

## **LICENSE AGREEMENT**

### **I. PARTIES**

A. CITY OF CONCORD, a municipal corporation duly existing under the laws of the State of New Hampshire and having a usual place of business at 41 Green Street, Concord, New Hampshire 03301 (“City”).

B. NH News, Views, and Blues, a nonprofit corporation in the State of New Hampshire, having a principle place of business at 48 Airport Road, Suite 2, Concord, NH 03301 (the “Licensee”).

C. The City and the Licensee are collectively referred to as the “Parties.”

### **II. PURPOSE**

The purpose of this License Agreement is for the City to authorize the Licensee the right to enter upon and to operate, and to reenter as necessity may require to maintain a sixty (60) foot self-standing radio tower for Licensee’s use within the City’s property located at 81 Penacook Street, Concord, NH 03301. The licensed area is shown on a map dated July 30, 2021, prepared by the City of Concord, New Hampshire, attached as Exhibit A, and on the plan entitled “Resubdivision Plat land of City of Concord & Margaret L. Lassonde, Project Location: Map 101, Block 2, Lots 10 & 11, 71 & 81 Penacook St, Concord, NH,” dated June 7, 2018, prepared by Richard D. Bartlett & Associates, LLC, and recorded in the Merrimack County Registry of Deeds as Plan Number 201800015168, attached as Exhibit B (the “Licensed Area”).

By way of background, the existing sixty (60) foot self-standing radio tower was installed by New Hampshire Public Radio (NHPR) on July 28, 1993 adjacent to the City’s Auburn Street water storage tank. In 2011, NHPR discontinued its use of the radio tower and subsequently conveyed the radio tower to the City.

### **III. LICENSED AREA**

The City agrees to provide Licensee and the Licensee’s authorized agents, employees, representatives, contractors and subcontractors, access to the Licensed Area, as herein described, for the sole purpose of operating the radio tower.

A certain tract of parcel of land being 25 feet in width, the centerline of which being described as

follows:

Beginning at the southwest corner of the land of the City of Concord known as Map 101, Block 2, Lot 10 at the easterly sideline of Columbus Avenue; thence

North 04° 05' 59" West along the easterly sideline of Columbus Avenue a distance of 84.10 feet to a point of curvature; thence

By a curve to the left along the easterly sideline of Columbus Avenue, having a radius of 67.48 feet, and a length of 22 feet, to the true point of beginning of the herein described lease area; thence

North 89° 19' East across land of the City of Concord a distance of 262 feet; thence

North 19° 50' East across land of the City of Concord a distance of 90 feet; thence

North 12° 43' East across land of the City of Concord a distance of 71 feet; thence

South 87° 33' East across land of the City of Concord a distance of 110 feet to the existing radio tower.

#### **IV. USE OF LICENSED AREA**

A. The City agrees to provide Licensee and the Licensee's authorized agents, employees, representatives, contractors and subcontractors, access to the Licensed Area for the sole purpose of operating the radio tower and to construct, maintain and operator a 20' x 20' temporary structure to store Licensee's broadcasting equipment (the "Structure"), subject to the City Manager's final approval, at no cost or expense to the City during the Term (as hereinafter defined) of this License Agreement. Licensee and the Licensee's authorized agents, employees, representatives, contractors and subcontractors may have access to the Licensed Area on a twenty-four (24) hour basis.

B. Licensee shall be responsible, at its sole cost and expense, for maintenance activities to Licensee's Structure within the Licensed Area. The Structure shall be maintained in a good, workmanlike fashion, in accordance with any and all laws, codes, rules, regulations and ordinances, and with any and all governmental approvals and permits.

C. Licensee shall pay for any damage, together with associated expenses, costs and fees, within the Licensed Area which may result from Licensee's use of the Licensed Area. Additional activities within the Licensed Area not specified in this Licensee Agreement shall require the City's

written prior approval.

**V. FEE**

Licensee shall pay a fee for use of the Licensed Area as determined by the City Manager.

**VI. TERM AND TERMINATION**

This License Agreement shall continue until such time as it is terminated by the City for any reason. In the event that the City terminates this License, the City at its sole discretion may require Licensee to remove the Structure from the Licensed Area at Licensees sole cost and expense.

Within one hundred and eighty (180) days of termination of this License Agreement, the Licensee shall remove any and all of its material not belonging to the City from the Licensed Area and restore the Licensed Area to its original condition. Licensee shall be solely responsible to pay any costs associated with restoring the Licensed Area to its original condition, and to repair any damage caused to the Licensed Area.

**VII. INSURANCE**

During the Term of this License Agreement, Licensee shall furnish to the City a certificate that the Licensee has in force general liability insurance, naming the City as an additional insured, by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this license, in an amount not less than \$1,000,000 per incident or occurrence. Upon issuance of a Certificate of Occupancy, the Licensee shall maintain, during the Term of this License Agreement and for so long as Licensee continues Licensee’s use within the Licensed Area, the following insurance:

<b>A. Commercial General Liability</b>	
General Aggregate	\$2,000,000
Products-Completed Operations Agg.	\$2,000,000
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000
<b>B. Workers Compensation</b>	
NH Statutory including Employers Liability	
Each Accident/Disease-Policy Limit/Disease-Each Employee	
\$100,000/\$500,000/\$100,000	
<b>C. Commercial Umbrella</b>	
May be substituted for higher limits required above	\$5,000,000

**D. General Requirements.** The following conditions shall apply to the insurance policies required herein:

(1) Licensee shall submit certificates of insurance for all coverage required hereunder on the effective date and on each anniversary thereof, or at the City's reasonable request, together with such other relevant insurance documentation as the City may reasonably request. All the insurance required under this License Agreement shall name the City as additionally insured with respect to commercial general, automobile and umbrella liability, and all insurance policies and certificates shall include a provision requiring thirty (30) business days' written notice to the City by certified mail of any cancellation, material change, or reduction in coverage.

(2) All insurance of Licensee shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance for contributions.

(3) All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the State of New Hampshire and having an A+ or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).

(4) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.

(5) Licensee's failure to obtain, procure, or maintain the required insurance shall constitute a material breach of this License Agreement.

(6) Licensee's obligation to hold harmless and indemnify the City shall not be limited by the requirement for, or existence of, insurance coverage.

(7) The City shall have the right to require Licensee to increase such limits when, during the term of this License Agreement, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Licensed Area by responsible owners or Licensees are more or less generally increased, it being the intention of this sentence to require Licensee to take account of inflation in establishing minimum limits of liability insurance maintained from time to time, but not without sixty (60) days advanced written notice to Licensee.

## **VIII. INDEMNIFICATION**

Licensee shall defend, indemnify and hold harmless City and its officials, agents and employees (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability, and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation set forth in this License Agreement and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Licensee (or its contractors, agents or employees) in connection with this License Agreement; provided, however, that nothing herein shall require the Licensee to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or

omissions of, or the willful misconduct of, the City. Additionally, to the fullest extent permitted by law, no official, employee, agent, or representative of the City shall be individually or personally liable for any obligation or liability of Licensee under this License Agreement.

Further, Licensee agrees that the City, its agencies and their employees, agents, and representatives shall not incur any legal liability whatsoever to Licensee for any damage to the Structure or to any other property or employee of Licensee or to any other person or entity hired by or affiliated with Licensee resulting from or arising out of any ownership and use of and operations within the Licensed Area, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair.

The indemnification obligations set forth herein shall survive the term of this License Agreement. Licensee must choose defense counsel acceptable to the City and obtain the City's consent to any proposed settlement.

**IX. DAMAGE TO THE LICENSED AREA**

Any damage to the Licensed Area, which, as determined by the City, is caused by, results from, or arises out of the replacement, maintenance, or presence of Licensee's Structure shall be repaired by the City or the Licensee as shall be determined by the City. Licensee shall fully compensate the City for all costs associated with the repair of any such damage.

**X. IMMUNITY**

Notwithstanding any provision of this License Agreement, nothing herein contained shall be deemed to constitute a waiver of the immunity of the City, which immunity is hereby reserved to the City. This covenant shall survive the termination of this License Agreement.

**XI. ASSIGNMENT**

This License Agreement shall run with the land for the Term hereof. Licensee may assign or otherwise transfer this License Agreement upon the City's written consent, which shall not be unreasonably withheld, conditioned, or delayed.

**XII. COMPLIANCE WITH LAW**

The Licensee shall use, possess, maintain, repair, and replace Licensee's Structure within the Licensed Area, in compliance with all applicable federal, state, and local laws, codes, ordinances, statutes, rules, and regulations, and in accordance with any and all federal, state, and local permits and approvals.

**XIII. NOTICES**

Any notice or other communication required by this License Agreement will be deemed to

have been duly given, if deposited in the U.S. Mail, postage prepaid, and addressed to the other party at the address set forth in the identification of the Parties in this License Agreement.

#### **XIV. DISPUTES**

Any disputes between the Parties may be resolved using mediation or arbitration. The results of such mediation or arbitration shall be nonbinding unless otherwise agreed to in writing by both Parties. With respect to nonbinding mediation or arbitration, either party shall have the ability to set aside the results of such activities and to proceed with resolving any dispute via court.

The Parties hereby submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this License Agreement or any related agreement, and further waive any and all objections they may have as to venue in such courts and waive all rights to bring any such action or proceeding before any other court or tribunal. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court.

#### **XV. AMENDMENTS**

This License Agreement may be amended only in writing signed by the Parties.

#### **XVI. NO ORAL WAIVER, MODIFICATION, OR TERMINATION**

This License Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.

#### **XVII. BINDING EFFECT; SUCCESSORS AND ASSIGNORS**

The terms and provisions of this License Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective permitted successors, assigns, and nominees.

#### **XVIII. EXHIBITS**

All exhibits referred to in this License Agreement are hereby incorporated by reference and expressly made a part hereof.

#### **XIX. GOVERNING LAW**

This License Agreement shall in all respects be governed by, and construed and enforced in

accordance with, the laws of the State of New Hampshire.

**XX. WAIVER**

Any provision of this License Agreement may be waived or modified only by instruments in writing executed by each of the Parties hereto. No waiver, express or implied, of any breach of any provision of this License, shall be deemed a waiver of a breach of any other provision of this License Agreement or consent to any subsequent breach of the same or any other provision.

**XXI. SEVERABILITY**

If any term or provision of this License Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License Agreement shall be valid and be enforced to the fullest extent permitted by law.

**XXII. NO THIRD PARTY BENEFICIARIES**

This License Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto.

**XXIII. COUNTERPARTS**

This License Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire License Agreement and understanding between the Parties, and supersedes all prior agreements and understandings relating hereto.

**XXIV. CAPTIONS**

The captions and headings throughout this License Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify, or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this License Agreement, nor in any way affect this License Agreement, and shall have no legal effect.

**XXV. PROPERTY TAXES**

Licensee shall have the responsibility to pay any personal property taxes, real estate taxes, assessments, or charges owed on the Licensed Area which are the result of Licensee's use of the Licensed Area and/or the installation, maintenance, and operation of the Structure, including any increase in real estate taxes at the Licensed Area which arises from the Licensee's improvements and/or Licensee's use of the Licensed Area. Pursuant to RSA 72:23, I(b), the failure of the Licensee

to pay the duly assessed personal and real estate taxes when due shall result in termination of this License Agreement.

**XXVI. AUTHORITY OF CITY**

Authority for the City Manager to enter in this License Agreement on behalf of the City was granted by the City Council on \_\_\_\_\_, 2021, and is hereby incorporated into this Agreement by reference.

**XXVII. ENTIRE AGREEMENT**

This License Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and thereof, and supersedes all prior agreements and understandings between the Parties.

**XXVIII. EXECUTION**

**CITY OF CONCORD**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Thomas J. Aspell, Jr.  
Its City Manager  
Duly Authorized

**NH NEWS, VIEWS, AND BLUES**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its \_\_\_\_\_  
Duly Authorized