

LICENSE **AGREEMENT**

I. PARTIES

A. The City of Concord, New Hampshire, a municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire (the “City”).

B. State of New Hampshire, New Hampshire Army National Guard, a state agency with a mailing address of 107 N. Main Street, Concord, NH 03301, (“Licensee”), and the owner of real property having a primary address at 1 Minuteman Way, Concord NH 03301, and shown on the City’s assessor maps as Map 631Z, Lot 98.

C. The City and Licensee are collectively referred to as the “Parties.”

II. PURPOSE

The purpose of this License Agreement is to permit the Licensee to construct or place a parking lot, concrete sidewalk, granite monument sign, granite benches, a bike rack, and a landscaped area (collectively, “Entrance Improvements”) within the public highway right-of-way maintained by the City and known as Pembroke Road (“Licensed Area”). The Entrance Improvements and the Licensed Area are shown on a plan set having a cover sheet entitled “License Plans, Tax Map 631Z Lot 98, NHARNG Building C Renovations, 1 Minuteman Way, Concord, NH, Owned by State of New Hampshire, Prepared for State of NH, Dept. of Military & Veterans Services” dated July 20, 2022, prepared by TFM [a.k.a. TFMoran]; with the Licensed Area being more specifically shown on the plan sheet entitled “Tax Map 631Z Lot 98, Roadway Discontinuance Plan & License Area Plan, NHARNG, Pembroke Road, Concord, NH, Owned by State of New Hampshire” dated August 23, 2022; and the Entrance Improvements being more specifically shown on the plan sheet entitled “Tax Map 631Z Lot 98, Site Layout Plan, NHARNG – Building C renovations, 1 Minuteman Way, Concord, NH, Owned by State of New Hampshire, Prepared for State of NH, Dept. of Military & Veterans Services” dated July 20, 2022; all as attached to this License as Exhibit 1.

III. USE OF LICENSED AREA

If the Licensee ceases to use the Licensed Area for purposes that necessitate the Entrance Improvements, the Licensee shall immediately, at its own expense, remove the Entrance Improvements and restore the Licensed Area to a condition satisfactory to the City Engineer. If Licensee fails to remove the Entrance Improvements from the Licensed Area and restore the Licensed Area within thirty (30) days of ceasing to do business that necessitates the Entrance Improvements, the City may remove the Entrance Improvements and restore the Licensed Area. Licensee shall pay the City for any and all work performed by the City in the restoration of the Licensed Area

IV. MAINTENANCE

All construction and other improvements to the Licensed Area undertaken by Licensee shall be at its sole risk and expense. All construction and improvements shall be made in a

workmanlike manner and in compliance with all applicable federal, state, and municipal law regulations. Licensee shall be responsible for obtaining any and all necessary permits and approvals required for any improvements constructed pursuant to this License Agreement. The Licensee shall be responsible for all costs associated with the installation, maintenance, and removal of the Entrance Improvements.

The Licensee shall keep the Licensed Area in good condition and repair, safe for public travel and use, and free from snow, ice, and dirt to the satisfaction of the City.

V. MUNICIPAL INFRASTRUCTURE

Any municipal infrastructure, including but not limited to, parking meters, signs, sidewalks, etc., impacted by the construction of the Entrance Improvements shall be replaced or relocated per direction from the City Engineer at the cost of the Licensee.

VI. TERM AND TERMINATION

This License Agreement shall remain in effect until terminated by the City at any time and for any reason.

The City may terminate this License Agreement in writing to Licensee or its agent(s) at any time and for any reason. It is understood and agreed between the Parties that upon any termination of this License Agreement, Licensee shall have no claim whatsoever upon the City for reimbursement of any of Licensee's costs in exercise the license rights set forth in this License Agreement.

In the event of termination, the Licensee shall immediately, but no more than thirty (30) days following notice, at its sole expense, restore the Licensed Area to a condition satisfactory to the City Engineer. If Licensee fails to restore Licensed Area within thirty (30) days of the notice of termination, the City may restore the Licensed Area. Licensee shall pay the City for any and all work performed by the City in the restoration of the Licensed Area

VII. INDEMNIFICATION

Licensee shall defend, indemnify, and hold harmless the City and its officials, agents, and employees (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability, and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation set forth in this License Agreement and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Licensee (or its contractors, agents or employees) in connection with this License Agreement; provided, however, that nothing herein shall require the Licensee to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the City. Additionally, to the fullest extent permitted by law, no official, employee, agent, or representative of the City shall be individually or personally liable for any obligation or liability of Licensee under this License Agreement.

Further, Licensee agrees that the City, its agencies and their employees, agents, and representatives shall not incur any legal liability whatsoever to Licensee for any damage to the Licensed Area or to any other property or employee of Licensee or to any other person or entity hired by or affiliated with Licensee resulting from or arising out of the use of the Licensed Area.

VIII. INSURANCE

It is agreed that during the term of this License Agreement, Licensee, at its sole cost and expense and for the mutual benefit of the Licensee and the City, shall furnish the City a Certificate of Insurance confirming that Licensee has in force general liability insurance, naming the City as an additional insured, with waiver of subrogation favoring the City, in an amount not less than \$1,000,000 per incident or occurrence and an aggregate of \$2,000,000. The evidence of insurance shall be filed with the City prior to the construction of the improvements and shall include a statement by the carrier that a thirty (30) day notice will be given to the City before cancellation of coverage. The insurance shall remain in place until the termination of the License Agreement.

IX. COMPLIANCE WITH LAW

The Licensee shall use, possess, maintain, repair, and replace said Licensed Area, and any improvements to the Licensed Area, in compliance with all applicable federal, state, and local laws, codes, ordinances, statutes, rules, and regulations, and in accordance with any and all federal, state, and local permits and approvals.

X. NOTICES

Any notice or other communication required by this License Agreement will be deemed to have been duly given, if deposited in the U.S. Mail, postage prepaid, and addressed to the other City or Licensee at the address set forth in the identification of the Parties in this License Agreement.

XI. DISPUTES

The Parties hereby submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this License Agreement or any related agreement, and further waive any and all objections they may have as to venue in such courts and waive all rights to bring any such action or proceeding before any other court or tribunal. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court.

XII. NO ORAL WAIVER, MODIFICATION, OR TERMINATION

This License Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the parties hereto or by the party against which enforcement is sought. Any change, modification, or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.

XIII. GOVERNING LAW

This License Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.

XIV. SEVERABILITY

If any term or provision of this License Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License Agreement shall be valid and be enforced to the fullest extent permitted by law.

XV. NO THIRD PARTY BENEFICIARIES

This License Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto.

XVI. CAPTIONS

The captions and headings throughout this License Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify, or add to the interpretation, construction, or meaning of any provisions of, or the scope or intent of this License Agreement, nor in any way affect this License Agreement, and shall have no legal effect.

XVII. ENTIRE AGREEMENT

This License Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and thereof, and supersedes all prior agreements and understandings between the Parties.

XVIII. AUTHORITY OF CITY

Authority for the issuance of this License Agreement was granted by an affirmative action of the City Council on October 11, 2022.

City of Concord

By: _____

Thomas J. Aspell, Jr., City Manager

Duly Authorized

Date: _____

State of New Hampshire

By: _____

Duly Authorized

Date: _____

DRAFT