

LICENSE AGREEMENT

This License Agreement (hereinafter "Agreement") is made by and between the City of Glens Falls, New York (hereinafter "City") and the Town of Queensbury (hereinafter referred to as "Town").

RECITALS

The purpose of this agreement is to preserve and protect the natural resources of the Halfway Brook Reservoir watershed (hereafter the "Lower Watershed"), including and most importantly, the Lower Watershed's water quality, and provide for the construction, use and maintenance of a pedestrian use recreation trail to be known as the Halfway Brook Trail for the use and enjoyment of the general public.

Whereas, the Town and the City are political subdivisions of the State of New York, each being governed by their respective charters, laws and regulations setting forth the roles and responsibilities of various decision-making councils, boards and commissions, and

Whereas, municipalities are adjoining communities that share in the use and enjoyment of environmental resources of inestimable value including abundant sources of clean water, clean air and a diverse biosphere, and

Whereas, the water resources and the surrounding undeveloped land of the Lower Watershed are essential resources of the City required for the supply of clean drinking water to City residents, some Town residences and hundreds of local businesses, and

Whereas, the water resources and the surrounding undeveloped land of the Lower Watershed are a beneficial scenic and natural resource of the City located within the Town, are part of a system of ground, surface and subsurface water, and provide wildlife habitat, open space and visual enrichment for the general public, and

Whereas, the City watershed lands, acquired for the specific purpose of providing a safe and protected source of drinking water, are held in trust for the People of Glens Falls in order to ensure that human disturbances and development of the land adjacent to streams and reservoirs do not negatively impact water purity and quality, and

Whereas, the city charter prescribes that watershed lands may not be sold, conveyed or leased except as approved by a City-wide referendum, held as part of a general election, after proper notice and two public hearings thereon, and

Whereas, in order to ensure the continued quality of the City water supply and to reduce environmental impacts from the human activity and development, the City will prepare and implement a *Watershed Management Plan* for the watershed lands which shall include measures to improve on-site wastewater and stormwater management, reduce sedimentation and erosion, limit nutrient export, stop the introduction and spread invasive species, promote public education, and address unauthorized public access to watershed lands,

Whereas, Town has achieved laudable goals in developing a passive recreation trail system on property adjacent to Lower Watershed and desires to develop a trail through the Lower Watershed to connect to existing trails on adjacent properties and to establish additional trail opportunities by means of a larger interconnected trail system with substantial public benefits, and

Whereas, the municipalities have determined through cooperative effort the Lower Watershed can continue to serve its essential purpose of supplying of clean water after undergoing limited modification to accommodate a pedestrian use recreation trail, bridge, and parking area without a diminution of water quality or undue impact to natural resources,

AGREEMENT

1. Grant of License: For and in consideration of the payment of \$10.00 and for the mutual promises set forth herein, the City grants to the Town a license (hereinafter "License") for the following purposes:

(a) to construct, install, reconstruct, use, maintain, repair, implement and replace a pedestrian use recreation trail across the Lower Watershed, a footbridge over Halfway Brook and two parking areas (hereinafter "Improvements") and thereafter to manage the use thereof in accordance with the Lower Watershed Recreation Management Plan which, upon adoption by the City and Town, shall become part of this Agreement as if fully set forth herein.

(b) the area subject to this license to be used by the Town as set forth herein, and the Improvements to be made by the Town, shall be limited to the pedestrian use recreation trail, bridge and parking areas set forth on Exhibit "A" attached hereto and made part hereof.

(c) this license is not exclusive and the City retains the right to use the licensed areas. Use of the trails may be interrupted by the City as necessary for timber harvesting, forest management and property maintenance.

(d) the Improvements shall not be open to public use until the City and Town have adopted the Lower Watershed Recreation Management Plan and the Town has received, and provided copies to the City, of all required Federal, state and local permits.

2. Limitation of use of the Lower Watershed: The Improvements to be made by the Town shall be limited to those set forth in Exhibit "A" attached hereto. The Town shall not construct, install, reconstruct, use, maintain, repair and/or replace any structure, building, or make any other surface or subsurface improvements, whether temporary or permanent, on the Lower Watershed except in accordance with Exhibit "A".

The use and management of the Improvements shall be established in the Lower Watershed Recreational Management Plan (hereinafter "Plan") which, upon adoption by the City and Town, shall be attached hereto as Exhibit "B" and made a party hereof. It is

understood by the parties that anyone engaging in any prohibited use shall be subject to criminal prosecution in connection with said prohibited use, including trespass. The Plan shall include, but not be limited to, the following subjects:

- permitted uses;
- prohibited uses;
- hours of operation;
- posting of signs and the content thereof;
- maintenance and maintenance schedule;
- debris and trash removal;
- enforcement plan including patrols and prosecution;
- access and leashing of domestic animals;
- public education and notification program.

3. Lower Watershed Recreation Management Committee: The City and Town agree to form a joint committee which shall be known as the Lower Watershed Recreation Management Committee (hereinafter "Committee"). The Committee shall be comprised of seven (7) members, with four (4) members being from the City and three (3) members being from the Town. Each party's members shall consist of at least one elected official and the chairperson of said committee shall be the City's Water and Sewer Superintendent who shall constitute one (1) of the City's four (4) members. Each member of the Committee shall get one (1) vote for any and all action of the Committee.

The Committee shall be responsible for developing the Plan which, upon completion, shall be adopted by a majority vote of the members of the Committee for recommendation to the City and Town for approval. Upon approval by the City and Town, the Plan shall become party of this Agreement and, provided the Town has received all necessary permits and approvals, the Improvements shall be open for public use.

After the adoption of the Plan, the committee shall meet at least twice per year and shall address any and all issues which may arise in connection with this Agreement. The parties specifically agree that said committee is advisory only and the governing bodies of the City and Town maintain jurisdiction and control over the terms of this Agreement.

In the event that the City and Town shall fail to adopt a plan within one year of the date of the full execution of this Agreement, this Agreement shall be deemed null and void.

4. State Environmental Quality Review: To the extent that Improvements or any activities on the Lower Watershed associated with same require an environmental impact assessment, the City shall be lead agency for the purpose of any SEQR review or action.

5. Cost to install and maintain: The Town shall be responsible for all costs associated with the installation and maintenance of the Improvements and shall maintain

the Improvements in a safe and environmentally sound manner and in compliance with all applicable governmental requirements. Without limiting the generality of the preceding, all Improvements constructed by the Town shall meet or exceed all applicable requirements and specifications of all applicable governmental agencies having jurisdiction. All costs of construction and maintenance and similar activities required in connection with the Improvements shall be borne solely by the Town.

6. Property Taxes: The Town shall be responsible for any increase in property taxes resulting from the presence of the Improvements and shall be responsible for fifty percent (50%) of the property taxes for that portion of the Lower Watershed on which the Improvements are located.

7. Restoration of Lower Watershed: Upon completion of any Improvements or related activities by the Town which disturb the surface of the Lower Watershed or the Halfway Brook, the Town shall promptly restore the disturbed areas to the condition existing prior to the disturbance or as otherwise required by this Agreement.

Upon the termination of this Agreement, the Town shall promptly restore the disturbed areas to the condition existing prior to the Improvements but shall not remove any Improvements without the written authorization of the City.

8. Conduct of the Town: At all times, all actions of the Town on or about the Lower Watershed or in connection with any and all activities contemplated by this Agreement shall be in strict compliance with all governmental requirements. The Town shall be responsible for obtaining and complying with all applicable federal, state and local government requirements for the construction, operation, use and maintenance of the Improvements.

9. Indemnity: The Town shall indemnify, defend, and hold harmless the City from and against any and all losses, claims, actions, damages, liabilities, penalties, fines, pollutants, or expenses, of whatsoever nature including, without limitation, reasonable attorneys' fees and costs, injury to persons, the death of any person, or damage to property arising from the use of the Lower Watershed, Improvements or adjoining areas by the Town and from any and all damage arising from use of the Lower Watershed by the general public or from the activities contemplated by this Agreement. The indemnity set forth in this paragraph shall be effective without regard to compliance or non-compliance with this Agreement by the Town.

10. Insurance: The Town shall, at all times this Agreement is in effect, maintain a policy of general liability insurance with respect to the Town's and the general public's activities on the Lower Watershed. The amount of such insurance shall be no less than one million dollars \$1,000,000.00 and such policy shall name the City as an additional named insured. Such policy shall provide that it shall not be amended or terminated except upon at least 30 days' prior written notice to the City. Upon ten (10) days request by the City, the Town shall provide to the City a certificate of insurance meeting the requirements set forth in this paragraph. In the event at any time the Town fails to have in place the insurance coverage required by this paragraph or fails to provide

proof of insurance as required by this paragraph, the City shall have the right to immediately terminate this Agreement.

11. Right of Use/Access: Upon completion of the Improvements set forth herein, the adoption of the Plan, and upon receipt of all of the required permits and approvals, the Town and general public shall have the right of use and access over and across the Lower Watershed trails as set forth herein for the sole and limited purpose of those activities set forth in the Plan.

12. Termination of Agreement: In the event that the Town fails to perform any obligations under this Agreement the City may, but is not required, to perform any such obligation of the Town at the sole costs and expense of the Town and shall further have the right to immediately terminate this Agreement.

13. Maintenance of Improvements: All expenses of the construction, operation, maintenance and reconstruction of the Improvements shall be borne solely by the Town and shall be performed as set forth in the Plan.

14. Town Code: The Town shall amend the Town Code to prohibit unauthorized motor vehicle use anywhere in the Lower Watershed and shall inform the general public of such prohibited use and shall enforce same on the Lower Watershed Property. Motorized vehicle are prohibited except for the following exceptions:

- a. Vehicles used for construction and/or maintenance of the trails;
- b. Vehicles authorized by either the town or the city;
- c. Emergency and law enforcement vehicles.

15. Condition of Use: The rights of the Town and general public to utilize the Lower Watershed as set forth herein is expressly conditioned on said use not causing or contributing to any material harm, or otherwise adversely impacting or damaging, the Lower Watershed or the Halfway Brook.

(a) The Town shall implement all storm water soil erosion and sediment control measures as may be necessary to protect the Halfway Brook from erosion and to prevent the discharge of sediment or turbid water into the Halfway Brook.

(b) any and all damage to the Lower Watershed or the Halfway Brook caused or contributed to by the Town's and the general public's use of the Lower Watershed shall immediately be corrected or repaired by the Town at its sole cost and expense.

(c) as part of the Plan, the Town shall implement the public education and notification program to promote public awareness of the prohibition against entry into unauthorized areas of the Lower Watershed.

(d) the Town shall prepare and submit to the City an annual report that summarizes the activities and conditions of the trail and any use conflicts or

environmental problems encountered during the year including the manner in which they were resolved.

(e) If at any time, the City determines that the use of the Lower Watershed as set forth herein has adversely impacted or damaged the Lower Watershed or the water quality of the Halfway Brook, the City shall have the right to immediately terminate this Agreement. In the event that the City is required to take any remedial action in connection with the adverse impact or damage to the Lower Watershed, the Town shall be solely responsible for any and all costs in connection with same.

16. Term of Agreement: The agreement is terminated upon the sale by the City of any of the affected parcels. The term of this Agreement shall be for a period of one (1) year and shall be automatically renewed annually unless terminated by either party pursuant to this Agreement.

The annual renewal of this Agreement is conditioned upon compliance with the terms of this Agreement as determined by the City.

17. Attorneys' Fees: In the event any litigation, arbitration, administrative proceeding or other proceeding is brought to enforce or interpret this Agreement or is brought in connection with the Town's use of the Lower Watershed, the Town shall be solely responsible for the costs and reasonable attorneys fees incurred in connection with same.

18. Paragraph Headings: Paragraph headings are included for reference purposes only and do not constitute part of this Agreement.

19. Governing Law: This Agreement shall be governed and construed under the Laws of the State of New York.

20. Severability: Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

21. Waiver: Waiver by the City of any default by the Town shall not be deemed to be a waiver of any other default under this Agreement. Any remedy or election under this Agreement will not be deemed exclusive, but instead, whenever legally permissible, will be cumulative with all other remedies at law or in equity.

22. Entire Agreement: This Agreement constitutes the entire Agreement between the parties.

23. Assignment: Neither this Agreement nor the rights granted herein may be sold, assigned or otherwise transferred without the written consent of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Licensors:

Licensee:

John Diamond, Mayor Date
City of Glens Falls

John Strough, Supervisor Date
Town of Queensbury