertaking the Thorndike Reconstruction, including, without limitation, grading land, constructing, operating, improving, maintaining, repairing, replacing, relocating, realigning and/or reconstructing slopes of excavation and/or embankment, driveways, driveway aprons, sidewalks, retaining walls, stone walls, landscaping, loaming, planting trees, seeding, paving, and erosion control, which temporary construction easements shall terminate automatically on the earlier of four (4) years from the date on which this Grant of Easements is recorded with the Registry and the completion of the portion of the Lord Overpass Project in and around the LRTA Property without the necessity of recording any instrument with the Registry. Notwithstanding the foregoing, the LRTA shall have the right to use the Temporary Construction Areas if reasonably necessary for the safety of the LRTA Land and/or improvements thereof or public safety purposes; the LRTA shall not interfere unreasonably with the City's rights herein.

2. Facilities.

The Facilities shall be and remain the personal property of the City, and the City shall be responsible for maintaining the same in safe condition. The City shall be solely responsible for paying all utility charges associated with the Facilities and the City's failure to make timely payments shall constitute a material breach of this Agreement. The Facilities, together with any roadway or other improvements constructed by the City within the Easement Area, are referred to herein as the "City's Improvements." The City may enter upon the Easement Areas at any time and from time to time without prior notice to the LRTA for the purpose of inspecting the City's Improvements and/or the routine maintenance of the City's Improvements provided that such inspection or maintenance does not require any portion of the Easement Areas to be closed or inaccessible for use by others or otherwise interfere with the rights of the LRTA and/or others. In no event shall the City store or park vehicles within any portion of the LRTA Easement Premises. No advertising signs, boards, billboards or banners of any nature may be affixed to the Easement Areas by the City.

3. Non-Exclusive.

The City acknowledges and agrees that its rights in the Easement Areas are non-exclusive, except for the temporary construction easement, and that the LRTA reserves to itself all rights not explicitly granted herein, including, without limitation, the right to use the Easement Areas designated in Par. 1 (a) and (b) for any and all purposes, including the right to enter onto any of the Easement Areas to maintain, repair, replace, relocate and/or remove utility, communication and/or other facilities, and to grant such other easements and/or licenses as the LRTA deems reasonable, provided the same do not interfere materially with the rights granted to the City hereunder. The City and the LRTA shall take such reasonable steps as may be necessary to prevent any unreasonable interference with the other's use of the said Easement Areas.

4. Subordination to LRTA Operating Requirements and Lease.

(a) LRTA Use. The City acknowledges that the LRTA uses the LRTA Property for transportation purposes, and that the LRTA's ability to use the LRTA Property for access, parking, utilities and other uses at any and all times is integral to the operation of transportation systems. Accordingly, the easements granted hereby in the LRTA Property are subject and subordinate at all times to the requirements of the LRTA to maintain public safety and to maintain and operate transportation systems. In no event shall the City obstruct, hinder, delay or otherwise interfere with the operation of the LRTA's transit operations, ingress and/or egress from and to the LRTA Property, and/or the use of the LRTA Property by the LRTA and/or others entitled thereto, and, if the City's use of the Easement Areas is reasonably likely to interfere with the LRTA's operations, it shall give the LRTA at least five (5) days written notice thereof. The City acknowledges and agrees that, given the continued and uninterrupted use of the LRTA Property for transit related purposes is critical to the LRTA, that it shall use best efforts to coordinate any work in the Easement Areas with the LRTA so as to minimize any interference with the LRTA's transit operations, and that any occupation, work, use or activity permitted hereunder within the Easement Areas may be stopped or delayed at any time in response to each such requirements. The LRTA shall not be responsible or liable for any costs or other damages

incurred or suffered by the City as a result of any such interruption or delay, whether direct, indirect or consequential costs or damages.

(b) Relocation. The LRTA shall have the right to relocate the Wall Area and/or the improvements thereon if the LRTA's use of the LRTA Property, reasonably requires such relocation or removal, provided that the LRTA shall provide the City with written notice of any proposed relocation at least thirty (30) days in advance, or, in the event of an emergency threatening public safety or the integrity or use of LRTA's buildings or other improvements, with such notice as is practicable under the circumstances. The LRTA shall be responsible for removing and replacing and/or relocating the City Improvements at no cost to the City, unless such relocation or removal is necessary because the retaining wall and/or other improvements located within the Wall Area threaten the integrity of the LRTA's buildings and/or other improvements located adjacent to or near the Wall Area, as provided in Section 1(b). In the event of such relocation, the parties shall agree to the new location and record a modification or amendment to this Agreement that includes a revised Exhibit A showing the relocated Easement Areas. The parties agree that the other Easement Areas cannot be relocated.

(c) The Lease. The City understands that, for any portion of the Easement Area as set forth in Par. 1(b) that is part of the Leased Property, the rights of the City shall in all events be subject and subordinate to the Lease, and that a termination of the Lease will terminate any easements held by the City in the Leased Property. In the event of a termination of the Lease, the City, if requested to do so by the MBTA, shall at its sole cost and expense remove all or any portion of the City's Improvements and restore the Leased Property to the condition it was in prior to the date of this Agreement. The LRTA shall not be responsible or liable for any direct, indirect or consequential costs or damages incurred by the City as a result of any such termination or required removal, including, without limitation, pursuant to Massachusetts General Laws Chapter 79.

5. Construction.

(a) Work Plan. The City shall give the LRTA at least thirty (30) days' written notice prior to installing, constructing, improving, replacing, and/or relocating any of the Facilities and/or improving, altering and/or repairing the Easement Areas (the "Work"), and, for any Work that is likely to interfere with the LRTA Property, including, without limitation, interference with buses and other vehicles using the Easement Areas for or on behalf of the LRTA, the City shall obtain the LRTA's prior written consent, not to be unreasonably withheld. The notice shall include a full set of contract documents and a set of full-sized plans and detailed specifications (including the materials to be used) and the equipment and proposed methods of performing the work, or any part thereof, together with a site safety and health plan for the Work and such other information as may be reasonably required by the LRTA (collectively, the "Work Plan") to the LRTA. The City shall not enter onto the Easement Areas for any such Work until the Work Plan for such Work has been approved in writing by the LRTA. Provided that the City's written notice to the LRTA hereunder prominently states the following: "THE LRTA'S FAILURE TO ACT WILL BE DEEMED APPROVAL," the LRTA's failure to object within said thirty (30)-day period shall be deemed approval of the Work stated in the notice, provided that in no event shall the Work or alterations made by the City interfere with or hinder the safe and continuous passage of vehicles for or on behalf of the LRTA. Other than as permitted hereunder, no other alterations or improvements of any kind or nature shall be made to the Easement Area, and no

buildings, structures or facilities installed or placed on the Easement Area, without the LRTA's prior written consent, which may be withheld in its sole and absolute discretion.

(b) Safety Measures. The City shall take such reasonable security measures as may be necessary to protect the LRTA's operations, property, employees or customers during the City's conduct of Work and/use of the Easement Area.

(c) Conduct of Work. All Work shall be done in a good and workmanlike manner, using materials of good quality and, to the maximum extent feasible, at such times that the LRTA Property is not being used by the LRTA or others. The City shall use diligent efforts to complete its Work in an expeditious manner without interference with the use of the LRTA Property by the LRTA and others entitled thereto. At the end of each day's construction activities, the City must restore the Easement Areas to a safe condition. After completion of Work on, under, within or above the Easement Areas, the City shall promptly return the Easement Areas to the same condition they was in prior to such Work, except that City Improvements permitted under this this Agreement may remain in place.

(d) As-Builts. Upon completion of any Work, including without limitation the construction and installation of the City's Improvements, the City shall provide the LRTA with reproducible "as-built" copies of each approved construction drawing indicating the final conditions of the Easement Areas, which drawings must be certified by a Massachusetts-registered land surveyor or civil engineer.

(e) Dig Safe. The City acknowledges that there may be surface and subsurface utilities on, under, over and adjacent to the Easement Areas and agrees to exercise extreme caution in performance of any Work. The City 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, 220 CMR 99.00, et seq., in connection with the exercise of the City's rights hereunder, at its sole cost and expense.

6. Use of Easement Areas; Maintenance and Repair.

(a) Maintenance by LRTA. The LRTA shall have no obligation to maintain, repair and/or replace the Easement Areas, the Facilities and/or the other City Improvements, including keeping the same in safe and passable condition. Notwithstanding the foregoing, the LRTA shall be solely responsible for and shall promptly repair, at its sole cost, any damage or harm caused by the LRTA or its agents, employees and/or contractors to the Facilities and/or other City Improvements Property, and/or the Easement Area.

(b) Maintenance by the City. The City shall (i) be responsible for all costs associated with the Easement Areas and the City's Improvements, including, but not limited to, all costs associated with the construction, installation, maintenance, operation, repair, replacement and/or removal of the City's Improvements; (ii) keep and maintain the Easement Areas and the City's Improvements in good, safe and clean order and repair and in compliance with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and/or ordinances applicable to the LRTA or the City, including, without limitation, the Environmental Laws (defined below) (collectively, "Applicable Laws") and promptly make all necessary repairs to keep the Easement Areas and the City's Improvements in good working order and safe

condition, at its sole cost and expense; (iii) have sole responsibility for the condition of the Easement Areas and the City's Improvements; (iv) do whatever is necessary in accordance with sound construction and engineering practices (including, but not limited to, installing proper drainage and removing snow, ice, debris, gravel, and dust), subject to such reasonable conditions as may be imposed from time to time by the LRTA, to prevent any material negative impact on the Easement Areas or on the LRTA Property and/or any improvements thereon, from the use of the Easement Areas by the City; and (v) with reasonable promptness make all repairs to the Easement Areas and the City's Improvements of every kind and nature that may be required at the City's sole cost and expense.

(c) Compliance with Applicable Laws, Regulations and Permits. In exercising its rights hereunder, the City shall comply with, and shall cause all Work by or on behalf of the City hereunder to comply with, all Applicable Laws, at its sole cost and expense, including, without limitation, G.L. c. 40, §54A, to the extent applicable. The City shall also be responsible, at its sole cost and expense, for obtaining, complying with and maintaining any and all federal, state, public utility commission, local and/or other governmental authority permits and/or approvals necessary to carry out the activities performed by or on behalf of the City hereunder. The City shall also be responsible, at its sole cost and expense, for complying with such reasonable regulations as the LRTA may from time to time establish to govern the City's use of the Easement Areas.

(d) Liens. The City shall not encumber or voluntarily cause a lien to be placed upon the LRTA Property and/or the Easement Areas and shall take all commercially reasonable steps necessary to promptly remove any such encumbrances or liens at its sole cost and expense.

7. Hazardous Materials; Indemnity.

The City shall not, nor permit any of the other City Parties to, bring onto, store, use, release or dispose of any hazardous materials, hazardous substances, oil or other toxic materials on the LRTA Property (collectively, "Hazardous Materials"), as those terms are defined in or regulated under G.L. c. 21E and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000, et seq., and any and all federal or other state laws, rules, regulations, orders, judgments, decrees, 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 (as the same may be amended from time to time, the "Environmental Laws"), and shall defend, indemnify, defend and hold harmless the LRTA from and against any and all claims, causes of action, administrative actions, administrative penalties, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all costs associated with the removal and clean-up of Hazardous Materials, fines, penalties, attorneys' fees, and consultant and expert fees) caused by or resulting from the presence, use, storage, generation, releases or disposal of hazardous substances by any of the City Parties on or about the LRTA Property (the "City Hazardous Activities"). The City's covenant to indemnify, defend and save the LRTA harmless from claims related to Hazardous Materials includes the obligation of the City to perform any required response action related to the Easement Areas and/or other impacted property required by a governmental authority at the City's sole cost and expense and in accordance with any of the Environmental Laws. The provisions of this Section shall survive the termination of this Agreement

8. Indemnification; Release.

(a) Indemnification. The City shall protect, indemnify, defend (at the option of the LRTA), and hold harmless the LRTA from and against any and all liabilities, losses, damages, costs, expenses, (including reasonable attorneys' or other professionals' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever (including, without limitation, damages to real estate or personal property, or the illness, injury or death of a person) including, without limitation, those related to any Hazardous Materials and/or the Environmental Laws), that are brought against, asserted, imposed upon and/or incurred against the LRTA after the date hereof which occur or arise as a result of any of the following activities or occurrences:

- (i) the activities of the City and/or the City's use of the Easement;
- (ii) the presence, discovery or revealing of any environmental condition including Hazardous Materials on the Easement Areas (or other portions of the LRTA Property), , which presence, discovery or revealing is a result of the City's activities hereunder and/or use of the Easement Areas; or
- (iii) the placement of or release or discharge of any Hazardous Materials on, in, at, under, over, through or associated with the Easement Area (or other portions of the LRTA Property) by the City ; or
- (iv) any failure of the City to perform or comply with any of the terms hereof and/or the Applicable Laws, including, without limitation, the Environmental Laws.

Notwithstanding the foregoing, the indemnification described above shall not apply to the City to the extent of any gross negligence or willful misconduct of the LRTA.

(b) Release. The City has inspected the Easement Areas and accepts the Easement Areas "as is". The City assumes all the risk of entry onto and use of the Easement Areas and the City hereby releases the LRTA from any responsibility for the City's losses or damages related to the condition of the Easement Areas and/or the City's use of the Easement Area, and the City 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 any other claim) against the LRTA, 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 the Massachusetts Department of Environmental Protection. Nothing herein shall release the LRTA from claims for losses or damages relating to Hazardous Materials within the Easement Areas that are not caused by or relating to the City Hazardous Activities, to the extent LRTA is responsible therefor under applicable laws, rules, and regulations.

(c) Survival. The provisions of this Section shall survive the termination of this Agreement.

9. Insurance; Requirements.

(a) Insurance. The Grantee understands that the City is self-insured. However, during any time that any Work is performed for the City within the Easement Areas by persons other than the City's employee, including its consultants and contractors, the parties performing the Work shall at all times maintain the following insurance and shall provide the LRTA with a certificate or certificates of insurance and shall, forever thereafter, renew and replace any expired certificate, evidencing the insurance of the activities permitted hereunder, with companies that comply with the requirements stated below, in which the LRTA is an additional insureds (other than workers insurance) and which provide minimum liability coverage as follows:

- (i) *Commercial General Liability Insurance*. Insuring the City, the LRTA, the Easement Areas and all activities of the City permitted pursuant to this Agreement, as well as the City's indemnification obligations contained herein, with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate and umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000.00) must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis).
- (ii) *Workers' Compensation Insurance and Employers' Liability Insurance*. Insuring all persons employed by the City in connection with any work done on or about the Easement Areas with respect to which claims for death or bodily injury could be asserted against the LRTA, including (i) Workers' Compensation Insurance providing statutory coverage as required by the Commonwealth of Massachusetts, and (ii) Employers' Liability Insurance coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident. The policy shall contain a clause waiving the right of subrogation in favor of LRTA. Each of the City's contractors, subcontractors and consultants performing work on or about the Easement Areas shall have similar policies covering their employees.
- (iii) *Automobile Liability Insurance*. Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of the City and its subcontractors and consultants that are used in the activities permitted hereunder.

(b) General Requirements. The required insurance coverages hereinbefore 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 A or better, shall be kept in full force and effect until the completion of any Work, shall be primary and non-contributory to any insurance or self-insurance maintained by the LRTA, and shall require that the LRTA be given at least thirty (30) days' advance written notice in the event of any cancellation or non-renewal in coverage. All such insurance as is required of the City shall be provided by or on behalf of all contractors and/or subcontractors to cover their operations performed. The City shall ensure that such insurance policies are in place and provide coverage as required throughout the term of this Agreement, and provide the MBTA and the LRTA with certificates of insurance prior to undertaking any Work and at such other times as the LRTA may reasonably request. The City shall be held responsible for any modifications, deviations or

omissions in the compliance with these requirements by any contractor or subcontractor of the City.

10. Event of Default.

In the event the City shall fail to comply with any term or condition herein (an “Event of Default”), the City shall have thirty (30) days from receipt of written notice from the LRTA of such Event of Default to cure such Event of Default (except that in the case of an Event of Default which cannot with due diligence be cured within such thirty day (30) period, then so long as the City proceeds with due diligence to commence to cure the same within the aforesaid thirty (30) day period and thereafter prosecutes the curing of such Event of Default with all due diligence to completion). Notwithstanding the foregoing, if the Event of Default is one that imminently threatens the safety of the public and/or would imminently cause harm to any of the LRTA’s improvements on the LRTA Property and/or the imminently impede LRTA’s ability to operate the transportation system, then it shall be considered an emergency default. In the event of an emergency default, if the City does not affect an immediate cure, the LRTA may use self-help at the expense of the City and the City shall be responsible for such expenses. However, in that event, prior to LRTA’s incurring any expenses it shall first notify the City of the estimated cost, except during an emergency, in which event notice shall be given as soon as practicable. The LRTA shall comply with applicable Massachusetts public bidding laws.

In the event the City contests the LRTA’s allegation of default and obtains a Court determination that a default did not occur, the City shall have no responsibility to reimburse the LRTA for any expenses that the LRTA may have incurred to cure or abate the alleged default.

11. Removal of Installations/Improvements.

At such time as the City ceases to use the Easement Areas, or in the event of the termination of this Agreement, the City shall, at its sole cost and expense, remove any and all personal property, improvements and installations made by it in the Easement Areas, and restore the Easement Areas to the condition they were in at the commencement of this Agreement. Any personal property or installations not so removed shall be deemed abandoned and may be removed and disposed of by the LRTA without any liability to the LRTA for such removal and disposition, all at the sole cost and expense of the City. This section shall not apply to Section 1 (c), which describes a temporary construction easement, provided, however, that the City shall restore the Temporary Construction Areas to their condition prior to the City’s entry thereon promptly upon the completion of the work.

12. Miscellaneous.

(a) Taxes. The City shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable during the time during which the Agreement continues to exist, which may be assessed against the City or the LRTA which are directly attributable to the City’s installations on, improvements to or use of the Easement Areas, or any personal property or fixtures of the City located thereon.

(b) Notices. All notices to be given pursuant to the terms hereof shall either be delivered in hand by messenger with signed receipt or by recognized overnight courier services with signed receipt, or shall be mailed by certified or registered mail, return receipt requested, postage prepaid, to the party entitled to receive such notice addressed as described below. Notices shall be deemed given when delivered by messenger or overnight courier service on the date of the delivery as aforesaid or when deposited in certified or registered United States mail, postage prepaid, return receipt requested.

If to the LRTA:

Lowell Regional Transit Authority
115 Thorndike Street
Lowell, Massachusetts 01852

If to the City:

Joe Giniewicz
Department of Planning and Development
City of Lowell
50 Arcand Drive
Lowell, MA 01852

Claire Ricker
Department of Planning and Development
City of Lowell
50 Arcand Drive
Lowell, MA 01852

The LRTA and the City shall, at any time and from time to time, have the right to specify as their proper addresses for purposes of this Agreement any other address or addresses by giving fifteen (15) days' written notice thereof to the other parties in accordance with the provisions herein.

(c) Amendment. This Agreement may not be amended, released or terminated except by a recorded instrument executed by the City and the LRTA.

(d) Captions. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

(e) Governing Law. The validity, construction and interpretation of this Agreement will be in accordance with the laws of the Commonwealth of Massachusetts.

(f) Bind and Inure. The obligations and benefits created pursuant hereto shall run with the land and be binding upon and inure to the benefit of the respective parties, their successors and assigns.

(g) Waiver. No consent or waiver, expressed or implied by the City or the LRTA to or for any breach of any covenant, condition or duty of the other party hereunder shall be construed as a consent or waiver to or for any other breach of the same or any other covenant, condition or duty hereunder.

(h) Agreement. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire agreement between the parties and may be terminated, cancelled, modified or amended only by a written instrument executed by all of the parties and recorded with the Registry.

(i) Limited Liability. In no event shall any partner, trustee, principal, officer, director, shareholder, employee or agent of the City or the LRTA have or incur any personal liability for any of the liabilities or obligations of the City or the LRTA, as applicable, hereunder and no personal judgment shall be sought, levied or enforced against any such person individually.

(j) Recitals. The recitals to this Agreement are incorporated into and are part of this Agreement.

(k) Severability. If any provision hereof shall to any extent be invalid or unenforceable, the remainder hereof (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected, and each provision hereof shall be valid and enforceable to the fullest extent permitted by Applicable Law.

(l) Recording. The City agrees to pay for the cost of recording this Agreement and any plans or other documents relating thereto.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have signed this Agreement under seal as of this 23rd day of December, 2019

LOWELL REGIONAL TRANSIT AUTHORITY

By: 
James H. Scanlan
Administrator, duly authorized

CITY OF LOWELL

By: _____
Eileen Donoghue
City Manager, duly authorized

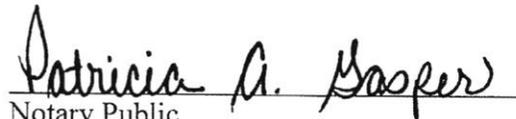
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 23 day of December, 2019, before me the undersigned Notary Public, personally appeared James H. Scanlan, Administrator of the Lowell Regional Transit Authority, proved to me through satisfactory evidence of identification, which was the notary's personal knowledge of the individual, to be the person whose name is signed on the preceding document, and acknowledge to me that he signed it voluntarily for its stated purpose on behalf of the Lowell Regional Transit Authority.



PATRICIA A. GASPER
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 28, 2022


Notary Public
My commission expires: October 28, 2022

COMMONWEALTH OF MASSACHUSETTS

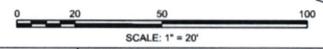
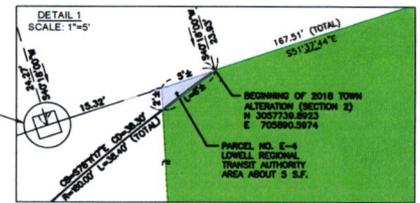
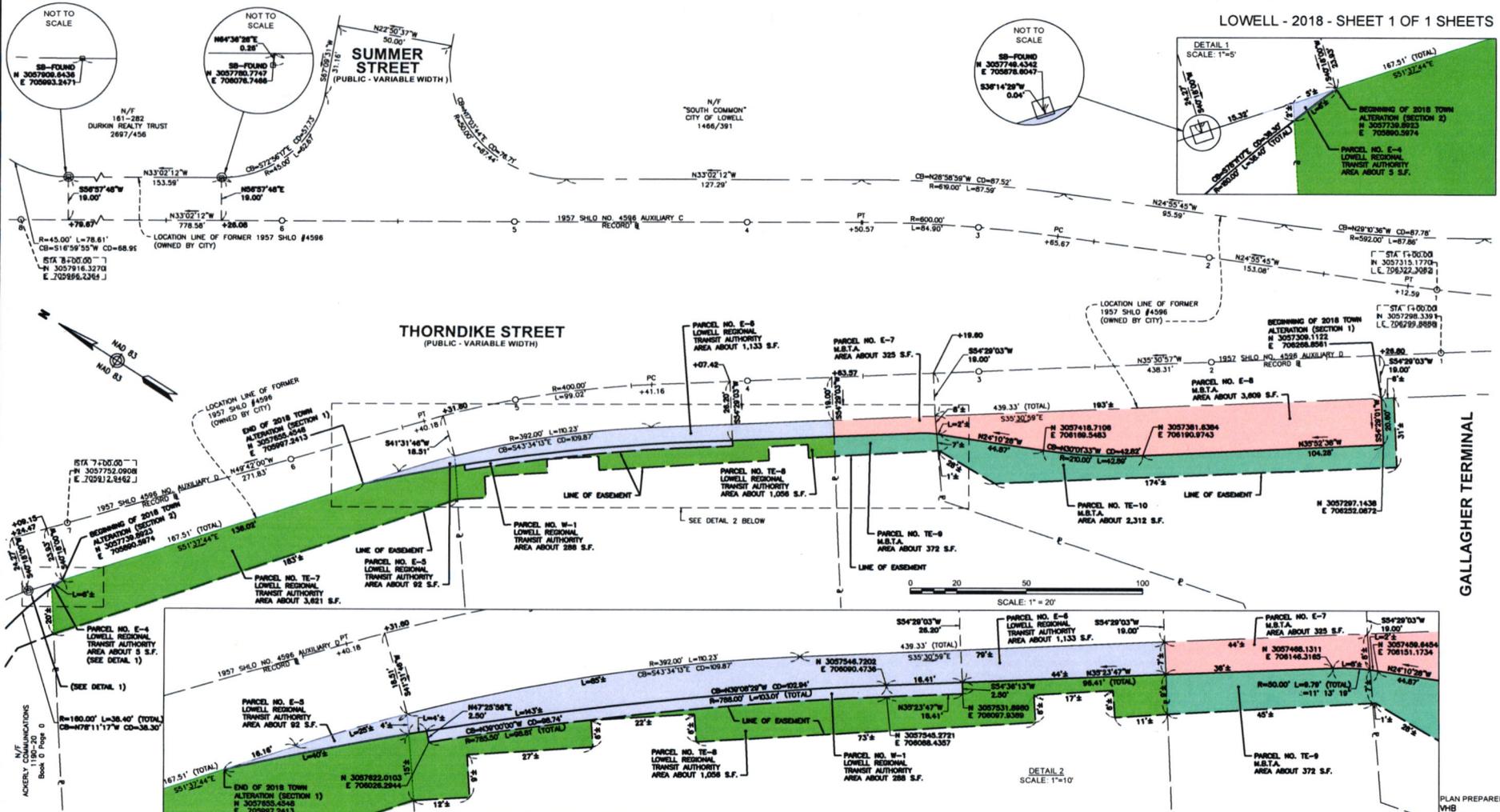
Middlesex, ss.

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared Eileen Donoghue, City Manager, proved to me through satisfactory evidence of identification, which was Notary's personal knowledge of the individual, to be the person whose name is signed on the preceding document, and acknowledge to me that she signed it voluntarily for its stated purpose on behalf of the City of Lowell.

Notary Public

My commission expires:

699557.4/LRTA/0008



FOR REGISTRY USE

Certification

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.
 I HEREBY CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES THAT ARE THE LINES OF EXISTING OWNERSHIP'S, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN. (MASS. GEN. LAWS CHAPTER 41, SEC. 81-X).

LEGEND	
E	ROADWAY EASEMENT
W	WALL EASEMENT
TE	TEMPORARY EASEMENT
N/F	NOW OR FORMERLY
SF	SQUARE FEET

- NOTES:
1. THE EXISTING MONUMENTATION AND TIES FOR THE CITY AND COUNTY LAYOUTS SHOWN ON THIS PLAN WERE LOCATED DURING A FIELD SURVEY PERFORMED BY VHB IN 2009, WITH SUPPLEMENTAL FIELD SURVEY PERFORMED IN 2015 AND 2017.
 2. THE PROPERTY LINES FOR PARCELS SHOWN ON THIS PLAN ARE BASED UPON AN ACTUAL FIELD SURVEY CONDUCTED BY VHB IN 2009, WITH SUPPLEMENTAL FIELD SURVEY PERFORMED BY VHB IN 2015 AND 2017.
 3. THE PURPOSE OF THIS PLAN IS TO CREATE PERMANENT AND TEMPORARY EASEMENTS FOR THE CITY OF LOWELL.

APPROVED: _____

 CITY OF LOWELL
 COMMISSIONER OF PUBLIC WORKS

PLAN OF ROAD IN THE CITY OF
LOWELL, MASS
MIDDLESEX COUNTY
 SHOWING LOCATION OF EASEMENTS
 FOR THE PURPOSE OF RECONSTRUCTING
 THORNDIKE STREET
 FOR THE CITY OF LOWELL
 SCALE: VARIES

DATE: _____
 RUSSELL J. BOUSSOUT, PLS #35389

111



Eileen M. Donoghue
City Manager

Kara Keefe Mullin
Assistant City Manager

January 14, 2020

Mayor John J. Leahy
and
Members of the City Council

REFERENCE: LRTA Easement Agreement for Lord Overpass

Dear Mayor Leahy and Members of the City Council:

The Department of Planning and Development (DPD) and Engineering Department are making final preparations for the Lord Overpass project. As part of the project, the City will receive a temporary (construction) easement and permanent easements from the LRTA. Additionally, the City is finalizing easement documents with DCAMM. Following the approval of these easement agreements, the City will continue to advance the project with start-up in the spring.

The Department of Planning and Development recommends that the Council approve the proposed easement agreement with the LRTA in order to continue to move this project forward. The Law Department has prepared the necessary Vote.

If you have any questions please feel free to contact Diane Tradd at the Department of Planning and Development at 978-674-4101.

Sincerely,

Eileen M. Donoghue
City Manager

EMD/ns
Attachment

cc: Diane N. Tradd, Assistant City Manager/DPD Director
Christine P. O'Connor, City Solicitor
Christine Clancy, Commissioner of Public Works
Claire V. Ricker, Chief Design Planner
Joseph Giniewicz, Urban Renewal Project Manager