
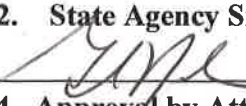


# TRAIL CONSTRUCTION AND MAINTENANCE AGREEMENT

The State of New Hampshire and the Licensee hereby  
Mutually agree as follows:  
**GENERAL PROVISIONS**

## 1. Identification and Definitions.

<b>1.1. State Agency Name</b> NH Fish and Game Department	<b>1.2. State Agency Address</b> 11 Hazen Dr, Concord, NH 03301
<b>1.3. Licensee Name</b> Town of Durham	<b>1.4. Licensee Address</b> 8 Newmarket Rd, Durham, NH 03824
<b>1.5 Licensee Phone #</b> 603-868-5571	<b>1.6. Expiration Date</b> December 31, 2024
<b>1.7. Officer for State Agency</b> Jim Oehler, State Lands Habitat Biologist	<b>1.8. State Agency Telephone Number</b> 603-271-0453
"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this license agreement, including if applicable RSA 31:95-b."	
<b>1.9. Licensee Signature 1</b> 	<b>1.10. Name &amp; Title of Licensee Signor 1</b> TODD I. SELIG, ADMINISTRATOR
<b>Licensee Signature 2</b> _____	<b>Name &amp; Title of Licensee Signor 2</b> _____
<b>Licensee Signature 3</b> _____	<b>Name &amp; Title of Licensee Signor 3</b> _____
<b>1.11. Acknowledgment:</b> State of New Hampshire, County of <u>Strafford</u> , on <u>7/17/19</u> , before the undersigned officer, personally appeared the persons identified in block 1.10., known to me (or satisfactorily proven) to be the persons whose names are signed in block 1.9., and acknowledged that he/she executed this document in the capacity indicated in block 1.10. <u>Donna L. Hamel</u> <b>DONNA L. HAMEL</b>	
<b>1.11.1. Signature of Notary Public or Justice of the Peace</b> <u>Donna L. Hamel</u> <b>Notary Public - Justice of the Peace</b> (Seal) <u>Donna L. Hamel</u> <b>Commission Expiration June 1, 2021</b>	
<b>1.11.2. Name &amp; Title of Notary Public or Justice of the Peace</b> <u>Donna L. Hamel</u> <b>Notary Public</b>	
<b>1.12. State Agency Signature(s)</b> 	<b>1.13. Name &amp; Title of State Agency Signor(s)</b> <u>Glenn Normandeau</u> <b>Ex. Director</b>
<b>1.14. Approval by Attorney General (Form, Substance and Execution) (if G &amp; C approval required)</b> By: _____ Assistant Attorney General, On: ____ / ____ / ____	

**2. SCOPE OF WORK:** In exchange for permission to use lands owned by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as "the State"), the Licensee identified in block 1.3 (hereinafter referred to as "the Licensee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being hereinafter referred to as "the Project").

3. AREA COVERED. Except as otherwise specifically provided for herein, the Licensee shall perform the Project in, and with respect to, the State of New Hampshire.
4. EFFECTIVE DATE. COMPLETION OF PROJECT.
- 4.1. This Agreement and all obligations of the parties hereunder, shall become effective on the date of approval of this Agreement by the State Agency as shown in block 1.14 ("the effective date").
5. COMPLIANCE BY LICENSEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Licensee shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Licensee, including the acquisition of any and all necessary permits.
6. PERSONNEL.
- 6.1. The Licensee shall, at its own expense, provide all personnel necessary to perform the Project. The Licensee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 6.2. The Licensee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
- 6.3. The Officer identified in block 1.7 shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Officer, and his/her decision on any dispute, shall be final.
7. CONDITIONAL NATURE OR AGREEMENT. The State does not have any financial obligation associated with this Agreement. All financial obligations associated with completing the Project are the responsibility of the Licensee.
8. EVENT OF DEFAULT. REMEDIES.
- 8.1. Any one or more of the following acts or omissions of the Licensee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
- 8.1.1 Failure to perform the Project satisfactorily as outlined in the Scope of Services; or
- 8.1.2 Failure to perform any of the other covenants and conditions of this Agreement.
- 8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 8.2.1 Give the Licensee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Licensee notice of termination; and
- 8.2.2 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
9. TERMINATION.
- 9.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Licensee shall deliver to the Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed up to and including the date of termination.
- 9.2. In the event of Termination under paragraphs 7 or 9.3 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Licensee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.
- 9.3. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Licensee hereunder, the Licensee, may terminate this Agreement without cause upon thirty (30) days written notice.
10. CONFLICT OF INTEREST. No officer, member of employee of the Licensee, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
11. LICENSEE'S RELATION TO THE STATE. In the performance of this Agreement the Licensee, its employees, and any subcontractor of the Licensee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Licensee nor any of its officers, employees, agents, members, or subcontractors, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

ASSIGNMENT AND SUBCONTRACTS. The Licensee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted by the Grantee other than as set forth in the Scope of Services without the prior written consent of the State.

INDEMNIFICATION. The Licensee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Licensee or subcontractor, or other agent of the Licensee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

INSURANCE AND BOND.

The Licensee shall, at its own expense, obtain and maintain in force, or shall require any subcontractor or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

14.1.1 Statutory workmen's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

14.1.2 Comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

14.2 The policies described in subparagraph 14.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State.

WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Licensee.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required, or by the signing State Agency.

18. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

19. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

20. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

21. SPECIAL PROVISIONS. The additional provisions set forth in Exhibit C hereto, if any, are incorporated as part of this agreement.

Licensee Initials

Date

EXHIBIT A  
Scope of Work

The Licensee identified in block 1.3 shall perform the work identified and more particularly described below:

Licensee is permitted to provide public pedestrian access via a trail on New Hampshire Fish and Game (F&G) property referred to as the Beaudette Lot of the Lamprey River Wildlife Management Area as identified in the attached map. There shall be no fee for the use of this property. Trail use is limited to the single trail identified on the attached map and to pedestrian travel (e.g., hiking, walking, and cross country skiing) and mountain biking only. Motorized and other wheeled vehicles of any sort are prohibited. This license is hereby issued with the additional following conditions:

- The installation of a foot bridge by the Town across LaRoche Brook that spans bank to bank, meets DES wetland permitting requirements and is suitable to NH Fish & Game.
- The town will work with F&G wildlife biologists to site the trail to minimize impacts on wildlife and wildlife habitat.
- The trail will be a single track pedestrian trail built to the standards identified in "Best Management Practices for Erosion Control During Trail Maintenance and Construction" published by the NH Trails Bureau.
- The town will work collaboratively with F&G to re-route the trail as needed if erosion, water, management, or other considerations warrant.
- In exchange for allowing the trail through the Beaudette Lot, the Town will monitor and close rogue trails (aka unpermitted or social trails) on the Lamprey River WMA north of Bennett Road, including removing flagging, placing brush and other woody debris on trails, and alerting the community to these closures and prohibition on new rogue trails.
- Trail maintenance shall be the sole responsibility of the Town for as long as the trail is open to the public, and shall be done to the standards identified in "Best Management Practices for Erosion Control During Trail Maintenance and Construction" published by the NH Trails Bureau or successor publication. Vegetation management shall be limited to the removal of trees which have fallen across the trail, the clearing of brush within the authorized established trail-way, including any existing bridges, and the mowing or trimming of grasses and forbs (no wider than four feet within the authorized established trailway) to accomplish safe passage of pedestrians.
- No alterations, installation of additional bridges, trail relocation or cutting of trees with a diameter of 4" or larger are allowed without prior written approval of the Executive Director of NH Fish and Game, in accordance to NH Admin Rule Fis.900.
- Trails may be marked with blazes and/or signs as approved by F&G.

EXHIBIT B  
None

EXHIBIT C  
None

Licensee Initials

Date



