

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to execute a Temporary Access Agreement between the City of Lowell and Colonial Gas Company, relative to 157 West Forest Street, Lowell.

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The City of Lowell owns property at 157 West Forest Street, Lowell, and

Colonial Gas Company has requested access to said property for the purpose of performing an archaeological survey of a portion of the replacement gas line's location in accordance with state permitting requirements with a termination date of May 31, 2020; and

A Temporary Access Agreement for such purpose is needed; and

The City of Lowell is willing to grant temporary access to Colonial Gas Company its employees, agents, representatives and contractor's access onto the property in order to perform said archaeological survey, subject to the terms and conditions for a period that will terminate on May 31, 2020.

BE IT VOTED BY A TWO-THIRDS VOTE OF THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City Manager be and he is hereby authorized to execute a Temporary Access Agreement between the City of Lowell and Colonial Gas Company, its employees, agents, representatives and contractor's relative to property at 157 West Forest Street for the purpose of performing an archaeological survey of a portion of the replacement gas line's location in accordance with state permitting requirements with a termination date of May 31, 2020, all as more fully described in the form, or substantially the form, attached hereto marked "A" and the Plan marked "B".

## PROPERTY ACCESS AGREEMENT

THIS PROPERTY ACCESS AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **CITY OF LOWELL**, a municipal corporation, having a mailing address of 375 Merrimack Street, Lowell, MA 01852 (the "City"), and **COLONIAL GAS COMPANY**, a Massachusetts corporation, having a usual place of business at 40 Sylvan Road, Waltham, MA 02451 ("Colonial Gas" or the "Company").

WHEREAS, the City owns a parcel of land located at 157 West Forest Street in Lowell, Massachusetts, all as more particularly described as Lot D in that vote dated April 2, 2014 and recorded with the Middlesex North District Registry of Deeds in Book 28108, Page 115 ("the Property"); and

WHEREAS, in connection with the Company's Lowell Area Gas Modernization Project, wherein the Company is replacing an existing natural gas pipeline to improve the safety and reliability of the same (the "Project"), Colonial Gas has requested that the City permit Colonial Gas the right to enter upon the Property for the purpose of performing an archaeological survey of a portion of the replacement gas line's location in accordance with state permitting requirements, all as more particularly described below; and

WHEREAS, the City has agreed to provide temporary access to the Property to Colonial Gas and its authorized agents, employees, representatives and contractors, in order to perform said archaeological survey subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter recited and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- (1) Access. The City hereby grants to Colonial Gas and its authorized agents, employees, representatives and contractors, a license to enter and use the Property for the purpose of conducting an archaeological survey as more particularly described on the scope of work attached hereto as Exhibit A (the "Work") in the location shown as "Archaeological Sensitive Area 2" on the sketch plan attached hereto as Exhibit B (the "Work Area"). Note that both the Work and the Work Area also reference a second area, but that area is not on land owned by the City of Lowell and is not subject to the terms of this Agreement.
- (2) Activities at the Property. Colonial Gas shall obtain all of the necessary permits and approvals and shall be responsible for working conditions on those portions of the Property where the Work takes place, including the protection of the health, welfare and safety of all persons and Property during the performance of the Work and compliance with Occupational Safety and Health Administration, and other applicable federal, state and local governmental laws, ordinances, codes, rules and regulations.
- (3) Indemnification; Insurance. Colonial Gas will indemnify, hold harmless and defend the City from and against all injury, loss, or damage (including death) on or about the Property caused by or resulting from any negligent act or omission of Colonial Gas or its agents, employees, representatives, or contractors in connection with or arising out of the performance of the Work at the Property; provided, however, that Colonial Gas shall not be responsible for the negligent acts or omissions of City or its agents, employees, representatives, or contractors at the Property. Colonial Gas agrees it shall maintain comprehensive general liability insurance in terms and amounts commercially reasonable covering any action arising in connection with the Work and shall include City as an additional insured thereunder.
- (4) Restoration of the Property. Colonial Gas agrees that, upon completion of the Work, Colonial Gas shall repair any damage to the Property caused as a result of Colonial Gas's Work at the Property, and to restore the ground surface of the Property to substantially the same condition in which it existed prior to Colonial Gas's commencement of the Work. Colonial Gas's restoration obligations under this Paragraph shall survive any termination of this Agreement.

(5) Term. The license granted herein shall commence upon the execution of this Agreement by both parties and expire on May 31, 2020. The City shall have the right to terminate or revoke this Agreement by providing at least five (5) days prior written notice to Colonial Gas.

(6) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts.

(7) Complete Agreement and Modification. The terms of this Agreement apply to access to the Property for performance of the Work and shall supersede the terms of any prior agreements between the parties involving access to the Property. This Agreement may not be modified or amended unless mutually agreed upon in writing by both parties.

(8) Binding Effect; Severability. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, including successors in title to the Property. This Agreement is solely for the benefit of said parties and their respective successors and assigns and may not be enforced by, nor shall it be construed for the benefit of, any third party. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(9) Transfer or Sale of Property. During the Term of this Agreement, the City shall notify Colonial Gas in advance as promptly as practicable of the proposed transfer or sale of all or any part of the Property.

(10) Notices. The giving of notice hereunder shall be by delivery in hand or by mailing by certified mail, return receipt requested, or express mail, or courier, as follows: (1) in the case of the City to the attention of Christine Clancy, P.E., City Engineer, City of Lowell Dept. of Public Works, 375 Merrimack Street, Lowell, MA 01852; (2) and in the case of Colonial Gas to the attention of Mathew Hayward, Project Manager, National Grid, 40 Sylvan Road, Waltham, MA 02451, with a copy to Megan F.S. Tipper, Esq., Assistant General Counsel, at the same address; or to any other address specified in a written notice sent to the City or Colonial Gas by the party changing its address. Any notice hereunder shall be deemed effective upon delivery in hand with a receipt therefor having been obtained or upon the first attempted delivery by mail or courier whether or not such delivery is accepted by the addressee.

(11) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall have the force and effect of an original and all of which together shall constitute but one and the same document. A signature set by facsimile shall have the same force as an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as a sealed instrument effective as of the date first above written.

**CITY OF LOWELL**

**COLONIAL GAS COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### SCOPE OF WORK

#### PROPOSED ARCHAEOLOGICAL TESTING

Archaeological testing is proposed by Commonwealth Heritage Group, Inc (Commonwealth) for two locations in proximity to West Forest Street in Lowell as part of the environmental compliance for the Lowell Area Gas Modernization Project. This testing has been requested by the Massachusetts Historical Commission (MHC) in their letter dated October 19, 2018 and will be conducted under a Permit issued by the MHC in compliance with state and federal regulations, as outlined in Massachusetts General Laws Chapter 9, Sections 26-27C (950 CMR 70-71), and Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800). Since the Project requires permits from the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act, it is also subject to review under Section 106 of the National Historic Preservation Act ("Section 106"). Colonial Gas is coordinating with both the USACE and MHC to avoid adverse effects to any eligible and potentially eligible historic and archaeological resources. As part of its Section 404 permit review and pursuant to Section 106, the USACE will consult with Native American tribes that express an interest in the historic and archaeological resources that may be affected by portions of the Project subject to USACE jurisdiction.

The proposed archaeological testing is to be performed on two areas of well drained soils outside of wetlands but within 300 ft of wetlands, favorable environmental conditions for encountering Native American archaeological sites. Archaeological testing involves manual excavation by shovel of small excavation tests. These are square 50-x-50 cm (1.5-x-1.5 ft) standard test pits (STPs) excavated along the proposed route of the gas pipeline. Systematic testing will take place with STPs every 10-m or 33 ft; the depth of excavation is typically 60 cm or about 2 ft. If any artifacts of potential significance are encountered, additional test pits will be placed around the STPs in which the artifacts are recovered at 5m (16.5 ft) intervals. Soil from the shovel test pits will be screened through one-quarter inch hardware cloth to ensure uniform recovery of artifacts. Once excavated, the STP is backfilled and returned to its natural appearance. Recovered artifacts will be returned to Commonwealth's laboratory for processing and will be property of the Commonwealth of Massachusetts in accordance with Massachusetts General Laws Chapter 9, Sections 26-27C (950 CMR 70-71).

Approximately three to four STPs each are proposed for Areas 2 and 3 as seen on the attached plan. It is estimated that the work will be completed by two archaeologists in the span of one day. STPs will not be left open if a second day of field work is necessary. All excavations are backfilled within the work day.

The proposed work is to assist in the environmental compliance for the project so that significant cultural resources of the Commonwealth of Massachusetts are identified if they will be affected by the project. Without conducting the subsurface professional testing, it is not possible to ascertain whether or not there is anything of cultural significance at the location.

Please feel free to contact me or the designated project contact for additional information as needed.

Respectfully,  
Martin Dudek



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**EXHIBIT B**

**PLAN**

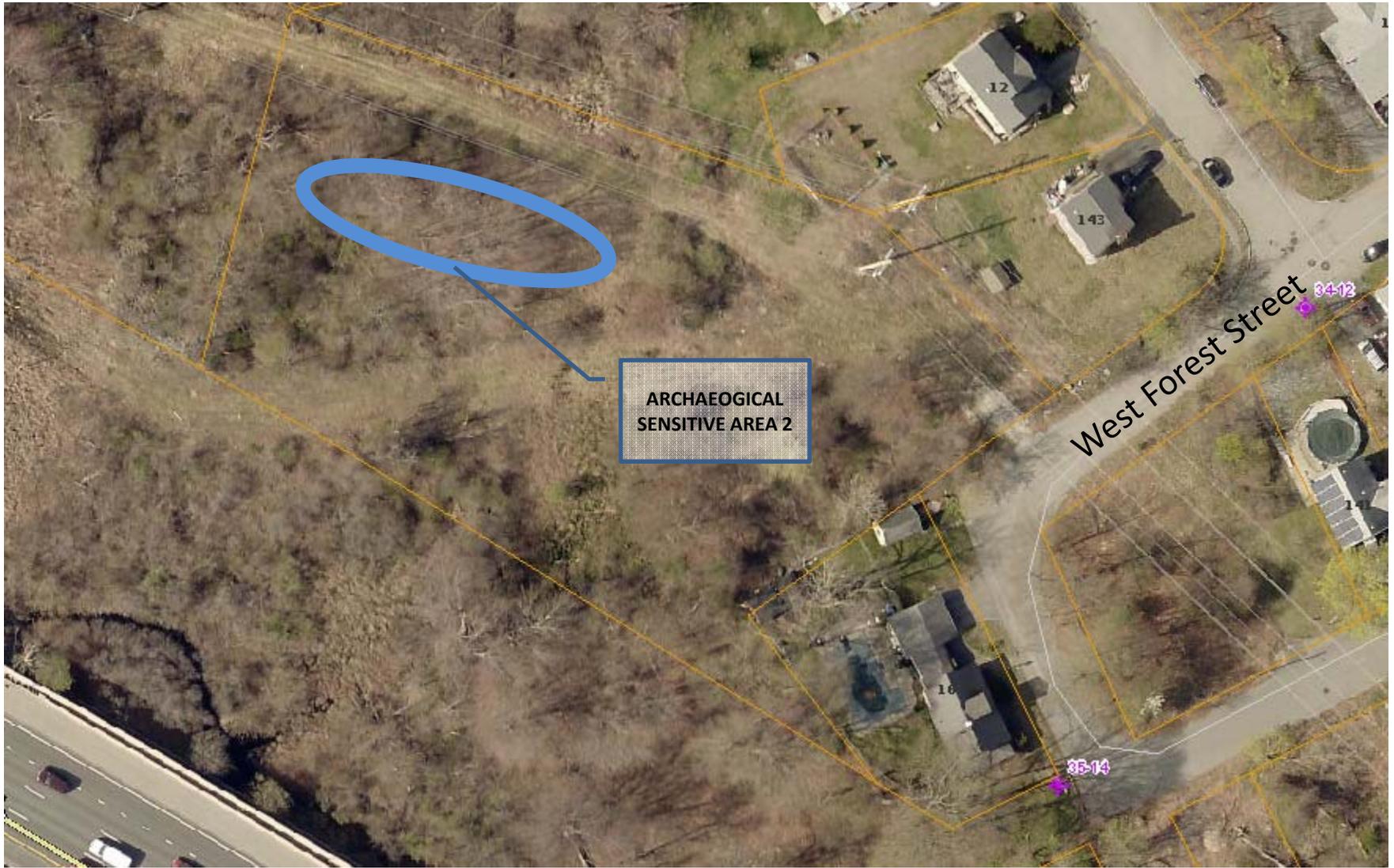


EXHIBIT B PLAN – 157 WEST FOREST STREET



Christine Clancy, P.E.  
DPW Commissioner

Date: January 9, 2020

TO: Eileen Donoghue, City Manager

FROM: Christine Clancy, P.E., DPW Commissioner

**SUBJECT: Request for City Council to authorize execution of access agreement for Colonial Gas Company to access City land (157 West Forest Street)**

This is a request for City Council to authorize the execution of an access agreement for Colonial Gas Company to access 157 West Street, Lowell, MA, a City owned parcel. As part of Colonial Gas Company's Lowell Area Gas Modernization Project, Colonial Gas is required to perform archaeological surveys in a few select locations along the proposed route of the replacement pipeline in the general area of the crossing of West Forest Street. One of these locations is on a parcel owned by the City of Lowell, 157 West Forest Street. The archaeological survey will determine if there are any significant cultural resources of the Commonwealth of Massachusetts within the project area. Without conducting this testing, it is not possible to ascertain whether or not there is any cultural significance at this location. The disturbed area will be restored to substantially the same condition upon completion of this testing.

The access agreement is attached. Upon execution of the access agreement, Colonial Gas anticipates completing the testing this winter or spring.

Thank you