

TRAIL AND LICENSE AGREEMENT

THIS TRAIL AND LICENSE AGREEMENT (“License” or “Agreement”) is made this 20 day of ~~JUNE~~ JUNE 2018, by and between the City of Concord, a municipal corporation having a place of business at 41 Green Street, Concord, NH 03301 (“City” or “Grantor”), being the owner and easement holder of a certain parcels of land situated in the City of Concord, New Hampshire, and Friends of the Concord-Lake Sunapee Rail Trail, a non-profit corporation, with its principal place of business at P.O. Box 610, Warner, New Hampshire 03278 (“FCLSRT” or the “Grantee”). The City and FCLSRT are sometimes referred to herein each as “Party” and together as “Parties.”

RECITALS

WHEREAS, the City is the owner in fee simple of real property located on the east side of Carter Hill Rd, in the City of Concord, more particularly described as Map 37Z, Lot 26 and Map 37Z, Lot 79, both recorded in the Merrimack County Registry of Deeds at Book 1032, Page 346. And WHEREAS the City is the owner of a recreational easement over a portion of the property formerly part of the Concord & Claremont Railroad along Bog Rd in the City of Concord, more particularly described as Map 312Z, Lot 6.

WHEREAS, FCLSRT desires to develop, maintain, steward and promote an unpaved multi-use trail connecting the communities of Concord, Hopkinton, Warner, Bradford, Sutton and Newbury along the historic Concord-Claremont Railroad Line (hereinafter referred to as “the Trail”) for non-motorized transportation and recreational purposes;

WHEREAS, a portion of the Trail is proposed to be constructed on property owned by the City or upon which the City has an easement for recreation purposes;

WHEREAS, the Trail will afford the public access to an expanded and extensive trail network which will benefit Concord community at large as well;

WHEREAS, the parties have agreed to the benefits of the Trail, on its approximate location (see “Appendix A”, attached hereto), and on the manner in which the Trail shall be administered and maintained: and

NOW THEREFORE, the parties agree as follows:

1. ACCESS AND USE LIMITATIONS.

- a. The Grantor shall permit the Grantee, its guests, invitees, and the general public, to utilize the Trail for non-motorized passive recreation including walking, running, snowshoeing, horseback riding, cross-country skiing, bicycling (including the use of category 1 pedal assist e-bikes with motors of 750 watts or less) , nature study and scenic enjoyment, all in accordance with

the terms of this Agreement. The use of the Trail will be for non-motorized passive recreation except to the extent that a power driven-wheelchair or other power-driven mobility device (OPDMD) shall be permitted to the extent required by the Americans with Disabilities Act or successor federal legislation;

- b. The Trail may be utilized for snowmobiling to the extent allowed by the Grantor.
- c. The Grantee shall be permitted to use the Trail for activities such as competitive running and bicycle races to the extent all municipal permits and other landowner permissions are received. For such events, the Grantee shall be required to comply with the City's insurance and other requirements applicable to event permits.
- d. The Trail as constructed shall use a 3/8" +/- minus stone dust material as the surface of the Trail. FCLSRT shall be provided a thirty (30) foot right of way for the Trail for purposes of maintenance and installation of infrastructure as allowed pursuant to this Agreement. However, the Trail as constructed shall be no more than ten (10) feet in width with an additional two (2) feet of clearing on each side for shoulder space (unless otherwise authorized by the Grantor).
- e. FCLSRT shall collaborate and receive approval from the City on the design of the Trail. Prior to construction, FCLSRT will meet with representatives of the City on the design and construction of the Trail so the Parties can discuss the City's requirements. A site walk along the Trail may be appropriate.
- f. The Grantee shall have the right, with the consent of the Grantor, to relocate the Trail.
- g. FCLSRT is required to obtain before construction may begin, any and all other permissions, permits, easements and licenses required for said Trail by federal, state, county, or local governments, and their agencies or boards, or any other political subdivision thereof.
- h. The Grantee shall have the right to cut, trim, and remove outgrowths of brush, other vegetation and other obstructions from the Trail, to the extent reasonably necessary to facilitate the intended uses, and the right to mark the Trail with markers in order to guide users along its course.

- i. No structures or other man made improvements shall be constructed, placed, or introduced onto the Property other than those necessary for the purposes of the Agreement. Retaining walls, gates, bridges, or culverts may be constructed, placed, or introduced onto the Property only as necessary in the accomplishment of the non-motorized passive recreational use of the Trails with the prior approval of the Grantor. The Grantee shall also have the right to place benches and trail kiosks with the prior approval of the Grantor.
- j. To the extent any locked gates are installed, the Grantee shall work with the Grantor to ensure continued access for municipal services, and a key shall be provided to the Grantor for any locks. In the winter, the gates shall remain unlocked and open in the event needed for snowmobile access.
- k. To the extent required by the City, FCLSRT shall install fencing.
- l. FCLSRT and its Contractor shall protect and leave undisturbed all underground or overhead utilities located on the City's property during and after Trail construction.
- m. The Grantee, its agents, employees or representatives, may use power equipment and motorized vehicles as may be necessary for the construction and maintenance of the Trail. FCLSRT shall consult with the City prior to the use of motorized vehicles over the weight of thirty tons on the Trail for construction and maintenance purposes to ensure that all underground or overhead utilities located on the City's property are not disturbed. FCLSRT shall further consult with the City for any digging activities that exceed the use of a hand-held post hole digger or shovel and/or exceed the depth of two feet in the ground along the Trail.
- n. This Agreement does not grant to the Grantee or to the general public or to any private person any rights in, over, under or across any portion of the Grantor's property, other than along the Trail.
- o. There shall be no parking on the City's property at Carter Hill Road, and FCLSRT shall install signs notifying the public.

2. INSURANCE

a. FCLSRT or its Contractor shall pay the premiums on a policy or policies of insurance covering the following during the construction of said Trail:

1. Commercial General Liability Coverage: \$2,000,000.00 each occurrence, designating the City as an additional insured;
2. Worker's Compensation Insurance Coverage in the amount as required by current State statute; and
3. Comprehensive automobile liability insurance or pooled risk management coverage covering all motor vehicles, including owned, hired, borrowed and non-owned vehicles, for all claims of bodily injury, death or property damage: \$500,000.00 combined single limit.

3. COSTS, EXPENSES AND TRAIL MAINTENANCE. All expenses associated with or arising out of the construction of the Trail, and its maintenance and improvement, shall be borne solely by or on behalf of the Grantee. This maintenance shall include, but is not limited to:

- a. FCLSRT shall be responsible for the clearing of all downed trees across the Trail or fencing. All cleared trees shall be removed from the City property and disposed of off-site.
- b. If drainage, runoff or any other problems caused by the presence of the Trail are encountered after the Trail is complete, FCLSRT shall at its expense make all repairs and alterations required by the City to remedy said problems.

4. GRANTOR'S RIGHTS.

- a. The Grantor shall have the right to temporarily close the Trail, or relocate the Trail, to accommodate municipal purposes including but not limited to Water Division purposes, forestry or agricultural activities. Except in the case of an emergency, the Grantor shall make reasonable efforts notify the Grantee at least fourteen (14) days in advance of said closing to allow for announcement to the public.
- b. The Grantor reserves the right to manage, develop or give permissions on other land of the Grantor contiguous with the Property even if such management, development or permission is inconsistent with the purpose of

the Agreement but does not interfere with the public's right of access to the Trail.

- c. The Grantor shall have no responsibility or obligation to maintain or repair the Trail or pay for the construction, maintenance and/or repair of the Trail.

5. TERM AND TERMINATION. The term of this Agreement shall be from the date of its execution to such time as the Grantor should choose to terminate the Agreement. The Grantor may terminate this Agreement upon ninety (90) days written notice to the Grantee of its intent to terminate.
6. NON-ASSIGNMENT AND AMENDMENT, NO THIRD PARTY BENEFICIARIES. This Agreement may not be assigned or transferred. Until terminated, this Agreement shall inure to the sole benefit of and be binding upon the Parties hereto.
7. LIABILITY. The Grantor and Grantee's liability is governed by New Hampshire RSA's including but not limited to 212:34, 508:14 and 231-A as applicable for any liability related to or arising out of this Agreement.
8. ENTIRE AGREEMENT. This Agreement constitutes the complete agreement and understanding between the parties regarding the Trail, and supersedes any prior agreements. The Agreement may be revised at any time upon mutual written consent of the parties, provided that all revisions to the Agreement must be in writing.
9. NOTICES. All notices, requests and other communications, required to be given under this Agreement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as any party may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.
10. SEVERABILITY. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, the remainder of the provisions of this Agreement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

11. **CHOICE OF LAW:** This Agreement is governed by New Hampshire law. Any disputes shall be resolved within the venue of the State of New Hampshire and Merrimack County.

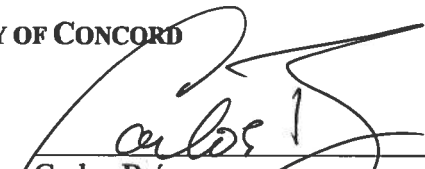
EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate on this 20 day of June 2018.

6/20/18
Date

CITY OF CONCORD

By:



Carlos Baia
Acting City Manager
Duly Authorized

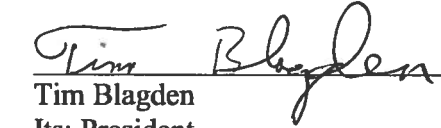
Authority for the City Manager to enter in this Agreement and License was granted by the City Council on June 11, 2018, and is hereby incorporated into this Agreement by reference.

The **Friends of the Concord-Lake Sunapee Rail Trail** accepts this Agreement and License and the terms contained therein.

*FRIENDS OF THE CONCORD-LAKE SUNAPEE
RAIL TRAIL*

6/20/18
Date

By:



Tim Blagden
Its: President
Duly Authorized

APPENDIX A

(see attached map)

Concord - Lake Sunapee Rail Trail Fisherville Road to Carter Hill Road

