

PARKING AND EASEMENT AGREEMENT

THIS PARKING AND EASEMENT AGREEMENT (“**Agreement**”) is made this ____ day of _____, 2014, between the Town of Vienna (the “Town”), a municipal corporation located in Fairfax County, Virginia, and the Northern Virginia Regional Park Authority, a body corporate and politic (the “Authority”). The Town and the Authority collectively are referred to as the “Parties” or individually as a “Party”.

RECITIALS:

R1. The Authority owns certain real property extending from Arlington County to Purcellville, Virginia, on which the Authority operates and maintains a park, including trails and related facilities, for the public’s use and enjoyment, also known as the W&OD Railroad Regional Park (the “**Trail**”).

R2. The Trail passes through the Town.

R3. Near the intersection of Dominion Road NE and Ayr Hill Avenue NE, and next to the historic Vienna train station, the Authority operates on the Trail a parking lot (the “**Station Parking Lot**”) containing 23 parking spaces. Currently, use of the Station Parking Lot is restricted to users of the Trail and visitors to the train station.

R4. The Town desires the Authority to increase the number of parking spaces at the Station Parking Lot and to allow all of the parking spaces in the Station Parking Lot, as expanded, to be available for public parking, in return for granting to the Authority a conservation easement (“**Easement**”) over certain real property owned by the Town that is adjacent to another part of the Trail.

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

1. Subject to the conditions set forth in this Agreement, the Authority agrees to design and construct at its cost approximately 16 additional parking spaces (the “**Additional Parking Spaces**”) at the east side of the Station Parking Lot, as more particularly shown on **Exhibit A**.
2. The Authority shall work in good faith to complete in a timely manner the following:
 - a. The design of the Additional Parking Spaces;
 - b. Submission of all necessary construction permit applications;
 - c. Submission and obtaining of construction bids; and
 - d. Construction of the Additional Parking Spaces, unless the Authority elects to terminate this Agreement due to excessive costs as provided in Paragraph 3.

3. In the event the total cost to design, permit and construct the Additional Parking Spaces exceeds \$35,000.00, the Authority may in its sole discretion elect to terminate the Agreement by written notice to the Town.
4. Upon receipt of construction bids acceptable to the Authority, the Authority will notify the Town of its intent to move forward with the construction. Within fourteen (14) days of such notice, the Parties shall execute and record in the land records of Fairfax County the Easement attached hereto as **Exhibit B**.
5. The Easement shall remain on the subject property for as long as the Station Parking Lot, as expanded (“the **Expanded Station Parking Lot**”), is made available to the general public. For ten (10) years from the date of this Agreement, the Easement shall be terminable by the Town, but only if the Authority elects to change the use of the Expanded Station Parking Lot, as provided in Paragraph 10. However, after ten (10) years of use of the Expanded Station Parking Lot by the public without any fees having been paid to the Authority, in consideration of such use the Easement shall become irrevocable. The Easement shall contain a prohibition against the Town subdividing or selling the land subject to the Easement.
6. The Expanded Station Parking Lot shall be managed the Authority and the Parties agree to evenly split the maintenance costs for the entire parking lot. Within thirty (30) days of receipt of an invoice from the Authority for maintenance costs, the Town shall reimburse the Authority for 50% of such costs.
7. Once the Additional Parking Spaces are constructed, the Authority agrees to allow the Expanded Station Parking Lot to be used by the general public for parking, subject to the restrictions set forth in Paragraph 8. This public use is revocable by the Authority as provided in Paragraph 10. The Town shall not pay any fees to the Authority for the public’s use of the Expanded Station Parking Lot.
8. The Expanded Station Parking Lot shall be open to the public every day but the parking shall be restricted only to Trail users on Weekends and holidays from 7:00 a.m. to 1:00 p.m. The Authority may install appropriate signage indicating these restrictions and may enforce the restrictions as it deems appropriate.
9. The Authority shall have the right to (1) terminate this entire Agreement, or (2) reduce the limits of the Expanded Station Parking Lot if the Authority determines that such property is needed for another use. In no event shall the Authority give less than 180 days notice to the Town of its intent to terminate this Agreement or reduce the area of the Expanded Station Parking Lot.
10. Prior to use by the Public of the Expanded Station Parking Lot the Town shall obtain and maintain thereafter, a policy of general liability insurance in the amount of two million and 00/100 Dollars (\$2,000,000.00) from a reputable insurance company naming the Authority as an additional insured. The general liability insurance shall insure and protect the Town, as a named insured, from any and all liability and damages arising

from the public's use of the Expanded Station Parking Lot. A copy of the general liability insurance policy shall be supplied to the Authority prior to the public's use of the Expanded Station Parking Lot, and written evidence confirming the continued existence of such insurance shall be supplied to Authority annually thereafter.

11. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given at the time of personal deliver, the first business day after deposit with an overnight delivery service or as of the date of first attempted delivery if sent by registered or certified mail. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the Commonwealth of Virginia. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

To AUTHORITY:

Northern Virginia Regional Park Authority
5400 Ox Road
Fairfax Station, Virginia 22039
Attention: Director of Planning and Development

To TOWN:

12. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any suit, action or proceeding arising out of or relating to this Agreement shall be instituted and maintained only in the Circuit Court of Fairfax County, Virginia, or the United States District Court for the Eastern District of Virginia, Alexandria Division
13. All of the terms, provisions, conditions, agreements and covenants contained in this Agreement shall survive the expiration or termination of this Agreement with respect to all rights and remedies that have accrued prior to or that accrue on the expiration or termination of this Agreement.
14. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes.

15. Whenever a period of time is herein prescribed for action to be taken by a Party, that Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of the Party.
16. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, discussions, statements and agreements. No modification or amendment to this Agreement shall be binding on either Party hereto unless such modification or amendment shall be properly authorized in writing and signed by both Parties.

WITNESS the following signatures and seals:

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

TOWN OF VIENNA

By: _____

Name: _____

Title: _____

Date: _____