

## EASEMENT DEED and AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the CITY OF BURLINGTON, a Vermont municipality (the "Grantor"), in consideration of Ten and More Dollars paid to the Grantor's full satisfaction by CHITTENDEN COUNTY TRANSPORTATION AUTHORITY, a Vermont municipal corporation with its principal offices in Burlington, Vermont (the "Grantee"), by these presents does freely GIVE, GRANT, SELL, CONVEY, and CONFIRM to the Grantee, CHITTENDEN COUNTY TRANSPORTATION AUTHORITY the following easements (collectively, the "Easements") burdening certain lands in the City of Burlington, Chittenden County, Vermont, consisting of six roadway segments and four sidewalk segments to be used in connection with the construction and operation of a public transit station (the "Transit Station", which is more particularly described below). The Easements are depicted on a set of plans consisting of three pages entitled, "Survey of Easement, City of Burlington to CCTA, Burlington Transit Station," prepared by Summit Engineering, Inc., dated September 30, 2014 [AI] [Review to refer to most current survey plans.] (the "Easement Plans"), a copy of which is attached as Exhibit A attached hereto and made a part hereof), to be recorded in the City of Burlington land records (the "Land Records"), and are more particularly described as follows:

### **St. Paul Street (between Pearl Street and Cherry Street):**

Being an exclusive easement and right of way (subject, however, to the terms and conditions of this Agreement) over, under, and across St. Paul Street, beginning on the northerly end at the curb line on the southerly side of Pearl Street and terminating on the southerly end at the curb line on the northerly side of Cherry Street, and being depicted on page E3 of the Easement Plans as "EASEMENT FROM CITY OF BURLINGTON TO CCTA FOR TRANSIT STATION BUILDING AND BUS OPERATIONS, 22,635 S.F., 0.52 ac." ("Easement Area No. 1").

### **North side of Pearl Street east of St. Paul Street and westerly of Elmwood Avenue:**

Being an easement and right of way (subject, however, to the terms and conditions of this Agreement) running along and adjacent to the curb located along the northerly edge of Pearl Street and being depicted on page E5 of the Easement Plans as "EASEMENT FROM CITY OF BURLINGTON FOR BUS OPERATIONS (1,263-193 s.f.)", together with an easement and right of way for two (2) passenger shelters depicted on page E5 of the Easement Plan as "EASEMENT FROM CITY OF BURLINGTON TO CCTA FOR TWO PASSENGER SHELTERS AND TRASH RECEPTACLES (65 s.f. EACH)" (together "Easement Area No. 2").

### **North side of Pearl Street west of St. Paul Street and easterly of George Street:**

Being an easement and right of way (subject, however, to the terms and conditions of this Agreement) running along and adjacent to the curb located along the northerly edge of Pearl Street and depicted on page E5 of the Easement Plans as "EASEMENT FROM CITY OF BURLINGTON FOR BUS OPERATIONS (1,235-177s.f.)" ("Easement Area No. 3").

### **South side of Pearl Street east of St. Paul Street:**

Being an easement and right of way (subject, however, to the terms and conditions of this Agreement) running along and adjacent to the curb located along the southerly edge of Pearl Street depicted on page E5 of the Easement Plans as "EASEMENT FROM CITY OF BURLINGTON FOR BUS OPERATIONS (1,275-252 s.f.)" ("Easement Area No. 4"). This shall include the right

to relocate the curb, lower the level of the existing sidewalk, add one step with railing to the staircase at the north entrance to the Zampieri State Office Building, and extend the handicapped ramp to comply with ADA requirements consistent with the lower profile of the sidewalk.

**South side of Pearl Street west of St. Paul Street:**

Being an easement and right of way (subject, however, to the terms and conditions of this Agreement) running along and adjacent to the curb located along the southerly edge of Pearl Street and depicted on page E5 of the Easement Plans as "EASEMENT FROM CITY OF BURLINGTON FOR BUS OPERATIONS (1,433-076 S.F.)", together with an easement and right of way for two (2) passenger shelters and accessibility landing pads to be located within the bounds of the right of way of Pearl Street southerly of and adjacent to, and including portions of, the existing sidewalk located along the south side of Pearl Street and depicted on page E5 of the Easement Plans as "EASEMENT FROM CITY OF BURLINGTON TO CCTA FOR TWO PASSENGER SHELTERS, LANDING PADS AND TRASH RECEPTACLES (768 S.F.)" (together, "Easement Area No. 5").[A2]

**North side of Cherry Street west of St. Paul Street and easterly of Pine Street:**

Being an easement and right of way (subject, however, to the terms and conditions of this Agreement) along and adjacent to the curb located along the northerly edge of Cherry Street and depicted on page E4 of the Easement Plans as "EASEMENT FROM CITY OF BURLINGTON FOR BUS OPERATIONS, 1,548 S.F.", together with an easement and right of way for three (3) passenger shelters and accessibility landing pads to be located within the bounds of the right of way of Cherry Street northerly of and adjacent to, and including portions of, the existing sidewalk located along the north side of Cherry Street and depicted on page E4 of the Easement Plans as "EASEMENT FROM THE CITY OF BURLINGTON TO CCTA FOR THREE PASSENGER SHELTERS, LANDING PADS AND TRASH RECEPTACLES" (together, "Easement Area No. 6").

(Easement Area No. 1, Easement Area No. 2, Easement Area No. 3, Easement Area No. 4, Easement Area No. 5, and Easement Area No. 6 are referred to collectively as the "Easement Areas"). These six easement areas collectively constitute the entire Transit Station as authorized by the Federal Transit Administration (FTA).

The lands burdened by the Easement Areas (the "Burdened Property") are portions of (i) that portion of St. Paul Street as was laid out by the City of Burlington Road Commissioners by instrument dated June 16, 1813, and recorded in Highway Volume 1, Page 17 of the Land Records; (ii) that portion of Pearl Street as was laid out by the City of Burlington Road Commissioners by instrument recorded in Highway Volume 1, Page 21 of the Land Records and (iii) that portion of Cherry Street as was laid out by the City of Burlington Road Commissioners by instrument recorded in Highway Volume 1, Page 19 of the Land Records.

Reference is hereby made to the instruments described above, the records thereof, and the references contained therein in further aid of this description.

The Easements are granted subject to (1) the provisions of state laws and regulations, municipal ordinances, public laws and special acts; (2) the terms and conditions set forth herein below; and (3) all easements, rights of way, covenants, conditions, permits, and other restrictions on use of

record and affecting the property described herein, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. § 601 et seq.

**TO HAVE AND TO HOLD** the Easements, with all the privileges and appurtenances thereto, to the Grantee, **CHITTENDEN COUNTY TRANSPORTATION AUTHORITY**, to its own use and behoof throughout the term of the Easements. The Grantor, **CITY OF BURLINGTON**, for itself and its successors and assigns, does covenant with the Grantee that until the ensembling of these presents, the Grantor has authority over the use of the Easement Areas in the manner described herein (as set forth in 24 V.S.A. App. § 3-48 (49)), and has good right and title to grant the Easements in the manner described in this Easement Deed and Agreement, and that the Easement Areas are **FREE FROM EVERY ENCUMBRANCE**, except as stated in this Easement Deed and Agreement; and the Grantor hereby engages to **WARRANT AND DEFEND** the same against all lawful claims whatever, except as stated in this Easement Deed and Agreement.

### **CONDITIONS OF GRANT**

In consideration of the Easements granted by this Easement Deed and Agreement (the "Agreement") and the mutual promises contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Grantor and the Grantee agree that the Easements granted by this Agreement are granted upon and subject to the following terms and conditions:

#### **EASEMENT AREA NO. 1**

1. Easement Area No. 1 shall be used by the Grantee for the construction, operation, maintenance and repair of the "Transit Station Building" and related site improvements, including a platform with a glass canopy, fencing, landscaping, and lighting. The Grantee agrees to install, operate, and maintain lighting within Easement Area No. 1 that will meet all lighting requirements applicable to the St. Paul Street right-of-way (which includes the sidewalk along the east side of St. Paul Street between Cherry Street and Pearl Street that is outside of and adjacent to Easement Area No. 1) – including during hours when the Transit Station is not in operation – as long as Burlington Electric Department ("BED") installs, operates, and maintains lighting at the intersections of St. Paul Street with Cherry Street and with Pearl Street.
2. **Use of Easement Area No. 1.** The Grantee shall use Easement Area No. 1 for the operation of bus and other public transit services and other uses related to the provision of public transit services, including services convenient for riders of public transit and typically provided at comparable facilities, as those uses may evolve over the term of the Easements. Those services may, at the Grantee's discretion, include services such as an ATM, food service, and a tourism information kiosk or booth. The Transit Station Building shall be open and operated on a continuing basis (subject to reasonable hours of operation) throughout the term of this Agreement; provided, however, that the Transit Station Building may be closed on holidays, weekend days, and at other times when having the Transit Station Building open is not necessary to support the Transit System (as defined in Section 12(e) below).
3. **Maintenance.** The Grantee shall use and maintain Easement Area No. 1 and the Transit Station Building and related site improvements in good condition and repair, in a neat, clean, and safe manner, and shall be solely responsible for all maintenance required within Easement Area No. 1 including, without limitation, the removal of snow and ice (except to the extent of Grantor's responsibilities described in the next sentence) and the maintenance of landscaping, pavements, buildings, and any other structures or improvements, except for utility lines and equipment owned and controlled by others as provided in Section 4, 9, or 20 below. The Grantor shall plow the northbound and southbound traveled lanes of St. Paul Street

within Easement Area No. 1 consistent with the its regular winter street maintenance schedule. The Grantee shall be solely responsible for pedestrian safety within Easement Area No. 1 and for the safety of public transit riders and all other users of and people within Easement Area No. 1 and the Transit Station Building.

4. **Rights of Others.** Easement Area No. 1 is granted subject to (a) the rights of existing utility rights-of-way, utility lines and other utility infrastructure presently situated therein, including without limitation any rights held by utility service providers to access, maintain, repair and replace such utilities and infrastructure, (b) the rights of pedestrians to cross within designated crosswalks and to walk within designated pedestrian zones, regardless of whether such pedestrians are transit riders (subject, however, to the reality that some pedestrians will walk outside of designated crosswalks and pedestrian zones), (c) the rights of emergency vehicles and personnel, and (d) rights of vehicular and pedestrian ingress and egress for the owners, employees and invitees of the John J. Zampieri State Office Building (which has a street address of 108 Cherry Street) via the parking garage entrance to such property situated on St. Paul Street within Easement Area No. 1, which rights of vehicular and pedestrian ingress and egress shall be available at all times during and after construction of the Transit Station Building and related improvements within Easement Area No. 1, provided, however, that access may be restricted as required during construction outside of regular business hours for the Zampieri Building; Grantor and Grantee agree that the easement rights granted hereby are subject to the rights of the owner of the Zampieri Building to utilize Easement Area No. 1 for major maintenance and construction purposes subject to coordination and cooperation with Grantee, as set forth in a separate Memorandum of Understanding made by and between Grantor and Grantee and, possibly, joined by the owner of the Zampieri Building (the "MOU") and provided that such use of Easement Area No. 1 does not unreasonably disrupt CCTA's bus operations at the Transit Station. This Agreement shall only be effective if the MOU has been executed at least by Grantor and Grantee.

The parties acknowledge that at the time that this Agreement is executed, only BED and the Burlington Department of Public Works ("DPW") maintain any utilities within Easement Area No. 1. Accordingly, once construction of the Transit Station is complete, and unless rights or easements are later acquired by others to install and maintain utilities within Easement Area No. 1, only BED and DPW shall have access to maintain or otherwise repair any utilities within Easement Area No. 1. The parties also acknowledge that the Grantee intends to install a sub-surface snow melt system beneath the center platform and beneath the ten bus bays adjacent to the center platform within Easement Area No. 1; the Grantee intends to construct the roadway within Easement Area No. 1 by pouring an eight inch concrete slab in the ten foot wide bus bays directly adjacent to the platform and by utilizing asphalt in the northbound and southbound travel lanes of St. Paul Street. The parties' acknowledge and confirm their intention that once construction of the Transit Station is complete, the only utilities within Easement Area No. 1 will be located within the northbound and southbound travel lanes of St. Paul Street. Any construction activity undertaken by any utility, including the City of Burlington, will be done at the sole expense of the utility. The utility provider will be responsible for any damage to any portion of the concrete roadway caused by the utility's excavation, construction, repair, maintenance, or replacement activities.

5. **Signage and Signalization.** The Grantee shall install and maintain such signage and signaling that may be necessary or appropriate to warn and educate pedestrians about vehicular traffic patterns and other safety issues related to its use of the Easement Area and operation of the Transit Station. The Grantee may establish reasonable rules and regulations regarding pedestrian behavior, including the enforcement of smoking prohibitions, and the use of bicycles within Easement Area No. 1 and may post signs within Easement Area No. 1 notifying the public of such rules and regulations. Such signage and signalization within Easement Area No. 1 shall be consistent with signage and signalization in its immediate neighborhood, and generally in compliance with the requirements of and the conventions established by DPW and in coordination with DPW.

## EASEMENT AREAS NO. 2 - 6

6. **Bus Operations.** Those portions of Easement Areas No. 2 – 6 that are designated on the Easement Plan as being used for “bus operations” shall only be used by the Grantee for the operation of the Transit System, including bus passenger loading and unloading and for the staging of vehicles while active drivers are on break. The Grantee agrees to utilize other bus storage areas that it owns or controls from time to time for long-term or overnight bus parking rather than Easement Areas No. 2 – 6 in order to maximize the availability of on-street parking on Cherry Street and Pearl Street while retaining only such bus operations areas within Easement Areas No. 2 – 6 reasonably necessary or convenient for the operation of the Transit System. The Grantee shall install and maintain signage indicating hours of bus operations, which shall be consistent with signage in the immediate neighborhood and generally in compliance with the requirements of and the conventions established by DPW and in coordination with DPW.

7. **Passenger Shelters and Accessibility Landing Pads.** Those portions of Easement Areas No. 2 – 6 that are designated on the Easement Plan as being used for “passenger shelters” shall only be used by the Grantee for the construction, operation, maintenance and repair of accessibility landing pads, the placement of trash receptacles, and the construction, operation, maintenance, and repair of canopied passenger shelters. The Grantee shall use and maintain the passenger shelters, accessibility landing pads and trash receptacles in good condition and repair, and in a neat, clean and safe manner. The construction of passenger shelters shall include the use of sidewalks within Easement Areas No. 2 – 6, the conversion of grass areas to concrete for the purpose of constructing passenger shelters and accessibility landing pads, and for the installation of trash receptacles.

8. **Bicycle Storage.** The Grantee shall provide a covered bicycle storage unit substantially matching the appearance and dimensions of the current aluminum and glass passenger shelters, and shall install such storage unit, at its expense, in a location on the south side of Cherry Street in the vicinity of the Transit Station Building identified by DPW.

9. **Rights of Others.** Easement Area Nos. 2 -6 are granted subject to (a) the rights of existing utility rights-of-way, utility lines and other utility infrastructure presently situated therein, including without limitation any rights held by utility service providers to access, maintain, repair and replace such utilities and infrastructure, (b) the rights of emergency and maintenance equipment, vehicles and personnel, (c) existing sidewalks and curbs within and along the roadways of Pearl Street and Cherry Street, which shall not be modified, except as shown on the Project Plans (as defined below) and Easement Plans, without the Grantor’s prior written consent, (d) the rights of pedestrians to walk within the sidewalks and (e) the rights of the Grantor described in Section 11(b) below. Any excavations or other work performed by any utility company, including the City of Burlington, shall be at the sole expense of the utility company, and the roadway and any other physical properties of the site shall be restored or repaired in a commercially reasonable manner following completion of the utility work. The Grantee shall have the exclusive use of those portions of Easement Areas No. 2 - 6 that the Grantee shall have improved with passenger shelters.

## ALL EASEMENT AREAS

10. **Transit Station Construction and Alteration.** The Transit Station, which term includes the Transit Station Building that includes a glass canopy substantially the same as that presented to the Burlington City Council on December 9, 2013, the passenger shelters, accessibility landing pads, trash receptacles and related site improvements, shall be constructed substantially in accordance with the \_\_\_\_\_ sheet set of plans and drawings entitled “\_\_\_\_\_” prepared by \_\_\_\_\_ dated \_\_\_\_\_

\_\_\_\_\_, last revised \_\_\_\_\_, which are incorporated in this Agreement by reference (collectively, the "Project Plans"). [CCTA will provide final Project Plans for review and approval by the City once the Easement Deed and Agreement has been approved by the City Council and prior to signature by the Mayor.] Without limiting the foregoing, the Grantee agrees to place the passenger shelters, accessibility landing pads and trash receptacles in locations that will not interfere with or impede the functionality of the Grantor's current sidewalk snow plows. The parties acknowledge that the construction of the Transit Station will include removing trees located within the St. Paul Street right-of-way on the east side of the street. The Grantee shall not materially alter or modify the approved design or appearance of the Transit Station, the passenger shelters, accessibility landing pads, trash receptacles and related site improvements without first obtaining the written consent of the Grantor, which shall not be unreasonably withheld. The Grantee shall complete construction of the Transit Station and related site improvements no later than two (2) years after the commencement of its construction. The Grantee shall not be responsible for any delay in or failure to complete construction within such period if such delay or failure is due to any cause or circumstance beyond its reasonable control; such causes include, by way of example but not limitation, strikes or other labor disputes, fire or other casualty, accidents, unexpected adverse site conditions, unforeseeable failure or delays in delivery by third parties, acts of God, war, civil commotion, flood, earthquake, or unforeseeable weather.

11. **Operation Agreement.**

a. **Schedule.** At the time that this Agreement is executed, and then at least annually thereafter, at the request of the Grantor or the Grantee, the Grantor and the Grantee shall negotiate in good faith an agreement (the "Operation Agreement") on the schedule for the days and hours during which the Grantee shall operate and staff the Transit Station Building.

b. **Public Parking.** At the time this Agreement is executed and then annually thereafter, the Grantee shall provide to the Grantor data that will be useful to determine when certain portions of Easement Areas No. 2-6 can be made available for general public parking. That includes determining both the locations and times of day when public parking can be accommodated. The Grantor (acting through the Director of Public Works in consultation with the City Engineer) shall work with the Grantee to maximize the times and locations when on-street public parking can be available on Cherry Street and Pearl Street while maintaining full access to Easement Areas No. 2-6 during times that are required for the operation of the Transit System. The parties' agreement with respect to the use of Easement Areas No. 2-6 for public parking shall be incorporated into the Operation Agreement.

c. **Local Match.** At the time this Agreement is executed, the Grantor shall agree to contribute to the 20% local match for the federal funds used for the installation of glass in the Transit Station canopy, in an amount not to exceed \$ \_\_\_\_\_. This shall be accomplished by providing in-kind services for the installation of curbs and sidewalks within Easement Area Nos. 5 and 6, provided that Grantor's obligations under this provision are contingent on (i) its receipt of grant approval in a manner that is approved by the Office of the City Attorney, and (ii) the general scope and scale of the contemplated improvements being provided to and approved by the City Engineer.

12. **Term.**

a. **Initial Term.** The Easement Areas are granted hereby for a term of forty (40) years from the date of this Agreement, unless terminated earlier by written agreement of the Grantor and the Grantee and subject to the provisions of Section 11(b) above.

b. **Traffic and Transportation Studies.** At least two years, but not more than five years, prior to the expiration of the initial forty (40) year term, upon the written request of the Grantor, the Grantee shall provide a traffic and transportation study conducted by a third party vendor selected and paid for by the Grantee but approved in advance by the Grantor, which approval shall not be unreasonably withheld, together with the Grantee's internally prepared ridership and usage data (collectively, the "Traffic and Transportation Studies") to substantiate its current and continued need to use all of the Easement Areas for the operation of the Transit System. The term of the Easements for all Easement Areas will be extended pursuant to subsection (c) below if the Grantor and the Grantee reasonably determine that the Traffic and Transportation Studies support the continued necessity of the Easement Areas for the operation of the Transit System. The Grantor and the Grantee may determine that the Traffic and Transportation Studies do not support the continued necessity of some of the Easement Areas for the operation of Transit System. In that case, the availability of any Easement Areas determined to be unnecessary at that time shall be suspended. At any time thereafter, however, the Grantee may request to lift the suspension based on new Traffic and Transportation Studies and internally generated ridership and operations data. While in suspension, the Easement Areas will be available for public parking pursuant to the Operation Agreement.

If the Grantor and the Grantee are unable, despite good faith efforts, to reach agreement on the continued necessity of any portion of the Easement Areas for the operation of the Transit System as provided above in this subsection within thirty (30) days after the Grantee has provided the Traffic and Transportation Studies, then the issue of necessity shall be referred to the Mayor or the Mayor's designee and the Grantee's General Manager. If the Mayor or the Mayor's designee and the General Manager are unable to agree within thirty (30) days after referral, the issue shall go to mediation as a condition precedent to binding dispute resolution. The parties shall endeavor to resolve the issue by mediation. If the issue is not resolved by mediation, the issue shall be subject to arbitration, which, unless the parties agree otherwise, shall be conducted in accordance with the commercial rules and procedures of the American Arbitration Association. Demand for arbitration shall be made in writing delivered to the other party. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

c. **Extension Term.** The term of the Easements and this Agreement will automatically extend for two additional terms of twenty (20) years each, unless the Grantee provides written notice to Grantor of the Grantee's intention to terminate the Easements and this Agreement prior to the expiration of the then current term, provided that no material Event of Default by the Grantee exists at the expiration of the then current term. The extensions shall be on the same terms and conditions as the initial forty (40) year term.

d. **Holdover.** If the Grantee remains in possession of the Easement Areas after expiration of the extension terms then, unless Grantor otherwise agrees in writing, Grantee's right to continued use and possession and use of the Easement Areas shall continue on a year to year basis, terminable by either party upon two year's prior written notice to terminate.

e. **Operation of Grantee's Transit System.** The operation of the Grantee's Transit Station shall include, but is not necessarily limited to, the provision of local bus service, LINK Express services, local commuter routes, neighborhood specials, shopping shuttles, and other bus routes serving Vermont

(collectively, the "Transit System"). The Transit System shall also include the contractual requirement to provide space for drivers to stage their buses while on break and the necessity to locate vehicles owned by the Grantee that are used for the transportation of supervisory personnel, drivers, and ticket agents. The Transit System shall also include all of the support services required for an efficient bus operation, including, but not limited to, the staging of back-up vehicles, use of ticket agents and supervisory personnel. The Grantee agrees that Easement Areas No. 2 – 6 will only be used by vehicles other than buses so long as such vehicles are owned by the Grantee, are used on a short term as-needed basis, and are used in the course of performing the Grantee's official business.

13. **Obligations Upon Expiration or Termination.** Upon expiration or termination of the Easements, at the Grantor's option, the Grantee shall either (a) remove all improvements constructed within the Easement Areas and return and restore the Easement Areas to their original conditions to the extent reasonably practicable, (b) abandon all of the improvements constructed within the Easement Areas in which even they shall be and become, without further action on the part of the Grantee, the property of the Grantor, free and clear of all claims by the Grantee and any person claiming by, through or under the Grantee, or (c) abandon specific improvements constructed within the Easement Areas (in which even they shall be and become, without further action on the part of the Grantee, the property of the Grantor, free and clear of all claims by the Grantee and any person claiming by, through or under the Grantee) and remove the balance of the improvements and return and restore the areas from which improvements are removed to their original conditions to the extent reasonably practicable. Upon expiration or termination of the Easements, the Grantee shall execute and deliver to the Grantor an instrument suitable for recording in the Land Records confirming the expiration or termination of the Easements. At the request of either the Grantor or the Grantee, the parties shall negotiate in good faith an extension of the Easements.

14. **Additional Rights.** In addition to the rights described above, the Easements include the right to construct, install, operate, maintain, repair, replace, and remove, from time to time, pipes, lines, conduits and equipment for utility services, including, without limitation, sewage disposal, potable water, stormwater facilities, electricity, telephone and telecommunications, cable television, and gas services, sidewalks, roadways, landscaping, and other related improvements used for the Transit Station, including the right to use the Easement Areas for staging and material storage during any construction, repair, maintenance, replacement, or removal of improvements located within the Easement Areas. All utilities used by or supplied to the Easement Areas shall be in the Grantee's name, and the Grantee shall pay all separately metered charges for water, sewer, gas, electricity, light, heat, power, telephone, internet, and any other services used, rendered, or supplied upon or in connection with the Easement Areas, including, without limitation, connection fees or costs charged for the supply of such services or the installation of the Grantee's meters, and the Grantee shall indemnify and save harmless the Grantor on such accounts.

15. **Continuing Effect.** The Easements shall run with the land and burden the Burdened Property for the stated term, as the term may be extended. The Grantee shall incorporate the terms, conditions, and restrictions of this Agreement into any lease, license, or other agreement for the rental or use of any portion of the Easement Areas.

16. **Compliance with Laws.** The Grantee shall at its own cost and expense comply with any and all laws, statutes, ordinances, rules, and regulations affecting the Easement Areas and its use thereof; provided, however, that the Grantee shall not be responsible for compliance with respect to utility lines and equipment owned or controlled by others pursuant to Sections 4, 9, or 20 of this Agreement. The Grantee shall be solely responsible for obtaining, at the Grantee's sole cost, any permits, licenses, or approvals from any governmental authority necessary for construction of any improvements by the Grantee within the

Easement Areas, and shall construct, operate, and maintain all improvements within the Easement Areas in compliance with any and all such permits, licenses, and approvals.

17. **Construction; No Liens.** Any construction undertaken by the Grantee shall be diligently performed in a good and workmanlike manner. The Grantee shall promptly pay all suppliers of labor or materials for the improvements and promptly discharge any lien that may be filed against the Grantor or the Burdened Property in connection with the construction of the permitted improvements. The Grantee shall not permit any claim, lien, or other encumbrance arising from any construction or the Grantee's use of the Easement Areas to accrue against or attach to the Easement Areas or the interest of the Grantor in the Burdened Property or any adjacent lands.

18. **Restoration of Damage.** Promptly upon the completion of construction of the Transit Station and related improvements, the Grantee shall cause the surface of the lands within the Easement Areas not covered by the improvements to be restored as nearly as practical to its prior condition, except as otherwise shown in the Project Plans. Upon completion of construction within or improvement to the Easement Areas, any disturbed area shall be promptly properly repaired, restored, re-paved (if applicable) and re-seeded (if applicable) in a commercially reasonable manner by the Grantee at its expense. The Grantee shall in addition use commercially reasonable efforts to assure that its construction activities shall be done at dates and times that are mutually convenient for the Grantor and the Grantee. The Grantee shall promptly repair and restore any damage to the Grantor's property caused by or arising out of the Grantee's use of the Easement Areas or the Grantor's property, with such work to be performed in a neat and orderly, good, and workmanlike manner using high quality materials, and accomplished lien free and in compliance with all rules, regulations, laws, ordinances, permits, approvals, or orders of every governmental authority with jurisdiction. During performance of any such work, the affected area shall be maintained in a neat and orderly manner.

19. **Public Utilities.** In connection with the construction of the Transit Station and related improvements, certain public utility infrastructure will be constructed at the Grantee's expense and certain public utility infrastructure will be relocated at the Grantee's expense, including an existing combined sewer line, an electrical line that currently supplies power to the traffic signal controller at the intersection of St. Paul Street and Pearl Street, light poles and storm water catch basins. Upon completion of construction of the Transit Station and related improvements, such relocated public utilities, together with new public utilities, including traffic signals, will become the property of and responsibility of the Grantor and its departments to maintain and operate, and the Grantor retains the right to access these elements in coordination with the Grantee. Should the Grantee not arrange with BED for the provision of sidewalk lighting, any and all light poles installed by the Grantee within Easement Area No. 1 shall be owned and maintained by the Grantee, and the Grantee shall pay for all electricity used by such light poles.

20. **Stormwater Offset.** The Grantee agrees that in recognition of the stormwater impacts that the Transit Station will have on the City of Burlington, the Grantee shall participate, up to a maximum amount of \$25,000, in one of the Grantor's stormwater projects to offset the impacts caused by the Transit Station.

21. **Indemnity.** The Grantee shall indemnify, defend and save the Grantor harmless from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature, including costs and reasonable attorneys' fees, suffered or incurred as a result of any breach by the Grantee, its agents, servants, employees, visitors or licensees of any covenant or condition of this Agreement, or as a result of its use or occupancy of the Easement Areas, or the negligence or willful misconduct of the Grantee, its agents, servants, employees, visitors or licensees;

provided, however, that the obligations of the Grantee under this Section 21 shall not extend to the negligence or willful misconduct of the Grantor, its employees, agents or representatives.

22. **Casualty Insurance.** The Grantee shall insure its improvements, including without limitation the Transit Station Building and the passenger shelters, against loss by fire and other casualty by policies that shall include standard extended coverage endorsements at full replacement cost, as the same shall exist from time to time without a coinsurance feature. The Grantee's policy or policies shall insure against all risks of direct physical loss or damage, including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the improvements required to be demolished or removed by reason of the enforcement of any building, zoning, safety, or land use laws as the result of a covered loss.

23. **Liability Insurance.** The Grantee, at the Grantee's own cost and expense, shall maintain a policy or policies of liability insurance insuring the Grantee against all claims or demands for personal injuries to or death of any person, and damage to or destruction or loss of property, that may or may be claimed to have occurred on the Easement Areas or in the vicinity of the same. Such policies shall cover such risks and be in such amounts as the Grantor from time to time may reasonably request, but in any event in an amount not less than Two Million Dollars and 00/100 (\$2,000,000.00) for injury to or death of any one person or for damage to or destruction or loss of property in any one occurrence. Upon demand by the Grantor, the Grantee shall deliver to the Grantor certificates of such insurance coverage evidencing that such coverage is actually in effect, which certificates shall name the Grantor as an additional insured.

24. **No Assignment.** This Agreement shall be binding upon the Grantor and the Grantee and their respective successors and assigns, provided however, that without the prior written consent of the Grantor, which may be withheld or granted in the Grantor's sole discretion, the Grantee shall not assign this Agreement, by operation of law or otherwise, or grant others any rights to use the Easement Areas granted by this Agreement, other than leases or licenses of interior space within the Transit Station Building for the operation of complementary businesses, which the Grantee may enter into without any prior written consent of the Grantor. Except as provided in the previous sentence, any assignment or attempted assignment without the Grantor's prior written consent shall be void.

25. **Inter-City Bus Service.** Should the Grantor determine that it is in the City of Burlington's best interest to enter into agreements with one or more inter-city bus service providers to use space within Easement Areas No. 2 – 6, the Grantee will identify an appropriate portion of Easement Area No. 3 and make it available to the Grantor for that purpose. The Grantee shall have no obligation to provide any services or facilities to either the Grantor or any bus service provider in connection with any such inter-city bus service. It shall be the Grantor's responsibility to enter into any agreements with inter-city bus operators. The Grantee shall retain the right to use the space made available for inter-city bus service when it is no longer being used for that purpose, at which time this space shall be used pursuant to the Operation Agreement.

26. **Damage or Destruction.**

a. In the event that the Transit Station Building shall be destroyed or severely damaged by fire, flood, lightning, wind storm, ice storm, terrorist act, or any similar or other occurrence or peril beyond the Grantee's control, then the Grantee shall rebuild or restore the Transit Station Building. In the event that the Grantee decides not to rebuild or restore such facility, the Grantee will notify the Grantor of its intent to terminate this Agreement within ninety (90) days of the date of damage or destruction, and if it

fails to notify the Grantor of its intent to terminate this Agreement within such period, then it shall be deemed to have elected to rebuild or restore the Transit Station Building. If the Grantee elects to terminate this Agreement, then the Grantee shall promptly and diligently fulfill its obligations upon the termination of this Agreement set forth in Section 13. If the Grantee timely elects to rebuild or restore the Transit Station Building, then it shall proceed to promptly and diligently rebuild or restore the Transit Station Building to its condition prior to such damage, at its cost and expense and in compliance with the obligations of this Agreement.

b. In the event that any element of the Transit Station other than the Transit Station Building shall be destroyed or severely damaged by fire, flood, lightning, wind storm, ice storm, terrorist act, or any similar or other occurrence or peril beyond the Grantee's control, then the Grantee shall promptly and diligently replace, rebuild, or restore the damaged element(s) to their original condition at its cost and expense and in compliance with the obligations of this Agreement.

27. **Default.** It shall be an Event of Default under this Agreement if the Grantee shall fail to perform or comply with any of the agreements, terms, covenants, or conditions in this Agreement for a period of sixty (60) days after notice from the Grantor to the Grantee specifying the items in default, or in the case of a default that cannot with due diligence be cured within said sixty (60) day period, the Grantee shall fail to commence within said sixty (60) day period the steps necessary to cure the same and thereafter to prosecute the curing of such default with due diligence (it being understood that the time within which to cure shall be extended for such period as may be necessary to complete the same with all due diligence). For so long as a material Event of Default shall exist and be continuing, the Grantor may give written notice to the Grantee specifying the Event of Default and stating that the Grantee's rights to the possession, use, and occupancy of the Easement Areas under this Agreement shall expire and terminate on the date specified in such notice, and upon the date so specified, all rights of Grantee under this Agreement shall so expire and terminate. Upon termination in accordance with the foregoing provisions, the Grantee shall immediately fulfill its obligations upon the expiration or termination of this Agreement set forth above. In the event that the Grantee fails to comply with its obligations hereunder, the Grantee shall pay all costs reasonably incurred by the Grantor in requiring the Grantee to so comply, including reasonable attorneys' fees and disbursements. The Grantor shall have all rights and remedies as may be available under applicable law at the time of the occurrence of the Event of Default. In all instances where the Grantor takes action to enforce the terms of this Agreement, and substantially prevails in that action, the Grantee shall be liable to the Grantor for all attorney's fees and other reasonable costs incurred by the Grantor in connection with such enforcement. In all instances where the Grantee takes action to enforce the terms of this Agreement, and substantially prevails in that action, the Grantor shall be liable to the Grantee for all attorney's fees and other reasonable costs incurred by the Grantee in connection with such enforcement.

28. **No Waiver.** The failure of the Grantor or the Grantee to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions and agreements of this Agreement, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants or conditions, agreements or options, but the same shall continue and shall remain in full force and effect.

29. **Extinguishment of Existing Bus Terminal.** Effective upon the commencement of operations at the Transit Station, the Grantee releases any right, title, or interest that it holds in the existing bus terminal situated on Cherry Street, however such right, title, or interest is held, and the Grantee agrees that all such right, title, or interest shall be terminated and extinguished without the need for either party to take any additional action or execute any additional instruments of release. Any rights, title, or interest held by the

Grantee in the existing bus terminal on Cherry Street will automatically transfer, in kind, to the new Transit Station situated within Easement Areas No. 1-6.

30. **Miscellaneous.** No modifications of any provisions of this Agreement shall be effective unless in writing and executed by the parties hereto (or their permitted successors or assigns). This Agreement shall be subject to and interpreted in accordance with the laws of the State of Vermont. This Agreement, including the exhibits hereto and the instruments and agreements referenced herein, constitutes the entire understanding between the parties hereto as to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof. Should any provisions of this Agreement be determined to be unenforceable, the remaining provisions shall continue to be effective and binding on the same parties. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience; they do not define, limit, construe, or describe the scope or intent of such sections, nor in any way affect this Agreement or have any substantive effect. Each party to this Agreement, and each undersigned individual acting as agent for and on behalf of a party, represents and covenants that each party has full power, authority, and legal light to execute and carry out this Agreement and that the provisions hereof constitute valid, binding, and enforceable obligations imposed upon each such party charged with performance thereof.

*Signature Page to Follow*

DRAFT

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Agreement this \_\_\_ day of October, 2014.

City of Burlington

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Miro Weinberger  
Mayor and Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF CHITTENDEN SS.

On this \_\_\_ day of October, 2014, personally appeared Miro Weinberger, Mayor and duly authorized agent for the City of Burlington, to me known to be the person who executed this Easement Deed and Agreement, and he acknowledged this instrument, by him signed, to be his free act and deed, individually and as duly authorized agent for the City of Burlington.

Before me: \_\_\_\_\_  
Notary Public  
My Commission Expires: 2/10/2015

Chittenden County Transportation Authority

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Paul Bohne  
Interim General Manager and Authorized Agent

STATE OF VERMONT  
COUNTY OF CHITTENDEN SS.

On this \_\_\_ day of October, 2014, personally appeared Paul Bohne, Interim General Manager and Authorized Agent of Chittenden County Transportation Authority, to me known to be the person who executed this Easement Deed and Agreement, and he acknowledged this instrument, by him signed, to be his free act and deed, individually and as duly authorized agent for Chittenden County Transportation Authority.

\_\_\_\_\_  
Notary Public  
My Commission Expires: 2/10/15

**Exhibit A  
Easement Plan  
Attached**

**DRAFT**

**Exhibit B**  
**Approved Plans of All Transit Station Improvements**

**[Include Reference]**

**Not Attached – On File with Burlington Department of Public Works**

**DRAFT**













