

AMENDMENT NO. 1 TO LICENSE AGREEMENTS

This Amendment No. 1 to License Agreements (this "Amendment") is made as of this 6th day of March, 2008 by and between MASSACHUSETTS ELECTRIC COMPANY, a Massachusetts corporation, having an address of 55 Bearfoot Road, Northborough, Massachusetts 01532 ("MEC") and the CITY OF NEWBURYPORT, a Massachusetts municipal corporation, with an address of 60 Pleasant Street, Newburyport, Massachusetts ("City");

WHEREAS, MEC and the City entered into two license agreements (the "License Agreements"), each dated as of July 14, 2003, in connection with the City's establishment of a rail trail in Newburyport, Massachusetts. The first license agreement affects a twenty (20) foot wide portion of MEC's property known as the Water Street Substation, off Water Street in Newburyport; and the second license agreement affects a fifteen (15) foot wide portion of a right of way running along the former "Newburyport City Branch" of the Boston & Maine Railroad, said portion of which right of way is now owned in fee by MEC.

WHEREAS, the commencement date of both License Agreements was predicated upon the City performing certain conditions (the "Conditions Precedent") by July 14, 2008, which Conditions Precedent include, without limitation, completing a mutually approved set of plans and specifications, and obtaining all necessary approvals and permits for the rail trail. According to Section 17 of the License Agreements, in the event the City does not complete the Conditions Precedent by July 14, 2008, then MEC has the option to terminate both License Agreements;

WHEREAS, the City does not anticipate completing all of the Conditions Precedent by July 14, 2008;

WHEREAS, as MEC and the City both wish to continue to cooperate in the long-term establishment of the rail trail, the City has requested that MEC extend the July 14, 2008 deadline in order that the City may complete the Conditions Precedent, and MEC has agreed to such extension;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MEC and the City agree to amend the License Agreements as follows: the last sentence of Section 17 of both License Agreements is hereby amended by deleting the words "five (5)" from said sentences and substituting the words "fifteen (15)" therefor. In accordance therewith, the City's deadline to complete the Conditions Precedent under both License Agreements is extended until July 14, 2018.

All other provisions of the License Agreements shall remain in full force and effect and unchanged except as modified by this Amendment, and the parties hereto ratify and confirm all such terms and conditions of the License Agreements not inconsistent herewith.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to License Agreements to be executed by their respective duly authorized officers under seal effective upon date the date first above written.

LICENSOR:

MASSACHUSETTS ELECTRIC COMPANY

By:

Name: Ronald T. Gernatowski

Title: Vice President

LICENSEE:

CITY OF NEWBURYPORT

By:

Name: John F. Moak

Title: Mayor

LICENSE AGREEMENT

COPY

THIS LICENSE AGREEMENT (this "License") is made as of this 14th day of July, 2003, by and between **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation having a usual place of business at 55 Bearfoot Road, Northborough, Massachusetts 01532 (hereinafter the "Licensor"), and the **CITY OF NEWBURYPORT**, a Massachusetts municipal corporation having a principal place of business at City Hall, 60 Pleasant Street, Newburyport, Massachusetts 01950 (hereinafter the "Licensee").

RECITALS:

WHEREAS, Licensor is the owner of the fee and/or other interests in certain real estate constituting all or a portion of the former "Newburyport City Branch" of the Boston and Maine Railroad located in Newburyport, Massachusetts as more particularly described in that certain Indenture dated September 13, 1926, between Boston and Maine Railroad and Eastern Massachusetts Electric Company (predecessor in interest to Licensor) (the "Licensor's Property"); and

WHEREAS, the Licensee desires to use a fifteen (15) foot wide portion of Licensor's Property (hereinafter the "Licensed Premises"), referred to as "Railbed Portion of Bike Path" on the Plan, attached hereto as Attachment A and hereby made a part hereof for the purpose of maintaining one (1) ten (10) foot wide pathway constructed above the existing grade in connection with Licensee's phased construction and operation of a bike path and walking trail ("Bike Path") that will run along the former "Newburyport City Branch" rail corridor (the "Project"); and

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged under seal, the parties agree as follows.

1. GRANT OF LICENSE

The Licensor hereby grants to the Licensee a terminable nonexclusive license to use the Licensed Premises as and for the Improvements (as hereinafter defined) subject to the terms and conditions set forth in this License. Inasmuch as this License is non-exclusive, the Licensor hereby covenants and agrees not to grant such other license rights to any third party which would materially interfere with the Licensee's rights as described herein. The Licensee covenants and agrees that only the Improvements shall be constructed within the Licensed Premises, and it shall construct the Improvements in accordance with the Approved Plans and Specifications (as hereinafter defined). Within sixty (60) days of completion of initial construction or installation of the Improvements, the Licensee covenants and agrees to deliver to the Licensor an "as built" plan prepared by a registered professional engineer indicating the exact location of the Improvements and all final grades within the Licensed Premises and certifying that the Improvements have been located in strict compliance with the Approved Plans and Specifications.

2. TERM

Unless otherwise terminated as provided herein and so long as Licensee is in compliance with the terms and conditions of this License, the Licensee shall have the right to use the Licensed Premises as set forth herein for a term of ninety-nine (99) years (the "Term"), which commences on the License Commencement Date (as hereinafter defined) and expires on the date which is the ninety-ninth (99th)

anniversary of the License Commencement Date (the "License Expiration Date").

Licensor shall have the right, but not the obligation, to review and reasonably revise the terms and conditions of this License from time to time during the Term as Licensor deems reasonably necessary in connection with Licensor's business operations, but not more frequently than once every five (5) years, and the parties shall enter into a written amendment to this License in order to incorporate any such revised terms and conditions into this License, the execution of which shall not be withheld or delayed. Under no circumstances shall any revision by Licensor materially diminish the rights granted to Licensee herein to utilize the Licensed Premises for the purposes herein expressed.

At all times during this License and following the expiration or termination of this License, the Improvements shall be and remain the sole property of Licensee.

3. LICENSEE'S USE AND OCCUPANCY OF THE LICENSED PREMISES

- (a) The Licensee's use and occupancy of the Licensed Premises shall be restricted exclusively to the installation, operation, security, repair and maintenance of the Improvements in connection with the Project and the use of the Bike Path for pedestrian and non-motorized passage. On a temporary basis during initial installation of the Improvements, the Licensor shall permit the Licensee to use Licensor's Property up to five (5) feet wide on either side and immediately adjacent to the Licensed Premises (collectively the "Temporary Work Space") and a portion of Licensor's Property for access to the Licensed Premises and Temporary Work Space (the "Access Area"), in each case as designated by the Licensor. Upon completion of the construction of the Improvements, the Licensee's right to use the Temporary

Work Space and the Access Area shall terminate, at which time Licensee shall vacate the Temporary Work Space and remove any and all equipment, supplies, earth, debris and other such materials from the Temporary Work Space.

- (b) With respect to such use and occupancy and/or the performance of any obligations set forth in this License, Licensee covenants, agrees and acknowledges that:
- (i) Pedestrian and non-motorized passage over Licensor's Property shall occur only within the Bike Path within the Licensed Premises; and no motorized vehicles are allowed within the Licensed Premises except for emergency vehicles or maintenance vehicles used by Licensee or Licensee's contractors, employees or agents, or any person acting on their behalf, which may be required for occasional maintenance and repair of the Licensed Premises. Licensee shall erect such physical barriers such as signs, bollards and fencing (in addition to the fence erected by Licensor) to demark the Bike Path and to prevent unauthorized access, as reasonably required by Licensor.
 - (ii) Licensee shall keep the Improvements in good condition and repair at all times during the Term at the Licensee's sole cost and expense.
 - (iii) Licensee shall properly restore, repair and maintain, to the reasonable satisfaction of the Licensor, any portion of the Licensor's Property that constitutes, in whole or in part, the Licensed Premises or the Temporary Work Space or any physical condition of the surface

and/or subsurface of any portion of the Licensor's Property that impacts the use of the Licensed Premises, the Temporary Work Space or the Access Area or the installation, operation, security, repair, maintenance or use of the Improvements, and shall keep the Licensed Premises free of any ice, snow, debris, trash, rubbish or other obstructions. Nothing in this paragraph shall be deemed to require the Licensee to restore, repair or maintain any damage that does not affect the Licensee's use of the Licensed Premises, unless such damage was caused or contributed to by the Licensee or its agents, employees, licensees, servants, contractors and invitees, in which case the restoration, repair or maintenance of such damage shall be the Licensee's sole responsibility at the Licensee's sole cost and expense.

- (iv) Except in connection with the initial installation of the Improvements in accordance with the Approved Plans and Specifications, Licensee shall not excavate or change the grade of the Licensed Premises.
- (v) Licensor is under no obligation to restore, repair or maintain any portion of the Licensor's Property (including the Licensed Premises, the Temporary Work Space or the Access Area), or make the Improvements serviceable for passage or any other purpose in any respect, including, without limitation, the removal of accumulated debris or water, ice and snow, all of which are the sole responsibility of Licensee.

- (vi) Licensor makes no warranty with respect to the condition, safety, title, or fitness of the Licensor's Property (including the Licensed Premises, the Temporary Work Space or the Access area), and Licensee hereby expressly waives any such warranties, accepts the same in their "as is" condition and shall use the same at its sole risk.
- (vii) Except in the event of an emergency, following initial installation of the Improvements, the Licensee shall notify Licensor at least forty-eight (48) hours in advance of the commencement of any repair of the Improvements. In addition, the Licensee shall obtain Licensor's prior written consent to such repairs, which consent shall not be unreasonably withheld or delayed, and, at Licensor's option, said repairs to be under the supervision of the Licensor, excepting minor repairs, and any cost of said supervision to be paid for by the Licensee; provided, however, that if Licensee is unable to notify Licensor in advance of any repairs of the Improvements as a result of an emergency, Licensee may provide fewer than forty-eight (48) hours notice to Licensor for such access. Licensee's agents, employees, licensees, servants and contractors shall at all times maintain such enclosures (such as fences), provide such security and take all necessary precautions for the compliance with the terms and conditions of this License and the safety of Licensee's agents, employees, licensees, servants, contractors and invitees upon, within or about the Licensed Premises, Temporary Work Space and Access Area; shall comply with all applicable provisions of federal, state and

municipal laws, codes, regulations and ordinances and any successor laws, codes, regulations and ordinances thereto, in order to prevent accidents or injury to persons and property on, about or adjacent to the Licensed Premises, Temporary Work Space and Access Area, including, without limitation, the National Electric Safety Code and the OSHA requirements for working clearances from energized lines; and shall ensure that the Licensed Premises, Temporary Work Space and Access Area are used by Licensee, its agents, employees, licensees, servants, contractors and invitees only for the purposes expressly authorized in this License.

(viii) Licensee shall comply with all applicable federal, state or municipal laws, regulations, codes and ordinances affecting the Licensed Premises, Temporary Work Space and Access Area and its occupancy, operation and the use thereof pursuant to the terms hereof.

(ix) Licensor shall have the right to use the Licensed Premises, Temporary Work Space and Access Area, including use of the Improvements, at such times and in a manner not inconsistent with this License.

Licensee shall not interfere with the Licensor's access to the Licensed Premises, Temporary Work Space and Access Area or to Licensor's Property, including without limitation, Licensor's transmission lines, substation equipment, structures and facilities. In the event that Licensor requires immediate access to the Licensed Premises, Temporary Work Space and Access Area, as determined by the Licensor in its sole discretion, Licensor may move or cause to be

moved any obstructions at Licensor's sole expense. In the event that the Licensor moves or causes to be moved any such obstructions pursuant to this Paragraph, Licensee agrees that neither Licensor nor its affiliates, employees or agents of any of them shall be liable to the Licensee, its employees or agents with respect to any claims for damages or personal injury or property damages resulting from or in any way connected with the Licensor's exercise of any rights set forth in this Paragraph.

(x) Licensee shall not stockpile, either temporarily or permanently, or otherwise accumulate any earth, materials or supplies or store any equipment or vehicles upon the Licensed Premises or the Access Area without Licensor's prior approval, which approval shall not be unreasonably withheld or delayed.

(xi) [Intentionally Deleted].

(xii) [Intentionally Deleted].

4. [INTENTIONALLY OMITTED]

5. LICENSOR'S RESERVATION OF RIGHTS

The Licensee agrees that this License and the exercise of its rights or performance of its obligations under this License by the Licensee is subject to and shall not interfere with Licensor's or any of its affiliates' present and/or future business operations, including but not limited to the construction, reconstruction, repair, maintenance, renewal, replacement, expansion, use and operation of the Licensor's present or future facilities, including but not limited to transmission lines, substation equipment, structures and facilities, located or to be located over, across,

under or adjacent to the Licensed Premises. Although it is not contemplated that Licensor shall require access to the Licensed Premises, Temporary Work Space or Access Area except in emergency situations and only on a temporary basis, Licensor expressly reserves the right to enter upon the Licensed Premises, Temporary Work Space and Access Area, including without limitation, use of the Bike Path, at any time and to temporarily restrict or prohibit access to and along the Licensed Premises, Temporary Work Space and/or Access Area when required by Licensor's business activities as determined by Licensor in its sole reasonable discretion. In such event, Licensor's entry, restriction and/or prohibition of the Licensee's access shall not continue for any duration of time longer than that which is required for Licensor to address its business activities. Licensor shall give Licensee prior notice of any such restriction or prohibition on access to the Licensed Premises, Temporary Work Space and/or Access Area, except that, in the event of an emergency, prior notice shall not be required but notice shall be given to Licensee as soon as practicable. Licensee agrees that neither the Licensor nor its affiliates, employees or agents of any of them shall be liable to the Licensee, its agents, employees, licensees, servants, contractors and invitees with respect to any claim or cause of action or right to payment for any personal injury or property damage resulting from or in any way connected with the rights herein reserved.

6. INDEMNIFICATION

The Licensee agrees to pay and to release, protect, defend with counsel satisfactory to Licensor, indemnify and save harmless Licensor and its affiliates, and employees or agents of any of them, from and against, any and all liabilities, loss, damages, costs, expenses (including any and all attorneys' fees, costs and expenses of

the Licensor), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from the Licensee's exercise of its rights or performance of its obligations under this License and (i) any work, act or omission done in, on or about the Licensed Premises, Temporary Work Space or Access Area or the Improvements or any part thereof, by or on behalf of the Licensee or any person claiming under the Licensee, or the employees, agents, licensees, servants, contractors and invitees of the Licensee or any such person; (ii) injury to, or the death of, persons or damage to property on the Licensed Premises, Temporary Work Space or Access Area or upon Licensor's Property or in any way arising out of or connected with the use, nonuse, condition, possession, operation, maintenance, management or occupation of the Licensed Premises, Temporary Work Space or Access Area or the Improvements by the Licensee or any person claiming under the Licensee, or the employees, agents, licensees, servants, contractors and invitees of the Licensee or any such person, or resulting from the condition of the Licensed Premises, Temporary Work Space or Access Area or the Improvements; or (iii) with Licensee's rights reserved in this License or violation of any agreement or condition of this License or of any applicable federal, state or municipal laws, regulations, codes and ordinances, or other requirements affecting the Licensed Premises, Temporary Work Space or Access Area or the ownership, occupancy or use thereof by Licensee or any person claiming under the Licensee, or the employees, agents, licensees, contractors and invitees of the Licensee or any such person hereunder. The foregoing indemnification shall not include injury or damage directly caused by the sole negligence or willful misconduct of the Licensor or the Licensor's agents, employees or contractors. The

provisions of this paragraph shall survive the expiration or earlier termination of this License.

7. INSURANCE

At least ten (10) days prior to the License Commencement Date, the Licensee will, at its sole cost and expense, obtain and keep in force during the term of this License commercial general liability insurance with a combined single limit of not less than Three Million Dollars) (\$3,000,000) for injury to or death of any one person or for any number of persons in one occurrence (not in one year), and including property damage liability, insuring the Licensee and the Licensor including, but not limited to, coverage for contractual liability, broad form property damage liability, and automobile liability insurance insuring the Licensee for vehicles owned, non-owned or hired by it, all with respect to the Licensed Premises, Temporary Work Space and Access Area or arising out of the Licensee's maintenance, use or occupancy of the Licensed Premises, Temporary Work Space and Access Area pursuant to this License. The combined single limit of Three Million Dollars (\$3,000,000) shall be re-evaluated every five (5) years and compared to the Consumer Price Index (or its successor index, published by the U.S. Government). Following such analysis, Licensor shall inform Licensee in writing as to whether coverage must be updated to reflect increased economic values. Such insurance will insure the indemnity obligations of the Licensee set forth herein. Such insurance will be primary to and noncontributing with any insurance which may be carried by the Licensor and will contain a severability of interest provision that the Licensor, although named as an additional insured, will nonetheless have the benefits of the policy apply to the Licensor as though a separate policy had been issued to

the Licensor. All insurance required in this paragraph, and all renewals of it shall be insured by reputable insurance companies authorized to transact business in the Commonwealth of Massachusetts and acceptable to Licensor on a pre-approval basis. All such policies shall name the Licensor as an additional insured and shall provide at least thirty (30) days' prior written notice to the Licensor of any cancellation, or material change or alteration of such policies. The Licensee shall, prior to any use or occupancy of the Licensed Premises, Temporary Work Space and Access Area under this License, provide the Licensor with certificates of insurance or other evidence satisfactory to the Licensor of compliance by the Licensee with the provisions of this paragraph.

8. HAZARDOUS MATERIALS; OIL

The Licensee covenants and agrees with the Licensor that neither the Licensee nor any person claiming under the Licensee, nor the employees, agents, tenants, contractors, licensees, invitees, or visitors of the Licensee or any such person shall bring onto, store, generate, or permit to be stored or generated on the Licensor's Property, including but not limited to the Licensed Premises, Temporary Work Space and Access Area, any oil, hazardous material, hazardous waste or hazardous substance as those terms are defined by any applicable federal, state or municipal law, regulation, code, or ordinances including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c.-21E, as amended; and the Massachusetts Hazardous Waste Management Act, as amended, M.G.L. c. 21C (collectively, "Hazardous Materials"). The Licensee shall indemnify and hold the Licensor harmless from and against any

claim, liability, loss, damage or expense (including attorneys' fees, costs, expenses, assessments, remedial or response actions) arising out of a breach of the conditions of this paragraph. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

9. DEFAULT

If the Licensee shall fail to observe or perform any of its agreements or obligations under this License to the extent that such failure shall constitute a material breach of its agreements or obligations hereunder, and if any such default shall not be cured within thirty (30) days of Licensor's delivery of written notice of default, which written notice shall be delivered to the Licensee's usual place of business set forth on page 1 of this License, or such longer time as is necessary to cure such default, provided Licensee is diligently and continuously pursuing such cure, but under no circumstances shall such cure period exceed sixty (60) days from Licensor's delivery of written notice of a default, Licensor may at its sole option, terminate this License. If Licensor elects to terminate this License, it shall be of no further force and effect except as to such of Licensee's liabilities or obligations hereunder, actual or contingent, as shall have arisen on or prior to such date of termination or which by their terms survive said termination.

10. EXPIRATION OF TERM

(a) Licensee agrees that upon the expiration or earlier termination of this License, the Licensee shall remove the Improvements (unless otherwise directed by Licensor) and restore the Licensed Premises, to the extent practicable, to a condition reasonably satisfactory to Licensor. If the Licensee fails to remove

said Improvements and restore the Licensed Premises within sixty (60) days from the expiration or termination of this License, then, in its sole discretion, the Licensor may remove the Improvements and restore the Licensed Premises at the sole cost and expense of the Licensee, and any costs so incurred by Licensor shall be paid to Licensor by the Licensee promptly upon demand. In the event that the Licensor removes the Improvements and restores the Licensed Premises pursuant to this paragraph, Licensee agrees that neither Licensor nor its affiliates, employees or agents of any of them shall be liable to the Licensee, its employees or agents with respect to any claims for damages or any personal injury or property damages resulting from or in any way connected with the Licensor's exercise of any rights reserved in this paragraph.

(b) [Intentionally Deleted].

11. ASSIGNMENT

This License is not assignable voluntarily, involuntarily or by operation of law, in whole or in part, by Licensee, without the Licensor's prior written consent, which consent shall not be unreasonably withheld. The sale, transfer or conveyance of Licensor's Property, or the portion thereof which constitutes the Licensed Premises, during the Term of this License shall not operate to terminate automatically this License.

12. NOTICE

All notices required or permitted under this License shall be in writing and either delivered in hand or mailed (a) by registered or certified mail (return receipt requested) with the United States Postal Service, or (b) by Federal Express or other overnight mail carrier furnishing evidence of receipt, to the Licensor at

Massachusetts Electric Company
25 Research Drive
Westborough, Massachusetts 01582
Attn: Michael Rook, Manager, Property Assets and Real Estate Department

with a copy to

Alan J. Rabinowitz, Esq.
25 Research Drive
Westborough, Massachusetts 01582-0099

and a copy to

William T. Sherry, Vice President, Business Services,
Massachusetts Electric Company
1101 Turnpike Street
North Andover, Massachusetts 01845-6195

or to the Licensee at the address first set forth above,

Attention Mayor's Office
Post Office Box 550
Newburyport, Massachusetts 01950

and a copy to

Planning & Development Office
Post Office Box 550
Newburyport, Massachusetts, 01950.

Either party may change the address at which it is to receive notices by giving notice as hereinabove set forth. Any notice or other communication in connection with this License shall be deemed duly served when received (or upon attempted delivery if delivery is not accepted).

13. GENERAL PROVISIONS

- (a) Failure of the Licensor to complain of any act or omission hereunder on the part of the Licensee, no matter how long the same may continue, shall not be deemed a waiver by the Licensor of any of its rights hereunder. No waiver by the Licensor at any time, express or implied, of any breach of any provision of

this License shall ever be deemed a waiver of a breach of any other provision of this License, or a consent to any subsequent breach of the same or any other provision. If any action by the Licensee shall require the Licensor's consent or approval, such consent or approval on any particular occasion shall not be deemed a consent or approval of any other action on any subsequent occasion.

- (b) If any provision of this License, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this License, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected. Each provision of this License shall be deemed valid and enforceable to the fullest extent permitted by law.
- (c) The section headings contained in this License are for reference and convenience only and in no way define or limit the scope and contents of this License or in any way affect its provisions.
- (d) This License constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior oral and written offers, negotiations, proposals, representations, agreements, courses of dealing and understandings between the parties relating to the subject matter hereof, and is subject to no understandings, conditions, or representations other than those expressly stated herein.
- (e) This License may only be amended or modified by a writing signed by the Licensor and the Licensee and which refers to this License.
- (f) This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The Licensee agrees and consents

that venue and jurisdiction shall be proper in the state court of any county of the Commonwealth of Massachusetts, or in the United States District Court for the District of Massachusetts.

- (g) Neither party to this License shall be responsible to the other for delays or errors in its performance or other breach of this License occurring solely by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers, or failure of transportation or communication.
- (h) ~~The parties agree that, upon the effective date of this License as described in~~ Paragraph 17 hereof, a memorandum of this License shall be recorded at the appropriate registry of deeds for the town/city in which the property is located.
- (i) If the Licensee executes this License through an agent or representative, each such agent or representative hereby warrants and represents to the Licensor that he is authorized to execute, acknowledge, and deliver this License on behalf of the Licensee and to thereby bind the Licensee to the same.
- (j) This License shall not be construed as creating or vesting in the Licensee any easement or estate in the Licensed Premises, Temporary Work Space or Access Area, but only the limited rights of possession and use under the License hereinabove described.
- (k) This License: (i) shall be executed in duplicate counterparts, each of which when executed by all parties to this License shall be deemed to be an original;

(ii) shall take effect as a sealed instrument; (iii) shall bind and inure to the parties and their respective legal representatives, successors and assigns, except that the Licensee may not delegate any of its obligations under this License or assign this License; and (iv) is not intended to inure to any third-party beneficiary.

14. EMINENT DOMAIN

If the Licensed Premises, Temporary Work Space, Access Area or the Licensor's Property, in whole or in part, is appropriated or acquired by any governmental agency or other party having the power of eminent domain, the Licensor may terminate this License. Any damages recoverable in respect to such appropriation or acquisition shall be the sole property of the Licensor, and the Licensee hereby releases unto the Licensor any interest it may have in the same.

15. APPROVALS

Prior to initial construction of the Improvements, Licensee and/or Licensor, as the case may be, shall have obtained any and all final federal, state, municipal and other licenses, permits, approvals and authorizations (including without limitation, M.G.L. Chapter 91 waterways licenses and Orders of Conditions from the Conservation Commission) which Licensor deems necessary for the construction, installation and use of the Improvements, in form and substance reasonably acceptable to Licensor (including without limitation all conditions made a part of any such Approval), with all appeal periods for such Approvals having expired with no appeals having been taken (in such form, collectively, the "Approvals" and individually an "Approval"). To the extent that any Approval may not be clearly required for the construction, operation or use of the Bike Path, the parties shall

consult with each other and will negotiate in good faith a resolution of such ambiguity. Licensor shall make the final decision regarding the necessity of permits and Licensee shall comply with that final decision. Notwithstanding any provision in this License to the contrary, it is agreed that if Licensee is denied or does not obtain any Approval for any reason, after fully exhausting Licensee's rights of appeal of such denial, Licensee shall so notify Licensor, and this License shall be null and void and without recourse to the parties hereto, except for any provisions of this License which by their terms shall survive said termination.

16. PLANS AND SPECIFICATIONS FOR THE IMPROVEMENTS

Prior to initial construction of the Improvements, the Licensee shall deliver a complete set of plans and specifications for the Improvements to the Licensor for Licensor's review and approval, which approval shall not be unreasonably withheld or delayed. The Licensor shall have a period of forty-five (45) days in which to review and either approve or reject the plans and specifications delivered to it by Licensee. On or before the end of said forty-five (45) day period, the Licensor shall notify the Licensee in writing of its approval or denial of said plans and specifications, together with, in the event of a denial, a description of the modifications to said plans and specifications required by the Licensor. In the event that said plans and specifications, as they may be modified in accordance herewith, are approved by the Licensor (hereinafter, together with any modifications thereof subsequently approved by the Licensor, referred to collectively as the "Approved Plans and Specifications"), the improvements that will be constructed by the Licensee within the Licensed Premises, including the Bike Path, Lighting and a chain link fence (collectively the "Improvements"), and the names of the Approved Plans and

Specifications shall be specified in an amendment to this License in the form attached hereto as Attachment B and made a part hereof. Any modifications to the Approved Plans and Specifications shall require the Licensor's prior written approval, which approval shall not be unreasonably withheld or delayed.

17. EFFECTIVE DATE

Notwithstanding any provision in this License to the contrary, this License is expressly conditioned upon, and shall not become effective unless and until, the completion of the following to the Licensor's satisfaction:

- (a) All of the Approvals required for construction of the proposed Bike Path have been obtained in accordance with the terms and conditions of Paragraph 15 of this License;
- (b) The parties have agreed upon the final set of Approved Plans and Specifications, including without limitation the final description of the Improvements, and the Approved Plans and Specifications have been delivered to the Licensor;
- (c) Licensee has obtained the insurance required by Paragraph 7 of this License and has delivered certificates of insurance to Licensor evidencing such insurance; and
- (d) Licensee has obtained substantially similar rights of access from at least one abutting property owner to the Licensor's Water Street substation property for purposes of locating the proposed Bike Path and connecting it to the Licensed Premises.

Upon satisfaction of the conditions listed in subparagraphs (a), (b), (c) and (d) above, the parties hereto shall enter into an amendment to this License specifying in detail (a) the


Improvements; (b) the names of the Approved Plans and Specifications; and (c) the date on which the Term of this License shall commence (the "License Commencement Date"), the License Expiration Date, which amendment shall be in the form attached hereto as Attachment B and made a part hereof, and one (1) fully executed original thereof is in the possession of each of the parties, all in accordance with the provisions of Paragraph 16 of this License. If any of the conditions contained in this Paragraph are not completed to the Licensor's satisfaction on or before five (5) years from the date hereof, the Licensor may, at its option, terminate this License by written notice to the Licensee, in which event this License shall be null and void and without recourse to the parties hereto, except for any provisions of this License which by their terms shall survive said termination.

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IN WITNESS WHEREOF, the parties have caused this License to be executed by their respective duly authorized officers under seal effective upon the date first above written.

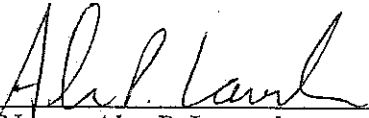
LICENSOR:

MASSACHUSETTS ELECTRIC COMPANY

By: 
Name: Cheryl A. LaFleur
Title: President

LICENSEE:

CITY OF NEWBURYPORT

By: 
Name: Alan P. Lavender
Title: Mayor

This License shall not be recorded at any registry of deeds, but a memorandum summarizing its key terms and conditions may be, upon request of Licensee.

LICENSE AGREEMENT

COPY

THIS LICENSE AGREEMENT (this "License") is made as of this 14th day of July, 2003, by and between **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation having a usual place of business at 55 Bearfoot Road, Northborough, Massachusetts 01532 (hereinafter the "Licensor"), and the **CITY OF NEWBURYPORT**, a Massachusetts municipal corporation having a principal place of business at City Hall 60 Pleasant Street, Newburyport, Massachusetts 01950 (hereinafter the "Licensee").

RECITALS:

WHEREAS, the Licensor is the fee owner of certain real estate located on Water Street in Newburyport, Massachusetts known as the Water Street Substation (hereinafter the "Licensor's Property"); and

WHEREAS, the Licensee desires to use a twenty (20) foot wide portion of Licensor's Property (hereinafter the "Licensed Premises"), referred to as "Substation Portion of Bike Path" on a sketch plan (hereinafter the "Plan") attached hereto as Attachment A and hereby made a part hereof for the purpose of maintaining one (1) ten (10) foot wide pathway constructed above the existing grade in connection with Licensee's construction and operation of a bike path and walking trail ("Bike Path") that will run along the Merrimac River and portions of the former "Newburyport City Branch" rail corridor (the "Project"); and

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged under seal, the parties agree as follows.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

1. GRANT OF LICENSE

The Licensor hereby grants to the Licensee a terminable nonexclusive license to use the Licensed Premises as and for the Improvements (as hereinafter defined) subject to the terms and conditions set forth in this License. The Licensee covenants and agrees that only the Improvements shall be constructed within the Licensed Premises, and it shall construct the Improvements in accordance with the Approved Plans and Specifications (as hereinafter defined). Within sixty (60) days of completion of initial construction or installation of the Improvements, the Licensee covenants and agrees to deliver to the Licensor an "as built" plan prepared by a registered professional engineer indicating the exact location of the Improvements and all final grades within the Licensed Premises and certifying that the Improvements have been located in strict compliance with the Approved Plans and Specifications.

2. TERM

Unless otherwise terminated as provided herein and so long as Licensee is in compliance with the terms and conditions of this License, the Licensee shall have the right to use the Licensed Premises as set forth herein for a term of twenty-five (25) years (the "Term"), which commences on the License Commencement Date (as hereinafter defined) and expires on the date which is the twenty-fifth (25th) anniversary of the License Commencement Date (the "License Expiration Date"). Licensor shall have the right to review and reasonably revise the terms and conditions of this License from time to time during the Term but not more frequently than once every five (5) years, and the parties shall enter into a written amendment to this License in order to incorporate any such revised terms and conditions into this License, the execution of which shall not be withheld or delayed.

In the event that Licensee desires to extend the Term, Licensee shall send a written request for an extension of the Term to Licensor on or before the date which is the twenty-fourth (24th) anniversary of the License Commencement Date (the "Extension Notice Date"). The parties shall have a period of six (6) months following the Extension Notice Date in which to negotiate mutually agreeable terms and conditions for the extension of the Term. If the parties are able to agree upon the terms and conditions of such extension during said six (6) month period, they shall execute a written amendment to this License or new license agreement, as the case may be, on or before the sixtieth (60th) days following the end of said six (6) month period. If the parties are unable to agree upon the terms and conditions for an extension of the Term during said six (6) month period or unable to agree upon a mutually acceptable written amendment to this License or a new license agreement, as the case may be, as set forth in this paragraph, then this License shall expire on the License Expiration Date set forth above. At all times during this License and following the expiration or termination of this License, the Improvements shall be and remain the sole property of Licensee.

3. LICENSEE'S USE AND OCCUPANCY OF THE LICENSED PREMISES

- (a) The Licensee's use and occupancy of the Licensed Premises shall be restricted exclusively to the installation, operation, security, repair and maintenance of the Improvements in connection with the Project and the use of the Bike Path for pedestrian and non-motorized passage. On a temporary basis during initial installation of the Improvements, the Licensor shall permit the Licensee to use Licensor's Property up to five (5) feet wide on either side and immediately adjacent to the Licensed Premises (collectively the "Temporary Work Space") and a portion of Licensor's Property for access to the Licensed Premises and Temporary Work Space (the "Access Area"), in each case as designated by the Licensor. Upon completion of the construction of the Improvements, the

Licensee's right to use the Temporary Work Space and the Access Area shall terminate, at which time Licensee shall vacate the Temporary Work Space and remove any and all equipment, supplies, earth, debris and other such materials from the Temporary Work Space.

- (b) With respect to such use and occupancy and/or the performance of any obligations set forth in this License, Licensee covenants, agrees and acknowledges that:
- (i) Pedestrian and non-motorized passage over Licensor's Property shall occur only within the Bike Path within the Licensed Premises; no motorized vehicles are allowed within the Licensed Premises except for emergency vehicles or maintenance vehicles used by Licensee or Licensee's contractors, employees or agents, or any person acting on their behalf, which may be required for occasional maintenance and repair of the Licensed Premises. Licensee shall ensure that access to Licensor's Water Street Substation by Licensee and/or members of the general public is prohibited. Licensee shall erect such physical barriers such as signs, bollards and fencing (in addition to the fence erected by Licensor) to demark the Bike Path and to prevent unauthorized, access, as reasonably required by Licensor. Licensee's obligations hereunder include that of strictly prohibiting and preventing unauthorized, intentional and/or accidental access to the waterfront by Licensee's staff and members of the public.
 - (ii) Licensee shall keep the Improvements in good condition and repair at all times during the Term at the Licensee's sole cost and expense.
 - (iii) Licensee shall properly restore, repair and maintain, to the reasonable satisfaction of the Licensor, any portion of the Licensor's Property that constitutes, in whole or in part, the Licensed Premises or the Temporary

Work Space or any physical condition of the surface and/or subsurface of any portion of the Licensor's Property that impacts the use of the Licensed Premises, the Temporary Work Space or the Access Area or the installation, operation, security, repair, maintenance or use of the Improvements, and shall keep the Licensed Premises free of any ice, snow, debris, trash, rubbish or other obstructions. Nothing in this paragraph shall be deemed to require the Licensee to restore, repair or maintain any damage that does not affect the Licensee's use of the Licensed Premises, unless such damage was caused or contributed to by the Licensee or its agents, employees, licensees, servants, contractors and invitees, in which case the restoration, repair or maintenance of such damage shall be the Licensee's sole responsibility at the Licensee's sole cost and expense.

- (iv) Except in connection with the initial installation of the Improvements in accordance with the Approved Plans and Specifications, Licensee shall not excavate or change the grade of the Licensed Premises.

- (v) Licensor is under no obligation to restore, repair or maintain any portion of the Licensor's Property (including the Licensed Premises, the Temporary Work Space or the Access Area), or make the Improvements serviceable for passage or any other purpose in any respect, including, without limitation, the removal of accumulated debris or water, ice and snow, all of which are the sole responsibility of Licensee.
- (vi) Licensor makes no warranty with respect to the condition, safety, title, or fitness of the Licensor's Property (including the Licensed Premises, the Temporary Work Space or the Access area), and Licensee hereby expressly waives any such warranties, accepts the same in their "as is" condition and shall use the same at its sole risk.

- (vii) Except in the event of an emergency, following initial installation of the Improvements, the Licensee shall notify Licensor at least forty-eight (48) hours in advance of the commencement of any repair of the Improvements. In addition, the Licensee shall obtain Licensor's prior written consent to such repairs, which consent shall not be unreasonably withheld or delayed, and, at Licensor's option, said repairs to be under the supervision of the Licensor, excepting minor repairs, and any cost of said supervision to be paid for by the Licensee; provided, however, that if Licensee is unable to notify Licensor in advance of any repairs of the Improvements as a result of an emergency, Licensee may provide fewer than forty-eight (48) hours notice to Licensor for such access.
- (viii) Licensee's agents, employees, licensees, servants and contractors shall at all times maintain such enclosures (such as fences), provide such security as may be required and take all necessary precautions for the compliance with the terms and conditions of this License and the safety of Licensee's agents, employees, licensees, servants, contractors and invitees upon, within or about the Licensed Premises, Temporary Work Space and Access Area; shall comply with all applicable provisions of federal, state and municipal laws, codes, regulations and ordinances and any successor laws, codes, regulations and ordinances thereto, in order to prevent accidents or injury to persons and property on, about or adjacent to the Licensed Premises, Temporary Work Space and Access Area, including, without limitation, the National Electric Safety Code and the OSHA requirements for working clearances from energized lines; and shall ensure that the Licensed Premises, Temporary Work Space and Access Area are used by

Licensee, its agents, employees, licensees, servants, contractors and invitees only for the purposes expressly authorized in this License.

- (ix) Licensee shall comply with all applicable federal, state or municipal laws, regulations, codes and ordinances affecting the Licensed Premises, Temporary Work Space and Access Area and its occupancy, operation and the use thereof pursuant to the terms hereof.
- (x) Licensor shall have the right to use the Licensed Premises, Temporary Work Space and Access Area, including use of the Improvements, at such times and in a manner not inconsistent with this License. Licensee shall not interfere with the Licensor's access to the Licensed Premises, Temporary Work Space and Access Area or to Licensor's Property, including without limitation, Licensor's transmission lines, substation equipment, structures and facilities. In the event that Licensor requires immediate access to the Licensed Premises, Temporary Work Space and Access Area, as determined by the Licensor in its sole discretion, Licensee shall move or cause to be moved any obstructions placed thereon by Licensee or its invitees, at Licensee's sole expense.
- (xi) Licensee shall not stockpile, either temporarily or permanently, or otherwise accumulate any earth, materials or supplies or store any equipment or vehicles upon the Licensed Premises or the Access Area without Licensor's prior approval, which approval shall not be unreasonably withheld or delayed.

(xii) Licensee covenants and agrees to pay Licensor on demand any and all costs and expenses incurred by Licensor which are directly or indirectly related to Licensee's exercise of its rights or the performance of its obligations under this License, including, but not limited to, any and all costs for repairs of, or modifications to, any structures, guys, anchors, grounds, counterpoises, culverts or any other utility facility or equipment located on the Licensor's Property. Notwithstanding the foregoing, Licensor shall be responsible for the costs of moving its fence to accommodate the Bike Path across its Water Street substation property.

(xiii) During the initial Term and any extension of this License, if relocation of the Improvements and/or the Access Area is deemed necessary by Licensor in connection with the present and/or future business activities of Licensor or any of its affiliates at the Licensor's Property, Licensor shall have the right to require Licensee to relocate the Improvements, or any of them, and/or use a different access area on Licensor's Property, at Licensee's sole cost and expense.

4. [INTENTIONALLY OMITTED].

5. LICENSOR'S RESERVATION OF RIGHTS

The Licensee agrees that this License and the exercise of its rights or performance of its obligations under this License by the Licensee is subject to and shall not interfere with Licensor's or any of its affiliates' present and/or future business operations, including but not limited to the construction, reconstruction, repair, maintenance, renewal, replacement, expansion, use and operation of the Licensor's present or future facilities, including but not limited to transmission lines, substation equipment, structures and facilities, located or to be located over, across, under or adjacent to the Licensed Premises.

Although it is not contemplated that Licensor shall require access to the Licensed Premises, Temporary Work Space or Access Area except in emergency situations and only on a temporary basis, Licensor expressly reserves the right to enter upon the Licensed Premises, Temporary Work Space and Access Area, including without limitation, use of the Bike Path, at any time and to temporarily restrict or prohibit access to and along the Licensed Premises, Temporary Work Space and/or Access Area when required by Licensor's business activities as determined by Licensor in its sole reasonable discretion. In such event, Licensor's entry, restriction and/or prohibition of the Licensee's access shall not continue for any duration of time longer than that which is required for Licensor to address its business activities. Licensor shall give Licensee prior notice of any such restriction or prohibition on access to the Licensed Premises, Temporary Work Space and/or Access Area, except that, in the event of an emergency, prior notice shall not be required but notice shall be given to Licensee as soon as practicable. Licensee agrees that neither the Licensor nor its affiliates, employees or agents of any of them shall be liable to the Licensee, its agents, employees, licensees, servants, contractors and invitees with respect to any claim or cause of action or right to payment for any personal injury or property damage resulting from or in any way connected with the rights herein reserved.

6. INDEMNIFICATION

The Licensee agrees to pay and to release, protect, defend with counsel satisfactory to Licensor, indemnify and save harmless Licensor and its affiliates, and employees or agents of any of them, from and against, any and all liabilities, loss, damages, costs, expenses (including any and all attorneys' fees, costs and expenses of the Licensor), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from the Licensee's exercise of its rights or performance of its

obligations under this License and (i) any work, act or omission done in, on or about the Licensed Premises, Temporary Work Space or Access Area or the Improvements or any part thereof, by or on behalf of the Licensee or any person claiming under the Licensee, or the employees, agents, licensees, servants, contractors and invitees of the Licensee or any such person; (ii) injury to, or the death of, persons or damage to property on the Licensed Premises, Temporary Work Space or Access Area or upon Licensor's Property or in any way arising out of or connected with the use, nonuse, condition, possession, operation, maintenance, management or occupation of the Licensed Premises, Temporary Work Space or Access Area or the Improvements by the Licensee or any person claiming under the Licensee, or the employees, agents, licensees, servants, contractors and invitees of the Licensee or any such person, or resulting from the condition of the Licensed Premises, Temporary Work Space or Access Area or the Improvements; or (iii) with Licensee's rights reserved in this License or violation of any agreement or condition of this License or of any applicable federal, state or municipal laws, regulations, codes and ordinances, or other requirements affecting the Licensed Premises, Temporary Work Space or Access Area or the ownership, occupancy or use thereof by Licensee or any person claiming under the Licensee, or the employees, agents, licensees, contractors and invitees of the Licensee or any such person hereunder. The foregoing indemnification shall not include injury or damage directly caused by the sole negligence or willful misconduct of the Licensor or the Licensor's agents, employees or contractors. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

7. INSURANCE

At least ten (10) days prior to the License Commencement Date, the Licensee will, at its sole cost and expense, obtain and keep in force during the term of this License

commercial general liability insurance with a combined single limit of not less than Three Million Dollars) (\$3,000,000) for injury to or death of any one person or for any number of persons in one occurrence (not in one year), and including property damage liability, insuring the Licensee and the Licensor including, but not limited to, coverage for contractual liability, broad form property damage liability, and automobile liability insurance insuring the Licensee for vehicles owned, non-owned or hired by it, all with respect to the Licensed Premises, Temporary Work Space and Access Area or arising out of the Licensee's maintenance, use or occupancy of the Licensed Premises, Temporary Work Space and Access Area pursuant to this License. The combined single limit of Three Million Dollars (\$3,000,000) shall be re-evaluated every five (5) years and compared to the Consumer Price Index (or its successor index, published by the U.S. Government). Following such analysis, Licensor shall inform Licensee in writing as to whether coverage must be updated to reflect increased economic values. Such insurance will insure the indemnity obligations of the Licensee set forth herein. Such insurance will be primary to and noncontributing with any insurance which may be carried by the Licensor and will contain a severability of interest provision that the Licensor, although named as an additional insured, will nonetheless have the benefits of the policy apply to the Licensor as though a separate policy had been issued to the Licensor. All insurance required in this paragraph, and all renewals of it shall be insured by reputable insurance companies authorized to transact business in the Commonwealth of Massachusetts and acceptable to Licensor on a pre-approval basis. All such policies shall name the Licensor as an additional insured and shall provide at least thirty (30) days' prior written notice to the Licensor of any cancellation, or material change or alteration of such policies. The Licensee shall, prior to any use or occupancy of the Licensed Premises, Temporary Work Space and Access Area under this License, provide the Licensor with certificates of insurance or other evidence satisfactory to the Licensor of compliance by the Licensee with the provisions of this paragraph.

8. HAZARDOUS MATERIALS; OIL

The Licensee covenants and agrees with the Licensor that neither the Licensee nor any person claiming under the Licensee, nor the employees, agents, tenants, contractors, licensees, invitees, or visitors of the Licensee or any such person shall bring onto, store, generate, or permit to be stored or generated on the Licensor's Property, including but not limited to the Licensed Premises, Temporary Work Space and Access Area, any oil, hazardous material, hazardous waste or hazardous substance as those terms are defined by any applicable federal, state or municipal law, regulation, code, or ordinances including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c. 21E, as amended; and the Massachusetts Hazardous Waste Management Act, as amended, M.G.L. c. 21C (collectively, "Hazardous Materials"). The Licensee shall indemnify and hold the Licensor harmless from and against any claim, liability, loss, damage or expense (including attorneys' fees, costs, expenses, assessments, remedial or response actions) arising out of a breach of the conditions of this paragraph. The provisions of this paragraph shall survive the expiration or earlier termination of this License.

9. DEFAULT

If the Licensee shall fail to observe or perform any of its agreements or obligations under this License to the extent that such failure shall constitute a material breach of its agreements or obligations hereunder, and if any such default or material breach shall not be cured within thirty (30) days of Licensor's delivery of written notice of default, which written notice shall be delivered to the Licensee's usual place of business set forth on page 1 of this License, or such longer time as is necessary to cure such

default, provided Licensee is diligently and continuously pursuing such cure, but under no circumstances shall such cure period exceed sixty (60) days from Licensor's delivery of written notice of a default, Licensor may at its sole option, terminate this License. If Licensor elects to terminate this License, it shall be of no further force and effect except as to such of Licensee's liabilities or obligations hereunder, actual or contingent, as shall have arisen on or prior to such date of termination or which by their terms survive said termination.

10. TERMINATION

- (a) If the parties are unable to agree upon a mutually satisfactory extension of this License Agreement pursuant to the foregoing Section 2, then this License Agreement shall expire on the final day of the 25-year term. Notwithstanding anything herein contained to the contrary, in the event that the Term is extended and subsequently Licensor determines, in its sole discretion, that it desires to use the Licensed Premises in connection with the present and/or future business activities of Licensor or its affiliates, Licensor reserves the right to terminate this License at any time by giving to Licensee a written notice of termination at least twelve (12) months prior to the effective date of said termination. Upon the effective date of termination, this License shall be of no further force and effect, except as to such of Licensee's liabilities or obligations hereunder, actual or contingent, as shall have arisen on or prior to such date of termination or which by their terms survive the termination of this License.
- (b) Licensee agrees that upon the expiration or earlier termination of this License, the Licensee shall remove the Improvements (unless otherwise directed by Licensor) and restore the Licensed Premises to a condition reasonably satisfactory to Licensor. If the Licensee fails to remove the Improvements and restore the Licensed Premises within thirty (30) days from the expiration or termination of this License, then, in its sole discretion, the Licensor may restore the Licensed Premises at the sole cost and expense of the Licensee, and any costs so incurred

by Licensor shall be paid to Licensor by the Licensee promptly upon demand. In the event that the Licensor restores the Licensed Premises pursuant to this paragraph, Licensee agrees that neither Licensor nor its affiliates, employees or agents of any of them shall be liable to the Licensee, its employees or agents with respect to any claims for or rights of any personal injury or property damages resulting from or in any way connected with the Licensor's exercise of any rights reserved in this paragraph.

(c) [Intentionally Deleted].

11. ASSIGNMENT

This License is not assignable voluntarily, involuntarily or by operation of law, in whole or in part, by Licensee, without the Licensor's prior written consent, which consent shall not be unreasonably withheld. The sale, transfer or conveyance of Licensor's Property, or the portion thereof which constitutes the Licensed Premises, during the Term of this License shall not operate to terminate automatically this License.

12. NOTICE

All notices required or permitted under this License shall be in writing and either delivered in hand or mailed (a) by registered or certified mail (return receipt requested) with the United States Postal Service, or (b) by Federal Express or other overnight mail carrier furnishing evidence of receipt, to the Licensor at

Massachusetts Electric Company
25 Research Drive
Westborough, Massachusetts 01582
Attention: Michael Rook, Manager, Property Assets
and Real Estate Department

with a copy to

Alan J. Rabinowitz, Esq.
25 Research Drive
Westborough, Massachusetts 01582-0099

and a copy to

William T. Sherry
Vice President, Business Services
Massachusetts Electric Company
1101 Turnpike Street
North Andover, Massachusetts 01845-6195

or to the Licensee at the address first set forth above,

Attention Mayor's Office
Post Office Box 550
Newburyport, Massachusetts 01950

and a copy to

Planning & Development Office
Post Office Box 550
Newburyport, Massachusetts 01950.

Either party may change the address at which it is to receive notices by giving notice as hereinabove set forth. Any notice or other communication in connection with this License shall be deemed duly served when received (or upon attempted delivery if delivery is not accepted),

13. GENERAL PROVISIONS

- (a) Failure of the Licensor to complain of any act or omission hereunder on the part of the Licensee, no matter how long the same may continue, shall not be deemed a waiver by the Licensor of any of its rights hereunder. No waiver by the Licensor at any time, express or implied, of any breach of any provision of this License shall ever be deemed a waiver of a breach of any other provision of this License, or a consent to any subsequent breach of the same or any other provision. If any action by the Licensee shall require the Licensor's consent or approval, such consent or approval on any particular occasion shall not be deemed a consent or approval of any other action on any subsequent occasion.
- (b) If any provision of this License, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of

this License, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected. Each provision of this License shall be deemed valid and enforceable to the fullest extent permitted by law.

- (c) The section headings contained in this License are for reference and convenience only and in no way define or limit the scope and contents of this License or in any way affect its provisions.
- (d) This License constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior oral and written offers, negotiations, proposals, representations, agreements, courses of dealing and understandings between the parties relating to the subject matter hereof, and is subject to no understandings, conditions, or representations other than those expressly stated herein.
- (e) This License may only be amended or modified by a writing signed by the Licensor and the Licensee and which refers to this License.
- (f) This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The Licensee agrees and consents that venue and jurisdiction shall be proper in the state court of any county of the Commonwealth of Massachusetts, or in the United States District Court for the District of Massachusetts.
- (g) Neither party to this License shall be responsible to the other for delays or errors in its performance or other breach of this License occurring solely by reason of circumstances beyond its control, including acts of civil or military authority,

national emergencies, fire, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers, or failure of transportation or communication.

- (h) The parties agree that, upon the effective date of this License as described in Paragraph 17 hereof, a memorandum of this License shall be recorded at the appropriate registry of deeds for the town/city in which the property is located.
- (i) If the Licensee executes this License through an agent or representative, each such agent or representative hereby warrants and represents to the Licensor that he is authorized to execute, acknowledge, and deliver this License on behalf of the Licensee and to thereby bind the Licensee to the same.
- (j) This License shall not be construed as creating or vesting in the Licensee any easement or estate in the Licensed Premises, Temporary Work Space or Access Area, but only the limited rights of possession and use under the License hereinabove described.
- (k) This License: (i) shall be executed in duplicate counterparts, each of which when executed by all parties to this License shall be deemed to be an original; (ii) shall take effect as a sealed instrument; (iii) shall bind and inure to the parties and their respective legal representatives, successors and assigns, except that the Licensee may not delegate any of its obligations under this License or assign this License; and (iv) is not intended to inure to any third-party beneficiary.

14. EMINENT DOMAIN

If the Licensed Premises, Temporary Work Space, Access Area or the Licensor's Property, in whole or in part, is appropriated or acquired by any governmental agency or other party having the power of eminent domain, the Licensor may terminate this

License. Any damages recoverable in respect to such appropriation or acquisition shall be the sole property of the Licensor, and the Licensee hereby releases unto the Licensor any interest it may have in the same.

15. APPROVALS

Prior to initial construction of the Improvements, Licensee and/or Licensor, as the case may be, shall have obtained any and all final federal, state, municipal and other licenses, permits, approvals and authorizations (including without limitation, M.G.L. Chapter 91 waterways licenses and Orders of Conditions from the Conservation Commission) which Licensor deems necessary for the construction, installation and use of the Improvements, in form and substance acceptable to Licensor (including without limitation all conditions made a part of any such Approval), with all appeal periods for such Approvals having expired with no appeals having been taken (in such form, collectively, the "Approvals" and individually an "Approval"). To the extent that any Approval may not be clearly required for the construction, operation or use of the Bike Path, the parties shall consult with each other and will negotiate in good faith a resolution of such ambiguity. Licensor shall make the final decision regarding the necessity of permits and Licensee shall comply with that final decision. Notwithstanding any provision in this License to the contrary, it is agreed that if Licensee is denied or does not obtain any Approval for any reason, after fully exhausting Licensee's rights of appeal of such denial, Licensee shall so notify Licensor, and this License shall be null and void and without recourse to the parties hereto, except for any provisions of this License which by their terms shall survive said termination.

16. PLANS AND SPECIFICATIONS FOR THE IMPROVEMENTS

Prior to initial construction of the Improvements, the Licensee shall deliver a complete set of plans and specifications for the Improvements to the Licensor for Licensor's review and

approval, which approval shall not be unreasonably withheld or delayed. The Licensor shall have a period of forty-five (45) days in which to review and either approve or reject the plans and specifications delivered to it by Licensee. On or before the end of said forty-five (45) day period, the Licensor shall notify the Licensee in writing of its approval or denial of said plans and specifications, together with, in the event of a denial, a description of the modifications to said plans and specifications required by the Licensor. In the event that said plans and specifications, as they may be modified in accordance herewith, are approved by the Licensor (hereinafter, together with any modifications thereof subsequently approved by the Licensor, referred to collectively as the "Approved Plans and Specifications"), the improvements that will be constructed by the Licensee within the Licensed Premises, including the Bike Path, Lighting and a chain link fence (collectively the "Improvements"), and the names of the Approved Plans and Specifications shall be specified in an amendment to this License in the form attached hereto as Attachment B and made a part hereof. Any modifications to the Approved Plans and Specifications shall require the Licensor's prior written approval, which approval shall not be unreasonably withheld or delayed.

17. EFFECTIVE DATE

Notwithstanding any provision in this License to the contrary, this License is expressly conditioned upon, and shall not become effective unless and until, the completion of the following to the Licensor's satisfaction:

- (a) All of the Approvals required for construction of the proposed Bike Path have been obtained in accordance with the terms and conditions of Paragraph 15 of this License;
- (b) The parties have agreed upon the final set of Approved Plans and Specifications, including without limitation the final description of the

Improvements, and the Approved Plans and Specifications have been delivered to the Licensor;

- (c) Licensee has obtained the insurance required by Paragraph 7 of this License and has delivered certificates of insurance to Licensor evidencing such insurance; and
- (d) Licensee has obtained substantially similar rights of access from at least one abutting property owner to the Licensor's Water Street substation property for purposes of locating the proposed Bike Path and connecting it to the Licensed Premises.

Upon satisfaction of the conditions listed in subparagraphs (a), (b), (c) and (d) above, the parties hereto have entered into an amendment to this License specifying in detail (a) the Improvements; (b) the names of the Approved Plans and Specifications; and (c) the date on which the Term of this License shall commence (the "License Commencement Date"), the License Expiration Date, which amendment shall be in the form attached hereto as Attachment B and made a part hereof, and one (1) fully executed original thereof is in the possession of each of the parties, all in accordance with the provisions of Paragraph 16 of this License. If any of the conditions contained in this Paragraph are not completed to the Licensor's satisfaction on or before five (5) years from the date hereof, the Licensor may, at its option, terminate this License by written notice to the Licensee, in which event this License shall be null and void and without recourse to the parties hereto, except for any provisions of this License which by their terms shall survive said termination.

IN WITNESS WHEREOF, the parties have caused this License to be executed by their respective duly authorized officers under seal effective upon the date first above written.

LICENSOR:

MASSACHUSETTS ELECTRIC COMPANY

By: CA LaFleur
Name: Cheryl A. LaFleur
Title: President

LICENSEE:

CITY OF NEWBURYPORT

By: Alan P. Lavender
Name: Alan P. Lavender
Title: Mayor

This License shall not be recorded at any registry of deeds, but a memorandum summarizing its key terms and conditions may be, upon request of Licensee.