



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the City Clerk

North Adams City Council Meeting

Tuesday, July 14, 2020

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the North Adams City Council will be conducted via remote, no in-person attendance of members of the public will be permitted. This meeting can be viewed live on the Northern Berkshire Community Television station and will be posted to their website as soon as possible.

I hereby notify that at twelve noon today, July 8, 2020, the following items of business have been filed with this office and will be acted upon at the regular meeting in the City Council Chambers at City Hall, Tuesday Evening July 14, 2020 at seven-thirty o'clock according to Section 8, Rules and Orders of the City Council.

Deborah M. Pedercini
City Clerk

ZOOM LINK:

<https://us02web.zoom.us/j/83557540978>

AGENDA

REGULAR MEETING OF THE CITY COUNCIL July 14, 2020

Roll Call
Moment of silent remembrance
The Pledge
Approval of the minutes of June 23, 2020
Hearing of Visitors

11,859 Communication submitted by Councilor Lamb addressing various safety issues regarding sidewalk ordinances which was postponed at the meeting of April 14, 2020.

- 11,811** Communication from Councilor LaForest requesting a process for appealing to the City Solicitor which was referred to the General Government Committee and postponed at the meeting of March 10, 2020.
- 11,840** An Order authorizing a study in regards to the restoration of children's pillar art located at Route 2, bridge Veterans Memorial Drive which was postponed at the meeting of May 26, 2020.
- 11,876** Communication submitted by Councilor Lamb addressing speed limits and safety concerns in the Autumn Drive and Birchwood Terrace area which was referred to the Traffic Commission and postponed at the meeting of May 26, 2020.
- 11,860** Communication from the North Adams Traffic Commission recommending stop signs at the intersection of East Main, Pleasant and Miner Streets which was postponed at the meeting of March 24, 2020.
- 9,513-28** An Ordinance amending Chapter 7, Section 7-11 of the Revised Ordinances of the City of North Adams, entitled Public Services, Disposal of Waste at Transfer Station, which was passed to a second reading and published as required by law at the meeting of June 23, 2020.
- 11,770-05** Mayor's communication #35 regarding Fiscal 2020 budget closeout, account-to-account transfers.
- 11,770-05** An Order appropriating the sum of \$466,964.09 for internal account-to-account transfers required to close out the Fiscal Year 2020 budget.
- 11,887** Mayor's communication #36 regarding acceptance of easement agreement for 227 and 245 Ashland Street.
- 11,887** An Order authorizing the Mayor to enter into an easement agreement for 227 and 245 Ashland Street.
- 11,888** Mayor's communication #37 regarding acceptance of easement and agreement for 1476 Massachusetts Avenue.
- 11,888** An Order authorizing the Mayor to enter into an easement agreement for 1476 Massachusetts Avenue.

LICENSES

MAYOR'S CONCERNS

LIAISON UPDATES AND COUNCILOR CONCERNS

COMMITTEE REPORTS AND MINUTES

OPEN FORUM

CORRESPONDENCE

ADJOURN



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Thomas W. Bernard

Communication #	Subject	Date
35	Fiscal Year 2020 budget closeout: account-to-account transfers	July 14, 2020

Honorable Members of the City Council
North Adams, Massachusetts

Dear Honorable Councilors:

At the July 14, 2020, meeting of the North Adams City Council I will present to the Council an Order outlining the internal account-to-account transfers required to close out the Fiscal Year 2020 budget by July 15, as required by the Commonwealth's Division of Local Services (DLS).

As transactions are still being processed for FY 2020, a consolidated transfer order will be forwarded to you by email as soon as possible prior to the meeting and after final adjustments and reconciliations are completed.

Members of the City finance team and I will be present at the meeting of the City Council on Tuesday, July 14, and are prepared to address any questions you may have about these transfers.

I request that the Council adopt the Order as presented.

Respectfully submitted,

Thomas W. Bernard
Mayor

TWB/me



City of North Adams

In City Council

July 14, 2020

Ordered:

That the sum of FOUR HUNDRED SIXTY-SIX THOUSAND NINE HUNDRED SIXTY-FOUR DOLLARS AND NINE CENTS (\$466,964.09) be and is hereby transferred from:

1. General Government

Treasurer Collector	Expense	\$ 11,639.39
Treasurer Collector	Salary	\$ 8,124.17
		\$ 19,763.56

2. Public Safety

Police	Salary	\$ 37,381.99
Building Inspector	Salary	\$ 44,492.60
		\$ 81,874.59

3. Public Services

Water Filtration Plant	Expense	\$ 23,238.96
Veteran's Benefits	Expense	\$ 139,225.80
Library	Expense	\$ 19,244.55
Airport Commission	Expense	\$ 50,290.52
Highways	Salary	\$ 32,304.32
Airport Commission	Salary	\$ 29,692.00
Council on Aging	Salary	\$ 27,096.86
Fire	Salary	\$ 19,232.93
		\$ 340,325.94

6. Unclassified

Reserve Account	Expense	\$ 25,000.00
		\$ 25,000.00

TOTAL \$ 466,964.09

TO:

1. General Government

Information Systems	Salary	\$ 27,177.78
Information Systems	Expense	\$ 31,511.69
Assessor	Salary	\$ 17,479.79
		<u>\$ 76,169.26</u>

2. Public Safety

Visiting Nurses	Expense	\$ 1,147.00
Public Safety	Salary	\$ 12,051.36
Building & Property	Salary	\$ 4,277.26
Wire and Alarm	Salary	\$ 2,843.22
Transfer Station	Expense	\$ 80,413.72
		<u>\$ 100,732.56</u>

3. Public Services

Parks & Recreation	Expense	\$ 9,597.47
Water Works Division	Salary	\$ 6,722.09
Cemetery	Salary	\$ 6,216.86
Parks & Recreation	Salary	\$ 3,433.27
Veteran's Services	Salary	\$ 1,035.25
Snow & Ice	Expense	\$ 138,527.09
		<u>\$ 165,532.03</u>

6. Unclassified

Health Insurance	Expense	\$ 50,658.91
		<u>\$ 50,658.91</u>

7. Capital Expenses

Capital Items	Expense	\$ 73,871.33
		<u>\$ 73,871.33</u>

TOTAL	\$ 466,964.09
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CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Thomas W. Bernard

Communication #	Subject	Date
36	Acceptance of easement and agreement for 227 and 245 Ashland Street	July 14, 2020

Honorable Members of the City Council
North Adams, Massachusetts

Dear Honorable Councilors:

Enclosed with this communication is an Order accepting an easement and agreement with Cumberland Farms for the property located at 227 and 245 Ashland Street in the City of North Adams.

As noted in the Order Cumberland Farms, Inc. and the City of North Adams desire to create a permanent easement for the purposes of permitting and enabling the installation and maintenance of municipal amenities, including but not limited to municipal water and utilities.

I request that the Council adopt the Order as presented.

Respectfully submitted,

Thomas W. Bernard
Mayor

TWB/me



City of North Adams

In City Council

July 14, 2020

Ordered:

WHEREAS, Cumberland Farms, Inc. is the fee simple owner of certain real property and improvements located at 227 and 245 Ashland Street, North Adams, Massachusetts, currently designated as City of North Adams Tax Assessor's Plat #171, Lots 4 and 5; and

WHEREAS, The City of North Adams has requested that Cumberland Farms, Inc. grant to the City an easement and access for utility purposes to access and maintain underground utility services serving the City of North Adams' municipal water supply system under Cumberland Farms, Inc.'s property and Cumberland Farms, Inc. has agreed to grant such easement in accordance with and subject to the terms and provisions of this Easement Agreement; and


WHEREAS, Cumberland Farms, Inc. and the City of North Adams desire to create a permanent easement for the purposes of permitting and enabling the installation and maintenance of municipal amenities, including but not limited to municipal water and utilities.

NOW THEREFORE, IT IS ORDERED:

That the City accept the Utility and Access Easement (with Exhibits) attached to this Order as Exhibit A and entitled "Utilities and Access Easement Agreement;" and that the Mayor be and is hereby authorized to accept and execute the Utilities and Access Easement Agreement on behalf of the City.

July 8, 2020

Lee S. Smith
lsmith@k-plaw.comMEMORANDUM

TO: MAYOR THOMAS W. BERNARD, MICHAEL NUVALLIE
FROM: LEE S. SMITH, ESQ. 
RE: ACCEPTANCE OF EASEMENTS
DATE: JULY 8, 2020

1. Blackinton Connector Project Easement

The City has been awarded a MassWorks grant for the improvement of critical infrastructure components in the area of Massachusetts Avenue and Ashton Avenue. In connection with this work, the City has requested that private landowners, Allan and Cynthia McLain, grant the City a Temporary Construction Easement on their property. The easement is required in order to enable reconstruction of and repairs to the former industrial waterway that crosses through the Blackinton Mill, the property owned by Allan and Cynthia McLain, and the City-owned parcel adjacent thereto, as well as related infrastructure and improvements. This work is critical to ensuring the proper flow of stormwater and to prevent continued flooding of the Blackinton Mill thereby facilitating its redevelopment. The term of the easement is three (3) years.

I have prepared the Temporary Construction Easement presented to the City Council for a vote to accept the easement, the landowners have executed the easement, and I have approved it as to form. If the easement is accepted by the City, it will be recorded in the Registry of Deeds.

2. Cumberland Farms, Inc. Utility and Access Easement

Cumberland Farms, Inc. ("CF") recently acquired the property located at 227 and 245 Ashland Street and is redeveloping it as a convenience store and gas station. In connection with this project, CF is relocating the water main that was located through the center of the property. After the water main is installed by CF and accepted by the City, the City will take responsibility for the water main as part of its public water supply system. The easement is required in order to grant the City rights to access the CF property to maintain the water main. The easement will be permanent.

I have reviewed the Utility and Access Easement Agreement presented to the City Council for a vote to accept the easement and I have approved it as to form. CF has executed the easement. If the easement is accepted by the City, it will be recorded in the Registry of Deeds.

UTILITY AND ACCESS EASEMENT AGREEMENT

This Utility and Access Easement Agreement (this “**Easement Agreement**”) is entered into as of the ____ day of _____, 2020 by and between **Cumberland Farms, Inc.**, a Delaware corporation, with an address of 165 Flanders Road, Westborough, Massachusetts (“**Grantor**”) and **The City of North Adams**, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, with an address of City Hall, 10 Main Street, North Adams, Massachusetts (“**Grantee**”).

W I T N E S S E T H :

WHEREAS, Grantor is the fee simple owner of certain real property and improvements known as and numbered 227 and 245 Ashland Street, North Adams, Massachusetts, currently designated as Town of North Adams Tax Assessor’s Plat #171, Lots 4 and 5, as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Grantor’s Property**”). The Grantor’s Property is shown as the “CF Property” on the plan (the “**Plan**”) attached hereto as **Exhibit A-1** and incorporated herein by reference;

WHEREAS, Grantee has requested that Grantor grant to Grantee an easement and access thereto for utility purposes to access and maintain underground utility services serving the City of North Adams’ municipal water supply system under the Grantor’s Property and Grantor has agreed to grant such easement in accordance with and subject to the terms and provisions of this Easement Agreement;

WHEREAS, Grantor and Grantee desire to create a permanent easement for the purposes of permitting and enabling the installation and maintenance of municipal amenities, including but not limited to municipal water and utilities.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

SECTION 1. Grant of Easement.

(a) Grantor hereby grants to Grantee, its successors and assigns, a perpetual, non-exclusive easement (the “**Easement**”), as appurtenant to the Grantee’s Property, to maintain utilities under Grantor’s Property in the location depicted on the Plan as the “**Water Easement Area**” (the “**Easement Area**”) for the purpose of maintaining a water line to the municipal water supply system in Ashland Street installed by Grantor (collectively, the “**Utilities**”). Notwithstanding the above, any water lines or other utilities serving the Grantor’s property connected to the municipal water supply system shall be the sole property of the Grantor and are expressly excluded from the definition of “Utilities” as described above and the Grantor shall be solely responsible for the maintenance, inspection, repair and replacement thereof.

(b) The easement rights hereby granted include the right to enter the Easement Area to install, maintain, inspect, repair and replace the Utilities by foot and by vehicle, including heavy equipment, (subject to the terms and provisions of this Easement Agreement), but do not include any right to relocate or expand any of the Utilities without Grantor’s (or its successor’s or assigns, as the case may be) prior written consent.

(c) Upon completion of the installation by the Grantor and acceptance by the Grantee, the Utilities shall be the sole property of Grantee. None of the Utilities or any part thereof shall be located above the ground. The Grantee shall exercise its rights hereunder in a reasonable manner so as to cause no more than minimum necessary disruption and interference with the Grantor’s Property and Grantee shall at all times use reasonable and diligent efforts to avoid any

interference to Grantor's use and enjoyment of Grantor's Property, including the Easement Area. Notwithstanding anything contained herein to the contrary, in no event shall Grantee's use of the Easement or Grantee's performance of any work within the Easement Area permitted hereunder, in any way interfere with Grantor's access to the Grantor's Property.

(d) Grantor hereby reserves for itself and its successors and assigns and its and their respective guests, invitees, and licensees, the right to fully use and enjoy the Easement Area and Grantor's Property for any uses and purposes to which Grantor's Property may be legally put, including the right to park motor vehicles upon, develop, construct improvements upon, and pass and repass over the Easement Area. In addition, Grantor reserves the right to install, maintain, repair and replace electrical wires, conduits, switches and related equipment benefiting Grantor's Property within the Easement Area, including, without limitation, the right to locate such items in the trench or trenches excavated by Grantee, provided however, that no such work or installation shall unreasonably interfere with Grantee's Utilities or access thereto. Grantee shall cooperate with Grantor, including, without limitation, by providing Grantor with notice of any excavation work within the Easement Area and reasonable opportunity to so install, maintain, repair and replace such equipment of Grantor concurrently with any excavation work of Grantee.

(e) Grantee hereby acknowledges and agrees that its use of the Easement Area is subject to easements, covenants, agreements, encumbrances and other matters of record.

SECTION 2. Use of the Utilities. Grantee acknowledges and agrees that the Easement is for the benefit of the Grantee, as a connection to the municipal water system. Grantee shall not permit the owner or occupant of any other property to "tie-in", so-called, to the Utilities on or adjacent to Grantor's Property, except for connections within the area of Ashland Street.

SECTION 3. Performance of Work, Maintenance and Restoration Obligations. Grantee shall at all times maintain the Easement Area and Utilities in good, clean and safe condition. Grantee shall promptly repair and/or replace any broken or leaking Utilities, repair any damage to Grantor's Property caused by any broken or leaking Utilities and restore Grantor's Property to its condition existing immediately prior to such damage. Any such work undertaken or performed by Grantee in connection with the installation, repair, maintenance, or replacement of the Utilities authorized under this Easement Agreement shall comply with the following:

(a) Except in the event of an emergency, in which case the following shall occur as soon as is practicable, any such work shall be subject to Grantor's prior written approval of (i) all plans and specifications therefor (and such reasonable conditions affecting, among other things, the obtaining of required permits and authorizations, the payment for labor and materials supplied in connection with the same, evidence of contractor's insurance, and contractor's performance and payment bond as the Grantor reasonably deems appropriate), (ii) the contractors responsible for performing such work, and (iii) the proposed timeline and work schedule (it being acknowledged and agreed that any permitted interference with Grantor's use of the Easement Area or Grantor's Property during initial construction or subsequent maintenance shall be scheduled in advance during such days and times as are acceptable to Grantor in its sole discretion). In the event that such work does not conform to the approved plans and specifications and as a result unreasonably interferes with Grantor's use and enjoyment of Grantor's Property, then Grantee shall be in default of this Easement Agreement and, in addition to all other rights and remedies available to Grantor, Grantor may, after giving Grantee a reasonable opportunity to cure and Grantee having failed to cure, elect to terminate this Easement Agreement by providing written notice thereof to Grantee, in which case the Easement and all rights granted hereby shall immediately terminate and become null and void. Notwithstanding the above, access and work performed in the event of an emergency shall not result in the Grantee being in default of this Easement Agreement. In

the event that any such work is not completed within a reasonable timeframe as requested by Grantor, following reasonable notice and opportunity to cure provided by Grantor to Grantee, then Grantee shall be in default of this Easement Agreement and Grantor may elect to either (i) terminate this Easement Agreement by providing written notice thereof to Grantee, in which case the Easement and all rights granted hereby shall immediately terminate and become null and void, or (ii) Grantor may complete such work at Grantee's sole cost and expense, which reasonable and documented costs are to be reimbursed within ninety (90) days of completion of such work; and

(b) Prior to entering the Grantor's Property, the firm or contractor performing any installation, maintenance, or other approved work shall provide the Grantor with certified copies of general comprehensive liability insurance policies providing coverage for the Grantor and naming Grantor as an additional insured thereunder, in an amount not less than \$1,000,000, as well as such other additional insurance as Grantor may reasonably require from time to time; and

(c) All costs of Grantee's design, engineering, construction, installation, repair, removal, upkeep and maintenance thereof, including all surveying expenses and all charges incurred for building permits and other necessary permits, and any attorneys' fees shall be paid solely by Grantee; and

(c) All excavation, earth removal, filling, construction, installation and other work performed pursuant to this Easement Agreement shall be in accordance with applicable laws, ordinances, orders, rules, regulations of all governmental authorities having jurisdiction thereof; and

(d) Grantee shall properly backfill any excavation and restore the surface of the Grantor's Property in as good condition as before the excavation was made; and

(e) Grantee shall at all times use good faith and diligent efforts to avoid and limit any interference with Grantor and its use of the Grantor's Property; and

(f) Grantee shall notify Grantor in writing prior to commencing any work on the Grantor's Property; and

(g) Grantee shall perform all work diligently, shall not leave any area open or exposed and shall complete all such work as quickly as possible and in any event within the scheduled timeline approved by Grantor. In addition, notwithstanding anything contained herein to the contrary, except in case of an emergency, in no event shall Grantee's activities hereunder interfere with Grantor's access to and use of the Grantor's Property for a period in excess of fifteen (15) minutes without (in each instance) Grantor's prior written consent thereto; and

(h) If, because of any act or omission of Grantee, any mechanic's or other lien, charge or order for the payment of money is filed against the Grantor or the Grantor's Property, the Grantee will cause the same to be discharged of record within twenty (20) days after written notice from the Grantor to the Grantee of the filing thereof. The Grantee will promptly notify the Grantor of any such lien, charge or order of which it may have knowledge.

SECTION 4. Covenants Running with the Land. This Easement Agreement shall be binding upon and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties hereto and shall be covenants running with the land, enforceable both at law and in equity.

SECTION 5. Insurance/Indemnification. Grantee hereby agrees to maintain with a responsible company qualified to do business in Massachusetts a policy of commercial general liability insurance insuring against any and all claims for personal injury, death or property damage occurring in, upon or connected with the Easement Area which arise in connection with

Grantee's exercise of its rights and obligations stated herein, the coverage and protection of such insurance to be not less than \$2,000,000.00 (combined single limit). Limits of such commercial general liability insurance may be reviewed annually and increased if independent insurance advisors selected by the Grantor so advise. Within thirty (30) days of the written demand of a party hereto, Grantee shall provide the demanding party with a certificate or certificates evidencing such insurance. To the extent permitted by law, Grantee shall hold harmless, defend (with counsel acceptable to Grantor) and indemnify Grantor from and against any and all loss, liability, claims, fines, penalties, orders of any federal, state or local authorities, damages, costs and expenses (including reasonable attorneys' fees) arising (i) upon or about the Easement Area, in connection with the exercise of the rights granted pursuant to this Easement Agreement by Grantee (or its legal representatives, heirs, successors and assigns and its or their agents or representatives, contractors or invitees), (ii) from any Hazardous Materials (as herein defined) released on the Grantor's Property in connection with the exercise of the rights granted by this Easement Agreement, or any violation of any Environmental Law (as herein defined) caused directly or indirectly by Grantee (or its legal representatives, heirs, successors and assigns and his or their agents or representatives, contractors or invitees), or (iv) from the failure of Grantee to fully perform its obligations hereunder.

"Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. **"Environmental Law"** shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions or wells.

SECTION 6. Remedies and Enforcement. (a) In the event of a breach or threatened breach by the Grantee of any of the terms, covenants, restrictions or conditions hereof, Grantor and its successors and assigns shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach from the Grantee.

(b) In addition to all other remedies available at law or in equity, upon the failure of the Grantee to cure a breach of this Agreement within fifteen (15) days following written notice thereof by Grantor, Grantor shall have the right to perform such obligations contained in this Agreement on behalf of Grantee and be reimbursed by Grantee upon demand for the reasonable costs thereof.

(c) The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

SECTION 7. Grantee's Additional Representations, Warranties and Covenants.

Notwithstanding anything contained herein to the contrary, in no event shall Grantee have the right to (i) disturb the surface or paved areas of the Grantor's Property (including the Easement Area) in connection with borings or test-drilling for the purpose of testing any soils on the Grantor's Property, or (ii) take any action the result of which could reasonably foreseeably impose upon Grantor or the Grantor's Property any remediation obligations under applicable environmental laws.

Grantee's violation of the terms of this paragraph shall constitute a default under this Easement Agreement resulting in the immediate and automatic termination of this Easement Agreement and all of the rights granted hereby. In such event, Grantor shall have the right, but not the obligation, to record a notice of easement termination in the Berkshire County Registry of Deeds.

SECTION 8. Miscellaneous.

(a) This Easement Agreement and the obligations of the parties hereto shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without reference to its conflict of laws provisions.

(b) All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given, if mailed, by registered or certified mail, return receipt requested, or, if by other means, when received by the other party, at the address first set forth herein, such other address as may hereafter be furnished to the other party by like notice, or at the addresses of the respective successors and assigns of the parties hereto as they may appear in the Berkshire County Registry of Deeds.

(c) This Easement Agreement may only be amended by a recorded document executed by the parties to this Easement Agreement or their successors of record.

(d) No waiver of, acquiescence in, or consent to any breach of any term, covenant or condition of this Easement Agreement shall be construed as a waiver of or acquiescence in, or consent to such breach or any other, further, or succeeding breach of the same or any other term, covenant or condition.

(e) If any term or provisions of this Easement Agreement shall, to any extent be invalid or unenforceable under applicable law, then the remaining terms and provisions of this Easement Agreement shall not be affected thereby, and each such remaining terms and provisions shall be valid and enforced to the extent permitted by law.

(f) This Easement Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

(g) This Easement Agreement contains the entire agreement between the parties with respect to the subject matter hereof and is subject to no other understandings, conditions or agreements other than those expressly contained herein.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, acknowledged and delivered as of the date first above set forth.

GRANTOR:

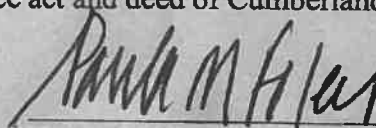
Cumberland Farms, Inc.,
a Delaware corporation

By: 

Print Name: George Fournier
Title: President

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Worcester

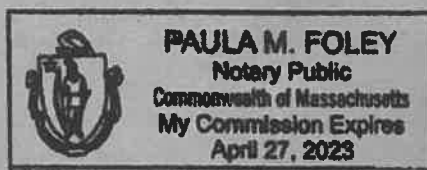
On the 18th day of June, 2020, before me personally appeared the within-named George Fournier, President of Cumberland Farms, Inc., a Delaware corporation to me known and known by me to be the party executing the foregoing instrument on behalf of said Cumberland Farms, Inc., and he/she acknowledged said instrument and the execution thereof, to be his/her free act and deed in such capacity and the free act and deed of Cumberland Farms, Inc.



Notary Public

Print Name: Paula M Foley

My commission expires: April 27, 2023



ACCEPTANCE OF GRANT OF ACCESS AND UTILITY EASEMENTS

On this _____ day of _____, 2020, the City of North Adams, acting by and through its Mayor pursuant to a vote of the City Council taken on _____, 2020, and every other authority appertaining, hereby accepts the foregoing easement from Cumberland Farms, Inc.

GRANTEE:

CITY OF NORTH ADAMS

Thomas W. Bernard, Mayor

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this _____ day of _____, 2020, before me, the undersigned Notary Public, personally appeared Thomas W. Bernard, Mayor, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Mayor of the City of North Adams.

Notary Public

My Commission Expires:

723715NOAD/0001

EXHIBIT A

Legal Description of Grantor's Property

BEGINNING AT BROKEN CONCRETE BOUND ON THE WESTERLY LINE OF ASHLAND STREET (AKA ROUTE 8A-PUBLIC) AT THE DIVISION LINE OF LOT 4, MAP 171 (N/F LANDS OF CITY OF NORTH ADAMS) AND LOT 3, MAP 171 (N/F LANDS OF MASS COLLEGE OF LIBERAL ARTS), RUNNING THENCE, ALONG SAID DIVIDING LINE OF LOT 3, MAP 171 AND LOT 4, MAP 171 THE FOLLOWING COURSE:

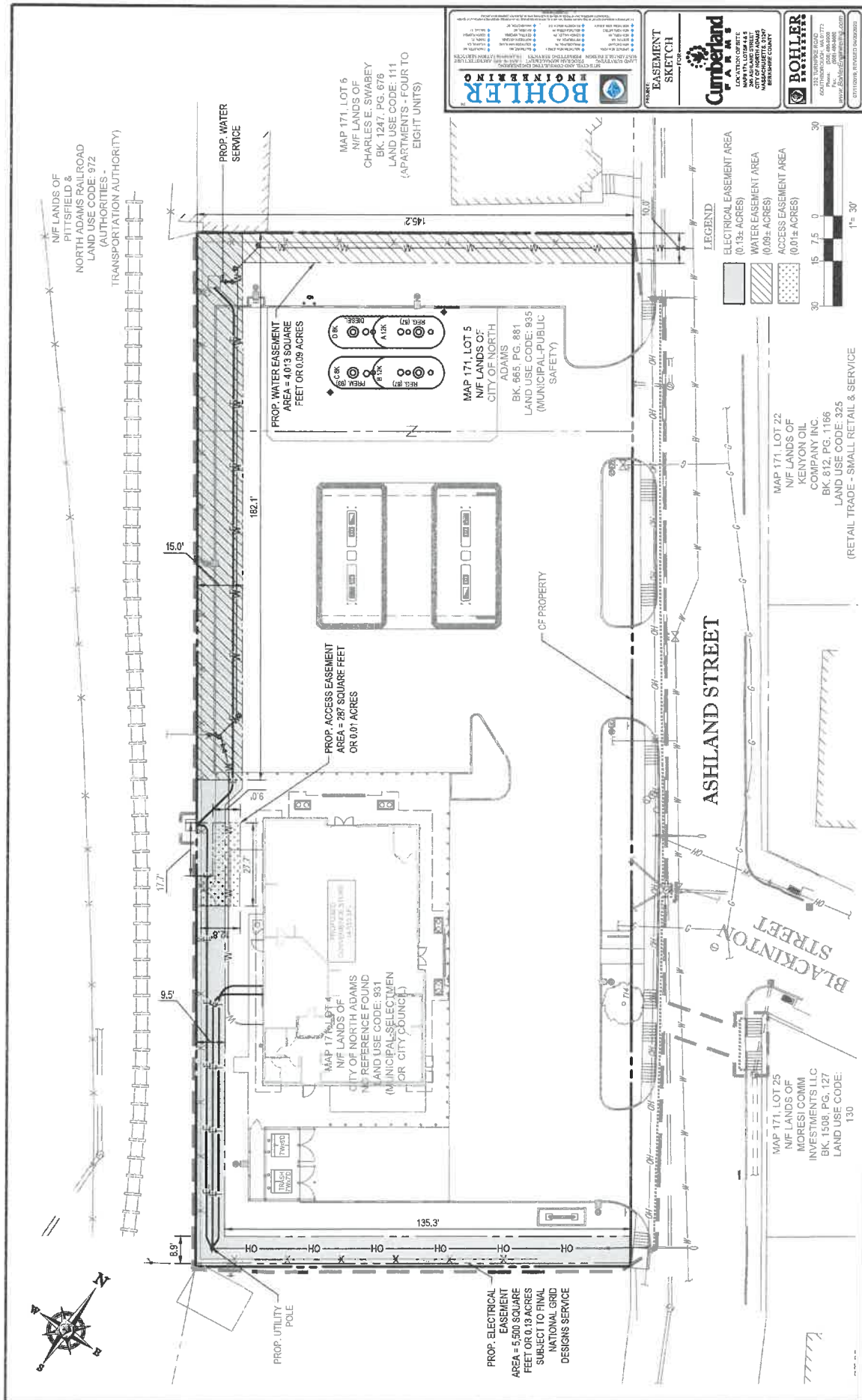
1. SOUTH 56 DEGREES - 07 MINUTES - 19 SECONDS – WEST, A DISTANCE OF 144.80 FEET TO A POINT ON THE EASTERLY BOUNDARY OF LANDS N/F LANDS OF PITTSFIELD & NORTH ADAMS RAILROAD, RUNNING THENCE;
2. ALONG THE DIVISION LINE OF LANDS N/F LANDS OF PITTSFIELD & NORTH ADAMS RAILROAD AND LOT 4 AND LOT 5, MAP 171, NORTH 33 DEGREES - 52 MINUTES - 43 SECONDS – WEST, A DISTANCE OF 277.90 FEET TO A CORNER IN COMMON WITH LOT 6, MAP 171 (N/F LANDS OF CHARLES E. SWABEY), THENCE;
3. ALONG THE DIVISION LINE OF LOT 5, MAP 171 AND SAID LOT 6, MAP 171, NORTH 56 DEGREES - 07 MINUTES - 17 SECONDS – EAST, A DISTANCE OF 145.20 FEET TO A REBAR FOUND ON THE WESTERLY LINE OF ASHLAND STREET, THENCE;
4. ALONG THE WESTERLY LINE OF ASHLAND STREET, SOUTH 33 DEGREES - 52 MINUTES - 43 SECONDS – EAST, A DISTANCE OF 343.90 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 49,934 SQUARE FEET OR 1.146 ACRES

THIS DESCRIPTION IS PREPARED WITH REFERENCE TO THE A MAP ENTITLED “ALTA/NSPS LAND TITLE SURVEY, 227 ASHLAND STREET, MAP 171, LOTS 4 AND 5, CITY OF NORTH ADAMS, BERKSHIRE COUNTY, COMMONWEALTH OF MASSACHUSETTS,” PREPARED BY CONTROL POINTS ASSOCIATES, INC. DATED NOVEMBER 15, 2017, LAST REVISED FEBRUARY 9, 2018.

EXHIBIT A-1

Plan Showing Grantor's Property, Grantee's Property, and the Easement Area



BOHLER ENGINEERING

317 CROWN AND CONSULTING ENGINEERING
1000 WEST 10TH STREET, SUITE 100
DENVER, CO 80202
TEL: 303.733.1111
FAX: 303.733.1112
WWW.BOHLERENGINEERING.COM

EASEMENT SKETCH

Cumberland

LOCATION OF SITE
MAP 171, LOT 5 & 6
CITY OF NORTH ADAMS
BERKSHIRE COUNTY

BOHLER

317 CROWN AND CONSULTING ENGINEERING
1000 WEST 10TH STREET, SUITE 100
DENVER, CO 80202
TEL: 303.733.1111
FAX: 303.733.1112
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CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Thomas W. Bernard

Communication #	Subject	Date
37	Acceptance of easement and agreement for 1476 Massachusetts Avenue	July 14, 2020

Honorable Members of the City Council
North Adams, Massachusetts

Dear Honorable Councilors:

Enclosed with this communication is an Order accepting an easement and agreement with the owner of the property located at 1476 Massachusetts Avenue in the City of North Adams.

Recently the City of North Adams was awarded a \$2,436,000.00 grant from the Commonwealth of Massachusetts Massworks Infrastructure Program to support the redevelopment of the Blackinton Mill. The project will address longstanding drainage and waterflow problems on the mill property, as well as related stormwater issues that affect the Blackinton neighborhood. The investment of public funds to support these infrastructure improvements – secured through a collaboration among the operators of TOURISTS, our legislative delegation, and the team in the Office of Community Development, and supported by the Commonwealth's Executive Office of Housing and Economic Development and the Baker-Polito administration – is a necessary first step in the overall redevelopment of the mill property.

In order to complete this work and provide full access to the Blackinton Mill property and project area, the city has negotiated an easement and agreement with the owner of the property located at 1476 Massachusetts Avenue.

I request that the Council adopt the Order as presented.

Respectfully submitted,

Thomas W. Bernard
Mayor

TWB/me



City of North Adams

In City Council

July 14, 2020

Ordered:

WHEREAS, the Commonwealth of Massachusetts, through its MassWorks Infrastructure program, has awarded the City of North Adams funds in the amount of Two Million Four Hundred Thirty-Six Thousand Dollars (\$2,436,000.00) for the purpose of making infrastructure improvements in the Blackinton neighborhood, including on a portion of the property located 1476 Massachusetts Avenue in North Adams (the “Improvements”); and

WHEREAS, The Improvements are part of a project that consists of redeveloping the Blackinton Mill, as well as the City-owned parcel identified on the Assessor’s Map as Map 90 Lot 15, in the easement granted to the developers for uses as allowed and described by an Order of the North Adams City Council on November 10, 2015, as recorded in Book 1592 Page 855 with the North Berkshire Registry of Deeds; and

WHEREAS, Completion of the Improvements require the City to accept an easement in, on, over, across, and under a portion of the property located at 1476 Massachusetts Avenue from Allan and Cynthia McLain; and

WHEREAS, to facilitate the City’s completion of the Improvements, Allan and Cynthia McLain, of the property, desire to grant the City an easement in, on, over, across, and under a portion of the property located at 1476 Massachusetts Avenue; and


WHEREAS, the parties have negotiated the terms of the easement in order to use the MassWorks funds to make the Improvements; and the City desires to accept the easement, subject to authorization by the City Council.

NOW THEREFORE, IT IS ORDERED:

That the City accept the Temporary Construction Easement (with Exhibits) attached to this Order as Exhibit A and entitled “Temporary Construction Easement;” and that the Mayor be and is hereby authorized to accept and execute the Temporary Construction Easement on behalf of the City.

July 8, 2020

Lee S. Smith
lsmith@k-plaw.comMEMORANDUM

TO: MAYOR THOMAS W. BERNARD, MICHAEL NUVALLIE
FROM: LEE S. SMITH, ESQ. 
RE: ACCEPTANCE OF EASEMENTS
DATE: JULY 8, 2020

1. Blackinton Connector Project Easement

The City has been awarded a MassWorks grant for the improvement of critical infrastructure components in the area of Massachusetts Avenue and Ashton Avenue. In connection with this work, the City has requested that private landowners, Allan and Cynthia McLain, grant the City a Temporary Construction Easement on their property. The easement is required in order to enable reconstruction of and repairs to the former industrial waterway that crosses through the Blackinton Mill, the property owned by Allan and Cynthia McLain, and the City-owned parcel adjacent thereto, as well as related infrastructure and improvements. This work is critical to ensuring the proper flow of stormwater and to prevent continued flooding of the Blackinton Mill thereby facilitating its redevelopment. The term of the easement is three (3) years.

I have prepared the Temporary Construction Easement presented to the City Council for a vote to accept the easement, the landowners have executed the easement, and I have approved it as to form. If the easement is accepted by the City, it will be recorded in the Registry of Deeds.

2. Cumberland Farms, Inc. Utility and Access Easement

Cumberland Farms, Inc. ("CF") recently acquired the property located at 227 and 245 Ashland Street and is redeveloping it as a convenience store and gas station. In connection with this project, CF is relocating the water main that was located through the center of the property. After the water main is installed by CF and accepted by the City, the City will take responsibility for the water main as part of its public water supply system. The easement is required in order to grant the City rights to access the CF property to maintain the water main. The easement will be permanent.

I have reviewed the Utility and Access Easement Agreement presented to the City Council for a vote to accept the easement and I have approved it as to form. CF has executed the easement. If the easement is accepted by the City, it will be recorded in the Registry of Deeds.

TEMPORARY CONSTRUCTION EASEMENT

For valuable consideration of One (\$1.00) Dollar, the receipt and sufficiency of which is hereby acknowledged, **ALLAN G. MCLAIN and CYNTHIA L. MCLAIN**, husband and wife, whose residence and mailing address is 244 Wood Road, Clarksburg, Berkshire County, Massachusetts, (hereinafter referred to as the "Grantor"), hereby grant unto the **CITY OF NORTH ADAMS**, a municipal corporation existing under the laws of the Commonwealth of Massachusetts, with its principal place of business at 10 Main Street, North Adams, Massachusetts, 01247, (hereinafter referred to as the "Grantee"), a temporary, non-exclusive easement within the Easement Area, as defined below, to Grantee together with its employees, contractors, subcontractors, representatives, agents and invitees, enter by foot and vehicle, including heavy equipment, and to construct, reconstruct, install, repair, rebuild, replace, locate, relocate, inspect, maintain, use, operate, on, across, over, under and within the Easement Area, the Hoosic River tailrace and equipment, utilities, infrastructure and other improvements, structures and related improvements appurtenant or related thereto including without limitation, electrical wires, pipes, conduits, culverts, drains, banks, slopes, walls, grading, landscaping and other means of directing drainage and the flow of water; collectively referred to herein as the "Facilities".

Any additional Facilities which may be necessary or advisable in the reasonable opinion of the Grantee to provide public improvements in connection with the above are to be located by the Grantee in such places on, upon, under, over and across the Easement Area as may be reasonable and consistent with the Grantee's project and as permitted herein. Grantee agrees that it shall perform work within the Easement Area so as to minimize interference with Grantor's operations or use of its property.

The Easement Area is a portion of Grantor's land located at 1476 Massachusetts Avenue, North Adams, Massachusetts, as shown on an Easement Plan attached hereto as Exhibit A.

Except in the event of emergency, and except for routine inspection and maintenance activities, as provided below, Grantee shall give Grantor at least seven (7) days written notice prior to installing, constructing, improving, altering, replacing, and/or relocating any Facilities within the Easement Area (the "Work"). Grantee will provide a description of the Work to be undertaken and plans and specifications, showing the Work to be done and/or alterations to be made to the Facilities and/or the Easement Area, and present Grantor with such other information as Grantor may reasonably request. All work shall be done in a good and workmanlike manner, substantially in compliance with the approved plans, and Grantee, to the extent feasible, will perform the work so as not to unreasonably interfere with the use of the Property by Grantor and, other than the improvements permitted herein, shall forthwith restore the Easement Area to its condition prior to such disturbance at its sole expense. Prior to commencing any Work, Grantee shall obtain all permits, licenses and authorizations necessary or advisable in connection with the Work and the Facilities and all Work shall be undertaken and completed in compliance with such permits, licenses and authorizations. Upon request, Grantee

shall provide Grantor with as-built plans showing the exact location of its Facilities; such plan shall be suitable for recording. Grantee will obtain and ensure any and all Grantee Parties obtain customary insurance at commercially reasonable limits, deductibles and coverages for the Work. Grantor shall be listed as an additional insured on all such policies. Upon request, Grantee shall provide Grantor with certificates of insurance for each Grantee Party.

Grantee may enter upon the Easement Area at any time and from time to time without prior notice to Grantor for the purpose of inspecting the Facilities and/or the routine maintenance of and/or repair to the Facilities/or and the Easement Area during the term of this easement, provided that the foregoing does not unreasonably interfere with Grantor's use of the Property. In the event that interference is reasonably likely, Grantee shall give Grantor at least seven (7) days prior written notice thereof, specifying the work to be done and the estimated work schedule, except in the event of an emergency, in which case Grantee shall provide such notice as is practicable.

Grantee acknowledges that Grantor has the right to use the Property, including the Easement Area, for any and all purposes that do not unreasonably interfere with the rights granted herein. Grantee shall be responsible for and shall promptly repair, at its sole cost, any damage or harm caused by Grantee and/or its agents, employees, contractors and/or invitees (with Grantee, the "Grantee Parties") to the Grantor's property (including the Easement Area) and/or any improvements thereon or thereunder.

To the extent permitted by law, Grantee releases Grantor and those acting by or through Grantor (with Grantor, the "Grantor Parties"), from all loss, damage, harm, expense, and/or liability related to the condition or use of the Easement Area by any of the Grantee Parties and/or the Facilities, except to the extent caused by the gross negligence or intentional acts of any of the Grantor Parties. To the extent permitted by law, Grantee and its successors and assigns shall defend, indemnify and hold Grantor harmless from and against all claims, demands, suits, actions, costs, expenses, debts, damages, (including personal injury and property damage), judgments, and liabilities of any nature whatsoever, imposed upon, incurred by, or asserted against Grantor, its agents, employees, successors or assigns, by reason of, or in consequence of any personal injury, death, or property damage or other liability occurring in or around the Easement Area that is caused by or related to Grantee's performance of the work hereunder, the failure of Grantee to comply with the provisions hereof or of any applicable laws, rules, regulations, and ordinances, and/or the negligence or willful misconduct of any of Grantee Parties.

This Temporary Construction Easement shall automatically terminate three (3) years from the date that this instrument is recorded in the Berkshire North Registry of Deeds, or sooner, but only if the City of North Adams' City Engineer has determined that the City's project to be performed hereunder is complete and in such event, a notice of termination of this Temporary Construction Easement shall thereafter be promptly recorded by the City in the Berkshire North Registry of Deeds.

This Temporary Construction Easement, executed in multiple counterparts, is to take effect as a sealed instrument, sets forth the entire agreement between the parties, is binding upon

and inures to the benefit of the parties hereto and their respective lessees, heirs, executors, administrators, successors and assigns where the context so requires or permits.

For Grantor's title, see deed recorded in Berkshire North Registry of Deeds in Book 1096, Page 358.

TO HAVE AND TO HOLD the rights set forth herein to the premises unto it, the said Grantee, its successors and assigns.

(Remainder of page intentionally left blank. Signature pages follow.)

IN WITNESS WHEREOF, the Grantor has cause this instrument to be executed this 7
day of July, 2020.

GRANTOR

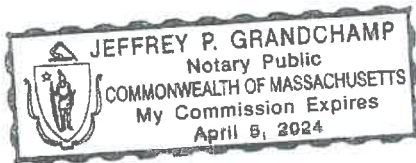
Allan G. McLain
Allan G. McLain

Cynthia L. McLain
Cynthia L. McLain

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this 7 day of July, 2020, before me the undersigned Notary Public,
personally appeared Allan G. McLain, proved to me through satisfactory evidence of identification, which
was Personal Knowledge, 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.

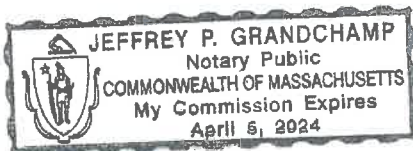


[Signature]
Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this 7 day of July, 2020, before me the undersigned Notary Public,
personally appeared Cynthia L. McLain, proved to me through satisfactory evidence of identification,
which was Personal Knowledge, 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.



[Signature]
Notary Public
My commission expires:

EXHIBIT A

Easement Plan

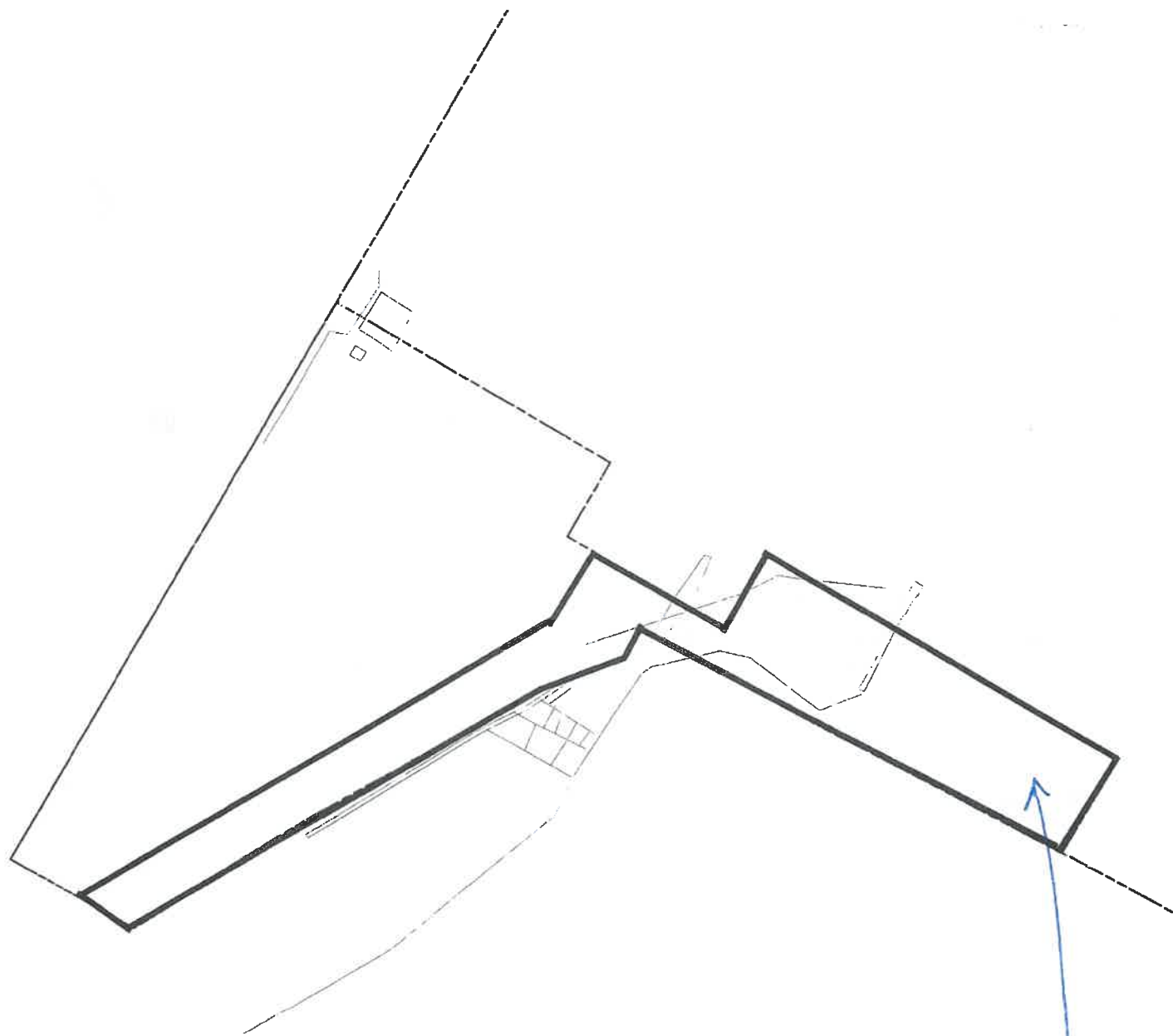


Exhibit A: Easement Plan

May 28, 2020 1" = 30'-0"

ACCEPTANCE OF EASEMENT

On this _____ day of _____, 2020, the City of North Adams, acting by and through its Mayor pursuant to a vote of the City Council taken on _____, 2020, G.L. c. 40, s. 14, and every other authority appertaining, hereby accepts the foregoing easement from Grant of Easement from Allan G. McLain and Cynthia L. McLain, on this _____ day of _____, 2020

GRANTEE:

CITY OF NORTH ADAMS

Thomas W. Bernard, Mayor

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this _____ day of _____, 2020, before me the undersigned Notary Public, personally appeared Thomas W. Bernard, proved to me through satisfactory evidence of identification, which was _____, 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 as Mayor of the City of North Adams.

Notary Public
My commission expires: