

FUTURE OPERATION AND MAINTENANCE AGREEMENT

This FUTURE OPERATION AND MAINTENANCE AGREEMENT (the “Agreement”) is made as of the ___ day of December, 2019, by and between the CITY OF BEACON, a municipal corporation with its principal offices at 1 Municipal Plaza, Beacon, New York, 12508 (“City”), and BEACON ENGINE COMPANY NO. 1, a New York not-for-profit corporation with offices at 57 East Main Street, Beacon, New York 12508 (“Beacon Engine”).

The City and Beacon Engine (hereinafter collectively referred to as the Parties”) agree to the following terms and conditions concerning the property described below:

1. **PROPERTY DESCRIPTION:**

The property which is the subject of this Agreement is approximately 0.57 acres of real property, comprising of tax lot number 186702 on the Tax Map of the City of Beacon, together with any and all buildings and improvements located thereon (the “Premises”).

Title to the Premises was acquired by the Parties as follows:

Beacon Engine Company, having acquired title by deed from Arthur Montfort dated November 10, 1888 and recorded May 18, 1889 in Liber 243, Page 276; and

City of Beacon, having acquired title by deed from Arthur Montfort dated February 21, 1889 and recorded May 18, 1889 in Liber 243, Page 278; and

City of Beacon, having acquired title from Beacon Engine Company dated December 15, 1920 and recorded April 6, 1921 in Liber 414, Page 220.

2. **PERMITTED USE OF PROPERTY:**

The Parties agree that the Premises shall be used by Beacon Engine and the City for firefighting purposes and for such uses incidental and related thereto, such as career staff utilizing the sleep quarters, showers and communication room, and for no other purpose. There shall be no restrictions on Beacon Engine’s use of the portion of the Premises it owns. Beacon Engine agrees to permit the paid firefighters to park their personal vehicles on the parking lot owned by Beacon Engine across the street from the Premises identified as tax lot number 204702 on the Tax Map of the City of Beacon, at no charge.

3. TERM:

The Parties agree that this Agreement shall remain in full force and effect so long as the Premises are used by both parties for firefighting purposes. Once the Premises are no longer utilized for firefighting purposes, either Party can cancel this Agreement, at said Party's sole discretion, upon sixty (60) days written notice to the other.

4. INSURANCE:

The City shall provide General Liability, Property, Fire and Casualty insurance for the portion of the Premises owned by the City and its employees, and shall provide Property insurance for the portion of the Premises owned by Beacon Engine, and name Beacon Engine as an additional insured.

Beacon Engine shall be responsible for obtaining insurance for any personal property it owns and maintains on the Premises. Beacon Engine shall obtain General Liability insurance for the portion of the Premises owned by Beacon Engine and name the City as an additional insured.

An annual basis the City shall provide Beacon Engine with an invoice for the Property insurance covering the Premises, for which Beacon Engine shall reimburse the City Sixty Percent (60%) thereof within fifteen (15) days of receipt of the invoice. This figure is derived from the 2,910 square feet of the improvements on the Premises owned by Beacon Engine as compared to the 4,688 total square feet of said improvements.

5. INDEMNIFICATION:

Subject to Paragraph 4, above, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

6. UTILITIES:

All utility costs for the Premises shall be paid for by the City.

7. OPERATION AND MAINTENANCE:

The City shall be responsible for all maintenance and for any repairs to the Premises, within its sole discretion, at its sole cost and expense.

8. CATASTROPHIC LOSS:

In the event there is a catastrophic loss and there is a payout by any insurance policy, whether or not said policy was required under to this Agreement, the City and Beacon Engine shall share the proceeds 40/60 respectively, pursuant to the proportionate square footage of the improvements on the Premises owned by each Party.

9. SURVEY:

Within sixty (60) days of the execution of this Agreement, the Parties shall obtain a new survey of the Premises, the cost of which shall be split 50/50 by the Parties.

10. ENTIRE AGREEMENT:

This Agreement when signed by both Parties will be the record of the complete Agreement between said Parties concerning the Premises. No verbal agreements or promises will be binding.

11. FURTHER DOCUMENTS:

Each Party to this Agreement agrees to execute, acknowledge and deliver or cause to be delivered, such other deeds, assignments, affidavits, certificates and other instruments and documents as may be reasonably necessary and required by the other party from time to time to confirm and carry out the intent and purpose of this Agreement and the performance of each party's obligations under the terms of this Agreement, in such form as shall be reasonably satisfactory to counsel for both Parties.

12. HEADINGS:

Headings in this Agreement are for convenience of reference only and in no way define, limit or describe the scope of this Agreement and shall not be used to interpret or construe this Agreement or any of its provisions.

13. NO THIRD PARTY BENEFICIARIES:

This Agreement is intended for the exclusive benefit of the Parties hereto and shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

14. INTEGRATION:

All prior understandings, agreements, representations and warranties, oral or written, between the Parties, concerning the Premises, are merged in this Agreement which Agreement completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Agreement.

15. INTERPRETATION:

This Agreement shall be interpreted and construed according to its fair meaning and neither for nor against any party hereto irrespective of which Party caused the same to be drafted. The Parties acknowledges that it has been or has had the opportunity to be represented by an attorney in connection with the preparation and execution of this Agreement.

16. GOVERNING LAW; VENUE:

This Agreement shall be interpreted, construed and enforced in accordance with and governed by the internal laws of the State of New York without reference to the principles of conflicts of laws. The Parties hereby irrevocably consent to the exclusive jurisdiction of the courts of the County of Dutchess and State of New York for all purposes in connection with any action, suit or proceeding which arises out of or relates to this Agreement. To the fullest extent it may effectively do so under applicable law, each Party hereby irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection which it may now or hereafter have to the laying of the venue of any such action, suit or proceeding brought in any such court and any claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

17. AMENDMENTS:

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by an agreement in writing signed by the Party against whom enforcement of any such modification, amendment, or waiver is sought, and then such modification, amendment, or waiver shall be effective only in the specific instance and for the specific purpose for which given.

18. FURTHER ASSURANCES:

The Parties shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other party in order to carry out the intent and purpose of this Agreement.

19. SUCCESSORS AND ASSIGNS:

Subject to the terms and conditions hereof, the covenants, agreements, terms, provisions and conditions contained in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective distributees, legal representatives, successors and assigns.

20. COUNTERPARTS:

This Agreement may be executed by the Parties individually in several separate counterparts, each of which shall be deemed an original, and all of the said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement is intended to be enforceable when executed and delivered by facsimile or by e-mail.

21. SEVERABILITY:

If any term, covenant or condition of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the extent permitted by the law.

22. NOTICES:

Any notice given hereunder shall be in writing and shall be served in person, via facsimile (subject to printout of confirmation of receipt), via email, by nationally recognized overnight express delivery service, or by United States certified mail, with postage prepaid, properly addressed and directed to a party's attorney at the following address:

If to City of Beacon:

City Administrator
1 Municipal Plaza
Beacon, New York 12508
Telephone: (845) 838-5009
Facsimile: (845) 838-5012

and

Fire Chief
1 Municipal Plaza
Beacon, New York 12508
Telephone: (845) 765-0899
Facsimile: (845) 831-3516

with a copy to

Nicholas M. Ward-Willis, Esq.
Keane & Beane, P.C.
445 Hamilton Avenue, Suite 1500
White Plains, New York 10601
Telephone: (914) 946-4777
Facsimile: (914) 946-6868
Email: nward-willis@kblaw.com

If to Beacon Engine:

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized representative to execute this Agreement as of the date first above set forth.

CITY OF BEACON

**BEACON ENGINE COMPANY
NO. 1**

By: _____
Anthony Ruggiero
City Administrator

By: _____
Name