

## **LICENSE**

### **I. PARTIES**

A. **CITY OF CONCORD**, a municipal corporation duly existing under the laws of the State of New Hampshire and having a usual place of business at 41 Green Street, Concord, New Hampshire 03301 (“City”).

B. **BANKS CHEVROLET-CADILLAC, LLC.**, a for profit corporation in the State of New Hampshire, having a principle place of business at 137 Manchester Street, Concord, NH 03301 (“Licensee”).

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

### **II. PURPOSE**

The purpose of this License is for the City to authorize the Licensee the right to install and maintain an irrigation system within the right-of-way of Manchester Street and Old Suncook Road.

### **III. TERM**

The term of this License shall commence on or after December 14, 2020, and shall remain in effect for ten (10) years subject to the termination conditions set forth under subsection VII.

### **IV. USE OF LICENSED AREA**

In accordance with applicable local ordinances; and state and federal laws, rules, and regulations, the City hereby grants to Licensee a License to install and maintain a below-ground an Irrigation System to water a landscape panel parallel to Manchester Street and another landscape panel parallel to Old Suncook Road a portion of both of which lies within the City’s Manchester Street right of way as shown on the plan, which is attached hereto as Exhibit A (“Licensed Area”).

The Licensed Area as shown on Exhibit A is subject to the rights and privileges herein granted and conveyed. Licensee hereby covenants that it shall not use the Licensed Area in a manner that impairs or interferes with the City’s improvements. Licensee shall have all other rights and benefits necessary or convenient to install and maintain its Irrigation System, subject to the terms and conditions set forth herein.

## **V. INSTALLATION OF IRRIGATION SYSTEM**

Licensee shall be responsible, at its sole cost and expense, for the installation of the Irrigation System within the Licensed Area so that it may be used for Licensee's intended purposes. Any and all improvements shall be constructed and maintained in a good, workmanlike fashion, in accordance with any and all laws, codes, rules, regulations, and ordinances, and with any and all governmental approvals and permits. Licensee shall pay for any damage, together with associated expenses, costs and fees, within the Licensed Area which may result from Licensee's constructing, maintaining, operating, altering, repairing, removing, changing the size of, or replacing the Irrigation System.

Following the completion of any work by Licensee, Licensee shall restore the Licensed Area to its condition prior to such work. Any other land of the City disturbed during the course of construction, maintenance, repair, or replacement of the improvements and not otherwise occupied by such improvements, shall be restored to its original condition at Licensee's expense. Licensee shall ensure that any and all contractors and subcontractors performing labor or supplying materials to the Licensed Area on behalf of the Licensee are paid in a timely manner.

## **VI. MAINTENANCE**

Licensee shall maintain the Irrigation System in good functioning order. Licensee shall monitor the Irrigation System regularly for signs of deterioration or damage which may pose a hazard to the public ("Damage"). Licensee shall notify the City of any known Damage immediately. Licensee shall, following notice to the City, remedy said Damage within three (3) days to the satisfaction of the City.

In the event that the Irrigation System is abandoned, the Licensee shall remove it from Licensed Area in its entirety within thirty (30) days.

The City retains the right to remove or relocate (or have removed or relocated) any portion of the Irrigation System within the Licensed Area for the City's maintenance, repair or improvement of its right of way. The City shall bear no obligation to compensate the Licensee for this action. The City shall have no obligation to replace or repair any portion of the Irrigation System damaged by its actions or by the actions of the traveling public. In the event of a non-emergency repair within the Licensed Area that may impact the irrigation system, the City will make a reasonable effort to notify the Licensee ahead of the work. In the event of an emergency, the City shall have no obligation to notify.

The Licensee shall be solely responsible for any and all damages that may occur to the City's property, or abutting properties, as a result of the irrigation system. Licensee shall repair any and all damage to the City's property and/or abutting properties that may result from installation and/or maintenance of the irrigation system. All repairs shall be completed to the sole satisfaction of aggrieved property owners.

Any and all maintenance work on the irrigation system shall be at Licensee's sole cost and expense and shall comply with all City ordinances, regulations, policies and procedures, and

with any and all other applicable State and Federal standards. Any maintenance, repair or relocation of the irrigation system in the Licensed Area that requires any equipment or workers to be located for any length of time in the Manchester Street vehicular travel way shall require five (5) days advanced written approval of the City Engineer who may require that Licensee provide a traffic control plan at Licensee's expense.

## **VII. RENEWAL**

The City, may at its sole option, without returning to the City Council for approval, extend the Term of the License, on the same terms and conditions set forth herein, or upon additional terms and conditions as the City may solely determine, for an additional ten (10) years (the "Extension Term"), subject to the following: (i) the Licensee shall give the City ninety (90) days prior written notice to the City of its intent to extend the License unless this License has been earlier terminated. If the City does not extend the Term of the License, the City shall provide written notice to the Licensee, which shall, within thirty (30) days of the final Term of the License, remove the irrigation system from the Licensed Area.

## **VIII. TERMINATION**

Either party may terminate this License at any times and for any reason with thirty (30) days written notice to the non-terminating party. In the event of termination, the Licensee shall immediately, but no more than thirty (30) days following notice, at its sole expense, remove the irrigation system from the Licensed Area.

## **IX. ASSIGNABILITY**

Licensee shall not assign or otherwise transfer this License.

## **X. INSURANCE**

Licensee shall, during the term of this License, at its sole cost and expense, shall carry and maintain the following types of insurance which shall name the City as "Additionally Insured." The Insurance shall be as follows:

Certificate of Liability Insurance:

- General Liability Insurance in the Aggregate of Two (2) Million Dollars.
- Each Occurrence of Injury One (1) Million Dollars.
- Medical Expense (any one person)

The failure to maintain such insurance by the Licensee shall be grounds for the City to terminate this License.

## **XI. INDEMNIFICATION**

Licensee shall defend, indemnify and hold harmless 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 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 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.

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 with in 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 any maintenance and use of the marquee sign.

## **XII. COMPLIANCE WITH LAW**

Licensee shall use, possess, maintain, repair, and replace its irrigation system within 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.

## **XII. 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 party at the address set forth in the identification of the Parties in this Agreement.

## **XIII. 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 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.

#### **XIV. NO ORAL WAIVER, MODIFICATION, OR TERMINATION**

This License 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.

#### **XV. GOVERNING LAW**

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

#### **XVI. SEVERABILITY**

If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, 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 shall be valid and be enforced to the fullest extent permitted by law.

#### **XVII. NO THIRD PARTY BENEFICIARIES**

This License 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.

#### **XVIII. CAPTIONS**

The captions and headings throughout this License 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, nor in any way affect this License, and shall have no legal effect.

#### **XIX. ENTIRE AGREEMENT**

This License 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.

**XXI. AUTHORITY OF THE CITY**

Authority for the City Manager to enter in this License Agreement on behalf of the City was granted by the City Council on December 14, 2020, and is hereby incorporated into this Agreement by reference.

**CITY OF CONCORD**

\_\_\_\_\_  
Date

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Thomas J. Aspell, Jr.  
City Manager

\_\_\_\_\_  
Date

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\_\_\_\_\_  
(Title)