

## 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 (“Licensor”).

B. LIBERTY UTILITIES (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, incorporated in the State of New Hampshire, having a principle place of business at 15 Buttrick Road, Londonderry, NH 03053 (the “Licensee”).

### **II. PURPOSE**

The purpose of this License is for the Licensor to authorize the Licensee the right to enter upon and to lay, construct, reconstruct, operate, and to reenter as necessity may require, to repair, replace, or maintain approximately 200 feet of 6 inch plastic gas main (“gas facilities”) laterally crossing approximately 3 feet underground as shown on the attached Plans as Exhibit 1.

### **III. USE OF LICENSED AREA**

A. The Licensor authorizes the Licensee the right to install gas facilities within the Licensed Area, which is known as Map 45, Block 6, Lot 20 and also Map 45, Block 6, Lot 8. This Licensed Area as shown on Exhibit 1 is subject to the rights and privileges herein granted and conveyed. The Licensee hereby covenants that it shall not use the Licensed Area in a manner that impairs or interferes with the Licensor’s improvements. The Licensee shall have all other rights and benefits necessary or convenient to construct, maintain, repair, and replace its gas facilities, subject to the terms and conditions set forth herein.

B. Licensee shall submit installation plans of the gas facilities to the Licensor for approval prior to any installation of the gas facilities.

C. Licensee shall submit any proposed alterations to said plans in writing to the Licensor for review and approval by the Licensor.

D. Licensee shall submit its written maintenance policies and procedures which are to be used for the inspection, repair, and maintenance of said facilities to the Licensor for review and approval. Such procedures shall be approved by the Licensor prior to initial operation of the constructed facilities.

E. Licensee shall give the Licensor a minimum of two (2) business days notice of scheduled or nonscheduled maintenance of the gas facilities except emergency repairs, for which Licensee shall contact the Licensor while such emergency repairs are being done. Regular maintenance, inspection, and updating by Licensee shall not be conducted without prior

notification to the Licensor.

F. All materials supplied and work performed by the Licensee or its contractor in the installation of the gas facilities shall be subject to the inspection of a representative of the Licensor. Any deficiencies in materials, methods of construction, or workmanship shall be promptly corrected to the satisfaction of the Licensor.

#### **IV. INSTALLATION OF GAS FACILITIES**

The Licensee shall be responsible, at its sole cost and expense, for the installation of the gas facilities within the Licensed Area so that it may be used for Licensee's intended purposes. Prior to commencement of construction, the Licensee shall provide the Licensor with plans and specifications as to the exact location of the installation for its approval. Except in the event of an emergency, all construction or maintenance activities shall be coordinated with the Licensor in advance. Any and all improvements shall be constructed and 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. The Licensee shall pay for any damage, together with associated expenses, costs and fees, within the Licensed Area which may result from the Licensee constructing, maintaining, operating, altering, repairing, removing, changing the size of, or replacing the gas facilities. Following the completion of any work by the Licensee, the Licensee shall restore the Licensed Area to its condition prior to such work. Any other land of the Licensor disturbed during the course of construction, maintenance, repair, or replacement of the improvements and not otherwise occupied by such improvements, shall be restored to its original condition at the Licensee's expense. The Licensee shall ensure that any and all contractors and subcontractors performing labor or supplying materials to the Licensed Area on behalf of the Licensee are paid in a timely manner.

#### **V. WORK PROCEDURE**

Licensee agrees that access to the gas facilities for scheduled or nonscheduled maintenance or for any other purpose shall be made in accordance with the following procedure:

- A. Prior to working within the Licensed Area, Licensee shall notify the City of Concord's City Engineer and schedule work with the City Engineer or his/her designee.
- B. At all times when working within Licensed Area, traffic control devices shall be provided by the Licensee as required by the Licensor.
- C. Any and all work done by the Licensee at these locations shall conform to standards set by the Licensor and all other applicable State and Federal standards.

#### **VI. TERM**

This License shall continue until such time as it is terminated by either party for any reason in accordance with the termination provision of this License.

**VII. TERMINATION**

Either party may terminate this License at any time and for any reason with a ten (10) days written notice to the non-terminating Party. If the Licensor terminates this License, Licensee shall remove its gas facilities from the Licensed Area within ninety (90) days of said effective date of termination. In the event the Licensee has failed to remove its infrastructure at the end of the ninety (90) day period, the Licensor shall have the right to call the Licensee’s financial surety to finance removal of the gas facilities. In addition, the Licensee shall be subject to reasonable liquidated damages in the amount of \$500.00 per calendar day.

**VIII. INSURANCE**

During the period of construction through the date of completion, as evidenced by the issuance of a Certificate of Occupancy for the Licensee’s project, the 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 and for so long as Licensee continues the installation of gas facilities within the Licensed Area, the following insurance:

**A. Commercial General Liability**

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. Workers Compensation**

NH Statutory including Employers Liability  
Each Accident/Disease-Policy Limit/Disease-Each Employee  
\$100,000/\$500,000/\$100,000

**C. Commercial Umbrella**

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 Licensor’s reasonable request, together with such other relevant insurance documentation as the Licensor may reasonably request. All the insurance required under this Agreement shall name the Licensor 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 Licensor 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 Licensor'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.

(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, 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 on the Premises, but not without sixty (60) days advanced written notice to Licensee

## **IX. FINANCIAL SURETY**

The Licensee shall provide the Licensor with a financial surety, in a form acceptable to the Licensor's City Solicitor and in an amount acceptable to the City Engineer, for modification or removal of the Gas Facilities should the Licensee fail to make modifications or to remove the improvements, as provided for within this Agreement. The amount of the financial surety shall be reviewed annually by the Licensor Engineer, and, if necessary, increased by the Licensee in order to cover the Licensor's City Engineer's estimate for removal or modification of the gas facilities. Failure of the Licensee to maintain a financial surety shall constitute a breach of this License.

## **X. INDEMNIFICATION**

Licensee shall defend, indemnify and hold harmless Licensor 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 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 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 Licensor. Additionally, to the fullest extent permitted by law, no official, employee, agent, or representative of the Licensor shall be individually or personally liable for any obligation or liability of Licensee under this License.

Further, Licensee agrees that the Licensor, its agencies and their employees, agents, and representatives shall not incur any legal liability whatsoever to Licensee for any damage to the gas facilities 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.

#### **XI. FURTHER PROTECTION**

Licensee shall, at the request of the Licensor and at the expense of Licensee, provide whatever protection is deemed necessary by the Licensor in the event the Licensor performs any work on the Licensed Area, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair of the highway facilities.

#### **XII. DAMAGE TO THE LICENSED AREA**

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

#### **XIII. IMMUNITY**

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

#### **XIV. TAXES**

The Licensee shall be responsible to pay any such taxes made necessary because of its use of the Licensed Area in accordance with RSA 72:23, I, b, as determined by the City of Concord Assessing Department. Taxes shall be paid quarterly by the Licensee, as billed by the City. The City or the Licensee shall have the right to appeal any such determination of tax. Failure of the Licensee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate this Agreement by the City.

## **XV. ASSIGNMENT**

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

## **XVI. COMPLIANCE WITH LAW**

The Licensee shall use, possess, maintain, repair, and replace said Licensed Area, and any improvements 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.

## **XVII. MODIFICATION OF LICENSED AREA**

In the event of a modification to the location of the Licensed Area, the parties shall execute an amendment memorializing such change.

## **XVIII. 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 Agreement.

## **XIX. 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 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.

## **XX. MUNICIPAL APPROVALS**

The execution of this License does not preempt or supersede the review process or powers of any City or other governmental Board, Committee, Commission, or Department, or excuse the Licensee from the requirement to apply for and receive all necessary permits and approvals from

all applicable City or other governmental Boards, Committees, Commissions, or Departments.

**XXI. ENTIRE AGREEMENT**

This License 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.

**XXII. AMENDMENTS**

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

**XXIII. NO ORAL WAIVER, MODIFICATION, OR TERMINATION**

This License 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.

**XXIV. BINDING EFFECT; SUCCESSORS AND ASSIGNORS**

The terms and provisions of this License 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.

**XXV. EXHIBITS**

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

**XXVI. GOVERNING LAW**

This License shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.

**XXVII. SEVERABILITY**

If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, 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 shall be valid and be enforced to the fullest extent permitted by law.

**XXVIII. NO THIRD PARTY BENEFICIARIES**

This License 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.

**XXIX. COUNTERPARTS**

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

**XXX. CAPTIONS**

The captions and headings throughout this License 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, nor in any way affect this License, and shall have no legal effect.

**XXXI. AUTHORITY OF LICENSOR**

Authority for the City Manager to enter in this License Agreement on behalf of the Licensor was granted by the City Council on \_\_\_\_\_, 2017, and is hereby incorporated into this Agreement by reference.

**XXXII. EXECUTION**

*In witness whereof*, the City has hereunto set its hand this \_\_\_\_ day of \_\_\_\_\_, 2017.

*CITY OF CONCORD*

\_\_\_\_\_  
Date

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

Liberty Utilities accepts this License and the terms contained therein.

*LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS)  
CORP. D/B/A LIBERTY UTILITIES*

\_\_\_\_\_  
Date

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