

CITY CLERK'S OFFICE
CITY COUNCIL REFERRAL SLIP

TO: City Administration

DATE: November 18, 2016

The attached document was received for City Council consideration.

The following action is required:

- Prepare a report together with related documents, if applicable, such as an ordinance, a resolution or an agreement and submit to the City Clerk's Office for inclusion in the City Council's _____ agenda.
- You are the only department or committee this communication was referred to.
- Along with your department, this item was referred to the following departments:

Please feel free to contact the City Clerk's Office if you have any questions.

From: Allan Herschlag
To: Bonenfant, Janice
Subject: consent agenda
Date: Monday, November 07, 2016 8:33:37 AM

City Clerk Bonenfant,

I am requesting that the following item be placed on the consent agenda for referral to the city manager:

The Langley Parkway agreement with St. Paul's School allows for the discontinuance of sections of Dunbarton and Silk Farm Road within the school's campus. It also establishes certain maintenance requirements for these roadways that are the responsibility of the School. The gated section of Silk Farm Road has deteriorated and appears to be in need of maintenance work.

I am requesting that this be referred to the city manager to determine if St Paul's School is in compliance with the Easement Agreement they signed with the City on February 9th 2010.

Respectfully,

Allan Herschlag

After recording return to:

MCRD Book 3180 Page 944

34.31
2- HBK
Shaheen & Gordon, PA
PO Box 2703
Concord, NH 03302-2703

EASEMENT AGREEMENT

This Easement Agreement is by and between **ST. PAUL'S SCHOOL**, a New Hampshire voluntary corporation, with its principal place of business at 325 Pleasant Street, Concord, New Hampshire 03301 (hereinafter referred to as the "St. Paul's", which shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns) and the **CITY OF CONCORD**, a municipal corporation with an address of 41 Green Street, Concord, New Hampshire 03301 (hereinafter referred to as the "City").

WHEREAS, St. Paul's and the City entered into an Agreement referred to as the Langley Parkway Agreement dated August 9, 2000, as amended by agreements dated December 1, 2004, September 26, 2005, and July 2006 [date not specified] (collectively, the "Langley Parkway Agreement"), in which St. Paul's agreed to contribute to the funding of the construction of Langley Parkway as an alternate route to the portions of the public ways known as Silk Farm Road and Dunbarton Road running through the St. Paul's School campus which provided access between Clinton Street and Pleasant Street; and

WHEREAS, the Langley Parkway Agreement specified that in consideration of St. Paul's contribution to the funding of the construction of Langley Parkway, that the portions of Dunbarton Road and Silk Farm Road that ran through the St. Paul's School campus would be discontinued as public ways and become internal roadways within the St. Paul's property subject to certain easements and rights of the City and St. Paul's.

NOW THEREFORE, St. Paul's and the City hereby set forth the agreements, rights, and easements concerning the discontinued portions of Dunbarton Road and Silk Farm Road lying within the St. Paul's School campus pursuant to the Langley Parkway Agreement.

1. Easement. St. Paul's hereby grants to the City a public right of way easement for pedestrian, bicycle, and emergency vehicle access over the discontinued portions of the public ways formerly known as Dunbarton Road and Silk Farm Road lying within the St. Paul's School campus pursuant to the Langley Parkway Agreement provided that St. Paul's continues to maintain those former public ways as internal roadways within the St. Paul's School property to at least the same size and condition of other School roads currently in use for emergency vehicle, pedestrian and bicycle traffic. The right and easement granted herein shall be in common with St. Paul's right and enjoyment to use said easement areas as private internal roadways for the benefit of its school campus. St. Paul's reserves for



LT2-3180-944-7



LT1-2-756126-1

itself and its successors and/or assigns the right to fully use and enjoy the easement area, including, but not limited to the right to pass and repass over the easement area and to conduct such other operations on its land so long as the use or operations shall not adversely affect the easement rights as herein stated. The easement area is described in Exhibit 1A, attached hereto.

2. Maintenance Defined. For the purposes of this easement, maintenance shall include, but will not be necessarily limited to, the following: snow removal, sanding and salting, removal of branches and debris, street sweeping, and other actions as may be necessary to ensure the easement area is in good order and in a condition suitable for public access and passage in all seasons.
3. Right to Abandon Use of Discontinued Portions of Dunbarton and Silk Farm Roads. St. Paul's shall have the right, in its absolute discretion, to abandon the roadway use of the discontinued portions of Dunbarton Road and Silk Farm Road lying within the St. Paul's School campus. In the event that St. Paul's elects to abandon the use of the former public ways, it may terminate the location of the easements within the former public ways, in return for another easement located within the St. Paul's property, which shall provide a reasonable alternative route for pedestrian and bicycle traffic from Pleasant Street to the existing bicycle path within the right of way of NH Interstate 89. St. Paul's agrees to construct to acceptable standards, as set forth below, any alternative easement at its cost and expense. In addition, St. Paul's shall designate an alternative easement for access by emergency vehicle traffic through the St. Paul's campus to connect from Pleasant Street to that portion of Silk Farm Road which remains open as a public way. Any alternative easement or easements prepared under the terms of this paragraph shall be described and memorialized as an amendment to this easement and recorded at the Merrimack County Registry of Deeds.
4. Right to Relocate Easement. St. Paul's shall retain the right to relocate the easement area at any time as long as the relocated easement area provides reasonable access to pedestrian and bicycle traffic from Pleasant Street to the existing bike path located within the right of way of NH Interstate 89, and continues to provide emergency vehicle access from Pleasant Street to that portion of Silk Farm Road which remains open as a public way. The use of the existing roadway network within the St. Paul's School campus shall be acceptable to satisfy the conditions of this Agreement. St. Paul's agrees to construct the relocated easement to acceptable standards, as set forth below, and at its cost and expense. In addition, St. Paul's may make subsequent changes to the layout of the relocated easement at its expense as long as the easement continues to provide access to pedestrian and bicycle traffic from Pleasant Street to the existing bike path located within the right of way of NH Interstate 89, and continues to provide emergency vehicle access from Pleasant Street to that portion of Silk Farm Road which remains open as a public way.. Any alternative easement or easements prepared under the terms of this paragraph shall be described and memorialized as an amendment to this easement and recorded at the Merrimack County Registry of Deeds.

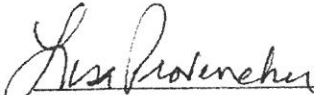
5. Standards for Alternative Easements. In the event that the easement area is abandoned or relocated by St. Paul's in accordance with the provisions of paragraphs 3 and 4 above, any alternative easement area to be constructed by St. Paul's to serve pedestrian, bicycle, and emergency vehicle access shall be constructed upon such standards and details that are acceptable to the City of Concord and St. Paul's, provided that any alternative easement areas to be constructed by St. Paul's are at least similar in size and condition of other School roads currently in use for emergency vehicle, pedestrian, and bicycle traffic.
6. Cost and Maintenance of any Easement Established as a Result of Abandonment. In the event that St. Paul's abandons the easement area, or abandons any alternative easement created by relocation, the City shall thereafter maintain at its sole cost and expense any alternative easement or easements, as set forth in paragraph 3 above. For the purposes of this easement agreement, abandonment shall mean that St. Paul's shall no longer have the right to limit the use of the easement area or areas, and the easement area or areas shall thereafter be for the use by the City for public purposes.
7. City's Right to Terminate. The City may terminate its easement at any time.
8. Indemnification. As long as the City continues the public use easement, either in its present location within the former city streets or as it may be relocated, the City shall indemnify, defend, and hold harmless St. Paul's from any claim, loss, damage, or injury that may arise in connection with such public use of the easement.
9. Binding Effect. This Agreement and the easements, rights, obligations, and liabilities created hereby shall be perpetual and shall be binding upon and inure to the benefit of the parties hereto, and their successors, assigns, tenants, invitees, and licensees, except as limited hereunder.
10. Governing Law. This Agreement shall be construed, governed by, and enforced in accordance with the laws of the State of New Hampshire. In the event of any dispute arising hereunder, exclusive jurisdiction and venue shall be with the Merrimack County Superior Court.
11. Successors. The covenants, terms, duties, powers, provisions, and undertakings of this Agreement shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, as if they were in every case named and expressed, and wherever reference is made to the parties hereto, it shall be held to include and apply also to the heirs, executors, administrators, successors, and assigns of such party, as if in each and every case so expressed.
12. Titles and Captions. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.
13. Partial Invalidity. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid,

inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby, it shall not be deemed that any such invalid provision affects the consideration for this Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

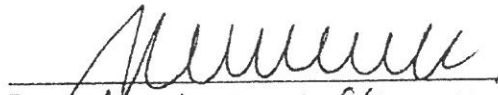
14. Amendment. This Agreement may be amended, modified, or terminated at any time only by an agreement in writing, executed and acknowledged by the parties hereto, their successors or assigns, and recorded in the Merrimack County Registry of Deeds. This Agreement shall not be otherwise amended, modified, or terminated during the term hereof.

Executed this 9th day of February, 2010.

St. Paul's School



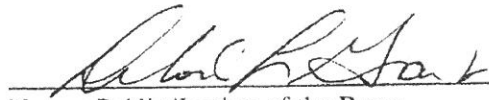
Witness



By: Michelle C. Chirwine
Its duly authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me this 9th day of February, 2010, by Michelle Chirwine the CFO of St. Paul's School, on behalf of said school.

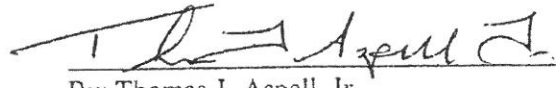


Notary Public/Justice of the Peace

DEBORAH L. GRANT
Notary Public - New Hampshire
My Commission Expires March 26, 2013

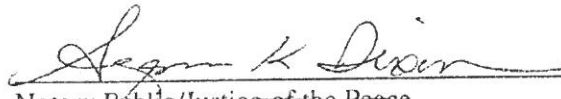
City of Concord


Witness


By: Thomas J. Aspell, Jr.
Its duly authorized City Manager

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me this 11 day of February, 2010, by Thomas J. Aspell, Jr., the City Manager of the City of Concord, on behalf of said City.


Notary Public/Justice of the Peace

SUZANNE K. DIXON, Notary Public
My Commission Expires September 13, 2011

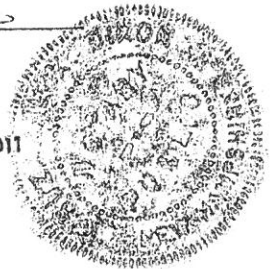


Exhibit 1A

The easement shall occupy an area of land situated in the City of Concord, Merrimack County, State of New Hampshire, which was formerly occupied by portions of two laid out public highways of the City of Concord known as Dunbarton Road and Silk Farm Road, said portions of the laid out highways having been discontinued by vote of the Concord City Council on July 10, 2000.

The easement includes the following portion of the former Dunbarton Road which is 60 feet in width, with the centerline more particularly described as follows:

Beginning at a point on the centerline of Pleasant Street as formerly located, 380.5 feet easterly of a point 30 feet from and at right angles to a stone bound in the southerly side line of Pleasant Street northerly from the Alumni House of said St. Paul's School as formerly located; thence

Southwesterly, curving to the left with a radius of 118.31 feet, 83 feet to said southerly side line of Pleasant Street as formerly located at a point 301.7 feet easterly along said side-line from said first mentioned stone bound; thence

Following the same curve 32 feet to a point; thence

South 17° 0' west 296.5 feet to a point; thence

Southwesterly, curving to the left, with a radius of 2864.93 feet, 340 feet to a point; thence

South 10° 12' west 200.0 feet to a point; thence

Southerly and westerly curving to the right with a radius of 1146.28 feet, 1158.6 feet to a point; thence

South 68° 08' west 506.5 feet to a point; thence

Westerly, curving to the right with a radius of 2864.93 feet, 300.0 feet to a point; thence

South 74° 08' west 113.2 feet to a point; thence

Westerly, curving to the right with a radius of 1910.08 feet, 342.2 feet to a point; thence

South 84° 24' west 152.8 feet to a point; thence

Westerly, curving to the left with a radius of 1432.69 feet, 375.0 feet to a point; thence

South 69° 24' west 267.5 feet to a point; thence

Westerly, curving to the right with a radius of 1910.08 feet, 191.7 feet to the endpoint of this description.

Meaning and intending to describe an easement across a portion of the former Dunbarton Road as shown on a plan entitled "St. Paul's School, Concord, N.H., Plan showing proposed Highway Location between Alumni House and Orphans Home Lot," scale 100 ft to the inch, dated Sept. 1916, prepared by Lhoyd + Mann, on file at the City of Concord Community Development Department as Permanent Plan Number 1001.

The easement also includes the following portion of the former Silk Farm Road which is 50 feet in width, with the centerline more particularly described as follows:

Beginning at a point on the centerline of the discontinued Dunbarton Road which is northeasterly along a curve with a radius of 1910.08 feet, a distance of 100 feet, more or less, from the endpoint of the portion of the easement over the former Dunbarton Road as described above, said point also being the intersection of the centerline of the former Dunbarton Road with the centerline of the former Silk Farm Road; thence

Southeasterly along the centerline of the former Silk Farm Road a distance of 30 feet to a point on the southerly sideline of the former Dunbarton Road; thence

Southeasterly, continuing along the centerline of the former Silk Farm Road a distance of 2100 feet, more or less, to a point which is 10 feet northwesterly of the edge of the right-of-way of Interstate 89, which is the endpoint of this description.

Meaning and intending to describe an easement across a portion of the former Silk Farm Road from the southerly sideline of the former Dunbarton Road to the northerly sideline of Interstate Route 89, as shown on the records of the City of Concord Community Development Department.

MERRIMACK COUNTY RECORDS

Kath: L. Gray, CPO, Register