

RIGHT OF ENTRY AND LICENSE AGREEMENT

This RIGHT OF ENTRY AND LICENSE AGREEMENT (this "Agreement") dated as of _____, 2016, is made and entered into by and between the TOWN OF WAYLAND, acting by and through its Board of Selectmen, a Massachusetts municipal corporation, having an address of 41 Cochituate Road, Wayland, MA 01778 (the "Licensor") and _____, a _____ having an address of _____ (the "Licensee").

BACKGROUND

- A. The Licensor is the owner of certain land in the Town of Wayland described on Attachment A hereto (the "Licensed Premises").
- B. The Licensor issued a Request for Proposals for the disposition and development of the Licensed Premises for affordable housing purposes (the "RFP"), pursuant to M.G.L. c. 30B.
- C. The Licensee's proposal in response to the RFP for the acquisition of the Licensed Premises was accepted by the Licensor.
- D. Licensor and Licensee have, on or about the date hereof, entered into a Land Disposition Agreement (the "LDA") for the sale and purchase of the Premises.
- E. Pursuant to the LDA, Licensor and Licensee are entering into this Agreement to facilitate and govern Licensee's access to the Licensed Premises to perform certain tasks set forth in the work plan to be provided by the Licensee and approved by Licensor hereunder (the "Work Plan").

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. Grant of License, Terms, Purpose and Use.

1.1 The Licensor hereby grants a right of entry and license to the Licensee to use the Licensed Premises for the sole purposes set forth herein and in the Work Plan (the "Licensed Activities"), subject to the terms and conditions set forth herein.

1.2 The right of entry and use of the Licensed Premises is specifically granted to the Licensee, its contractors, consultants, agents, and employees, collectively referred to herein as the "Licensee," solely for the implementation and completion of the tasks set forth in the Work Plan and for no other purposes. Said rights may not be assigned by the Licensee without the prior written consent of the Licensor, which consent may be withheld for any reason or for no reason, at Licensor's sole and absolute discretion. In the event that the Licensee assigns its rights

under this Agreement to another party with Licensor's approval, the Licensee shall remain liable for its obligations and duties contained herein.

1.3 The right of entry and use of the Licensed Premises by the Licensee hereunder shall be exercised beginning as of the date the Licensor approves in writing the Work Plan, such approval not be unreasonably withheld, conditioned or delayed (but subject to other terms of this Agreement) and such rights shall terminate on [**Insert last day of Due Diligence Period in LDA**], unless extended or earlier terminated by the parties hereto. The parties acknowledge and confirm the rights being granted hereunder are a license and no greater rights in the Licensed Premises are being granted hereunder. The parties acknowledge and confirm that neither this Agreement nor the license granted hereunder shall be construed to create or vest in the Licensee any easement, estate or legal interest in the Licensed Premises but only the limited right of possession on the terms herein described.

1.4 The Licensed Premises and the activities undertaken thereon by the Licensee shall be subject to inspection by representatives of the Licensor at any time, and from time to time, without prior notice.

1.5 The rights of the Licensee granted hereunder shall be exercised solely for the purposes set forth in this Agreement, and for no other purposes.

II. Terms, Costs and Restoration.

2.1 Licensee shall perform all Licensed Activities, including without limitation all work under the Work Plan and all geotechnical and environmental site investigations, strictly in compliance with the provisions of this Section II.

2.2 The Licensee shall be solely responsible for all costs and expenses associated with the exercise of the rights granted under this Agreement, including without limitation any costs associated with obtaining any permits, licenses or similar approvals necessary to undertake and/or complete the work contemplated herein.

2.3 The Licensee shall provide immediate notification to Licensor of any release or threat of release of oil or hazardous materials discovered during Licensee's Activities, including without limitation its work under the Work Plan and its geotechnical or environmental site investigations, that is not already disclosed in any of the environmental reports or other materials provided to the Licensee from the Licensor in connection with the RFP.

2.4 In no event shall the Licensee perform any subsurface investigations or invasive testing of the Licensed Premises, or install any soil or groundwater monitoring wells or test pits on the Licensed Premises, without the Licensor's prior written approval, which approval may be withheld by Licensor for any reason or for no reason, at Licensor's sole and absolute discretion. If such approval is granted, Licensee shall be solely responsible for decommissioning and removing all such wells and test pits in accordance with the Massachusetts Department of Environmental Protection (DEP) guidelines. Following the completion of Licensee's geotechnical and environmental site investigations, the Licensee shall remove all materials, groundwater monitoring wells, equipment and machinery and other items brought on to the Licensed Premises by the Licensee and shall restore the Licensed Premises to substantially the

same condition it was in prior to the exercise by the Licensee of the rights granted hereunder. In the event the Licensee in writing waives any right to terminate the LDA and unconditionally confirms that it will close on the purchase of the Licensed Premises in its as is condition and in accordance with the LDA, the Licensor may in writing waive the Licensee's obligation to restore the Licensed Premises and remove the groundwater monitoring wells. Otherwise, the Licensor shall deduct from any funds of the Licensee held on deposit by the Licensor in connection with this Agreement, the RFP or the LDA any amounts expended by the Licensor to restore the Licensed Premises, including without limitation, to decommission and remove any groundwater wells installed by the Licensee on the Licensed Premises. The Licensee shall coordinate any removal and/or relocation of existing groundwater monitoring wells with the Licensor.

2.5 Licensee shall provide to Licensor copies of all reports and plans generated as a result of Licensee's work under the Work Plan, including without limitation all geotechnical and environmental site investigations by the Licensee, within ten (10) days of completion; provided, however, that if any such work or investigations discovers any imminent hazard, Licensee shall immediately notify Licensor thereof. Licensee shall not report any release or threat of release of oil or hazardous materials reflected in such reports or plans, or otherwise identified during any Licensed Activities under this Agreement, to any government agency unless Licensee reasonably determines that it has a legal obligation to report such any release or threat of release of oil or hazardous materials to a government agency and Licensee has first notified the Licensor of the release or threat of release of oil or hazardous materials prior to making such report.

2.6 All materials resulting from any Licensed Activities under this Agreement, including without limitation (if Licensor grants Licensee permission to perform subsurface investigations or invasive testing of the Licensed Premises) all samples and any materials that may contain oil or hazardous materials that result from any Licensed Activities at the Licensed Premises shall become the property and responsibility of the Licensee, and shall be properly managed, transported and disposed of. At no time will Licensor assume or retain any responsibility or liability for the disposal of such materials and the removal of such materials from the Licensed Premises will remain the sole obligation of the Licensee, except to the extent that any liability arising out of the disposal or removal of such materials is the result of the gross negligence, willful misconduct or breach of contract of the Licensor or its agents.

III. Insurance and Indemnification.

3.1 Licensee shall carry and shall cause any contractor, consultant or agent engaged by it to perform the Licensed Activities at the Licensed Premises to maintain, at no cost to the Licensor, insurance in amounts as set forth below and with companies licensed to do business in the Commonwealth of Massachusetts, having an A.M. Best Company rating of "A-,VII" or better and otherwise satisfactory to Licensor at Licensee's or such contractor's, consultant's or agent's own cost and expense as the case may be, to protect against claims under any Worker's Compensation Act; against claims for damages because of bodily injury including sickness, disease or death; against claims for damages because of injury to or destruction of tangible property; against claims for damages because of personal injury, economic loss or other covered conditions; and against claims arising out of the performance of professional services caused by errors, omissions or negligent acts for which Licensee or any such contractor, consultant or agent engaged may be legally liable.

- (a) Commercial general liability, including coverage for bodily injury, personal injury, property damages and completed operations coverage in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- (b) Automobile liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1,000,000 per occurrence combined single limit;
- (c) Workers' compensation for all its employees, as required by statute, with employers' liability of \$500,000.00 or more including \$100,000 accident and \$100,000 disease;
- (d) Umbrella Liability having limits of \$5,000,000 per occurrence and \$5,000,000 aggregate; and
- (e) Professional liability coverage of at least \$1,000,000 per claim for any Licensed Site Professional, Professional Engineer, and other professional performing professional services as part of the Licensed Activities.

Prior to exercising any rights hereunder or entering the Licensed Premises, the Licensee shall furnish the Licensor with certificates of insurance showing that Licensee has complied with this Section, which certificates shall name Licensor as Additional Insured for the insurance required under (a), (b), and (d), above, and all such policies shall contain a provision providing that written notification of cancellation of the insurance policies required hereunder shall be given to Licensor and Licensee thirty (30) days prior to such cancellation.

3.2 To the fullest extent permitted by law, the Licensee shall defend, indemnify and hold the Licensor, its agents, subcontractors, boards, officials, and employees harmless from and against any and all claims, defense costs, including attorneys' fees, damages and other liabilities, including, but not limited to, bodily injury, damage to property and personal injury, arising out of or relating to acts or omissions of the Licensee or its agents, employees or contractors in performing the Licensed Activities or any other inspections, tests or other work in, on or about the Licensed Premises.

3.3 The Licensee shall be responsible for any releases of oil or hazardous materials caused by the Licensee or its agents, employees, consultants or contractors, and the Licensee will be responsible for environmental conditions Licensee or its agents, employees, consultants or contractors create at the Licensed Premises while acting pursuant to this Agreement, including without limitation the exacerbation of any existing environmental conditions at the Licensed Premises.

3.4 The Licensor may rely upon, use or disseminate any information, test results or reports generated or provided by the Licensee or its agents, employees, consultants or contractors pursuant to the work contemplated herein without the prior written consent of the Licensee.

IV. Conduct.

4.1 During the exercise of rights hereby granted, the Licensee shall at all times take, and shall cause its agents, employees, consultants and contractors at all times to take, reasonable

steps to conduct itself and themselves so as not to cause waste or damage to the Licensed Premises, and the Licensee and its agents, contractors and assigns shall not in any way interfere with operations of the Licensor. The Licensee shall observe and obey all applicable federal, state, and local laws, statutes, ordinances, rules and regulations in the conduct of its activities hereunder, and shall observe and comply with all licensing requirements provided by the Licensor, or as may be contained in the Work Plan. The Licensee shall notify the Licensor immediately upon the violation of any such law, statute, ordinance, regulation, or requirement, upon the release or threatened release of any oil or hazardous material as said terms are defined in Chapter 21 E of the Massachusetts General Laws or the Massachusetts Contingency Plan promulgated pursuant thereto.

4.2 Unless otherwise provided in the Work Plan, the Licensee shall submit to the Licensor for the Licensor's approval a schedule of activities to be conducted under this Agreement prior to the exercise of Licensee's rights hereunder.

4.3 All notices required or permitted to be given hereunder shall be in writing and delivered by hand, by recognized national overnight courier service, or mailed postage prepaid, by registered or certified mail, addressed as follows:

If to Licensee: [_____]

with a copy to: [_____]

If to Licensor: Town of Wayland
c/o Town Administrator
Wayland Town Building
41 Cochituate Road
Wayland, MA 01778

with a copy to: Stephen D. Anderson
Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141

and Mark. J. Lanza
Town Counsel
41 Cochituate Road
Wayland, MA 01778

or in the case of either party to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or one (1) day after when deposited with a nationally recognized overnight courier service or three days after deposit with the U.S. Postal Service, except that where under this Agreement any time period is specified to commence from notice, such time period shall not be deemed to commence until, according to applicable records of the courier service or U.S. Postal Service, delivery of such notice was first attempted. Notices which are given by either party may be given by the attorney for such party without the signature of such party.

V. Miscellaneous.

5.1 All provisions of this Agreement assigning obligations and allocating responsibility or liability between the Licensee and the Licensor shall survive the completion of the work set forth in the Work Plan and the expiration of this Agreement.

5.2 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

5.3 This Agreement represents the entire and integrated agreement between the Licensor and the Licensee and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to the subject matter hereof.

5.4 If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of this Agreement shall remain enforceable to the fullest extent permitted by law.

5.5 Any modification or amendment to this Agreement shall be in writing and duly executed by both parties hereto to be effective.

5.6 In the event that either party materially breaches this Agreement, the non-breaching party shall have the right to unilaterally terminate the Agreement by serving a written notice of termination upon the breaching party via certified mail.

5.7 The Licensee will not place any liens or permit any liens to be placed upon the Licensed Premises related to the work contemplated herein and shall immediately discharge any such liens.

[SIGNATURE PAGE FOLLOWS]

EXECUTED under seal as of the date first written above.

LICENSOR:

TOWN OF WAYLAND

By: _____

Name:

Title:

LICENSEE:

[_____]

By: _____

Name:

Title:

Attachment A

Licensed Premises

A certain parcel of land consisting of approximately 8.24 acres, commonly known as 484-490 Boston Post Road, Wayland, Middlesex County, Massachusetts, shown as “Lot A”, “Lot C”, and “Lot E” on that certain plan entitled “ANR Subdivision Plan Assessors Map 22, Lot 3, Lot 6 & Lot 7 Boston Post Road Wayland, Massachusetts” prepared by WSP Transportation & Infrastructure, dated June 1, 2015.

Attachment B

Work Plan

(Attach Work Plan if finalized at time of execution of Agreement)