

**INTERMUNICIPAL AGREEMENT BETWEEN
CITY OF LEOMINSTER AND TOWN OF LANCASTER
FOR THE PROVISION OF WATER SERVICE**

This agreement, made and entered into this 17th day of March, 2021, by and between the City of Leominster, a municipal corporation within the County of Worcester, Commonwealth of Massachusetts, acting through its Mayor, hereinafter referred to as “the City” or “Leominster,” and the Town of Lancaster, a municipal corporation within the County of Worcester, Commonwealth of Massachusetts, acting through its Board of Selectmen, hereinafter referred to as “the Town” or “Lancaster” (hereinafter the “Agreement”).

W I T N E S S E T H

WHEREAS, the City owns and operates a water treatment and distribution system (the “water system”); and

WHEREAS, the City has received a third-party request to connect certain property located within the Town to the City’s water system, such property being identified by the Lancaster Assessors’ Maps as follows: Map 8, Parcel 45; and as described in a deed dated November 8, 2019 and recorded with the Worcester Registry of Deeds at Book 59673 Page 28 (the “Property”); and

WHEREAS, the City and the Town agree it is in the parties’ mutual interests to connect said Property to the City’s water system; and

WHEREAS, the City is willing to permit the connection of the Property to its water system under the terms and conditions set forth in this Agreement and the Development Agreement entered into between the City and the Property owner, 702, LLC (the “Owner”), which is attached hereto as Exhibit 1 and incorporated herein by reference (the “Development Agreement”); and

WHEREAS, the parties are authorized by General Laws Chapter 40, Sections 4 and 4A to enter into an Intermunicipal Agreement for the purpose of the City of Leominster supplying water service to the Town of Lancaster, subject to authorization by the Leominster City Council and the Lancaster Board of Selectmen;

NOW, THEREFORE, in consideration of the promises and mutual benefits to be derived by the parties hereto, the parties agree as follows:

General Terms

1. The City agrees to permit the water connection to serve the Property located in the Town of Lancaster. The Property currently consists of approximately 378.95 +/- acres of land identified on the Lancaster Assessor's Map 8, Parcel 45; and as described in a deed dated November 8, 2019 and recorded with the Worcester Registry of Deeds at Book 59673 Page 28. This Agreement does not apply to any other property, and no other Lancaster property shall be allowed to tie into the water system without a written agreement between the parties or a written amendment to this Agreement.

2. Lancaster shall bear no responsibility for the costs associated with the design and construction of the connection of the Property to the City's water system, or for any maintenance and repairs required for the upkeep of the Property, the Property's connection to the water system, or the water system. All costs associated with the water system connection contemplated by this Agreement, including but not limited to all construction and maintenance costs relating to the Property's connection to the water system, shall be allocated amongst the City and the Owner, or its successors and assigns, as set forth in the Development Agreement.

3. The connection to the Property shall consist of a water main extension, a dedicated water meter, and additional pumps, pipes, and conduits the City and the Owner deem reasonably necessary and appropriate, all of which shall comply fully with all applicable federal, state and local laws, rules and regulations applicable to such water services. Lancaster shall have the right to review and approve all specifications and plans prepared by the City and/or the Owner for said water system connection prior to the commencement of any construction, said approval not to be unreasonably withheld. Upon completion of construction, the City's Department of Public Works will provide the Town with an as-built plan of the Property's connection to the City's water supply as a condition precedent to the actual supply of service by the City.

4. The maximum flow transferred from Leominster to the Property pursuant to this Agreement shall be a total of 100,000 gallons per day, unless the Owner's water supply allocation is increased or otherwise altered pursuant to Section 6 of the Development Agreement, in which case the flow allowable into the Town under this provision shall automatically be increased or altered consistent with the terms agreed to between the City and the Owner. The City shall provide the Town with reasonably prompt notice in writing of any changes to the Owner's water supply allocation, which notice shall become an addendum to this Agreement. Pursuant to Section 1 of this Agreement, no increase in the Owner's water supply allocation may be used to serve any other property in the Town, including such other or neighboring properties the Owner, or its successors and assigns, may acquire in the future without approval of the Town and a written amendment to this Agreement.

5. The City shall ensure the Owner obtains all necessary permits, approvals and rights in real property required by federal, state and local law, rules and regulations for the excavation and construction associated with the Property's connection to the City's water system, and shall maintain same in full force and affect throughout the term of this Agreement.

6. Subject to the terms and limits of this Agreement and of applicable state and federal law, the City, acting through its Department of Public Works, will provide water service to the Property in the Town, in consideration for the Owner's payment of applicable water connection and user rates and fees. The City shall be responsible for maintenance of the portion of the water main extension, as defined in Exhibit 1, within its jurisdictional boundaries, and the Owner shall be responsible for the portion of the water main extension, as defined in Exhibit 1, within the Town. Lancaster shall not be responsible for the maintenance of the water main extension, or any other conduits or service lines within the Town's jurisdictional bounds, constructed and maintained for the purpose of providing water to the Property. The Town reserves the right to perform any maintenance or repairs if the City or the Owner, or its successors and assigns, fail to perform such maintenance or repairs in a timely manner, following notice to the City and the Owner and a reasonable time to cure, as well as the right to perform emergency repairs as necessary, without prior notice to the City and the Owner, with notice to be provided to the City and the Owner as soon as practicable. The costs of all such maintenance and emergency repairs shall be borne by the City and allocated in its discretion consistent with Section 9 of the Development Agreement. Leominster and Lancaster have the right to inspect facilities and equipment in Lancaster that may affect

the City's water system. These inspections and any inspections permitted under this Agreement may include any and all reasonable tests Leominster deems necessary. Lancaster hereby consents to Leominster's entry onto or into the Property for the purpose of any inspection or repair, installation or maintenance which Leominster deems necessary under this Agreement.

Insurance

7. The City shall obtain and maintain during the period of construction of the water maintain extension, as defined in Exhibit 1, the following insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts, and acceptable to the Town.

The amounts of such insurance shall be for each policy, not less than:

- a) Bodily injury liability, including death - \$1,000,000.00 on account of any one person and \$2,000,000.00 aggregate limit.
- b) Property damage liability - \$1,000,000.00 on account of any one accident, and \$2,000,000.00 aggregate.

All policies shall identify the Town as an additional insured and shall provide that the City shall receive written notification at least 30 days prior to the effective date of any amendment or cancellation. The City shall provide the Town with appropriate certificate(s) of insurance evidencing compliance with this provision prior to the commencement of any construction.

Failure to provide or to continue in force such insurance shall be deemed a material breach of this Agreement and may result in termination of this Agreement.

User Fee and Billing

8. All connection and user fees, charges, water rates, costs, and expenses incurred in relation to the Property's connection to the City's water system shall be borne exclusively by the Owner or its successors and assigns. Lancaster will incur no debt or obligation, financial or otherwise, for payment of any connection fees, users fees, water rates, costs, expenses, or any other charges or assessments that may be incurred or imposed in relation to the Property's connection to the City's water system. The City shall bill or invoice the Owner, and its successors and assigns, for all water service contemplated under this Agreement and the Development Agreement and water system upgrades consistent with the terms and conditions of the Development Agreement. Lancaster acknowledges and consents to Leominster's right and ability to pursue all lawful means to collect any and all unpaid fees, charges, or rates issued in relation to the Property's connection to the City's water system. The Town shall not unreasonably interfere with the City's collection efforts or exercise of any and all rights and remedies contained in the Development Agreement, including but not limited to the City's ability to lien property within the Town.

9. Leominster shall furnish to Lancaster with the quarterly water meter readings for the Property by the subject connection.

Remedies

10. Either party may terminate the water service provided under this Agreement for any breach of the terms of this Agreement pursuant to the terms set forth herein, including but not limited to Section 13 of this Agreement.

11. Either party to this Agreement shall notify the other party in writing if it obtains actual notice of the Owner's failure to maintain and operate the water supply connection provided for in this Agreement and the Development Agreement in

compliance with all applicable rules and regulations of the City and the Town, and all federal and state laws, rules and regulations. Nothing herein shall be interpreted to impose an affirmative duty upon either party to monitor or inspect the Property, or to impose any responsibility or liability on either party for the Owner's, or its successors or assigns', failure to comply with any and all applicable laws, rules, or regulations.

12. In the case of an emergency creating a threat to the public health or safety as determined by the City, the City may suspend or terminate water service immediately and without prior written notice. Written notice shall be provided as soon as practicable thereafter.

13. In addition to the remedies, power and authority that the Department of Public Works has under the ordinances of the City of Leominster, the following remedies apply:

a) If either party fails to fulfill any obligation or condition of this Agreement, the other party has the right to terminate this Agreement by giving ninety (90) days notice, in writing, of its intent to do so. Upon receipt of such notice the party shall have the right to prevent termination by curing the default within sixty (60) days. Termination shall not release the Owner from its obligation to pay all bills or sums due in accordance with the Development Agreement.

b) Both parties reserve the right, either in law or equity, by suit, and complaint in the nature of mandamus; or other proceeding, to enforce or compel performance of any or all covenants herein.

c) This Agreement shall terminate automatically in the event the Development Agreement is terminated or expires without renewal.

d) If an administrative agency, board, commission or division of the

state or federal government or any court impairs, alters, restricts or limits, directly or indirectly, Leominster's rights, powers or authority to maintain, sell, contract for, or permit water supply services as described in this Agreement, Leominster in its sole discretion may terminate and void this Agreement by written notice to Lancaster. The notice of termination shall be given within five business days after Leominster receives written notice of the action or decision of such agency, board, commission, division or court. It is the intent of this notice provision to give Lancaster as much advance notice as possible consistent with Leominster's need to terminate. Leominster will notify Lancaster of the formal institution of any proceedings or the issuance of any formal order so that Lancaster may, if it chooses, participate in such proceedings or challenge any such order.

e) If either party fails to perform any obligation under this Agreement, the other party may perform on behalf of the defaulting party and charge the reasonable costs thereof, including administrative time and attorneys fees, to the defaulting party as a sum due under the Agreement provided written notice is given to the defaulting party allowing it a reasonable time to cure the default.

f) The remedies set forth in this Agreement are cumulative. The election of one does not preclude use of another, at any time or the same time.

Term of Agreement

14. The term of this Agreement shall be for a period of twenty-five (25) years from date that the Owner connects to the meter at the City and Town line or that date on which the Owner receives its first permit for construction of a building or other use within the Town to which water will be supplied, whichever occurs later, unless sooner

terminated as herein provided. Thereafter there shall be three (3) automatic, additional twenty-five-year periods of water supply under the terms contained herein, unless written notice of termination is delivered to the other party no later than ninety (90) days prior to the expiration of the then current term, or the Development Agreement is terminated as set forth therein. This Agreement shall terminate automatically upon the termination or expiration without renewal of the Development Agreement.

Liability and Indemnification

15. Employees, servants, or agents of either municipality shall not be deemed to be agents, servants or employees of the other municipality for any purpose, including but not limited to either Workers' Compensation or unemployment insurance purposes. The parties shall be liable for the acts and omissions of its own employees, servants, or agents and not for those of the other party in the performance of this Agreement to the extent provided by the Massachusetts Tort Claims Act, G.L. c. 258. Neither party to this Agreement has waived any governmental immunity or limitation of damages which may be extended to it by operation of law.

16. The City shall indemnify and hold the Town harmless from and against any and all claims, demands, liabilities, actions, costs and expenses, including reasonable attorney's fees, arising out of this Agreement and the City's supplying water to the Property, or the negligence or willful misconduct of the City, or its agents or employees.

Service of Notice

17. All notices or communications permitted or required by this Agreement must be in writing except in emergencies, and shall:

- a) As to Leominster, be delivered or mailed by certified mail, return receipt requested, to the Mayor's Office:

25 West Street, Leominster, MA 01453,

and the office of the Department of Public Works:

109 Graham Street, Leominster, MA 01453.

- b) As to Lancaster, be delivered or mailed by certified mail, return receipt requested, to the Board of Selectmen's Office:

701 Main Street, 2nd Floor, Lancaster, MA 01523.

Regulatory Authority

18. This Agreement is subject to the lawful rules, regulations, decisions, order or directives of any agency of the state and federal government with jurisdiction over the parties or subject matter of this Agreement. Any and all conditions, rules, regulations, orders or other requirements heretofore or hereafter placed upon Leominster or Lancaster by the EPA or by the Department of Environmental Protection or any other agency, division, office or department of the United States or the Commonwealth of Massachusetts or by any court of competent jurisdiction and by any other applicable Federal, state or county agency, shall be construed to become a part of this Agreement unless the Agreement is terminated hereunder.

Governing Law

19. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and Leominster and Lancaster

submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

Entire Agreement


20. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto. To the extent this Agreement and the Development Agreement conflict, this Agreement shall control.

Severability

21. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and all other parts of this Agreement shall remain in force and affect.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals on the date and year first above written.

CITY OF LEOMINSTER



Mayor, City of Leominster

TOWN OF LANCASTER
Board of Selectmen

