

FIRST ADDENDUM TO INTER-MUNICIPAL AGREEMENT

This First Addendum (First Addendum”) to Inter-Municipal Agreement (“IMA”) for the advancement of Bruce Freeman Rail Trail (Phase 2A and 2C) is made and entered into this ____ day of _____, 2014, and executed in triplicate (each executed copy constituting an original) by, between and among the Town of Acton (“Acton”), a Massachusetts municipal corporation with a principal place of business at the Town Hall, 472 Main Street, Acton, MA 01720; the Town of Carlisle (“Carlisle”), a Massachusetts municipal corporation with a principal place of business at 66 Westford Street, Carlisle, MA 01741; and the Town of Westford, (“Westford”), a Massachusetts municipal corporation with a principal place of business at 55 Main Street, Westford, MA 01886¹.

RECITALS

WHEREAS Acton, Carlisle and Westford are Parties to the IMA.

WHEREAS the IMA concerns the development of the Bruce Freeman Rail Trail (“BFRT”) (Phases 2A and 2C) through the Towns.

WHEREAS Acton, Carlisle and Westford intend to purchase an environmental insurance policy with a subsidy from the Massachusetts Brownfields Redevelopment Access to Capital (“BRAC”) Program to satisfy the provisions of M.G.L. c. 23A, § 3I.

WHEREAS the Towns desire to allocate the policy premium and the coverage limits between and among themselves on a mutually agreed basis.

NOW THEREFORE, in consideration of the above and mutual benefits to be derived by the parties hereto, pursuant to the authority contained in M.G.L. c. 40 § 4A, as amended, Acton, Carlisle and Westford do hereby mutually agree as follows:

¹ The Town of Concord is a party to the Inter-Municipal Agreement; however, the subject matter of this First Addendum does not concern the Town of Concord in any way and therefore the Town of Concord is not a party to this First Addendum.

1. **Environmental Insurance Policy.** Subject to the issuance of the BRAC subsidy set forth below, Acton, Carlisle and Westford agree to purchase the Pollution Legal Liability Select environmental insurance policy under Option 3 set forth in the PLL Select Premium Indication dated July 15, 2014, issued by the AIG Property Casualty Insurance Agency, Inc. attached hereto as Exhibit A, utilizing the AIG Specialty Insurance Company Form # 104827 (05/14) attached hereto as Exhibit B, with such further amendments and endorsements thereto as the towns and the insurer may agree upon prior to the policy's inception date (collectively the "Policy"). The first named insured on the Policy shall be the Town of Acton and the additional named insureds shall be the Town of Carlisle and the Town of Westford. The Policy's inception date shall be the date that the Town of Acton as the first named insured and the lead community under the IMA shall execute with the Massachusetts Department of Transportation ("MDOT") a Lease Agreement for the BFRT Corridor within Acton or as soon thereafter as reasonably possible. The Policy shall have a policy period of five (5) years, a per incident coverage limit of three million dollars (\$3,000,000), and an aggregate coverage limit of nine million dollars (\$9,000,000).

2. **BRAC Subsidy.** Acton, Carlisle and Westford agree to each apply to the BRAC Program for a BRAC subsidy for the Policy in the amount of 50% of the total policy premium (the "BRAC Subsidy"). In the event that the BRAC Subsidy is not issued prior to the binding of the Policy, Acton, Carlisle and Westford may elect to, but shall have no obligation to, proceed with the purchase of the Policy.

3. **Allocation of Policy Premium.** Acton, Carlisle and Westford agree to allocate a total policy premium of \$74,428 minus the expected BRAC Subsidy of \$37,214 as follows:

i. Acton = 35.27% = \$13,125.38

- ii. Carlisle = 32.365% = \$12,044.31
- iii. Westford = 32.365% = \$12,044.31
- iv. Total = \$37,214.00

Acton, Carlisle and Westford agree to allocate any surplus lines taxes and other fees for the Policy in the same percentages. In the event the policy premium and BRAC Subsidy are adjusted upward or downward to the mutual satisfaction of the towns prior to the Policy's inception date, those amount shall be allocated in the same percentages among the towns.

4. **Deductible**: Each Town shall be responsible to pay its own deductible (self-insured retention) per incident without contribution from the other Towns, with respect to any incident not involving the other Towns. If more than one Town is involved in the same incident, then the deductible shall be apportioned among those towns (regardless of degree of fault) in the same percentage as the allocation of premium.

5. **Payment of Policy Premium**. Acton, Carlisle and Westford agree that on or before the Policy's inception date, Acton shall pay \$37,214 (the total policy premium minus the BRAC Subsidy) to the Town's agent The James Minter Insurance Agency; and Carlisle and Westford shall each pay to Acton their respective share of the total policy premium minus the BRAC Subsidy, by delivering their respective checks in that amount to Town Manager, Town of Acton, Town Hall, 472 Main Street, Acton, MA 01720.

6. **Policy Conditions**. Acton, Carlisle and Westford have each read and understand the Policy and have had the advice of their respective Town Counsel regarding the Policy. Acton, Carlisle and Westford understand that the Policy contains an Endorsement entitled "Named Insured and Scheduled Named Insured Sublimit Endorsement" (the final Policy Endorsement) providing a "Sublimit for Scheduled Named Insureds" as follows:

Solely with respect to the Named Insureds scheduled below and subject to Paragraphs V.A.-V.F. above, the most the Company will pay for Loss arising from any Claim for Bodily Injury, Property Damage or Clean-Up Costs resulting from Pollution Conditions on, under or migrating from the Scheduled Insured Property that corresponds with the Scheduled Named Insured, is \$3,000,000 each incident/ \$3,000,000 total all incidents for all Loss regardless of the number of Pollution Conditions, Named Insureds, Insureds, Claims or claimants.

Acton, Carlisle and Westford agree that this Endorsement is appropriate to ensure that coverage under the Policy conforms to M.G.L. c. 23A, § 3I, in that each town will have available to it \$3,000,000 of coverage for covered matters and all claims made against or by that Town under the Policy. Acton, Carlisle or Westford each agree that it shall not draw on more than one-third of the aggregate coverage limit of \$9,000,000 to cover any losses under the Policy, so that each named insured has available to it only \$3,000,000 of potential insurance coverage from the \$9,000,000 aggregate limit under the Policy. In the event any named insured makes a covered claim or claims under the Policy that have the potential to exceed the \$3,000,000 individually or in the aggregate, it shall notify the other parties hereto and limit the coverage which it draws down from the Policy so as not to exceed the allocated aggregate limit of \$3,000,000 hereunder. This paragraph is intended to protect the interests of the three Towns and does not convey any right, interest or protection to any third party not a party to this Addendum.

7. **Conflict.** In the event of a conflict between this Addendum and the Policy, the terms of the Policy shall control. Nothing in this Addendum is intended or shall be interpreted in such a way as to invalidate coverage under the Policy.

8. **Notice.** In the event a claim is made by or against Acton, Carlisle and Westford under the Policy, that town shall notify the Town Manager or Town Administrator of each other party hereto and shall keep them informed as to the material progress of the claim under the Policy.

9. **Warranties and Representations.** Notwithstanding the provisions of Condition VI(O) (Separation of Insureds), Acton, Carlisle and Westford each warrants and represents that it has provided all relevant information to the insurer with respect to known environmental conditions within the Bruce Freeman Rail Trail Corridor within its respective boundaries and that it shall fully cooperate with the insurer with respect to any claim made under or against the Policy involving that town.

IN WITNESS WHEREOF, Acton, Carlisle and Westford caused their duly authorized representative to execute this First Addendum on the day and year above first written:

[SIGNATURE PAGES FOLLOW]

Signature Page

TOWN OF ACTON

By its Board of Selectmen:

Date:

Mike Gowing, Chair

Katie Green

Janet Adachi

Peter Berry

Franny Osman

By its Town Manager:

DATE:

Steven L. Ledoux

WITNESS

Signature Page

TOWN OF CARLISLE

By its Board of Selectmen:

Date:

John Gorecki, Chair

Douglas A. G. Stevenson Green

Peter Scavongelli

Nathan C. Brown

Vanessa Hunnibell Moroney

By its Town Administrator:

DATE:

Timothy D. Goddard

WITNESS

Signature Page

TOWN OF WESTFORD

By its Board of Selectmen:

Date:

Andrea Peraner-Sweet, Chair

Jim Sullivan

Scott Hazelton

Don Siriani

Kelly J. Ross

By its Town Manager:

DATE:

Jodi Ross

WITNESS