

RESOLUTION OF THE CITY COUNCIL

No. 201

Approved April 13, 2015

RESOLVED, That the Providence City Council ratifies the execution
by His Honor, the Mayor, of the attached Construction & Maintenance Agreement
with the State of Rhode Island for Providence Station Surface Improvements.

IN CITY COUNCIL

APR 02 2015

READ AND PASSED

PRES.

CLERK

I HEREBY APPROVE.

Mayor

Date:

4/13/15

PROVIDENCE STATION SURFACE IMPROVEMENTS
CONSTRUCTION & MAINTENANCE AGREEMENT

FEDERAL FUNDS

By and Between

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

And the

CITY OF PROVIDENCE

AGREEMENT entered into by and between the State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the State) and the City of Providence (hereinafter the City) (collectively, hereinafter the Parties).

WHEREAS the State is the recipient of Transportation Enhancement funding, administered through the Federal Highway Administration (hereinafter FHWA); and

WHEREAS the State is the recipient of rail modernization, high priority earmark funds and bus livability funding made available through the Federal Transit Administration (hereinafter FTA); and

WHEREAS the State and the City have selected the areas abutting the Providence Station (hereinafter the Station), partially located above an underground parking garage (hereinafter the Garage) for implementation of the project known as the Providence Station Surface Improvements (hereinafter the Project) under FHWA regulations at Title 23 and FTA regulations at Title 49; and

WHEREAS a lawsuit exists between the City and the owner of the Garage concerning maintenance of the Plaza above the Garage (hereinafter the Lawsuit); and

WHEREAS the Project will be partially undertaken on property known as the Capital Center Parcel 7A obtained by the City through an easement dated October 2, 1987 from Capital Properties, Inc. (hereinafter CPI), with the obligations of the City, CPI, and the Garage owners defined pursuant to an Easement Agreement (attached hereto and incorporated herein by reference as Exhibit A); and

WHEREAS the City and the State executed a Construction and Maintenance Agreement (hereinafter 1983 C&M, attached hereto and incorporated herein by reference at Exhibit B) for the Capital Center Project, Contract 1, Gaspee and Francis Street, RI Contract No. 8325 on May 9, 1983 that defined the State and the City's responsibilities within Parcel 7A; and

WHEREAS the State has agreed to be responsible for the design of the Project; and

WHEREAS the State has developed Design Plans ("Design Plans"), in consultation with the City and its Capital Center Commission, which is vested with review and approval authority over all development within the Project area; and

WHEREAS the State will accomplish said improvements with said FHWA and FTA funding, as amended and supplemented, and from other sources available for the purpose, subject however, to the condition that the City will provide for the proper maintenance after completion of Project as delineated below.

NOW THEREFORE, the State and City hereby agree as follows:

1. The Project, consistent with the Design Plans, shall include: renovations to the Plaza to the south of the Station, including lighting, electrical, street furniture and bike shelter rack improvements, located between Railroad Street and Park Row West; resurfacing of Railroad Street and Park Row West; renovations to the garage roof under the Plaza, Railroad Street and Park Row West including garage roof structural repairs, garage roof waterproofing membrane system, expansion joint repair and gland replacement; reduction of wall heights at strategic aesthetic locations, the addition of conduit and pad-ready site only for future vehicular traffic control devices (lift-arm gates) to be installed by Amtrak at the south end of the Station's east plaza, which partially extends to City-owned property (A.P 19, Lot 116, N/F Capital Properties, Inc., Book 2177, Page 71); and construction of a vehicle pull-in and related transit/taxi amenities along Gaspee Street to the north. The Project also includes bus, bicycle and streetscape improvements along Exchange Street from Park Row West to Exchange Terrace. The Project as it pertains to Parcel 7A is supplementary to and consistent with the plans and construction outlined in the 1983 C&M. In the event of inconsistencies between the 1983 C&M and this Agreement as it pertains to Parcel 7A, this Agreement shall control.
2. The funding made available by the State for design and construction for the Project is Six Million Five Hundred Thousand Dollars (\$6,500,000.00), which includes federal funds of Five Million Two Hundred Thousand Dollars (\$5,200,000.00) and State funds of One Million Three Hundred Thousand Dollars (\$1,300,000.00).
3. The State will be responsible for payment of all costs associated with design and construction of the Project up to and not exceeding Six Million Five Hundred Thousand Dollars (\$6,500,000.00); the Parties agree that this Project budget is fixed and, if necessary, elements of the Project will be adjusted, upon consultation with the city's Director of the Department of Planning and Development, to meet this budget.
4. The City and State agree that their obligations pursuant to the 1983 C&M remain unchanged by this Agreement, unless such obligations no longer exist as a result of alterations in the structural or urban landscape. Any term of this Agreement that is in direct conflict with a term in the 1983 C&M shall supersede the 1983 C&M.

5. The City agrees to release, remise and forever discharge the State from any claims, suits, demands, judgments, losses, fees, costs, expenses and causes of action of whatsoever kind, nature or description at law or in equity, with respect to any matter arising from the Lawsuit or pertaining to Parcel 7a.
6. The State agrees to cause its construction contractor who is selected for the Project to name the City as an additional insured on its commercial general liability and umbrella policies, as applicable ;
7. The City will allow the State and its contractors to enter onto its property, where applicable, for the purpose of constructing the Project, in accordance with the City's Parcel 7A easement rights.
8. Upon completion of the Project, the City will be responsible for maintenance of the following subsections (a) through (m):
 - a) Provide for weekly trash removal for any receptacles located on City property within the Plaza;
 - b) Provide for periodic sweeping of the Plaza, Park Row West and Railroad Street;
 - c) Provide for snow removal in the Plaza, Park Row West and Railroad Street and for snow and ice treatment to the Plaza walkways with deicing applications that will maximize the life cycle of the Plaza and garage roof with the deicing materials to be applied subject to review and approval of the Capital Center Commission;
 - d) Provide periodic litter and graffiti removal;
 - e) Provide for snow removal and de-icing of the Gaspee Street vehicle pull-in;
 - f) Maintain all landscaping and hardscape installed during construction of the Project, including watering, cutting, trimming and replacement of dead plantings;
 - g) Regulate the parking, standing, moving and guiding operations of vehicles and pedestrians, including taxi stands, in conformance with the specifications of the approved plans for the Project and Chapters 12 through 27 of Title 31 of the Rhode Island General Laws;
 - h) Conform to the latest edition of the Manual on Uniform Traffic Control Devices and Standards relative to all traffic control signals, flashing beacons, traffic islands, regulating or warning signs, pavement markings or other traffic control devices;
 - i) Enforce traffic regulations established in accordance with this Agreement and for the traffic devices installed in connection therewith;
 - j) Provide for electricity costs for lighting and receptacles;
 - k) Maintain the portions of the Project listed above in accordance with the Design Plans and specifications, at its own cost and expense, and make ample provision in each annual budget for such maintenance;
 - l) Provide for winterization and maintenance of sprinkler systems, maintain electric receptacles, electrical power and the lighting system in the Plaza; and
 - m) Provide an annual report to the Capital Center Commission detailing inspection, maintenance and corrective maintenance for: the pavement on Park Row West and


Railroad Street; the Plaza to the South of the Station; the parking garage roof membrane and expansion joints; and the roadway drainage system.

9. The State agrees to assign its contractual rights from the Project to the City for enforcement of latent defects, fraud, gross mistakes or any rights under any actual or implied warranty or guaranty in the State's construction or design contracts. Alternatively, upon written request by the City, the State shall use best efforts to seek redress against its contractor or design consultant for latent defects, fraud, gross mistakes or any rights under any actual or implied warranty or guaranty in the State's construction or design contracts. The State covenants to include such warranties and guaranties in any/all of its design and construction contracts related to this project as are included in public projects in the State of Rhode Island in 2014 which are of comparable dollar costs.
10. The City must notify the State's Maintenance Division at least 24 hours in advance of entering a State owned traffic signal controller cabinet. The State's representative must be on site during maintenance of the Emergency Vehicle Priority Control system.
11. The Mayor will take all necessary steps to receive authority from the City Council to enter in and execute this Agreement including, but not limited to, submission of this Agreement to the City Council for ratification and submission of proof of such authority to the State prior to project advertisement.

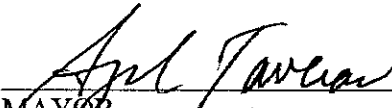
IN WITNESS WHEREOF, the State and the City have caused this Agreement to be executed by duly authorized officials on the _____ day of August, 2014.

RECOMMENDED FOR APPROVAL:

CITY OF PROVIDENCE



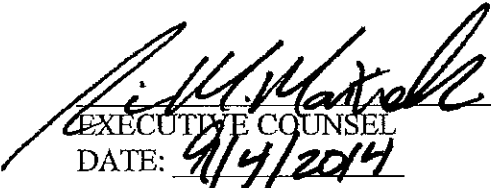
CHIEF ENGINEER
DATE: 9/5/14



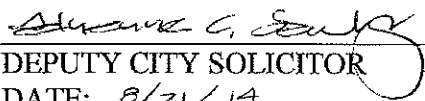
MAYOR
DATE: 8/21/14

APPROVED AS TO FORM:

APPROVED AS TO FORM AND
CORRECTNESS:

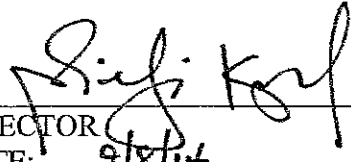


EXECUTIVE COUNSEL
DATE: 9/4/2014



DEPUTY CITY SOLICITOR
DATE: 8/21/14

APPROVED:



DIRECTOR
DATE: 9/8/14

DEVELOPMENT
PARCEL 7A

EASEMENT

CAPITAL PROPERTIES, INC.

TO

CITY OF PROVIDENCE

DATED: October 2, 1987

RECORDED: Providence, RI
DATE: October 3, 1987
BOOK: 1675
PAGE: 174

6681r
8/24/87

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT made this *2nd* day of *OCTOBER*, 1987, by and among CAPITAL PROPERTIES, INC., a Rhode Island corporation ("Capital"), STATION PARKING ASSOCIATES, a Rhode Island general partnership whose sole general partners are HENRY W. COLLINS, JR. of Barrington, Rhode Island and ROMOLO A. MARSELLA, JR. of Warwick, Rhode Island ("SPA"), and the CITY OF PROVIDENCE, a Rhode Island municipal corporation ("City");

W I T N E S S E T H:

WHEREAS, Capital is the owner of that certain lot or parcel of land situated in the City and County of Providence, State of Rhode Island and delineated as Parcel No. 7A on that plan entitled "Plan of land in Providence, R.I. surveyed for the Capital Center, surveyed and drawn by CE Maguire, Inc. Scale 1"=40', May, 1982 revised Dec. 1982" (Sheet 3 of 5), which said plan was attached to, and incorporated by reference in, that certain agreement entitled "Master Property Conveyance Contract", which is dated December 29, 1982 and recorded in the Land Evidence Records of the City of Providence in Deed Book 1241 at Page 849 and which is bounded and described as follows:

Parcel 7A: Beginning at the southwesterly corner of said Parcel No. 7A, said corner being the intersection of the extension of the westerly line of a proposed street on said plan called Exchange Street with the extension of the southerly line of a proposed street on said plan called Park Row;

thence N 27°-51'-22" W along the easterly end of said proposed Park Row and the easterly line of Parcel No. 8 on said plan, a distance of two hundred eight and 27/100 (208.27') feet to a corner;

thence easterly bearing northeasterly along the arc of a curve having a radius of three thousand eight hundred sixty-three and 86/100 (3,863.86') feet a distance along said arc and the southerly line of Parcel No. A-4 and Parcel No. 7 on said plan of seventy-eight and 04/100 (78.04) feet to a corner;

thence S 27°-51'-22" E along the southerly line of said Parcel No. 7 a distance of seventeen and 33/100 (17.33') feet to a corner;

thence N 42°-54'-47" E along the southerly line of said Parcel No. 7 a distance of two hundred thirteen and 93/100 (213.93') feet to a corner;

thence N 47°-05'-13" W along the southerly line of said Parcel No. 7 a distance of twenty and 00/100 (20.00') feet to a corner;

thence N 42°-54'-47" E along the southerly line of said Parcel No. 7 a distance of forty-three and 00/100 (43.00') feet to a corner;

thence N 47°-05'-13" W along the easterly line of said Parcel No. 7 a distance of twenty-two and 41/100 (22.41') feet to a corner;

thence easterly bearing northeasterly along the arc of a curve having a radius of three thousand eight hundred sixty-three and 86/100 (3,863.86') feet a distance along said arc and the southerly line of Parcel No. A-3 on said plan of twenty-nine and 29/100 (29.29') feet to a corner;

thence S 47°-05'-13" E along the westerly line of Parcel No. 6 on said plan a distance of two hundred thirty-one and 49/100 (231.49') feet to a corner;

thence S 42°-54'-47" W along the northerly end of said proposed Park Row on said plan, northerly line of Parcel No. 5 on said plan and the northerly end of proposed Exchange Street on said plan a distance of four hundred twenty-six and 72/100 (426.72') feet to the point and place of beginning.

The above-described parcel no. 7A contains an area of seventy-six thousand one hundred eighty (76,180) square feet of land, be the same more or less.

The aforesaid Parcel is hereinafter referred to as the "Land";

WHEREAS, SPA is the owner of all of the improvements which constitute the parking garage, located on the Land including the substructures and foundations thereof (the "Parking Garage"), subject, however, to the interest of Capital as Lessor under the Lease (as hereinafter defined); and

WHEREAS, by Lease Agreement (Parcel 7A) dated March 7, 1985 as of March 1, 1985, as amended, by and between Capital and SPA (the "Lease"), Capital leased to SPA the Land for a period of ninety-nine (99) years, subject to the terms and conditions set forth therein; and

WHEREAS, the entire plaza level (top floor) of the Parking Garage has been developed with certain public improvements, including, but not limited to, the continuation of the public way known as "Park Row" and "Station Place", lighting, planters, landscaping, markings, signs and their respective supports, railings and drainage facilities; and

WHEREAS, the City is desirous of obtaining the right and easement for the use of the portion of plaza level (top floor) of the Parking Garage constituting the continuation of the public way known as "Park Row" and "Station Place" for highway purposes and also for purposes of performing its maintenance obligations under the State Contract (as hereinafter defined); and

WHEREAS, the City and the State of Rhode Island and Providence Plantations (the "State") have entered into a certain Construction and Maintenance Agreement designated Rhode Island Contract Number 8325 (the "State Contract") which requires, in part, that the City undertake certain obligations, at its sole cost and expense, with respect to the maintenance of the plaza level (top floor) of the Parking Garage, a true copy of which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, Capital and SPA are each willing to grant to the City the necessary right and easement for the purposes aforesaid under certain terms and conditions; and

WHEREAS, the City has agreed to the terms and conditions upon which Capital and SPA are willing to grant said right and easement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations of the parties herein contained, it is mutually agreed as follows:

1. Capital (as owner and Lessor of the Land) and SPA (as owner of the Parking Garage and Lessee of the Land), jointly and severally, hereby grant and convey to the City the right and easement (1) to use the portion of the Parking Garage which constitutes the continuation of the public way known as "Park Row" and "Station Place" for highway purposes, (2) to maintain, repair, renew and/or replace the entire plaza level (top floor) of the Parking Garage from one inch (1") below the bottom of the reinforced concrete deck slab of the Parking Garage, and all improvements made upon it, including, but not limited to, lighting, planters, landscaping, marking, signs and their supports, railing and drainage facilities, and (3) to perform the obligations of the City under the State Contract.

2. The City agrees with Capital and SPA that it shall perform all of the obligations required to be performed by it under the State Contract with respect to maintenance of the portions of the Parking Garage subject to the terms and conditions hereof. All other portions of the Parking Garage not the subject of the State Contract shall continue to be maintained by SPA. Neither Capital nor SPA shall be responsible for property taxes upon the portions of the Parking Garage which are to be maintained by the City. The City shall be responsible for the cost of providing electricity to illuminate the Plaza level (top floor) of the Parking Garage.

3. The easements granted herein shall continue for so long as the plaza level (top floor) of the Parking Garage continues to serve as the continuation of the public way now known as "Park Row" and "Station Place."

4. It is hereby expressly understood and agreed that if the City shall disturb, in any way, the surface of the plaza level (top floor) of the Parking Garage which is subject to the within easements, the City shall, within a reasonable period of time thereafter, at its sole cost and expense, repair, renew and restore the surface of the same to its former condition.

5. The City agrees that, in availing itself of the easement and rights granted hereby, it shall not disturb, in any manner, the use of the Parking Garage by Capital and SPA and their respective successors, assigns, invitees, licensees, guests, agents and contractors.

6. Nothing herein contained shall be construed to permit the City to use, and the City shall not have the right to use the plaza level (top floor) of the Parking Garage for parking purposes.

7. The City agrees to indemnify and save harmless Capital and SPA and each of them from any and all loss, cost, damage or expense (including reasonable attorney's fees) incurred by Capital and/or SPA as a result of the failure of the City to perform the obligations set forth herein or in the State Contract.

8. Notwithstanding the aforesaid, the City shall have no liability or responsibility with respect to the maintenance of the ramps serving as ingress and egress to and from the plaza level (top floor) of the Parking Garage to the levels of the Parking Garage used for public parking, the maintenance of which shall remain the sole and exclusive responsibility of SPA.

9. This Easement Agreement shall be binding upon, and inure to the benefit of, SPA, the City and Capital and their respective successors and assigns.

IN WITNESS WHEREOF, Capital, SPA and the City have caused this Easement Agreement to be executed by appropriate parties thereunto duly authorized this 7th day of October, 1987.

CAPITAL PROPERTIES, INC.

By: Joseph R. Distefano
Joseph R. Distefano, President

STATION PARKING ASSOCIATES

By: Romolo A. Marsella, Jr.
Romolo A. Marsella, Jr.,
General Partner

By: Henry V. Collins, Jr.
Henry V. Collins, Jr.,
General Partner

CITY OF PROVIDENCE

By: Joseph R. Paolino, Jr.
Joseph R. Paolino, Jr., Mayor

(continued)

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, on the 2nd day of October, 1987,
before me personally appeared Joseph R. DiStefano, President of
Capital Properties, Inc., to me known and known by me to be the
person executing the foregoing Easement Agreement and he
acknowledges said instrument by him executed to be his free act
and deed individually and in his said capacity, and the free
act and deed of Capital Properties, Inc.

Gloria P. Hopkins
Notary Public
GLORIA P. HOPKINS
My Commission Expires June 30, 1991

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

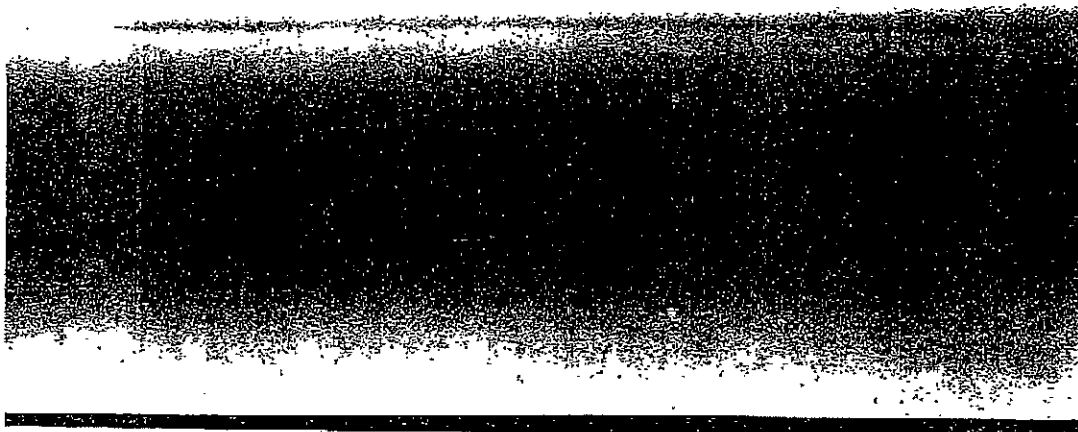
In Providence, on the 2nd day of October, 1987,
before me personally appeared Romolo A. Marsella, Jr. and Henry
V. Collins, Jr., sole general partners of Station Parking
Associates, to me known and known by me to be the persons
executing the foregoing Easement Agreement and they acknowledge
said instrument by them executed to be their free act and deed
individually and in their said capacity, and the free act and
deed of Station Parking Associates.

Beverly Mangione
Notary Public

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, on the 3rd day of October, 1987,
before me personally appeared Joseph R. Paolino, Jr., Mayor of
the City of Providence, to me known and known by me to be the
person executing the foregoing Easement Agreement and he
acknowledges said instrument by him executed to be his free act
and deed individually and in his said capacity, and the free
act and deed of the City of Providence.

Carolyn M. Ragucci
Notary Public
Notary Public



CONTRACT 1
GASPEE STREET AND FRANCIS STREET

RHODE ISLAND CONTRACT NO. 8325

CONSTRUCTION AND MAINTENANCE AGREEMENT

by and between the

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

and the

CITY OF PROVIDENCE

AGREEMENT made and entered into by and between the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (hereinafter called the STATE), through its Department of Transportation, Division of Public Works, and the CITY OF PROVIDENCE (hereinafter called the CITY), and

WHEREAS the State, in cooperation with the City, has selected the above referenced project in the City of Providence for improvements under the provisions established in the Federal-Aid Highway Program Manual (FHPM) of the United States Department of Transportation, Federal Highway Administration, and

WHEREAS the State will accomplish said improvements with funds apportioned to the State under the Federal-Aid Highway Act, as amended and supplemented, and from other sources available for the purpose, subject however, to the condition that the City shall provide for the proper maintenance after completion of the improvements.

NOW THEREFORE, in consideration of the mutual agreements herein contained, the State and the City hereby agree as follows:

GENERAL PROVISIONS

The State will submit plans and specifications to the Division Administrator, United States Department of Transportation, Federal Highway Administration, recommending approval for the construction of the project located in the City of Providence with the following description (hereinafter known as the Project) being that portion located in the City of Providence.

EXHIBIT A

The Construction Contract is for site clearing, installation of piles and pile caps; excavation and backfill; sheet piling; rail line including ballast, ties and subdrains; railroad bridge over Woonasquatucket River; Providence Railroad Station, platforms and entry plaza; parking garage; retaining walls and deck over railroad, pedestrian overpasses, landscaping, flood diversion culvert, Francis Street Bridge No. 865, Reconstruction of Gaspee Street (approximately 1700 linear feet); Reconstruction of Francis Street (approximately 500 linear feet); granite curb; concrete and brick sidewalks; storm drainage, sanitary sewers, water and gas facilities telephone plant; electrical and lighting system; signing, striping and traffic signal; fencing and railing, maintenance and protection of traffic and all other incidentals necessary to complete the project.

The City hereby agrees, upon completion of the project covered under this Agreement, to regulate the parking, standing, moving and guiding operations of vehicles and pedestrians in conformance with the specifications of the approved plans for the project.

The City agrees to conform to the latest edition of the Manual on Uniform Traffic Control Devices and Standards relative to all traffic control signals, flashing beacons, traffic islands, regulatory warning signs, pavement markings, or other traffic control devices.

The City through its Police Department shall be the enforcement agency for traffic regulations established in accordance with this Agreement and for the traffic devices installed in connection therewith.

The City agrees to enact any further regulations necessary to assure the preferential, safe and efficient movement of traffic in keeping with the through traffic service to be provided by this project.

Portions of the project to be maintained by the State include:

1. The septic system and roadway for the State House power plant.
 2. The stairway leading from the Francis Street Bridge to the University of Rhode Island parking area.
 3. The landscaping south of Gaspee Street and north of the
-

4. All landscaping within the limits of the State House lawn.
5. The crib wall between the railroad station and Smith Street.
6. The north wall between Francis Street and the railroad station.

Portions of the project to be maintained by the City include:

1. Gaspee Street, Francis Street, the Francis Street Bridge and all other public travel ways within the project limits.
2. Sidewalks
3. Storm drainage
4. Street lights
5. Signing
6. Pavement markings
7. Traffic signals
8. Railing
9. The entire top floor of the parking garage to a point one inch below the underside of the plaza level slab to include landscaping and lights.
10. The retaining walls, slopes and landscaping along Francis Street.
11. The retaining wall along Park Row.

The City agrees to maintain the portions of the project, mentioned above, at its own cost and expense, after construction is completed, in a manner satisfactory to the State or their authorized representatives, and will make ample provisions each year for such maintenance.

Dated and attested copies of amendments to the City Ordinance necessary for the enforcement of any specific provisions will be forwarded by the City to the State. All necessary City Ordinances applicable to this project shall be in effect prior to completion of construction.

The State and the City hereto agree that this Agreement may be amended only after the prior approval of the Division Administrator, Federal Highway Administration, has been obtained as to such proposed amendment.

All work performed under this project is subject of the approval and inspection of the State and Federal authorities in accordance with the provisions of the Federal Aid Highway Act and the regulations, including the Federal-Aid Highway Program Manual (FHPM), as aforementioned, which are hereby made a part of this Agreement by reference.

IN WITNESS WHEREOF, the State and the City have caused this Agreement to be executed by their duly authorized officials on the _____ day of _____, 19 _____.

Recommended for Approval:

CITY OF PROVIDENCE

William C. Cunniff
Chief Engineer
Division of Public Works

By Vincent A. Cunniff
Mayor

Approved:

Examined and Approved:

Robert E. Kirby
Director of Transportation

F H W A APPROVAL AS PER
ADVANCE C & M AGREEMENT
DATED 5-9-83

Division Administrator
U. S. Department of Transportation
Federal Highway Administration

Approved as to form:

Patrick J. Dunham
Chief Counsel for the State Department
of Transportation