

LICENSE AGREEMENT

This License Agreement (“License”) is made and entered into on _____, 2013 by and between The Nature Conservancy, a non-profit corporation organized and existing under the laws of the District of Columbia and having its principal office at 4245 N. Fairfax Drive, Arlington, VA 22203-1606, and maintaining a Massachusetts office at 99 Bedford Street, Boston, MA 02111 (the “Conservancy”) and the Town of Mount Washington, having an address at 118 East Street, Mount Washington, MA 01258 (the “Town”).

Background

The Conservancy is the owner of the Mount Plantain Preserve in Mount Washington, Massachusetts, a nature preserve that provides significant habitat for State-listed rare and endangered species. Within the Preserve is an area that contains a gravel pit. The gravel pit and immediately surrounding area is shown on the figure attached hereto as Exhibit A (the “Premises”). (Exhibit A is taken from the September, 2012 Gravel Pit Assessment Report prepared by Fuss & O’Neill, Figure 3.)

The Conservancy has made the Premises available to the Town for removal of gravel for the Town’s use, at no cost, since the Conservancy purchased the former Camp Hi-Rock property in 2004.

In 2010, the Town asked the Conservancy for permission to remove additional gravel, for a longer period of time than permitted by the Conservation Restriction on the Premises, and asked the Conservancy to hire a consultant to assess this request and to obtain permission for such removal from the Commonwealth of Massachusetts, as required by the Conservation Restriction.

In response to this request, the Conservancy commissioned, at its own cost, a professional engineering firm, Fuss & O’Neill, Inc. to prepare an environmental assessment of the gravel pit and potential future operations. The report was completed in September, 2012.

Based upon the findings and recommendations of the report, the Conservancy applied for and received, at its own cost, state permits and approvals, including approval under the Conservation Restriction, to allow future gravel removal, within certain guidelines and subject to certain requirements.

The Conservancy and the Town met and corresponded, in March and April of 2013, regarding the parties’ respective goals and a process for moving forward to allow the Town to remove gravel, in specified quantities, over a limited period of time, in accordance with state permits and approvals, and consistent with the goals and mission of the Conservancy.

The Conservancy, following review by, and with the approval of, the Town, prepared and distributed a Request for Proposals (RFP) for excavating services for restoration and potential future extraction of gravel. In response to the RFP, the Conservancy received one proposal for

such work, from Scott MacKenzie Excavating. The Conservancy intends to enter into a contract with Scott MacKenzie Excavating (“SME”) for certain work described in the proposal.

The Conservancy now is willing to enter into this license agreement with the Town to permit the Town to remove stockpiled gravel from the Premises, until October 3, 2017, subject to the terms and conditions set forth herein.

In consideration of the covenants and other consideration hereinafter set forth, the Conservancy and the Town agree as follows:

1. Stockpile of Gravel. Promptly after the execution of this license and payment of the initial license fee installment, the Conservancy shall enter into a contract to, among other things, excavate gravel from the Premises and stockpile it in a location in the vicinity of the excavation determined by the Conservancy within the Premises (the “Stockpile”) or load it into Town trucks. The Conservancy shall coordinate with the Town Highway Department regarding the date on which the excavation and stockpiling will commence and the Town may start removing gravel from the Stockpile. The Conservancy’s contract with SME shall provide that SME shall remove and stockpile material for ten days, (in addition to whatever work is required to remove and relocate stumps and restrict vehicular access), and that SME shall make commercially reasonable efforts to excavate approximately 7,300 cubic yards of gravel, if reasonably accessible.; provided, however, that the Town shall have the right to notify the Conservancy, prior to the completion of the contractor’s excavation work, that the Town wishes the Conservancy to cease gravel removal and stockpiling, in which event the Town shall be entitled to a partial reimbursement of the license fee, as provided in Section 4 below. SME will make a good faith effort to estimate the approximate amount of gravel and material actually excavated. The Town shall have exclusive use of the stockpiled gravel until October 31, 2017, the date of termination of this Agreement.
2. License. The Conservancy grants to the Town a limited license to enter onto the Premises for the purpose of removing gravel from the Stockpile as well as gravel loaded directly onto Town trucks by the Conservancy’s contractor. The Town shall have the right to hire independent contractors consistent with the provisions of this Agreement, provided such contractors are adequately insured pursuant to Town and Conservancy requirements. The Town shall have no other right to excavate or remove any gravel from the Premises, or to use the Premises for any other purpose, except as specifically set forth herein.
3. Term. The term of this License shall begin on the date of this Agreement, and shall automatically terminate on October 31, 2017; provided, however, that the Town may terminate this license agreement earlier than October 31, 2017, by written notice to the Conservancy.
4. Consideration. The license fee for this License is \$30,900, payable as follows:

- a. \$22,900.00 shall be due and payable on the date hereof; provided, however, that the Conservancy shall promptly thereafter reimburse the Town an amount equal to \$1,890.00/day, up to a maximum of \$9,450.00, if the Town timely notifies the Conservancy that it desires that gravel be extracted for less than the full ten day period, as provided in Section 1 above;
 - b. \$2,000.00 shall be due and payable on May 1, 2014, unless the Town terminates this License by April 30, 2014;
 - c. \$2,000.00 shall be due and payable on May 1, 2015 unless the Town terminates this License by April 30, 2015;
 - d. \$2,000.00 shall be due and payable on May 1, 2016 unless the Town terminates this License by April 30, 2016;
 - e. \$2,000.00 shall be due and payable on May 1, 2017 unless the Town terminates this License by April 30, 2017.
5. Town's On-Site Obligations. As additional consideration for the license granted hereunder, the Town agrees that the Town shall, at its expense and under the supervision of the Conservancy:
- a) Provide the services of a third party environmental monitor, satisfactory to the Conservancy and the MA Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program ("NHESP"), to conduct required on-site rare species monitoring while gravel extraction and stockpiling ("WORK") is underway outside of the inactive season timing restriction included in the Fuss & O'Neill Gravel Pit Report (inactive season is October 15-April 15). The monitor shall communicate with and report to the Conservancy on a daily basis regarding any rare species occurrences while gravel extraction and stockpiling are underway. All gravel and extraction Work shall cease if and when any rare species are discovered in the active Work area and until the species are no longer in the active Work area. The amount of time the monitor will be on site will be coordinated with and agreed upon with the Conservancy project manager, and will consist of a minimum of at least four hours/day for the first two days of work, and two hours/day thereafter while work is underway. This schedule shall be modified, in consultation with the NHESP, if rare species are found on site on a frequent or ongoing basis. The amount of time the environmental monitor shall be required to be on site will be reduced for those days or times that Conservancy staff will be on site, as coordinated and agreed upon in advance by the environmental monitor and Conservancy staff. The environmental monitor shall prepare a log documenting the date and time present on site, areas monitored observations, and any actions taken.
 - b) No later than 5 days after gravel excavation and stockpiling has begun, install a gate, the specifications for which shall be agreed to by the Conservancy and the Town, in

a location to be approved in advance by the Conservancy; provide keys for such gate to the Conservancy; and thereafter keep the gate closed and locked;

- c) Between October 15 and November 30, 2013, at the reasonable direction of the Conservancy, remove all discarded culverts and other metal debris located on the Premises and along Plantain Pond Road;
- d) Promptly restore any damage to the Premises caused by the Town's activities on the Premises, except for reasonable wear and tear to the internal access road and areas necessary for the Town to remove gravel from the Stockpile; and
- e) At the termination of this License Agreement, restore the Premises by:
 - 1. spreading any remaining stockpiled gravel to a natural grade;
 - 2. distributing the logs, rocks and boulders used to mark the access way (as provided above), to a natural, undisturbed appearance and
 - 3. restoring any other areas of the Premises or the Conservancy's surrounding land impacted by and clearly attributed to the Town's activities on the Premises.

These obligations shall survive the termination of this License Agreement.

- 6. Assignment. The Town shall not transfer or assign this License.
- 7. Release. The Town is using the Premises entirely at the Town's risk, and acknowledges that the Conservancy has made no warranty or representation, express or implied, regarding the safety of such activity. In addition, the Town acknowledges that the Conservancy has made no representations of any nature in connection with the condition of the Premises, and the Conservancy shall not be liable for any latent or patent defects thereon. The Town releases the Conservancy from any and all claims, demands, actions, lawsuits, or causes of action that the Town may have against the Conservancy related to the Town's use of the Premises.
- 8. Insurance/Indemnification. The Town shall indemnify and hold The Conservancy harmless from any and all manner of third party actions, claims, demands or suits in connection with the use of the Premises by the Town, its contractors, employees and agents. Prior to the commencement of this License, the Town shall provide the Conservancy with a certificate of insurance with a responsible company qualified to do business in Massachusetts and in good standing therein, evidencing comprehensive public liability insurance in the amount of \$1,000,000, naming the Nature Conservancy as an additional insured.
- 9. Default. If the Town violates any covenant or agreement set forth herein and does not cure such default within 30 days following notice from the Conservancy, the Conservancy shall have the right to immediately terminate this Agreement and remove the Town and

anyone claiming under the Town, without prejudice to The Conservancy's other remedies at law or in equity.

10. Waiver. Should one or more covenants or conditions be waived by the Conservancy, such waiver shall not be deemed to waive or render unnecessary the consent or approval of the Conservancy to or of any subsequent similar act by The Town.
11. Non-Exclusive Use. The Town understands that this License is non-exclusive, and that the Conservancy may enter into other license agreements with other parties. The Town also understands and acknowledges that the Conservancy intends to oversee and monitor the Town's activities on the Premises from time to time throughout the term of this license, and that the Conservancy intends to conduct gravel pit restoration activities on the Premises during the term of this License. The Town shall comply with any reasonable restrictions specified by the Conservancy in order to accommodate such activities, provided that such restrictions do not unreasonably impair the Town's right to obtain gravel, as provided herein. The Conservancy and the Town will use reasonable efforts not to interfere with each other's respective activities.
12. Choice of Law. This License is being executed and is intended to be performed in the Commonwealth of Massachusetts, and it shall be governed in all respects by the laws of that state.
13. Entire Agreement. This License contains the entire agreement of the parties, and the License may not be amended except by the written consent of the parties.

The parties have executed this instrument the day and year first above mentioned.

THE NATURE CONSERVANCY

By: _____
Wayne Klockner

THE TOWN OF MOUNT WASHINGTON

By: _____
Jim Lovejoy

By: _____
Gail Garrett

By: _____
Brian Tobin