

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. INTERCHANGE DEVELOPMENT, LLC, incorporated in the State of New Hampshire, having a principle office at 152 Morrill Road, Canterbury, NH, 03224 (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 install, maintain, repair, or replace an 18” reinforced concrete Pipe (“Pipe”) for the purposes of discharging stormwater from the Licensee’s commercial property located on the east side of Whitney Road, Penacook, NH 03303 across and under Whitney Road, a City of Concord accepted street, as shown on the attached plan sheet noted as Exhibit 1.

III. USE OF LICENSED AREA

A. The City agrees to provide Licensee and the Licensee’s authorized agents, contractors and subcontractors, access to the Licensed Area subject to the Licensee’s receipt of all required municipal permits including, but not limited to, a City excavation permit. The Licensee shall be subject to any and all pertinent City fees or moratoria relative to excavation of the public roadway.

B. Licensee shall be responsible, at its sole cost and expense, for maintenance activities to Licensee’s Pipe within the Licensed Area. The Pipe 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. Licensee shall provide the City a minimum of ten (10) business days-notice of scheduled maintenance of the Pipe if any work is to be conducted in the public right of way.

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.

IV. 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 Pipe from the Licensed Area at Licensee's sole cost and expense or alternatively seek compensation from the Licensee to the City for its removal of the Pipe.

V. 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:

A. Commercial General Liability

General Aggregate	\$2,000,000
Each Occurrence Injury	\$1,000,000

B. 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.

VI. 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 Pipe 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.

VII. 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 Pipe 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.

VIII. 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.

IX. 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.

X. COMPLIANCE WITH LAW

The Licensee shall use, possess, maintain, repair, and replace Licensee's Pipe 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.

XI. 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.

XII. 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.

XIII. AMENDMENTS

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

XIV. 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.

XV. 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.

XVI. EXHIBITS

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

XVII. 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.

XVIII. 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.

XIX. 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.

XX. 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.

XXI. 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.

XXII. 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.

XXIII. 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 Pipe, 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.

XXIV. 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 October 12, 2021, and is hereby incorporated into this Agreement by reference.

XXV. 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.

XXVI. EXECUTION

CITY OF CONCORD

Date

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

INTERCHANGE DEVELOPMENT, LLC

Date

By: _____
Laurie Rauseo
Its Manager & Member
Duly Authorized

Date

By: _____
David Rauseo
Its Manager & Member
Duly Authorized