

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 Broadway Street Holdings, Inc., relative to property located at 234 Mount Vernon Street, 268 Mount Vernon Street, and 5 Farnham Street (also known as the Soucy Site) in the Acre Urban Revitalization and Development Plan Area, Lowell, MA.

The City of Lowell owns property at 234 Mount Vernon Street, 268 Mount Vernon Street, and 5 Farnham Street (also known as the Soucy Site) in the Acre Urban Revitalization and Development Plan Area, Lowell, and

Broadway Street Holdings, Inc. has requested access to said property for the purpose of performing environmental remediation work; and

A Temporary Access Agreement for such purpose is needed; and

The City of Lowell is willing to grant temporary access to Broadway Street Holdings, Inc., their employees, agents and contractor's access onto the property for the purpose of this environmental remediation work to be conducted beginning on October 10, 2022 and ending upon April 10, 2023.

Said Agreement shall be predicated upon adequate insurance coverage which coverage shall be kept in force so long as said use of the premises continues under this License.

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 is hereby authorized to execute a Temporary Access Agreement between the City of Lowell and Broadway Street Holdings, Inc., their employees, agents and contractor's relative to property at 268 Mount Vernon Street, and 5 Farnham Street (also known as the Soucy Site) in the Acre Urban Revitalization and Development Plan Area for the purpose of performing environmental remediation work, all as more fully described in the form, or substantially the form, attached hereto, and to execute all other documents related to this agreement.

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

TEMPORARY ACCESS AGREEMENT

THIS TEMPORARY ACCESS AGREEMENT, made at Lowell, Middlesex County, Massachusetts, between the CITY OF LOWELL, a municipal corporation of the Commonwealth of Massachusetts and BROADWAY STREET HOLDINGS, INC., 706 Broadway Street, Lowell, MA 01854, hereafter referred to as “BSH,” WITNESSETH THAT:

The CITY OF LOWELL owns the properties located at 234 Mount Vernon Street, 268 Mount Vernon Street, and 5 Farnham Street (also known as the Soucy Site) in the Acre Urban Revitalization and Development Plan Area, in the City of Lowell, hereinafter called the “SITE,” attached hereto as Exhibit “A” and made a part hereof; and

WHEREAS, BSH desires access to said property for the purpose of performing environmental remediation work (hereinafter “Work”);

WHEREAS, the CITY OF LOWELL is willing to grant access to the property as shown in Exhibit “A” for the purpose of this Work, the scope of which is set forth in a remedial action plan (“RAM Plan”) and any amendments thereto, during the period October 10, 2022 through April 10, 2023;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties hereby agree as follows:

1. The CITY OF LOWELL hereby grants to BSH, its employees, agents, and contractors temporary access to encroach upon and use the SITE for the purpose of performing environmental remediation work;
2. BSH has and shall continue providing updates on the remediation plan for all environmental remediation work (the “RAM Plan”) for review by the City prior to the start of work. Access to the City Property by BSH to perform the Work is contingent upon the City’s continued receipt and approval of the RAM Plan and all associated amendments, no Access or Work shall occur without said approval;
3. BSH shall be responsible for the safety and security of the SITE during the Work of its employees, agents, and contractors on the site. At the end of each day when such Work occurs, BSH shall secure the site in such manner as is presently maintained. In the performance of all environmental remediation work, any stockpiling of soil or other remediation related activities occurring on the Property shall be performed in a customary workmanlike manner in compliance with all applicable Department of Environmental Protection (DEP) rules and regulations;

4. BSH shall obtain all necessary City of Lowell permitting, approvals, and authorizations, required as part of the Work, failure to obtain proper permitting shall void this access agreement;
5. BSH agrees that all work and stockpiling on the City Property shall be coordinated in harmony to the best of their ability with all City licensees and contractors as necessary to accomplish the work;
6. BSH and the CITY OF LOWELL acknowledge that the City makes no representations or warranties regarding the condition or safety of its SITE and that entry upon the SITE is at the risk of BSH, its employees, agents, and contractors. The City shall not be responsible for any personal injury or property damage suffered by any party or person that rises in any way out of the activities contemplated in this Agreement, except to the extent that such injury or damage is a direct result of gross negligence of the City, and subject to the limits and restrictions set forth in MGL Chapter 258. BSH, agrees to purchase and maintain a public/liability insurance policy in the amount of \$250,000 for injury to one person and or property and the amount of \$500,000 for injury to more than one person and or property naming the City as an additional insured.
7. BSH agrees to defend, indemnify and hold the CITY OF LOWELL, its officers, officials, agents and employees harmless from and against any suits, claims, actions, costs, expenses, fees, liability, losses and damages that may be asserted against, imposed upon, or incurred by the CITY OF LOWELL, its officers, officials, employees and agents, as a result of, relating to, or arising from any act or omission of BSH employees, agents, artists, and contractors that is directly associated or in connection with the grant of access as set forth herein.
8. BSH and its contractors, employees and representatives shall not interfere with, impede or deter the City's access, work, or activities on the site at any time.
9. BSH shall restore the site to its original condition, including paved areas, upon completion of the Work unless otherwise approved by the City.
10. BSH shall provide the City's Environmental Officer one (1) hard copy and (1) electronic copy of the RAM Plan and any other materials submitted to DEP in connection with the environmental remediation Work.
11. The Temporary Access Agreement is issued under the authority and in accordance with the Vote of the City Council of Lowell on this subject dated October 4, 2022.
12. BSH hereby agrees to be responsible for, and to pay for the cost of any damage to the CITY OF LOWELL regarding the premises.
13. Inherent in this Temporary Access Agreement is the unilateral right of the CITY OF LOWELL to cancel this Agreement at any time upon written notice thereof to BSH for any reason.

14. It is understood and agreed that this Temporary Access Agreement does not grant any ownership interest to the Site and shall in no way grant BSH access into any buildings on land currently owned by the CITY OF LOWELL.
15. The CITY OF LOWELL shall not be responsible or liable for any new reportable conditions discovered as a result of or arising from the Work. BSH shall be solely responsible for all costs and fees related thereto, including the costs of assessment and remediation, and BSH shall indemnify and hold the City harmless as to any claims, damages, fees, and costs.
16. In the event any wells on the City Property are damaged or removed as a result of the Work, BSH shall provide a list of removed and damaged wells along with a plan and schedule for their replacement if the LSP determines that said well(s) are necessary for future assessment and/or remediation.

Said License shall be predicated upon and shall not be in effect until adequate insurance coverage is provided, which coverage shall be kept in force so long as said use of the premises continues under this License.

IN WITNESS WHEREOF, the Parties have executed this Agreement as a contract under seal this the ____ day of October 2022.

CITY OF LOWELL, MA

BROADWAY STREET
HOLDINGS, INC.

By: _____

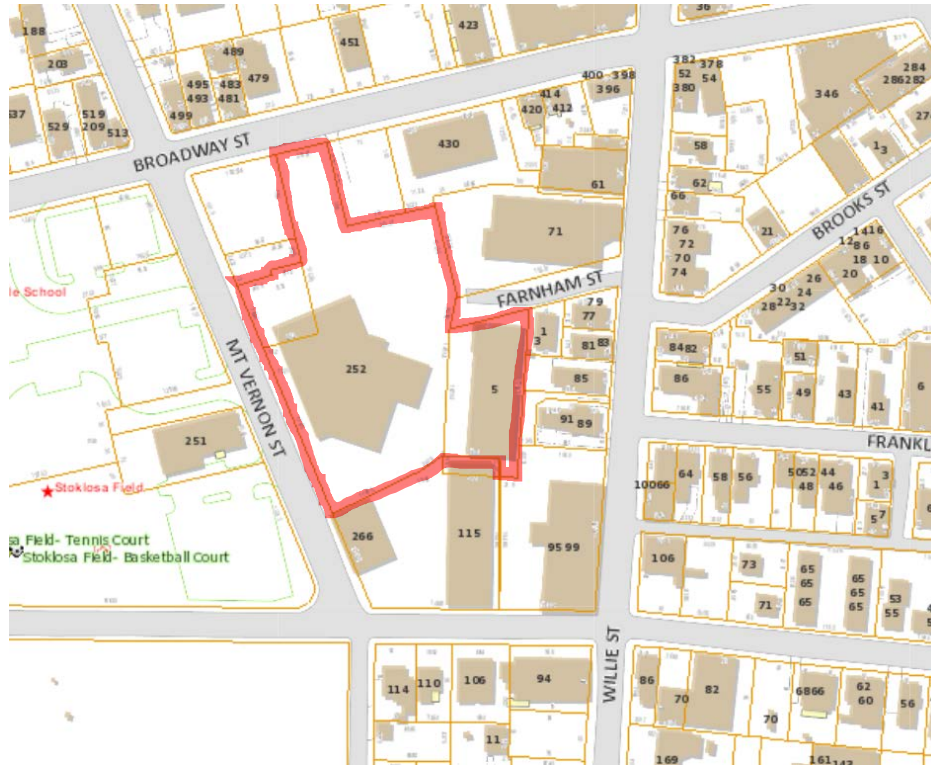
Thomas A. Golden, Jr., City Manager

By: _____

APPROVED AS TO FORM:

Christine P. O'Connor, City Solicitor

EXHIBIT "A"



City Owned (Soucy Site) 234 Mount Vernon Street, 268 Mount Vernon Street and 5 Farnham Street



Thomas A. Golden, Jr.
City Manager

September 27, 2022

Mayor Sokhary Chau
and
Members of City Council

REFERENCE: Temporary Access Agreement

Dear Mayor Chau and Members of the City Council:

REFERENCE: Temporary Access Agreement for 234 Mount Vernon Street, 268 Mount Vernon Street,
and 5 Farnham Street (the Soucy Site)

Broadway Street Holdings (BSH) has requested access to the City owned property located at 234 Mount Vernon Street, 268 Mount Vernon Street, and 5 Farnham Street, also known as the Soucy Site, in the Acre Urban Revitalization and Development Plan Area.

The property would be accessed to perform environmental remediation work. The Access Agreement indemnifies the City from injury to persons and property damage. The Agreement requires the contractor to obtain all necessary permitting approvals and restore the site to its original condition upon completion of the agreement.

If you have any questions or need any assistance in this matter, please contact Interim Assistant City Manager, Yovani Baez-Rose at (978) 674-4252 or me.

Sincerely,

Thomas A. Golden, Jr.
City Manager

Attachment:

Cc: Yovani Baez-Rose, Interim Assistant City Manager/DPD Director
Christine P. O'Connor, City Solicitor
Patricia Lucken, Asset Manager

Attachment: Temporary Access Agreement
Exhibit "A" Geographical Information Systems (GIS)