

**KENNEBEC RIVER RAIL TRAIL
INTERLOCAL AGREEMENT**

THIS INTERLOCAL AGREEMENT (the “Agreement”) is entered into by and among the City of Augusta, the City of Hallowell, the City of Gardiner, and the Town of Farmingdale, each a Maine municipal corporation (collectively, the “Parties”; individually, a “Party”).

RECITALS

WHEREAS, the Parties (i) entered into an Interlocal Agreement which was executed by the Parties on June 5, 1996 and which became effective June 7, 1996 (the “First Interlocal Agreement”), and (ii) amended the First Interlocal Agreement by an “Amended and Restated Kennebec River Rail Trail Interlocal Agreement” (the “Amended First Interlocal Agreement”) executed by the Parties on April 7, 1997, pursuant to which the Parties jointly agreed to construct and maintain a multi-use trail system (the “Kennebec River Rail Trail” or the “Trail”) through the Cities of Augusta, Hallowell, and Gardiner and the Town of Farmingdale and to operate the Trail jointly; and

WHEREAS, the Parties desire to continue, by virtue of this Agreement, their joint cooperation in the construction, maintenance, oversight and supervision of the Trail for an additional twenty (20) years after the expiration of the term of the First Interlocal Agreement; and

WHEREAS, the parties are authorized to enter into this Agreement pursuant to the Maine Interlocal Cooperation Act, 30-A M.R.S. §§ 2203-2207, as amended, and votes of their respective governing municipal bodies; and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the Parties agree as follows:

1. **Purposes**. The purposes of this Agreement shall be to provide for the construction, operation, maintenance, oversight, and supervision of the Trail.
2. **Term and Renewal**. The term of this Agreement shall be twenty (20) years and shall commence upon the date of filing of this Agreement with the Maine Secretary of State in accordance with Section 12. This Agreement may be renewed by written agreement signed by all Parties.
3. **Board of Supervisors – Creation, Membership, and Meetings**
 - a. **Creation**. The Parties hereby create and establish a board of supervisors (the “Board of Supervisors” or the “Board”) to have all of the powers and duties specified in this Agreement for the achievement of the purposes specified in Section 1.
 - b. **Membership**. The Board shall consist of up to ten (10) members as follows:

1. Two voting members from each Party. The municipal officers of each Party shall appoint that Party's two Board members. It is recommended, but not required, that one Board member from each Party be a municipal officer of the Party. Board members shall serve at the pleasure of their appointing municipality.

2. The Maine Department of Transportation ("MDOT") may be represented by one non-voting member appointed by its Commissioner.

3. The Friends of the Kennebec River Rail Trail, Inc. (the "Friends"), a Maine nonprofit corporation, may be represented by one non-voting member appointed by its Board of Directors.

c. Meetings.

1. The Board shall meet at least quarterly for the purpose of administering this Agreement. All meetings of the Board shall be governed by the provisions of the Maine Freedom of Access Act, 1 M.R.S. § 401 et seq., as amended.

2. A quorum for meetings of the Board shall consist of at least one representative from each Party.

3. Each Supervisor shall be entitled to one vote on any matter before the Board. There shall be no voting by proxies at any meeting of the Board. When a quorum is present, the vote of a majority of Supervisors present at a meeting shall be required to constitute an act of the Board unless the vote of a greater number is required by this Agreement or by statute.

d. Chairman. The Board shall establish a means of electing a Chairman and such other officers as the Board deems necessary.

4. Board of Supervisors – Powers. The Board shall have all of the powers and duties reasonably necessary to accomplish the following:

a. Develop and adopt rules and policies for the use of the Trail;

b. Construct, maintain, manage, and operate the Trail, including, as applicable, providing for or assisting in the construction and maintenance of the Trail;

c. Develop and propose an Annual Budget, as that term is defined in Subsection 6(a), that includes a request for municipal funding from the Parties and funding from other sources;

d. Update the municipal officers of the Parties from time to time on the status of the Trail;

e. Invoice each Party annually for its portion of the approved Annual Budget;

- f. Authorize expenditures for maintenance and improvement of the Trail that are consistent with the Annual Budget;
- g. Negotiate and enter into contracts to fulfill the purposes of this Agreement;
- h. Coordinate with other like organizations regarding the Trail, including its use and maintenance; and
- i. Carry out any other responsibilities reasonably necessary to fulfill the purposes of this Agreement.

5. Project Administration. The City of Augusta shall, in its name, execute all necessary agreements with state and federal agencies, any municipalities other than the Parties, or other interlocal cooperating agencies, relating to activities governed by this Agreement and shall act as administrator for the purpose of carrying out the requirements of such agreements. The City of Augusta, consistent with written directions from the Board, shall be responsible for the receipt and expenditure of all funds from whatever source, and all financial records, audits, and other transactions related to the purposes of this Agreement. Service and property provided by the City of Augusta in fulfilling its obligations under this Section shall be considered an in-kind contribution by the City of Augusta.

6. Municipal Finance and Approval.

- a. The annual amount required for costs of operation and maintenance of the Trail shall be established in an annual budget prepared by the Board and approved by the municipal officers of each of the Parties (the “Annual Budget”). The Board shall present a proposed Annual Budget to each Party’s municipal officers each March for the fiscal year beginning in July of that year.
- b. Each Party shall contribute an equal portion of the Annual Budget.
- c. Except as to monies given by the Friends to the Board or donated by other entities or individuals to the Board, the Board shall not expend any monies for annual maintenance costs that have not been appropriated in an Annual Budget approved by the municipal officers of each of the Parties.

7. Property.

- a. Ownership. All real property and improvements to real property, including easements acquired or developed pursuant to this Agreement, shall be at all times owned or held, as applicable, by the municipality in which the property and improvements are located.
- b. Dedication to Trail. Each Party agrees and covenants that any land owned by the Party, or in which the Party has any interest, that is used for the Trail shall be dedicated in perpetuity for use for the Trail so long as the Trail shall continue to exist.

8. License Agreement. The City of Augusta is authorized to enter into a license agreement between MDOT and the Parties that addresses the use, for purposes of the Trail, of public land held by the State of Maine by and through MDOT (the “License Agreement”). The parties acknowledge and agree that such public land held by the State of Maine consists primarily of a portion of the right-of-way commonly known as the “Lower Road Rail Line” lying within the general boundaries of the Trail. The Parties agree that the fees for such License Agreement shall not exceed One Dollar (\$1.00) per year and shall otherwise be consistent with the License Agreement.

9. Indemnification. Each Party shall indemnify and hold harmless each other Party and/or MDOT for all claims, suits, or liabilities of every kind or nature arising out of or from any negligent or intentional wrongdoing, act, or omission by a Party or any of its agents, employees, consultants, or contractors relating to the duties and obligations of the Parties under this Agreement.

10. Liability Limited. The Parties agree that, unless otherwise expressly provided by the Parties herein, all obligations of the Parties under this Agreement and under the License Agreement are joint and collective obligations, and no Party shall be liable for more than its pro rata share (i.e., one-fourth of the total liability) with respect to such obligations.

11. Termination. This Agreement (i) may be terminated only by written agreement signed by all Parties, but (ii) may not be terminated without the written approval of the Commissioner of MDOT or his/her designee.

12. Filing of Agreement. When all Parties have signed this Agreement, the Parties shall arrange for copies of the fully executed Agreement to be filed with the Clerk of each Party and with the Maine Secretary of State.

13. No Third Party Rights. This Agreement is entered into for the benefit of the Parties hereto, and nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the Parties hereto, except as may be expressly set forth herein.

14. Amendment.

a. Subject to Subsection (b), the Board may propose at any time, by a majority vote of all Board members present, one or more amendments to this Agreement.

b. This Agreement may be amended at any time by mutual agreement of the Parties, provided that, for any amendment to be operative or valid, it shall be reduced to writing, approved by the appropriate governing municipal authority of each Party (e.g., by the municipal officers or, where required, by the town meeting of the municipality).

15. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any and all previous agreements among

the Parties with respect to such subject matter, whether written or oral. The Parties represent and agree that no oral communications made prior to the execution of this Agreement shall in any way add to, delete from, change, or modify the terms of this Agreement or their interpretation.

16. Certification and Signatures. Each Party certifies that (i) it has approved this Agreement and all of its terms and that no further approvals of this Agreement are required, and (ii) its duly-elected undersigned official is authorized to sign this Agreement. The Parties acknowledge and agree that, for the convenience of the Parties in obtaining timely execution of this Agreement, this Agreement contains four (4) separate signature pages, that the signatory(ies) for each Party may sign, any one of the four (4) signature pages, and, when the signatories for all Parties have signed the signature pages, the Parties shall attach all signature pages to the Agreement to form the complete Agreement. This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute a single instrument.

[The remainder of this page is left blank intentionally. The next four (4) pages are the signature pages.]

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement as of the dates specified below.

Date: _____

CITY OF AUGUSTA

By: _____

William Bridgeo

Its: City Manager

Date: _____

CITY OF HALLOWELL

By: _____

Maureen AuCoin

Its: Interim City Manager

Date: _____

CITY OF GARDINER

By: _____

Scott Morelli

Its: City Manager

Date: _____

TOWN OF FARMINGDALE

By: Its Board of Selectmen:

James Grant

Nancy Frost

Wayne Kilgore

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