

RESOLUTION OF THE CITY COUNCIL

No. 301

Approved July 21, 2021

IT IS HEREBY RESOLVED, That His Honor, the Mayor, is authorized to grant a surface easement or surface easements over, under, on and upon that area in the City of Providence identified on the easement plan or plans attached hereto (each an “easement area” and collectively, the “easement areas”) to The Avenue Concept. Said easement or easements shall be granted specifically upon the following provisions:

1. Said easements shall be utilized only for the installation and display of public art. Said easement shall not exceed the easement area
2. Said easements shall be deemed to run with the land and shall operate against any successors in title and the easements or a memorandum of same shall be recorded by The Avenue Concept in the Office of Land Records for the City of Providence.
3. As consideration for the easements, The Avenue Concept shall install, maintain and display public art in the easement areas for the good of the public and the City of Providence.
4. The Avenue Concept shall execute an indemnification and hold-harmless agreement with the City of Providence. Said agreement shall be approved by the Department of Law of the City of Providence.
5. The Avenue Concept shall supply the City of Providence with an insurance policy naming said City of Providence, its agents, officers, servants and employees as additional-named insureds in a sum not less than one hundred thousand dollars (\$100,000.00) which policy shall be approved by the Department of Law of the City of Providence.
6. In the event that the City of Providence or its designee shall, for any public purpose, require the extinguishment of any easement granted herein, upon ninety (90) days’ notice, The Avenue Concept shall, at its own expense, and without claim against the City, its officers, servants or employees, for any damages whatsoever, remove said public art from the designated easement area.
7. To the extent any electrical installations are utilized in any easement area, The Avenue Concept recognizes the applicability of Sections 23-107, 23-108 and 23-190 of the Code of Ordinances which read as follows:

23-107. Indemnity of city against claims arising out of electrical installations.

No right of any person to maintain, use or operate any poles, wires, cables, conduits, ducts, pipes, manholes, handholes, or other appliances or appurtenances in any street or other traveled way in the city, shall be in preference or hindrance of public work in the city, and should any of the same in any way interfere with the construction, alteration or repair of any public work in, under, or over any such street or way, whether done by the city directly or by any contractor for the city, such person shall at his own expense protect, alter or move any of the same so interfering to some other location, or discontinue the use and operation thereof for the time being, as directed by the director of public works, without the city being liable for any damages suffered by such person thereby. The City shall notify such person not fewer than ninety (90) days prior to such public work, which will interfere with any of the same or the use or operation thereof. In case such person shall fail to comply with any such direction of said director, the city may protect, alter or move the same, and recover the cost thereof from such person.

23-108. Precedence of wires, apparatus of city signal service.

The wires, poles, posts, structures and supports of the telephone, fire alarm and police signal service maintained by the city shall at all times take precedence and right-of-way as to all other wires, poles, posts, structures and supports maintained or erected in the city; and no lineman or other person, either in erecting wires, poles, posts, structures or supports in any way whatsoever shall interfere with, or disturb, disarrange or change any wires maintained by the city, or any appurtenance thereof; and in every instance of removal of any of said wires, poles, posts, structures or supports for the accommodation of any other corporation or party, or to place the same beyond danger from the electric current of any other corporation or party, the expense incident to said removal shall be paid immediately by such other corporation or party.

23-109. Indemnity of city against claims arising out of electrical installation.

Every person erecting, maintaining or using electric wires or poles, fixture or structures, for the support or conducting of the same shall indemnify and save harmless the city, its officers, agents and servants, from and against all lawful claims and demands for injuries to persons or property occasioned by the existence of such poles, wires, fixtures or structures or the transmission of electric current by means thereof or by the digging up, opening or keeping open of any street, highway, traveled way, public place or part thereof, which shall be or has been opened for the purpose of installing, constructing or repairing any underground conduit, duct, structure, appliance or appurtenance by or for such person, or by any failure of such person to restore and keep in sound and safe condition for the required time any ground opened or dug up in the prosecution of any of its work in any street, way or place. The city, city council, or the officers, agents or servants of the city, exercising the rights, powers or permission, and subject to the restrictions, respectively given and reserved herein shall not be held liable by such person or corporation on account thereof, or by reason of any injury or damage caused thereby.

8. Such other terms and conditions as may be reflected in the record and minutes of the City Council Committee on Public Works and/or as may be deemed appropriate by the Mayor or the Department of Law.

IN CITY COUNCIL
JUL 15 2021
READ AND PASSED


JOHN J. IGLIOZI, PRESIDENT

Tina L. Mastrosimone
CLERK

I HEREBY APPROVE.



Mayor
Date:  7/21/21

ACTING

ADLER POLLOCK & SHEEHAN P.C.

One Citizens Plaza, 8th floor
Providence, RI 02903-1345
Telephone 401-274-7200
Fax 401-751-0604 / 351-4607

175 Federal Street
Boston, MA 02110-2210
Telephone 617-482-0600
Fax 617-482-0604

www.apslaw.com

May 14, 2021

Adrienne G. Southgate, Esq.
Deputy City Solicitor
City Solicitor's Office
City of Providence
444 Westminster Street, Suite 220
Providence, Rhode Island 02903

Re: *The Avenue Concept – Cooperative Use Agreement*

Dear Adrienne:

I am pleased to enclose for your records fully-executed copies of the *Cooperative Use Agreement Between the Avenue Concept and the City of Providence* and the associated *Easement*, bearing original, notarized signatures on behalf of the Avenue Concept. I thank you for your past and continuing efforts to bring this agreement to closure. Please feel free to contact either me or my colleague, Rob Stolzman, should there be anything further that you would require.

Very truly yours,



JEFFREY K. TECHENTIN
jtechentin@apslaw.com

Encls.

cc: The Avenue Concept (all by electronic mail)
 Robert I. Stolzman, Esq.

**COOPERATIVE USE AGREEMENT
BETWEEN THE AVENUE CONCEPT AND THE CITY OF PROVIDENCE**

This Agreement is entered into this _____ day of _____, 2021, by and between **The City of Providence, Rhode Island**, a municipal corporation organized and existing under the laws of Rhode Island, acting through its Operations Division, whose address is 25 Dorrance Street, Providence, Rhode Island 02903 ("City") and **The Avenue Concept**, whose principal address is 304 Lockwood Street, Providence, RI 02907 ("TAC") (individually, each being a "Party" and jointly, the "Parties").

SHARED GOALS AND PRINCIPLES:

WHEREAS, the Parties believe that public art provides not only aesthetic benefits but also opportunities for education, inspiration, increased quality of life, increased tourism and economic development within the City, and therefore should anchor iconic places in the City's downtown and other community gathering places in City neighborhoods; and

WHEREAS, the Parties believe that public art programs should cultivate and engage the local artist community and creative industries; and

WHEREAS, the City of Providence's Art in City Life Plan adopted by the Art in City Life Commission ("Commission") in April 2018 outlines the City's vision for public art, the policies and plan for support of public art projects and residencies; and

WHEREAS, the City recognizes the importance of public/private collaborations;

WHEREAS, TAC's mission includes the funding and support of the creation and installation of artwork in public spaces, and developing programs, policies, partnerships, and funding streams that make public art projects more viable and sustainable; and

WHEREAS, TAC is an accomplished leader in the sourcing, funding, and installation of both 2D (e.g., murals) and 3D (e.g., sculptures) public art within the City as well as the curation and promotion of such artwork after installation, and has established relationships with the art community both in and beyond Rhode Island; and

WHEREAS, TAC has successfully installed over 150 public art works within the City, representing an investment of over \$1,000,000 over the last eight years to augment and enhance the City's public environment, including on five sculpture pads located throughout the downtown area, the art for which has been programmed on an annual basis by TAC, associated underground electrical conduit, surrounding landscaping, and other enhancements; and

WHEREAS, the Parties believe that collaborative effort will bring synergetic benefits to the City in the form of more plentiful and high quality public art, greater community engagement and interaction, and sustainable mechanisms for future public art projects; and

WHEREAS, this Agreement serves to memorialize these actions and outlines the agreement of the Parties with respect to certain current and anticipated activities on City property;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

PARTIES' PROMISES AND OBLIGATIONS

1. Term. This Agreement shall be in effect from the date of execution through December 31, 2030.
2. TAC's Obligations
 - a. TAC will present to the Commission no later than March 1 each year a yearly plan for public art sculpture installations that it intends to install or maintain throughout the City, including on City land (an "Annual Plan for Public Art") so that the City can review and approve those installations that are subject to review and to better integrate the City's separate public art efforts with TAC's efforts. TAC shall promptly notify the City of any needed modifications to a previously-submitted Annual Plan for Public Art.
 - b. The City acknowledges that TAC has installed five sculpture pads on City property (the "Pads"), located at the sites specified on **Exhibit 1** hereto (the "Pads"). Within ten (10) days of the execution of this Agreement, TAC will apply for easements as to the Pads on essentially the terms set forth in **Exhibit 2** hereto. Pending the grant of such easements, or until the expiration of the Term of this Agreement, whichever occurs first, TAC shall (i) be solely responsible for the programming, financing, rotation, maintenance, and insurance of art works on the Pads, and (ii) shall continue to program the Pads consistent with past practice, to include rotation of art on a biannual or more frequent basis, within TAC's discretion. Additionally, TAC shall, during the Term of this Agreement, be responsible for care and maintenance of the garden areas surrounding the pads. In the event the City finds or believes that TAC has failed to properly care for and maintain said areas, the City shall promptly notify TAC of its concerns and the parties agree to cooperate with respect to the resolution of such concerns.
 - c. Sculpture Pad at Kennedy Plaza. TAC agrees to donate its interest in the sculpture pad at Kennedy Plaza, including the associated lighting, conduit, electrical lines, meters, and outlets, and tree wells, to the City, with no recourse or compensation for the expenses of its construction, and to undertake all steps necessary to place control of all electrical circuitry with the City.
 - d. Buried Conduit at Pad Sites: The City acknowledges that TAC has installed electrical conduit underground at certain of the Pad sites. A summary of that installation is attached as **Exhibit 3** hereto.
 - e. TAC shall make itself available to the City as a resource for advice on public art selection, procurement, installation, and promotion.

3. City's Obligations

- a. ACT's policies and procedures will govern all new projects sited on City property and/or undertaken with City funding. Except as may be agreed otherwise, projects on City property funded with private dollars are considered as gifts or as loans to the City.
- b. Sculpture Pads
 - i. The City acknowledges that TAC has installed the Pads, which TAC has programmed with public art over the past seven years, the locations of which are shown on Exhibit 1 to this Agreement, and that TAC intends to seek easements as to each of the Pads on substantially the terms set forth in Exhibit 2. City entities are the sole owners of the property upon which the Pads are located.
 - ii. ACT supports the grant of the requested easements.
 - iii. During the pendency of the application(s) for such easements, the City agrees that TAC may continue to program the Pads with public art consistent with its past practices, provided that such programming is done without cost to the City, with TAC responsible for the costs of installation, removal, maintenance, and appropriate insurance, and in accord with Section 2.b.
- c. Permitting of new art installation using Annual Plans for Public Art
 - i. Except when the City is operating under pandemic conditions or other force majeure circumstances, upon timely presentation of an Annual Plan for Public Art in the City (to be presented to the Commission no later than March 1), the City agrees to timely consider and, as appropriate, permit the component art projects and the Annual Plan for Public Art in the aggregate. For purposes of the consideration of an Annual Plan for Public Art, sixty (60) days for approval shall be presumptively be timely.
 - ii. In the event that TAC seeks to modify or replace a component art project of an Annual Plan for Public Art, TAC shall promptly make such a request to ACT for approval, and such modification shall be granted expeditious review if requested by TAC together with an explanation of the need for expedition. The City agrees to take reasonable efforts for requests that seek expedited review to render a permitting decision within thirty (30) days of the submission of the request.

4. Joint Obligations for Publicly-Funded Projects

The City and TAC may cooperate with respect to TAC-led public art projects utilizing City funds to be placed on private property in accordance with the policy outlined in the City's Art in City Life Plan, including the following:

- a. At ACT's request, TAC shall provide ACT copies of agreements with private building owners outlining siting, maintenance, and insurance for art works funded in part with City funds.
 - b. TAC may request a letter of support from the City for projects as appropriate and necessary, which shall be issued at the City's discretion.
 - c. The City and TAC may decide to enter into a partnership agreement around new joint projects, including but not limited to PVDFest projects, beyond the scope of this agreement.
5. Limitation on Liability. TAC shall not be liable to the City for any claims, losses, expenses, injuries, damages or other liabilities arising out of or in any way related to the installation or display of the art works.
 6. Non-Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.
 7. Binding Agreement. This Agreement shall be binding upon the parties, their successors, and permitted assigns.
 8. No Joint Venture or Partnership. This Agreement shall not be deemed to create a joint venture, partnership, principal-agent, employer-employee or similar relationship between TAC and the City.
 9. Entire Agreement. This Agreement represents the entire agreement between the parties hereto with respect to the subject matter contained herein and supersedes all other agreements, if any, express or implied, whether written or oral.
 10. Modifications or Amendments. No alteration or modification of this Agreement shall be valid unless made in writing and executed by each of the parties hereto.
 11. Governing Law. This Agreement shall be governed by the laws of the State of Rhode Island, without regard to conflicts of law principles.
 12. Counterparts. This Agreement may be executed in counterparts and both such counterparts shall be deemed to constitute a single agreement, notwithstanding that both parties are not signatories to the same counterpart.
 13. Termination.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

[SIGNATURES FOLLOW ON NEXT PAGE]

Yarrow Thorne signed and sworn
before me this 3rd day of May, 2021.
[Signature]

KASEY M. VIVENZIO
NOTARY PUBLIC
STATE OF RHODE ISLAND
COMMISSION EXPIRES 01/31/25

THE AVENUE CONCEPT, INC.

By: *[Signature]*
Name: Yarrow Thorne
Title: Executive Director

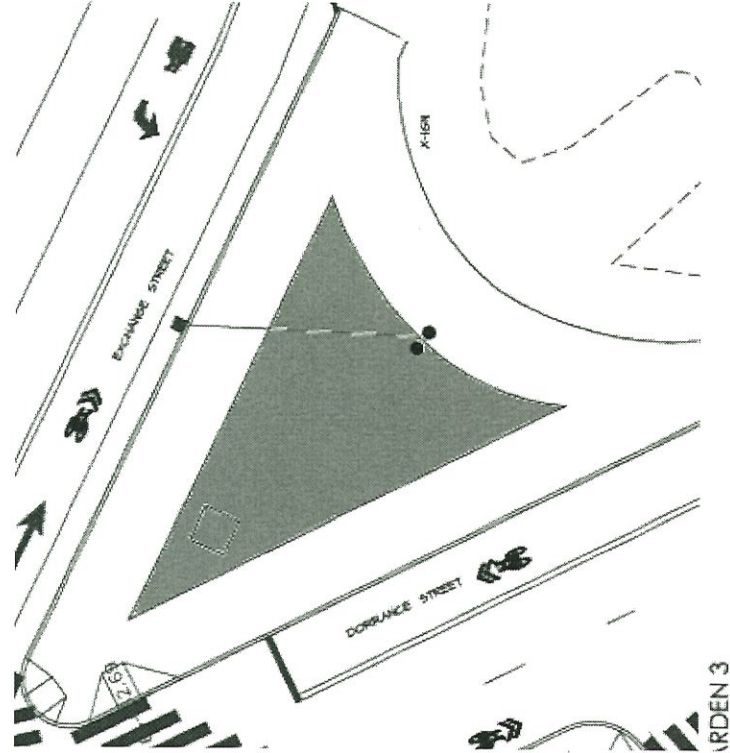
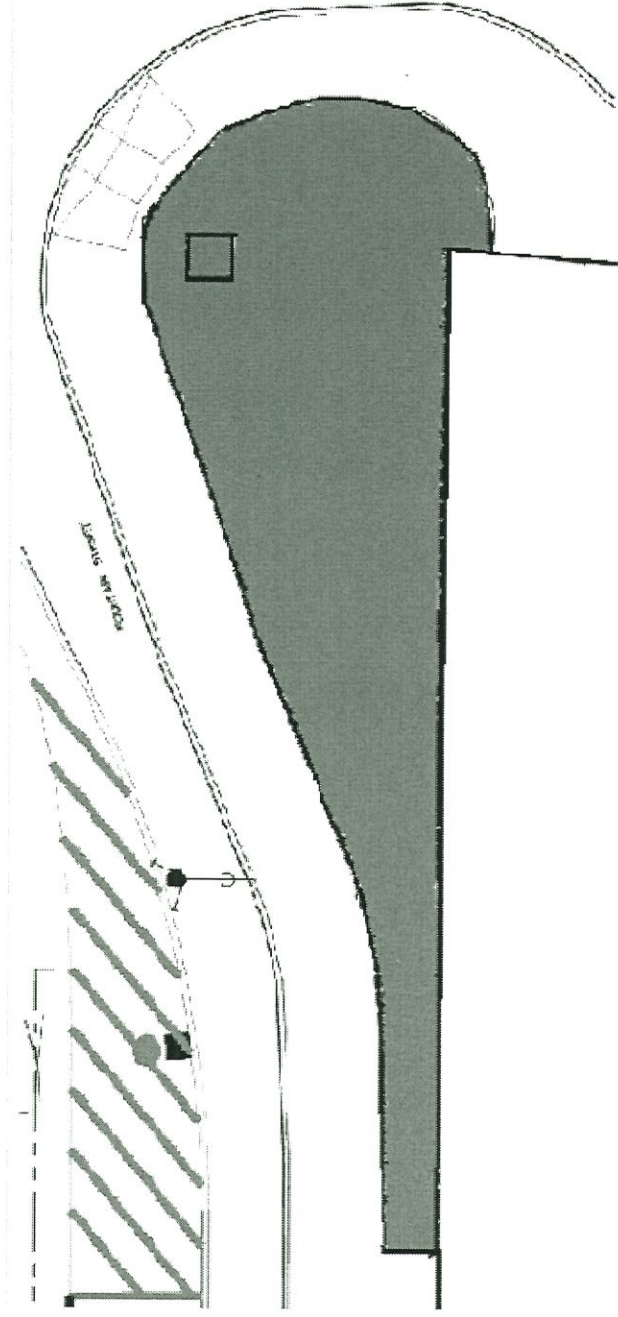
CITY OF PROVIDENCE

By: *[Signature]*
Name: Sabrina Solares-Hand
Title: Chief Operating Officer

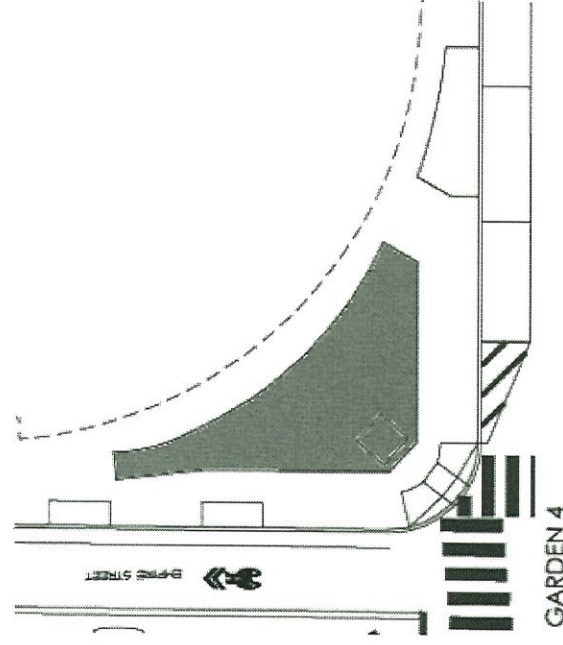
Approved as to form and correctness:

[Signature]
Jeffrey Dana, City Solicitor

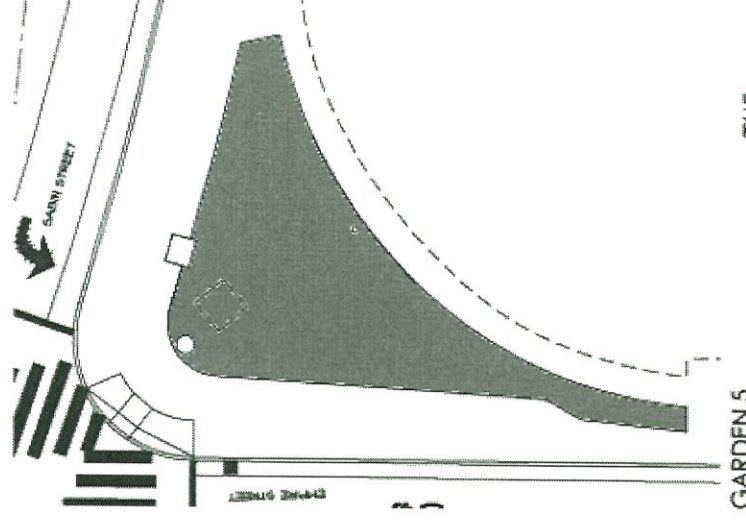
Exhibit 1



GARDEN 3



GARDEN 4



GARDEN 5

Exhibit 2

EASEMENT

This Easement ("Easement") is entered into as of this ____ day of _____, 20__ by and between the **City of Providence**, a municipal corporation in the State of Rhode Island (the "City") and **The Avenue Concept**, a Rhode Island non-profit corporation (the "Grantee").

PREAMBLE

WHEREAS, the City owns and maintains various public rights of way and adjacent areas suitable for the installation, maintenance and public view of public art;

WHEREAS, the Grantee's mission includes the funding, support and installation of public art;

WHEREAS, the City and the Grantee have entered into a Cooperative Use Agreement ("CUA") pursuant to which Grantee shall be entitled to install, maintain and display public art on properties owned by the City; and

WHEREAS, the City desires to allow Grantee the right to install, maintain and display public art on such properties.

NOW, THEREFORE, for the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Grantee hereby agree as follows:

1. Grant of Easement. The City hereby grants Grantee a perpetual (unless terminated pursuant to the terms hereof) exclusive easement in, over, under, through and upon those certain easement areas reflected on the Easement Area Plan attached hereto and made a part hereof. Each such area is referred to herein as the "Easement Area".
2. Use of Easement Area. Grantee shall have the right to utilize the Easement Areas for the installation, maintenance and display of public art including but not limited to sculptures, displays, installations and any other medium as determined by the Grantee in accordance with the CUA as such may be amended from time to time.
3. Security. The City shall provide only normal police protection and fire safety for the Easement Areas.
4. Insurance. Grantee shall provide casualty insurance for the public art displayed in any Easement Area in accordance with Grantee's custom and practice.
5. Termination of Easement. Either the City or Grantee may terminate this Easement with respect to any Easement Area upon written notice to the other in which event the easement for that Easement Area shall terminate upon the later of (a) ninety (90) days after such written notice, or (b) upon the expiration of any contract or other agreement between Grantee and the artist, provider, distributor or other facilitator of the public art located in any particular Easement Area the easement for which is being terminated.

6. Miscellaneous.

- (a) This Easement shall be interpreted and implemented in accordance with the laws of the State of Rhode Island.
- (b) This Easement represents the full agreement between the parties hereto and may not be amended without a written instrument executed by both parties.

Signature page follows

IN WITNESS WHEREOF, the undersigned have executed this Easement as of the date first above written.

CITY OF PROVIDENCE

By: _____
Its: _____

Approved as to form and correctness:

By: _____
Jeffrey Dana, City Solicitor

GRANTEE:

THE AVENUE CONCEPT

By: _____
Its: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on the ____ day of _____, 20__, before me personally appeared the above-named _____, to me known and known by me to be _____ of City of Providence, a municipal corporation, and the party executing the foregoing instrument for and on behalf of said entity, and such individual acknowledged said instrument by him/her executed, to be his/her free act and deed in said capacity as aforesaid and the free act and deed of _____.

Notary Public
Print Name:
My Commission Expires: _____

STATE OF RHODE ISLAND
COUNTY OF _____

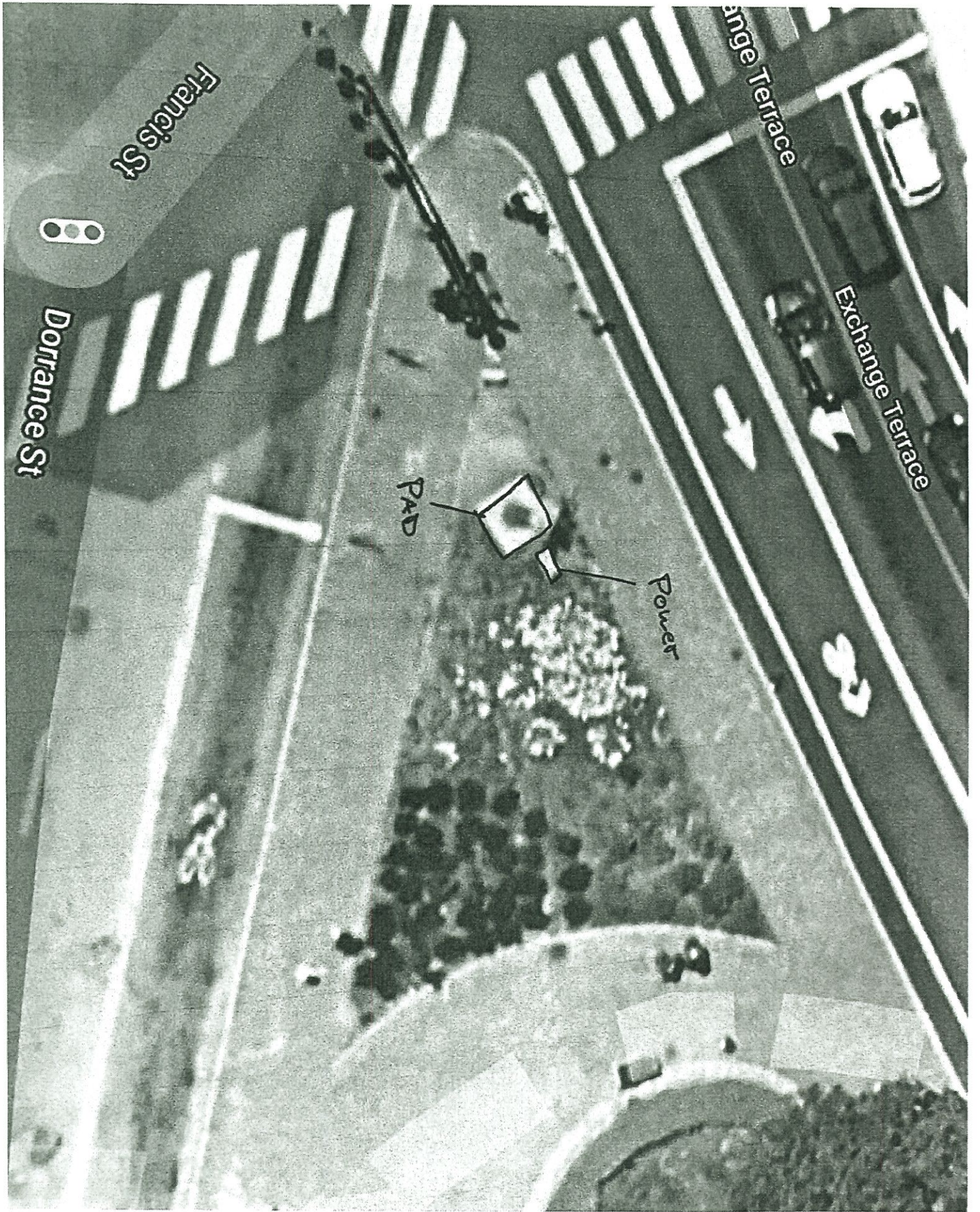
In _____, in said County and State, on the ____ day of _____, 20____,
before me personally appeared the above-named _____, to me known
and known by me to be _____ of The Avenue Concept, a Rhode Island non-
profit corporation, and the party executing the foregoing instrument for and on behalf of said
entity, and such individual acknowledged said instrument by him/her executed, to be his/her free
act and deed in said capacity as aforesaid and the free act and deed of
_____.

Notary Public
Print Name:
My Commission Expires: _____

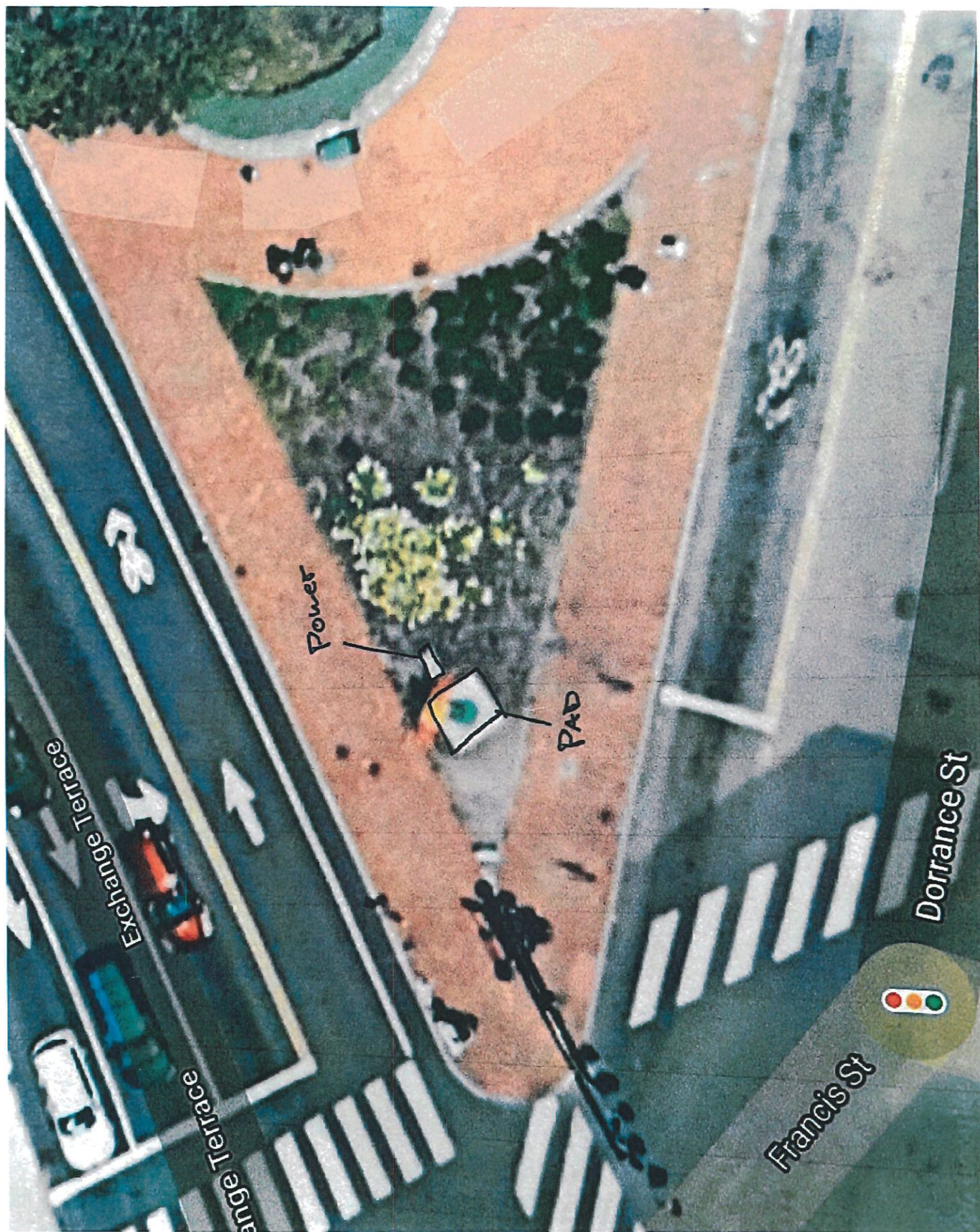
EXHIBIT A

EASEMENT AREA PLAN

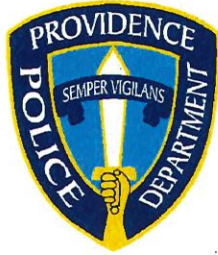
Exhibit 3











PROVIDENCE POLICE DEPARTMENT
Traffic Bureau
325 Washington St., Providence, RI 02903

5/26/2021

To: Sheri A. Petronio, City of Providence First Deputy City Clerk
From: Cpt Luis F. San Lucas, Traffic Bureau Commanding Officer
Subject: Petition to the City Council for granting of Art Pad Easements over city property for the purpose of maintaining public art displays by Jeffrey K Techentin, Adler, Pollock & Sheehan PC.

Sir,

After reviewing the petition for granting of art pad easements at One Citizen Plaza by Jeffrey Techentin, Adler, Pollock & Sheehan PC , dated May 21, 2021. The Providence Police Department has no objection to the request.

Respectfully Submitted

Luis F. San Lucas
/////original signed/////

STEVEN M. PARÉ
Commissioner of Public Safety
Acting Chief of Department



JORGE O. ELORZA
Mayor

Department of Public Safety, Fire Department
"Building Pride in Providence"

June 15, 2021

The Honorable Michael J. Correia
Councilman
Chairman, Committee on Public Works
Providence City Hall
25 Dorrance Street
Providence, RI 02903

RE: Petition Requesting Art Pad Easements Over City Property

Dear Councilman Correia:

I am in receipt of your memorandum regarding the petition that was filed by Attorney Jeffrey Techentin of Adler Pollock & Sheehan of Providence, Rhode Island on behalf of his client, the Avenue Concept, who is seeking an easement over city proper for the purpose of maintaining public art displays.

After review, it does not appear that these art installations will have any impact on fire safety. Therefore, I do not have any public safety concerns at this time.

If you have any questions, please feel free to contact my office.

Respectfully,

Steven M. Paré
Commissioner of Public Safety
Acting Chief of Department

cc: Sheri A. Petronio, First Deputy City Clerk

Petronio, Sheri

From: Zisiades, Steve
Sent: Monday, June 28, 2021 11:30 AM
To: Petronio, Sheri
Subject: RE: Easement

Per the Director of DPW the area located at Exchange Terrace @ Dorrance St. is maintained by the Parks Dept. Nothing needed from this department.

From: Petronio, Sheri
Sent: Monday, June 28, 2021 10:28 AM
To: Zisiades, Steve <Szisiades@providenceri.gov>
Subject: Easement

Attached is the copy of the easement.

Sheri A. Petronio
First Deputy City Clerk
25 Dorrance Street, Room 311
Providence, RI 02903
spetronio@providenceri.gov
(401) 680-5570

MEMBER


Rhode Island Water Works Assn.
New England Water Works Assn.
American Water Works Assn.
Water Research Foundation

An EPA WaterSense Partner

(401) 521-6300

125 Dupont Drive
Providence, RI 02907

www.provwater.com

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 Like us at:

facebook.com/Providencewater



Chuck Brennan
Manager - Records

cc: Peter LePage
Chris Labossiere
File

Attachment

Petronio, Sheri

From: Nilsson, Wendy
Sent: Monday, June 28, 2021 11:56 AM
To: Petronio, Sheri
Cc: Barker, Jillian; Fortunato, Stephanie; Azar, Robert
Subject: RE: Air Pd Easement - Avenue of the Arts

Hi Sheri,

Thanks for checking with me. I believe that none of those pads are on City Parks. The one that appears to be in Biltmore is actually on a Public Right of Way, and is technically not an extension of Biltmore Park. WRT to Kennedy Plaza, it looks as though they are just abandoning their access and infrastructure. I have looped in Stephanie, Bob and Jillian to make sure I am not missing anything here.

Thanks,
Wendy

From: Petronio, Sheri <Spetronio@providenceri.gov>
Sent: Monday, June 28, 2021 11:35 AM
To: Nilsson, Wendy <Wnilsson@providenceri.gov>
Subject: Air Pd Easement - Avenue of the Arts

Good morning Wendy. This is going before the Committee on Public Works this Wednesday, June 30th. I just found out that this is City owned property that the Parks Department maintains. Could you please send me a response to whether or not you approve or disapprove of this. If you have an questions please feel free to contact me at 680-5570. Thank you.

Sheri A. Petronio
First Deputy City Clerk
25 Dorrance Street, Room 311
Providence, RI 02903
spetronio@providenceri.gov
(401) 680-5570



385 Myles Standish Blvd
Taunton, MA 02780

June 3, 2021

City of Providence
Office of the First Deputy City Clerk
25 Dorrance Street
Providence, Rhode Island 02903

ATTN: Sheri A. Petronio, First Deputy City Clerk

RE: PETITION TO PLACE ART PAD EASEMENTS
1. Intersection of Francis Street, Exchange Terrace & Dorrance Street
2. Intersection of Sabin Street & Empire Street

Dear Sheri A. Petronio,

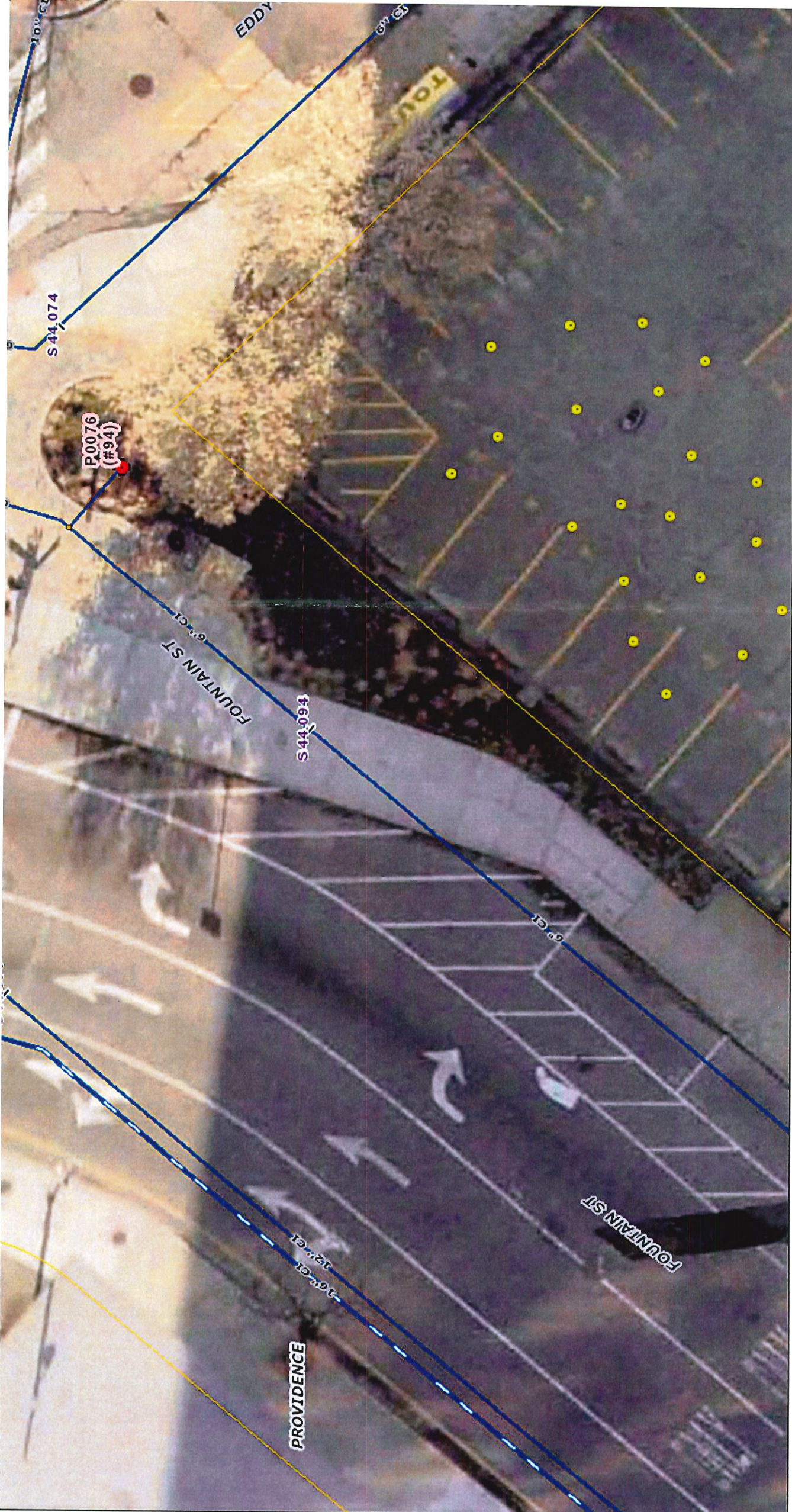
Upon investigation it has been determined that Verizon presently has no facilities at the sections identified to be utilized.

Verizon will not object to the granting of said Easement.

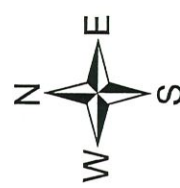
Sincerely,

Verizon New England Inc.
Attn: Daryl Crossman - ROW
385 Myles Standish Blvd
Taunton, MA 02780

(508) 398-5754 – South Yarmouth Office
(774) 409-3191 – Taunton Office
daryl.crossman@verizon.com - Email



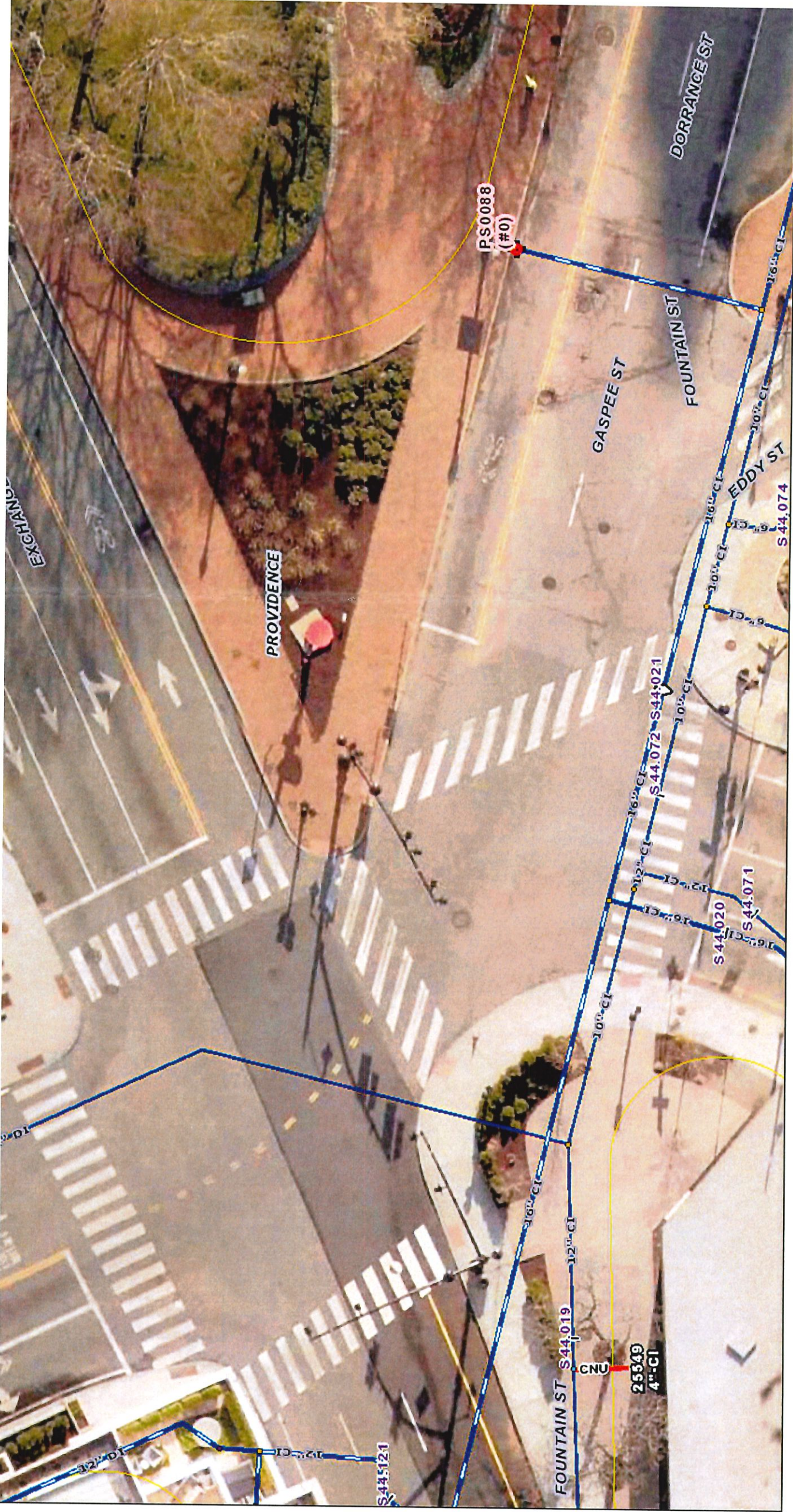
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