

MAINTENANCE AGREEMENT FOR THE COCHITUATE RAIL TRAIL BY AND BETWEEN THE CITY OF FRAMINGHAM AND THE TOWN OF NATICK

This Maintenance Agreement for the Cochituate Rail Trails by and between the City of Framingham and the Town of Natick (“Agreement”) is made as of this ____ day of January 2021 by and between the **City of Framingham**, a political subdivision of the Commonwealth in the County of Middlesex, with its main office in the Memorial Hall, 150 Concord Street, Framingham, Massachusetts 01702 (hereinafter referred to as “Framingham”) and the **Town of Natick**, a political subdivision of the Commonwealth in the County of Middlesex, with its main office at 13 E. Central Street, Natick, MA 01760 (hereinafter referred to as “Natick”)(collectively, Framingham and Natick are referred to as “the Parties”).

I. RECITALS

- A. WHEREAS**, M.G.L. c. 40, § 4A provides in relevant part that “[t]he chief executive officer of a city or town, or a board, committee or officer authorized by law to execute a contract in the name of a governmental unit may, on behalf of the unit, enter into an agreement with another governmental unit to perform jointly or for that unit's services, activities or undertakings which any of the contracting units is authorized by law to perform, if the agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, in a town by the board of selectmen . . . ; and
- B. WHEREAS** Framingham is authorized to enter into an agreement to jointly perform services, activities, or undertakings which any of the contracting units is authorized by law to perform by M.G.L. c.40, § 4A; and
- C. WHEREAS** Natick is authorized to enter into an agreement to jointly perform services, activities, or undertakings which any of the contracting units is authorized by law to perform by M.G.L. c.40, § 4A pursuant to the vote of the Board of Selectmen dated _____; and
- D. WHEREAS** the Cochituate Rail Trail (“CRT”) is a multi-use path located in Framingham and Natick which is an important municipal amenity lying partly in Framingham and partly in Natick; and
- E. WHEREAS** the Massachusetts Department of Transportation is constructing a bridge over and bridge over Route 30, also known as Cochituate Road to link the CRT in Framingham and Natick and
- F. WHEREAS** Framingham and Natick desire to enter into the Agreement to maintain so much of the CRT and bridge as lies within the limits of their respective municipalities for the benefit of the public;

NOW, THEREFORE, in consideration of the mutual promises contained herein, Framingham and Natick agree to the following terms, provisions, and conditions:

II. AGREEMENT

1. **Effective Date and Term.** This Agreement shall become effective when fully executed by Framingham and Natick and shall endure for a period of three years from the date of full execution of this agreement unless sooner terminated.
2. **Responsibility of Maintenance and Repair:**
 - a. **Routine Maintenance:** The Parties mutually agree that each of them shall be solely responsible for routine maintenance of so much of the CRT and bridge as lies within their respective boundaries. For ease of reference, a copy of the construction plan showing the municipal boundary is attached hereto as **Figure 1**. The Parties mutually agree that each of them shall:
 - i. periodically monitor the condition of the pavement and markings, curb cuts and aprons, lighting, signals, signage, grading, fencing, plantings, benches, and waste receptacles along the CRT (“path features”);
 - ii. promptly repair and replace defaced or damaged path features;
 - iii. regularly empty waste receptacles; and
 - iv. prohibit motorized vehicles such as motorcycles other than as used by public safety officials (including but not limited to Police, Fire and Emergency Medical Team and Public Works officials), dirt bikes or mopeds. This provision shall not be interpreted to prohibit the use of mobility assistive devices such as wheelchairs or scooters.
 - The Parties mutually agree, however, that while each of them may remove snow and ice from the CRT and bridge, nothing in this Agreement requires that the Parties, or either of them, do so.**
 - b. **Repair:** The Parties mutually agree that the costs for any capital repairs to, or replacement of, the bridge structure, surface and railings shall be shared equally by the Towns of Natick and Framingham. If repairs to, or replacement of, the bridge structure, surface and railings cannot be undertaken by Natick’s or Framingham’s on-call contractors, then Natick and Framingham shall issue a joint invitation for bids and shall include an agreement as to cost-sharing as an addendum to this Agreement.
3. **Cooperation.** Framingham and Natick agree to use good faith efforts to cooperate in the care and maintenance of the CRT.
4. **Default and Cure.** If either party fails to cure any breach of, or default of its obligations under this Agreement within ninety (90) days after receipt of written notice from the other party (provided, however, that such 90-day period shall be reasonably extended if curing the breach or default reasonably requires more than ninety (90) days and the breaching party has commenced to cure the same promptly within said 90-day period and thereafter continuously

and diligently prosecutes such cure to completion), then the non-breaching party, at its sole option, may cure such breach or default for the account of the breaching party (without waiving any right or remedy for breaching party's breach or default and without liability to the non-breaching party for any interference with, or interruption of, the breaching party's use of the CRT, and the breaching party shall reimburse the non-breaching party for all costs, expenses and liabilities incurred by the non-breaching party to cure such breach or default, subject to appropriation.

5. **Liability.** Each party hereto shall be liable and responsible for the negligent acts or intentional acts of its employees, agents, and contractors.
6. **Remedies.** Framingham and Natick hereby expressly acknowledge and all rights and remedies that each of them may have at law, in equity, or by contract with respect to this Agreement. All rights and remedies given in this Agreement are cumulative and not exclusive of any other rights or remedies which Framingham and Natick otherwise have and both Framingham and Natick reserve the right to enforce such rights to the full extent permissible by law.
7. **Available Funds.** Framingham and Natick's CRT and bridge maintenance obligations pursuant to this Agreement is limited to the extent that funds are appropriated for the work
8. **Additional Funding Sources.** This Agreement shall not preclude Framingham or Natick from applying for other funding from the Commonwealth of Massachusetts, or any other sources. The above payment process may be amended or modified upon the written agreement of both Parties.
9. **Termination.** Either party may terminate this Agreement if the other breaches any material term or condition or fails to perform or fulfill any material obligation required by this Agreement, provided that written notice is provided to the other party and an opportunity to cure any such breach is given pursuant to the provisions of Section 4 herein. Neither party shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their reasonable control and without their fault or negligence.
10. **Notice and Change of Circumstances.** Each party shall promptly notify the other of any legal impediment, change of circumstances, including but not limited to changes in funding availability, insurance requirements, city or town approvals, or any other event or condition, which may adversely affect each Party's ability to carry out any of its obligations under this Agreement. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement to be made, given, furnished to, or filed with one party by another party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows:

City of Framingham	Town of Natick
Simon M. Alexandrovich, P.E. Director of Transportation Engineering Framingham Department of Public Works 100 Western Avenue Framingham, MA 01702 Tel: (508)532-6028 Email: sma@framinghamma.gov	James Freas, AICP Director, Community & Economic Development Town of Natick 13 E. Central Street, Natick, MA 01760 Tel: 508-647-6450 Email: jfreas@natickma.org

with a copy to:

Framingham City Solicitor	Natick Town Counsel
Petrini & Associates, P.C. 372 Union Avenue Framingham, MA 01702 Attn.: Amanda Zuretti, Esq. Tel: (508) 665-4310 Email: azuretti@petrinilaw.com	Karis L. North, Esq. Murphy, Hesse, Toomey & Lehan LLP 300 Crown Colony Drive, # 410 Quincy, MA 02169 Tel: 617-691-1948 Email: knorth@mhtl.com

13. **Jurisdiction.** This Agreement is to be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.
14. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.
15. **Assurances.** The Parties hereto each agree to execute, acknowledge, and deliver such further assurances and amendments hereto as may from time to time be reasonably requested by the other party to better assure the rights and obligations herein created.
17. **Modification and Amendment.** This Agreement may be modified or amended only by written, mutual agreement of the parties.
18. **Entire Agreement.** This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations, and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

SIGNATURES ON FOLLOWING PAGES

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IN WITNESS HEREOF, the parties hereto have executed this Agreement on the day and year first above written.

City of Framingham

By: Dr. Yvonne M. Spicer, Mayor
Date:

Approved as to form:

By Christopher J. Petrini, City Solicitor
Date:

Town of Natick, by its Select Board Members:

Jonathan Freedman, Chair

Karen Adelman-Foster, Vice
Chair

Richard Jennett, Jr., Clerk

Susan G. Salamoff

Michael J. Hickey, Jr.

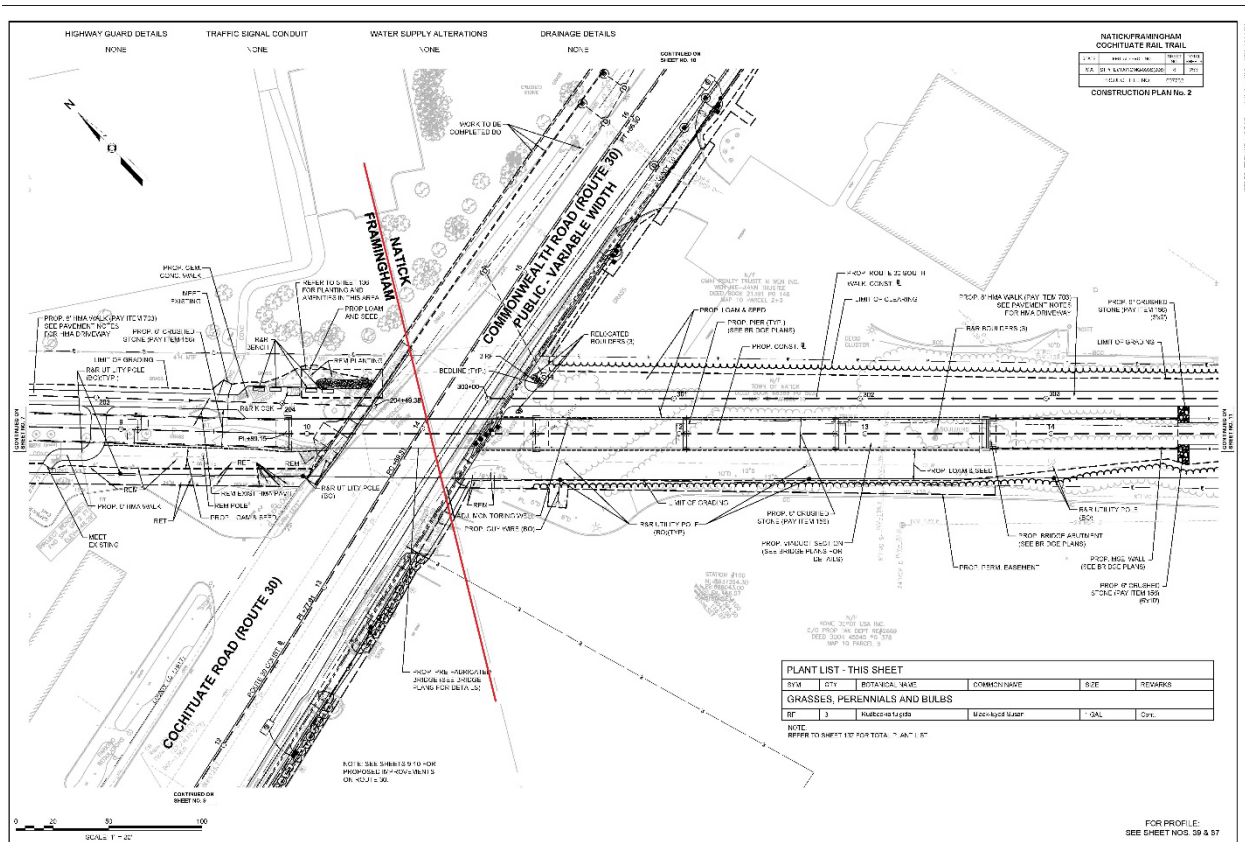
DATED:

Approved as to form:

By Karis L. North, Esq., Town Counsel
Date:

2021.01.08 PROPOSED FINAL CRT maintenance MOU (401-13)

FIGURE 1



2021.01.08 PROPOSED CRT maintenance MOU (401-13)