

## LEASE AMENDMENT

THIS LEASE AMENDMENT is made this \_\_\_\_ day of 20\_\_ (the “Effective Date”),<sup>1</sup> by and between the **YORK WATER DISTRICT**, a quasi-municipal corporation organized and existing under the laws of the State of Maine with a mailing address of 86 Woodbridge Road, P.O. Box 447, York, Maine 03909 (“District”); and the **TOWN OF YORK**, a municipal corporation organized and existing under the laws of the State of Maine with a mailing address of 186 York Street, York, Maine 03909 (“Town”).

WHEREAS, the District and the Town are parties to a certain lease agreement dated May 12, 1980, recorded at the York County Registry of Deeds in Book 2651, Page 118 (the “Lease Agreement”), whereby the District grants and leases to the Town certain interests in land of the District on Mount Agamenticus, York County, Maine, including an easement to use a road providing access to land owned by the Town at the summit of Mount Agamenticus and described in the deed to the Town dated April 25, 1980 and recorded at the York County Registry of Deeds in Book 2651, Page 112 (the “Summit Land”); and

WHEREAS, public use has increased with no intentional design or plan for centralized parking or public restrooms, and the parties wish to amend the Lease Agreement in certain respects to improve use, access and infrastructure while protecting water quality;

NOW, THEREFORE, the parties hereby agree as follows:

1. Mt. Agamenticus Road Easement Corridor. The easement area described in Section 1 of the Lease Agreement (the “Easement Corridor”) is redefined to include that portion of Mt. Agamenticus Road shown as “Mount A Road Corridor” on the plan attached hereto as Figure A-2, and is increased in total width, from three (3) rods (49½ feet) to four (4) rods (66 feet), based off of the centerline of Mt. Agamenticus Road as it currently exists.
2. Power Line Easement. With respect to the existing line of poles and wires crossing the District’s land and providing electric power and telecommunications service to the Summit Land, to the extent necessary during the term of this Lease Agreement, the District agrees to confirm existing easement rights to the providers of such service to assure the Town has access to such service over the existing line.
3. Parking Areas, Improvements, and Town Obligations. The first paragraph of Section 3 of the Lease Agreement is deleted in its entirety and replaced with the following:
  - a. Parking Areas. The areas leased to the Town are shown and described as “Lower Parking Lot,” “Ring Trail Parking Lot,” and “Upper Parking Lot” on the plans attached hereto as Figures B-1, B-2 & B-3 (collectively, the “Parking Areas”), and may be used by the Town solely for the purposes of constructing and operating

---

<sup>1</sup> Effective Date occurs upon execution by both parties, which will not happen until after (i) Maine PUC approves this Lease Amendment, and (ii) Town receives any necessary vote on funding.

- vehicular parking areas, except as hereinafter set forth. Within three (3) years after the Effective Date, the Town shall complete construction of all parking area improvements, located generally as shown on Figures B-1, B-2 & B-3 and more particularly described in drawings prepared by Wright-Pierce dated \_\_\_\_\_ (collectively, the “Parking Facilities”). At all times during the term of this Lease Agreement, the Town shall maintain clear striping of the vehicular parking spaces within the Parking Areas, limited to a maximum of 88 spaces at the Lower Parking Lot, 7 spaces at the Ring Trail Parking Lot, and 53 spaces at the Upper Parking Lot, all substantially as shown on Figures B-1, B-2 & B-3, unless otherwise agreed in writing by the District.
- b. Restroom Facility. In addition to said Parking Facilities, the Town shall complete construction at the Lower Parking Lot of a restroom facility, located generally as shown on Figure B-1 and to be more particularly described in plans to be prepared by the Town and approved by the District in writing (the “Restroom Facility”), within three (3) years after the Effective Date.
- c. Other Facilities. The Town also shall have the right, but not obligation, to construct at the Lower Parking Lot: (i) a welcome area, center or facility within the designated footprint of the Lower Parking Lot plan attached hereto as Figure B-1, provided that the building design will be agreed upon in writing by the parties and will be specifically described in plans and specifications pertaining to water quality and/or storm water (the “Welcome Center”); (ii) standard trailhead facilities such as trail/map box, kiosk/bulletin board/wayside exhibit(s), donation/fee collection device, etc.; and (iii) a domestic drilled well. No other buildings or structures may be constructed within the Easement Corridor or Parking Areas without the prior written consent of the District.
- d. Compliance with Laws. The Town shall, at its sole expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations applicable to the Easement Corridor, the Parking Areas, and all improvements constructed by the Town pursuant to this Lease Agreement.
- e. Enforcement of Town Ordinances. The Town agrees to enforce all public rules on the Easement Corridor and the Parking Areas, including those pertaining to the Animal Control Ordinance. The Town shall install signs requiring that all dogs be leashed. The Town may install other signs within the Easement Corridor and Parking Areas for safety purposes, in its reasonable discretion.
- f. Authorized Trails. The Town shall direct users of the Parking Areas to use only those trails located on adjacent District lands identified on the attached Figure C, or such other approved trails that may be agreed upon in writing by the District, and prohibiting users from entering any other portions of adjacent District lands. The Town shall install signs displaying such rules, and any other rules pertaining to public use of the trails that are promulgated by the District, at all trailheads at the Parking Areas.

- g. Parking Restrictions. The Town shall prohibit vehicular parking within and along the Easement Corridor, along Mountain Road from the intersection with the Easement Corridor extending to the entrance of the Center for Wildlife (385 Mountain Road), and within all portions of the Parking Areas other than the designated parking spaces within the Parking Areas; and the Town shall install signs to provide adequate notice of such parking restrictions.
  - h. Clearing. The Town shall have the right to cut and remove such trees within the Easement Corridor and Parking Areas as the Town shall deem proper, and to level the ground of the Easement Corridor and Parking Areas so far as may be reasonably necessary to fit it for use.
  - i. Town Obligations. The Easement Corridor and Parking Areas, and the improvements constructed and signs installed by the Town pursuant to this Lease Agreement, all shall be improved, maintained and repaired in good condition at the sole expense of the Town, and the Town shall save the District harmless from any and all claims for loss or damage that may arise for any reason from the use of said Easement Corridor or Parking Areas by the Town, its agents or servants, its patrons, invitees, permittees or any other person or persons whatsoever. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the Town or its respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by additional laws or regulations.
  - j. Costs and Expenses. No services shall be required to be provided by the District in connection with the Easement Corridor, the Parking Areas, or any improvements constructed by the Town pursuant to this Lease Agreement, and all costs, expenses and obligations relating to the Easement Corridor, the Parking Areas, and such improvements, whether foreseen or unforeseen, including (without limitation) all costs of maintaining and repairing the road within the Easement Corridor, shall be paid by the Town; provided that if the District shall elect to construct any improvements within said areas for the sole benefit of the District, such improvements shall be paid for by the District.
  - k. No Liens. If, because of any act or omission of the Town, any mechanic's lien or other lien shall be filed against the District or any portion of the District land affected by this Lease Agreement, the Town shall cause the same to be discharged of record or bonded within thirty (30) days after written notice from the District to the Town of the filing thereof; and the Town shall indemnify and save harmless the District against and from all costs and liabilities, including reasonable attorneys' fees, resulting therefrom.
4. Protection of Water Supply. The second paragraph of Section 3 of the Lease Agreement is deleted in its entirety and replaced with the following:

The Town covenants and agrees that the Easement Corridor, the Parking Areas, and the improvements built, maintained and repaired in accordance herewith, shall not be used or maintained by the Town in any way that will contaminate the waters of the great pond known as "Chase's Pond" or "Chase's Lake," from which the District takes its water supply for the Town of York, to the extent that it is dangerous to public health or in any way distasteful or obnoxious to the District or to the takers of the water from said pond.

5. Dangerous Conditions. The third paragraph of Section 3 of the Lease Agreement is deleted in its entirety and replaced with the following:

In the event it is found that any dangerous or obnoxious condition or conditions exist as a result of the maintenance and use of the rights and privileges hereby granted and leased, the Town, upon notice from the District to that effect, shall forthwith correct or remove such condition or conditions, and failing to do so, the District shall have the right to close the Easement Corridor and/or some or all of the Parking Areas and to suspend the use and occupancy of said Easement Corridor and Parking Areas until such time as said condition is corrected or removed, to the reasonable satisfaction of the District.

6. Restricted Access. The fourth paragraph of Section 3 of the Lease Agreement is deleted in its entirety and replaced with the following:

By virtue of the rights and privileges herein contained the Town shall have the right to restrict or restrain the use of the Easement Corridor and/or the Parking Areas or to limit its use to its agents or servants, its customers or patrons, prospective or otherwise, and for such purpose to bar or obstruct the said Easement Corridor and/or Parking Areas, or to charge a fee for the use of any of them, provided, however, that nothing herein contained shall be construed as preventing, restricting, or in any way limiting the District or its agents or invitees in the free use and passage on or over said Easement Corridor and Parking Areas at all times for any reason.

7. No Pollution. The fifth paragraph of Section 3 of the Lease Agreement is deleted in its entirety and replaced with the following:

In consideration of the rights and privileges hereby granted, the Town further agrees that any portion of the improvements constructed by the Town pursuant to this Lease Agreement that lie in the watershed of said "Chase's Pond" shall be so constructed and maintained in compliance with all applicable laws so as to prevent any pollution of said pond or of any of the streams tributary thereto from said improvements.

8. Commercial Activity. The sixth paragraph of Section 3 of the Lease Agreement is deleted in its entirety and replaced with the following:

No commercial enterprise of any kind, other than parking, shall be carried on or conducted in the Parking Areas; provided, however, that in the event the Town constructs and operates a Welcome Center, then commercial activities customarily conducted at welcome centers for similar public recreation areas may be conducted at the Welcome

Center, so long as all profits earned from such commercial activities are dedicated to Mount Agamenticus conservation programs.

9. Term; Renewal.

- a. The term of the Lease Agreement is extended for an additional twenty (20) years, to May 12, 2050, provided that the terms and conditions herein are performed by the Town.
- b. Provided that the Town is not in default in the performance of its obligations under the Lease Agreement, the term of the Lease Agreement will automatically renew for two (2) additional twenty (20) year term(s), upon the same terms and conditions, unless the Town notifies the District in writing of the Town's intention not to renew the Lease Agreement at least one (1) year prior to the expiration of the then-existing term.
- c. Notwithstanding the foregoing, if at any time during the term the Town shall cease to own the Summit Land, the Lease Agreement, as hereby amended, shall become null and void.

10. Default. If default shall be made by the Town in the performance or compliance with any of the agreements, terms or conditions in this Lease Agreement, and such default shall continue for a period of thirty (30) days after written notice from the District to the Town specifying the items in default, or in case of a default or contingency which cannot with due diligence be cured within said thirty (30) day period, the Town fails to proceed within said thirty (30) day period to commence to cure the same and thereafter to prosecute the curing of such default with due diligence and within a period of time which, under all prevailing circumstances, shall be reasonable, then the Town shall be in default under this Lease Agreement, and the District shall be entitled to seek whatever remedies may be available at law or in equity, including any action as may be available for damages or for specific performance; and

- a. the District may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of the Town, and any reasonable amount paid or any reasonable contractual liability incurred by the District in so doing shall be deemed paid or incurred for the account of the Town and the Town agrees to reimburse the District therefor; provided that the District may cure any such default as aforesaid prior to the expiration of said 30-day waiting period but after notice to the Town, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the District's water supply, or to prevent injury or damage to persons or property; and
- b. if such default by the Town shall occur prior to the Town's completion of construction of the Parking Facilities and the Restroom Facility in accordance with paragraphs 3.a and 3.b above, then the District may give written notice to the Town stating that the term extension set forth in paragraph 9 above shall be null and void,

such that the term of the Lease Agreement reverts back to the original term expiring on May 12, 2030.

11. Surrender. On the last day or sooner termination of the term of this Lease Agreement, the Town shall surrender to the District the Easement Corridor and Parking Areas, with all buildings and permanent improvements.

12. No Assignment or Sublease. The Town shall not, without the District's prior written consent, assign, convey, mortgage, pledge, encumber or otherwise transfer (whether voluntarily or otherwise) the Lease Agreement or any interest under it, or sublet the Parking Areas or any part thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Amendment to be under seal by their duly authorized officers as of the day and year first above written.

WITNESS:

TOWN OF YORK

\_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESS:

YORK WATER DISTRICT

\_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

Attachments:

- Figure A-1 – Mount Agamenticus Lease Areas
- Figure A-1 – Mount Agamenticus Overview
- Figure B-1 – Mount Agamenticus Lower Parking Lot (including designated area for possible Welcome Center)
- Figure B-2 – Mount Agamenticus Ring Trail Parking Lot
- Figure B-3 – Mount Agamenticus Upper Parking Lot
- Figure C – Mount Agamenticus Authorized Trails