



## TOWN OF WAITSFIELD

### CONSTRUCTION STAGING AREA LICENSE AGREEMENT

**THIS CONSTRUCTION STAGING AREA LICENSE AGREEMENT ["License"] is entered into by and between the Town of Waitsfield, Vermont ["Licensor"] and Kubricky Construction, a D.A. Collins Company ["Licensee"].**

WHEREAS, Licensor is the owner of a 12.2 acre property ["property"], parcel number 99205.000, locally known as "the Munn site," located off of Vermont Route 100 south and Kingsbury Road (Town Highway 30); and

WHEREAS, the property is currently unoccupied and has most recently been used for agriculture; and

WHEREAS, the property is adjoined by residential and commercial neighbors to the south, east, and north and the Mad River to the west; and

WHEREAS, the Licensee has been hired by the Vermont Agency of Transportation as the contractor for the Warren-Waitsfield STP 2506(1) Route 100 reconstruction project ["project"]; and

WHEREAS, the property is conveniently located in the project area; and

WHEREAS, the Licensor has agreed to allow Licensee temporary use of said property for a construction staging area pursuant to the terms and conditions set forth in this License Agreement.

NOW, THEREFORE, the Licensor and Licensee agree as follows:

1. **LICENSE.** Licensor hereby grants to Licensee a temporary and non-exclusive license to use approximately four acres (4 ac) of said property, legally described on Exhibit A, which is attached to and made a part of this Agreement, for the purpose of a construction staging area associated with the Warren-Waitsfield STP 2506(1) Route 100 reconstruction project. The rights of the Licensee under this License shall include a nonexclusive right of Licensee over and across the staging area for storage and operation of construction equipment and supplies and for ingress and egress. The Licensee shall cooperate with the Licensor in determining the layout and exact use of the staging area and in protecting the Licensor's use for agriculture after this license has terminated.

2. **TERM.** The term of this License shall begin on May 1, 2013 and may continue for so long as the staging area is necessary for the project. Either the Licensor or the Licensee may terminate this License at any time upon fifteen (15) days written notice to the other party. If this License is terminated pursuant to this provision, the Licensee shall remove all equipment, fencing, materials and so forth from the staging area and return the site to its original or better condition within 10 business days after termination

3. **FEE.** A fee of \$500 per month shall be paid by the Licensee to the Licensor at the beginning of each month.

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4. **USE.** The rights of the Licensee hereunder shall be to temporarily use the designated area of the staging area for necessary construction related purposes, such as a construction trailer, construction equipment, a materials trailer, building materials and other related uses, including fencing and access. Licensee shall not permit any waste or damage to be done to the staging area and shall maintain the staging area and keep the said area in good condition and repair and free of any litter, construction debris or any other waste and not allow any such litter or debris to blow away from the site. No materials, equipment or anything else not intended and used for the construction project shall be stored at this site.

5. **INDEMNIFICATION.** Licensee shall indemnify, defend, protect, and hold harmless the Licensor, and its officers, agents, and employees from and against any and all liens and encumbrances of any nature whatsoever which may arise in the exercise of Licensee's rights hereunder, and from all claims, causes of action, liabilities, costs and expenses (including all reasonable attorney's and in-house counsel fees), losses or damages arising from Licensee's use of the staging area, any breach of this License, or any act or failure to act of Licensee or Licensee's agents, employees, construction workers, or invitees, except those arising out of the sole negligence or willful misconduct of the Licensor, its officers, agents and employees.

6. **RISK OF DAMAGE OR LOSS.** Licensee, as a material part of the consideration to Licensor, hereby assumes all risk of damage to its property or injury to all persons and personal property in or upon the staging area. Licensee hereby releases and relieves Licensor, and waives its entire right of recovery against Licensor, for any loss or damage arising out of or incident to the Licensee's use of the staging area.

7. **HAZARDOUS MATERIALS.** Licensee shall not use, generate, manufacture, store, or transport or dispose of, on or over the staging area, any flammable liquids, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or any other "hazardous materials" as that term may be defined under federal or state laws, except for the hazardous materials which may be in the vehicles that Licensee will park or store on the staging area. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the staging area as a result of Licensee's use and occupancy thereof, Licensee shall provide notice as required by law and Licensee, at its sole cost and expense, shall undertake all appropriate remediation on all the property affected, whether owned by Licensor or any third party, to the satisfaction of the Licensor and any governmental body have jurisdiction thereof. Licensee must also notify Licensor as required by law of any release of hazardous materials that have come or will come to be located on or beneath the staging area.

8. **DISTURBANCES.** Licensee shall take reasonable care to minimize disturbances to the nearby residential and commercial establishments, whether from noise, dust, odors, or other emissions.

9. **RESTORATION.** Licensee shall maintain the staging area in its current condition and will restore the staging area to its pre-construction condition. Any damage to the roadway used to access the staging area must also be repaired. All repairs must be completed ten [10] days after completion of the term outlined in paragraph 2 above.

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10. **LIENS, TAXES AND ASSESSMENTS.** Licensee shall keep the staging area free from all liens, taxes and assessments resulting from or caused by the Licensee's use of the staging area, and shall operate the staging area in full compliance with all federal, state and municipal laws, ordinances and regulations governing the use and occupancy of the staging area.

11. **FENCING AND SIGNAGE.** Licensee may erect fencing and post signage at the entry to the staging area indicating that the use of the staging area is restricted to the Licensee during the term of this Agreement.

12. **SURRENDER.** Upon the termination of this license, all rights, use and interest of the Licensee in and to this License shall be surrendered peaceably to the Licensor and the Licensee shall remove all property from the staging area and restore the staging area and, if needed, any adjoining property, to its former condition or better.

13. **INSURANCE.** Licensee shall maintain in full force and effect during the term of this License, at Licensee's sole cost and expense, a policy of comprehensive general liability insurance in terms and amounts satisfactory to the Licensor.

14. **DEFAULT.** In the event of a breach by Licensee of any of the terms of this License, all rights of Licensee hereunder shall cease and terminate, and in addition to all other rights Licensor may have at law or in equity, Licensor may re-enter the staging area and take possession thereof without notice and may remove any and all persons and property therefrom, and may also cancel and terminate this License; upon any such cancellation, all rights of Licensee in and to the staging area shall cease and terminate.

15. **RULES AND REGULATIONS.** The Licensor shall have the right to establish and enforce reasonable rules and regulations concerning the management, use, and operation of the staging area, and compliance with said rules and regulations by the Licensee and his officers, agents and employees is expressly made a term of this License Agreement.

16. **ASSIGNMENT AND SUBLETTING.** This License is personal to the Licensee and Licensee agrees not to sublease, assign, sell, transfer, encumber, pledge or otherwise hypothecate any part of the License or Licensee's interest in the staging area to any other person or entity without the prior written consent of the Licensor, which consent may be withheld in the Licensor's sole and absolute discretion. Any purported assignment or sublease by Licensee of this License shall be void *ab initio* and a basis for immediate termination of this License. In the event that the Licensor shall provide such prior written consent to an assignment or sublease by Licensee, any such assignment or sublease shall not relieve Licensee of its obligations under this License.

17. **ATTORNEY'S FEES.** If any party named herein brings an action to enforce the terms hereof or to declare its rights hereunder, the prevailing party in any such action, on trial and appeal, shall be entitled to recover its costs and reasonable attorney's fees, including those of in-house counsel.

18. **NOTICES.** All notices, consents, requests, demands, approvals, waivers, and other communications desired or required to be given hereunder shall be in writing and signed by the

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party so giving notice, and shall, with respect to the Licensor, be delivered, received, and time stamped in the office of the Town of Waitsfield, Attn: Valerie Capels, Town Administrator, 9 Bridge Street, Waitsfield, VT 05673. With respect to the Licensee, the notices shall be given to: Kubricky Construction, Attn: Eric Baker, Superintendent, 269 Ballard Road, Wilton, NY 12831. Either party may, from time to time, change the designated party and address for its notices in the manner outlined above.

19. GOVERNING LAW. This License Agreement shall be interpreted, enforced and governed by the laws of the State of Kansas.

20. AMENDMENTS. No provision of this License Agreement may be amended or modified except by an agreement in writing executed by both parties hereto.

21. SEVERABILITY. In the event that one or more of the provisions contained in this License shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the remainder of the provisions of this License shall continue in full force and effect without impairment.

22. SOLE AGREEMENT. This License constitutes the sole agreement between the Licensor and the Licensee with respect to the staging area.

IN WITNESS WHEREOF, each of the parties has caused its authorized representative to execute triplicate original counterparts of this License this 29<sup>th</sup> day of April, 2013.

Licensor: \_\_\_\_\_  
Valerie Capels,  
Town Administrator  
Town of Waitsfield, Vermont

Licensee: \_\_\_\_\_  
Eric Baker  
Superintendent  
Kubricky Construction, a D.A. Collins Company

Attest: \_\_\_\_\_  
Janet Smith  
Assistant Town Clerk