

## RIGHT OF ENTRY AND LICENSE AGREEMENT

DATED: February 25, 2020

(the "Effective Date")

BETWEEN: CITY OF NEWPORT, OREGON

("City")

AND: NEWPORT TRAIL STEWARDS

("Licensee")

### Recitals:

- A. City owns the real property described in the attached Exhibit A (the "Property"). The Property is located approximately 1.5 miles East of Big Creek Park. Licensee desires to develop, construct, preserve and maintain recreational trails for the purposes of bicycling and non-motorized uses on the Property. The Property subject to this Agreement is located entirely within Tax Lot 100, Section 34, T.10 South, R.11 West (approximately 150 acres).
- B. Licensee is an Oregon not for profit corporation. Licensee desires to obtain from City a license to enter the Property to develop, construct, preserve, and maintain recreational trails for diverse user groups, including bicycling and other non-motorized uses, on the Property subject to and in accordance with the terms and conditions of this Right of Entry and License Agreement (this "Agreement").

### Agreements:

In consideration of the foregoing and the mutual covenants of the parties contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Right of Entry and License. Subject to the terms of this Agreement, City grants Licensee reasonable and non-exclusive access to the Property for the purpose of undertaking the development, construction, preservation and maintenance of recreational trails (the "Work"). All of the Work shall be undertaken and completed at Licensee's sole cost and expense, without liens upon the Property and fully in conformance with all applicable statutes, laws, ordinances, rules, regulations, and government requirements. The parties intend that the Work constitutes making use of the Property for "recreational purposes" without "charge" as those terms are defined in ORS 105.672. The parties acknowledge that this Agreement and the Work, may be impacted by anticipated construction of one or more new dams for the Big Creek Reservoir, and the parties further acknowledge such construction may displace or destroy part or all of the Work. Work reconstruction or rehabilitation that may be

necessary due to the location and construction of the dams are the sole obligation, and at the sole expense, of Licensee. All the Work activities shall be performed in a good and workman-like manner in accordance with National Park Service and International Mountain Bicycling Association (IMBA) trail design standards as approved by the City. All debris, including brush and trimmings, shall be scattered upon the Property by Licensee.

2. Term. This Agreement shall commence on the date of the execution of this Agreement and shall continue thereafter until the Work is completed or until the City terminates the Agreement, whichever occurs first.
3. Notice of Termination. This Agreement may be terminated by City for any reason, including no reason, upon 30 days' notice prior to such termination.
4. AS IS. Licensee accepts the Property, AS IS, WHERE IS, with all faults, latent and patent, without any representation or warranty by City, expressed or implied, and Licensee hereby assumes all risk and liability with respect to the Work on the Property. City expressly agrees that Licensee shall have no liability to City, other than for any damage or injury to the Property subject to this Agreement, and/or agents and employees on-site during the Work, or otherwise related to City's exercise of its rights under this Agreement.
5. Maintenance of Property; the Work. Licensee agrees that it shall maintain or cause to be maintained the area of the Work site in a safe condition during performance of the Work.
  - 5.1 City requires that, wherever reasonably possible, live trees with a circumference of greater than 4 inches be left undisturbed, unless authorized by City. Only after first obtaining City authorization, Licensee shall, at its expense, remove such trees.
  - 5.2 Except as allowed in Section 5.1, the Licensee acknowledges that no timber is to be cut or removed from the Property at any time, including during the Work. Should brush and/or timber less than 4 inches in diameter encroach upon any trail, it will be the exclusive responsibility of Licensee to remove same. City shall have no obligation to maintain any of the Work during construction or thereafter.
6. Permits and Approvals. Before Licensee undertakes any activities on the Property, Licensee, at its own risk and expense, shall first obtain any and all permits, approvals, consents with respect to the Work or other activity, on the Property. Right of Way permits are required for all excavation work, whether by hand or mechanical/mechanized means, and installation of any culvert or other structures, during the Work and thereafter as part of preservation, maintenance, rehabilitation or construction.



7. Indemnity. During the term of this Agreement, to the fullest extent not prohibited by applicable law, Licensee shall indemnify, reimburse, defend, and hold harmless City and City's officers, employees, agents, and their respective successors and assigns for, from and against all claims, liabilities, losses, liens, damages, costs and expenses (including reasonable attorneys' fees) arising out of damage or injury to persons or property caused by negligent acts or intentional misconduct of Licensee or any agent or employee of Licensee, or its successors and assigns. Licensee shall require any contractor contributing to the Work, if any, to provide this same indemnity for the benefit of City.
8. Notices. All notices, requests and other communication under this Agreement shall be in writing and shall be sent by United States mail, registered or certified, return receipt requested, recognized overnight courier prepaid, electronic mail or facsimile in accordance with the following instructions:

To City:                Spencer Nebel, City Manager  
                             169 SW Coast Highway  
                             Newport, Oregon 97365  
                             Phone: 541-574.0603  
                             Facsimile: 541.574.0609  
                             Email: [s.nebel@newportoregon.gov](mailto:s.nebel@newportoregon.gov)

To Licensee: Newport Trail Stewards (NEWTS)  
                             c/o Thomas Follett  
                             150 NW 6<sup>th</sup> Street  
                             Newport, Oregon 97365  
                             Phone: 541.265.7989  
                             Email: [Newport.newts@gmail.com](mailto:Newport.newts@gmail.com)

or such other person or address which City or Licensee shall designate upon notice as herein provided. All such notices, requests, and other communications shall be deemed to have been sufficiently given for all purposes hereof on the date such notice was deposited in the manner hereinabove required, emailed or faxed, as the case may be.

9. Signage. As part of the Work, appropriate "wayfinding" signage and a trailhead kiosk (with maps, guidelines and rules for trail usage) as approved by City, shall be constructed and placed by Licensee to identify parking areas and trails. Signage shall also display usage rules applicable to the recreational trails. Signage shall be maintained and replaced, as determined is appropriate by the City, at the sole expense of Licensee.
10. Miscellaneous Provisions. This Agreement constitutes the entire agreement between the parties with respect to the Property and Work thereon. No failure of City to enforce

any term of this Agreement shall be deemed a waiver of such term in any other instance. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable to the fullest extent. In the event any suit or other action is undertaken to enforce or interpret any term of this Agreement, the losing party shall pay the reasonable attorneys' fees incurred by the prevailing party in such suit or other action and any appeal or review thereof.

11. Counterparts. This Agreement may be signed in counterparts, which counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

NEWPORT TRAIL STEWARDS

Name:  (THOMAS FULLETT)  
Title: TREASURER

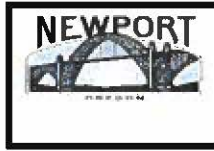
CITY OF NEWPORT, OREGON

  
Spencer R. Nebel, City Manager

## **EXHIBIT A**

### **Description of the Property**

The Property subject to this Agreement is located entirely within Tax Lot 100, Section 34, T.10 South, R.11 West (approximately 150 acres).



**AUTHORIZATION FOR  
AGREEMENTS, MOUs, OR  
OTHER DOCUMENTS OBLIGATING  
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: AGREEMENT  
RIGHT OF ENTRY & LICENSE Date: 2/25/2020

Statement of Purpose: Right of entry & license for the Newport Trail  
Stewards to build & maintain recreational trails in the  
BIG CREEK DAM AREA  
Department Head Signature: Mhauke

Remarks, if any: \_\_\_\_\_  
City Attorney Review and Signature: Reviewed, Revised, & approved by Ross W Date: 1/26/20

Other Signatures as Requested by the City Attorney: \_\_\_\_\_

	Signature				Name/Position
Budget Confirmed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>		Date: _____
Certificate of Insurance Attached:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>		
City Council Approval Needed:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			Date: _____

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 022520

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: Mhauke Date: 2/25/2020

Date posted on website: 2/28/20