

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, is made as of the 1st day of _____, by and between NSTAR Electric Company ("NSTAR Electric"), a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its usual place of business at 800 Boylston Street, Boston, Massachusetts, and Verizon New England, Inc., d/b/a Verizon Massachusetts ("Verizon"), a corporation organized and existing under the laws of the State of New York, having its usual place of business at 185 Franklin Street, Boston, Massachusetts (either or both hereinafter referred to as the "Licensor") and the City of _____, a municipal corporation having a usual place of business at _____, Massachusetts (hereinafter referred to as the "City"). NSTAR Electric, VERIZON, and/or the City may be individually referred to as a "Party" and two or more of the foregoing may be referred to as "Parties."

WITNESSETH

WHEREAS, the City and NSTAR Electric have entered into a Purchase and Sale Agreement Regarding Municipal Street Lights dated as of _____ ("Purchase and Sale Agreement") whereby NSTAR Electric will convey to the City certain streetlight facilities located in the City of _____;

WHEREAS, the City desires to place and maintain said streetlight facilities and such other related equipment and fixtures that the City may hereafter purchase or lease for the provision of street lighting (the "Attachments") on poles of Licensor, which poles are either jointly or solely owned by the Licensor;

WHEREAS, Licensor is willing to permit, to the extent Licensor may lawfully do so, the placement of said Attachments on Licensor's facilities as presently located and in such other locations as are reasonably available and where such use will not interfere with Licensor's service requirements or the use of its facilities by others, subject to the terms of this License Agreement;

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

ARTICLE I DEFINITIONS

When used in this Agreement with initial capitalization, the following terms shall have the following meanings:

1.1 Anchor Rod

A metal rod connected to an anchor and to which a guy strand is attached. Also known as a "guy rod".

1.2 Attachments or City's Facilities

Streetlight facilities and equipment that the City has purchased as of the date of this License Agreement from NSTAR Electric, together with such additional facilities for the provision of street lighting that the City may purchase in the future.

1.3 Verizon New England, Inc., d/b/a Verizon Massachusetts

Verizon New England, Inc., d/b/a Verizon Massachusetts ("VERIZON"), a corporation organized and existing under the laws of the State of New York, having its usual place of business at 185 Franklin Street, Boston, Massachusetts. Verizon New England, Inc., d/b/a Verizon Massachusetts is one of the Licensors, as that term is defined herein.

1.4 NSTAR Electric

NSTAR Electric Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having a usual place of business at 800 Boylston Street, Boston, MA. NSTAR Electric is one of the Licensors, as defined herein.

1.5 Field Survey Work or Survey Work

An on-site and/or office survey of the poles on which the City wishes to make an Attachment or relocate, materially alter, or replace an existing Attachment, in order to determine if the pole can safely accommodate the required Attachment, and to provide the basis for estimating the cost of this work.

1.6 Joint Owner

A person, firm or corporation having an ownership interest in a pole and/or anchor rod with Licensor.

1.7 Joint User

A party with whom Licensor has entered into, or may hereafter enter into, a written agreement covering the rights and obligations of the parties thereto with respect to the use of poles and anchor rods owned by each party.

1.8 Licensor

NSTAR Electric and New England Telephone and Telegraph Company, as those terms are defined herein.

1.9 Make-Ready Work

The work required (rearrangement and/or transfer of existing facilities on a pole, replacement of pole or any other changes) to accommodate the City's Facilities on Licensor's pole, where the City proposes to relocate, materially alter, or replace Attachments owned at the time of execution of this License Agreement, or install Attachments purchased after the date of execution of this License Agreement.

1.10 Other Licensee

Any entity, other than the City herein or a Joint User, to whom Licensor has or hereafter shall extend the privilege of attaching communications facilities to Licensor's poles.

ARTICLE 2 SCOPE OF AGREEMENT

- 2.1 Subject to the provisions of this License Agreement, Licensor agrees to issue to the City for the purpose of a City-owned streetlight system, nonexclusive licenses for the term set forth in Article 18 of this License Agreement, authorizing the attachment by the City of the City's Facilities to Licensor's poles. Subject to this Licensing Agreement and the separate Purchase and Sale Agreement signed by the City and NSTAR Electric, the City shall have the right and discretion to maintain and repair its street lighting equipment; to remove or replace said street lighting equipment; and to engage in any and all other acts necessary to the operation of its street lighting system. Such licenses are revocable by the Licensor only for material breach in the terms and conditions of this License Agreement and for the reasons set forth in Article 10 herein.
- 2.2 No use, however extended, of Licensor's poles shall create or vest in the City any ownership or property rights in such poles other than the ownership and other rights granted to the City pursuant to Section 1 of the Purchase and Sale Agreement; provided, however, that nothing in this License Agreement shall be deemed as limiting the rights that the City may have under G.L. c. 164, §34A, under any successor acts or amendments, or any other provision of law. The City's rights herein shall be and remain a license. Neither this License Agreement nor any license granted hereunder shall constitute an assignment of any of rights Licensors may lawfully possess to use the public or private property at the location of Licensor's poles.
- 2.3 Nothing contained in this License Agreement shall be construed to compel Licensor to construct, retain, extend, place or maintain any pole or other facilities not needed for Licensor's own service requirements; provided, however, that Licensor shall not remove or relocate any pole without first: a) giving the City 30 days' advance notice of relocation or removal; and b) offering the City the opportunity to purchase any such pole at a fair and reasonable price.
- 2.4 Nothing contained in this License Agreement shall be construed as a limitation, restriction, or prohibition against Licensor with respect to any agreement(s) and arrangement(s) which Licensor has heretofore entered into with others not parties to this Agreement regarding the poles covered by this Agreement, nor shall any provision in this License Agreement be construed as limiting the rights that the City may have with respect to public ways or municipal easements. The rights of the City shall at all times be subject to any such existing agreement(s) or

arrangement(s) between Licensor and any Joint Owner(s) or Joint User(s) of Licensor's poles, except as specified herein.

ARTICLE 3 FEES AND CHARGES

- 3.1 The City agrees to pay to Licensor the fees and charges as specified in and in accordance with the terms and conditions of APPENDIX I, attached hereto and made a part hereof, subject however to the terms of Section 8 of the Purchase and Sale Agreement, in which the City reserves the right to challenge the right of the Licensor or Joint Owners to impose fees for pole attachments. The City further agrees to pay such other fees as may be agreed to by the parties, regarding any other work that the City may request the Licensor to perform in connection with the City's operation, maintenance or repair of its street lighting system.
- 3.2 Nonpayment of any amount due under this Agreement shall constitute a default of this agreement and shall subject the parties to the rights and obligations set forth in Article 10 of this Agreement with respect to any such default; provided, however, that in the event of nonpayment the Licensor shall give notice of any intent to invoke its rights to terminate, and the City shall have the right to cure any default by making payment within 30 days of such notice.
- 3.3 Licensor may change the amount of fees and charges specified in APPENDIX I by giving the City not less than sixty (60) days' written notice prior to the date the change is to become effective. The Licensor will negotiate in good faith with the City regarding such changes. Notwithstanding any other provision of this Agreement, the City may terminate this License Agreement at the end of such sixty-day notice period if the change in fees and charges is not acceptable to the City, provided the City gives Licensor written notice of its election to terminate this Agreement at least thirty (30) days prior to the end of such sixty-day period. If the City so terminates, it shall remove all of the City's Facilities in the manner set forth in Article 10 of this License Agreement. If the City does not so terminate, Licensor's written notice of change shall constitute the Agreement of the Parties with respect to fees and charges, subject to the outcome of any timely request for judicial or regulatory review, if any, by the City.

ARTICLE 4 OTHER PAYMENT

- 4.1 City shall issue a purchase order to the Licensor in advance for any performance by Licensor of any Field Survey or Make-Ready Work required in an amount specified by Licensor sufficient to cover the direct and related indirect costs incurred by Licensor to complete the required Field Survey or Make-Ready Work. Payment shall be in accordance with Article 3.

ARTICLE 5 SPECIFICATIONS

- 5.1 The City's Facilities shall be placed and maintained in accordance with the applicable requirements and specifications of the latest editions of the New England Telephone and Telegraph Manual of Construction Procedures (Blue Book), Electric Company Standards, the National Electrical Code (NEC), the National Electrical Safety Code (NESC) and the rules and regulations of the Occupational Safety and Health Act (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply. Notwithstanding the foregoing paragraph, to the extent placement of Facilities purchased by the City shall not conform with such specifications, the City shall not be obligated to relocate or otherwise replace them except as expressly required pursuant to this Agreement or the Purchase and Sale Agreement of even date.
- 5.2 For Attachments that are purchased and installed after the date of execution of the Purchase and Sale Agreement ("Additional Facilities"), if any part of such Additional Facilities are not placed and maintained in accordance with the codes, regulations and laws specified in Section 5.1 above, and such failure was not caused by Licensor, after ten (10) days' prior written notice to the City and in addition to any other remedies Licensor may have hereunder, the Licensor may remove such Additional Facilities from any or all of the Licensor's poles or perform such other work and take such other action in connection with said Facilities, only to the extent that Licensor deems reasonably necessary or advisable to provide for the safety of Licensor's employees or performance of Licensor's service obligations. Such relocation work shall be at the cost and expense of the City provided, however, that when in the sole reasonable judgment of the Licensor such a condition constitutes an emergency, Licensor may take such action without prior notice to the City.
- 5.3 As described in APPENDIX III, Form G, the City shall place identification tags on those of the City's Facilities located on Licensor's poles that are added after the effective date of this Agreement. Licensor, in its sole determination, has the right to approve all identification tags that are different than those described in APPENDIX III, Form G. Licensor reserves the right to require the City to place identification tags on the City's equipment located on Licensor's poles that existed at the effective date of this Agreement if circumstances arise, in Licensor's good faith judgment, pose a safety risk to persons or to Licensor's equipment. If Licensor determines that it is necessary to affix identification tags on the City's equipment that can be accessed only by a bucket truck, the City agrees to affix identification tags in the course of performing any maintenance or other work on such equipment. The City shall have a reasonable time to comply with these tagging requirements.

ARTICLE 6 LEGAL REQUIREMENTS

- 6.1 The City shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain the City's Facilities on public and private property at the location of Licensor's poles which the City uses and shall submit to Licensor evidence of such authorization before placing the City's Facilities on such public and/or private property. The Parties acknowledge that the City does not need any authorization to place or maintain the City's facilities on City land, easements, or rights of way, and that the Licensor shall only require evidence of authorization in those instances in which City Facilities are placed on private land or land held by a public entity other than the City.
- 6.2 The parties hereto shall at all times observe and comply with, and the provisions of this License Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this License Agreement, so long as such laws, ordinances or regulations remain in effect.
- 6.3 No license granted under this License Agreement shall extend to any of Licensor's poles where the placement of the City's Facilities would result in a forfeiture of the rights of Licensor or Joint Users to occupy the property on which such poles are located, except to the extent Licensor's poles are dedicated to the City's exclusive use. If placement of the City's Facilities would result in a forfeiture of the rights of Licensor or Joint Users, or both, to occupy such property, the City agrees to remove its Facilities forthwith, provided that the City's Facilities are added after the effective date of this License Agreement; and the City agrees to pay Licensor or Joint Users, or both, all losses, damages, and costs incurred as a result thereof. Nor will any license granted hereunder extend to any of the Licensor's poles where the placement of equipment granted by such license precludes or interferes with the use of the City's Facilities, including any new City Facilities installed prior to the date of such third-party license.
- 6.4 The execution of this Agreement and the payment of License Fees shall not be used by any party as evidence that the space which the Licensee occupies hereunder is either "usable space" or not usable space.

ARTICLE 7 ISSUANCE OF LICENSES

- 7.1 Before the City shall make any new Attachments or relocate any existing Attachments on any pole, the City shall make application for and have received a license therefore in the form of APPENDIX III, Forms A-1 and A-2. For all of the City's Facilities purchased as part of the Purchase and Sale Agreement, the Licensor shall issue a license to the City as of the date of execution of this License Agreement. In the event the placement of any new Attachments is necessary to alleviate an emergency public safety situation, in the reasonable

opinion of the City, Licensor agrees to expedite the application process to address the emergency public safety situation.

- 7.2 The City agrees to limit the filing of applications for pole attachment licenses to include not more than 200 poles on any one application and 2,000 poles on all applications which are pending approval by Licensor at any one time. City Facilities purchased as part of the Purchase and Sale Agreement shall not be counted for purposes of this paragraph 7.2.

ARTICLE 8 POLE MAKE-READY WORK

- 8.1 The Licensor, at its reasonably-exercised discretion, may require a Field Survey for each pole on which the City proposes relocating, materially altering, or replacing the City's Facilities, or on which the City proposes to locate new Attachments after the effective date of this License Agreement, to determine the adequacy of the pole to accommodate the City's Facilities. The Field Survey will be performed jointly by representatives of Licensor, Joint Owner and/or Joint User and the City, at the cost of the City at Licensor's direct and related indirect cost for performing such work. A Field Survey shall not be required for the replacement of bulbs or photo cells or the replacement of streetlight equipment in the identical location with equipment of comparable style and size.
- 8.2 Licensor reserves the reasonable right to refuse to grant a license for attachment to a pole when Licensor determines that the space on such pole is required for its exclusive use or that the pole may not reasonably be rearranged or replaced to accommodate the City's Facilities.
- 8.3 In the event Licensor determines that a pole on which the City proposes relocating, materially altering, or replacing its Facilities, or installing new City Facilities after the date of this License Agreement, is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the City's Facilities in accordance with the specifications set forth in Article 5, Licensor will indicate on the Authorization for Pole Make-Ready Work (APPENDIX III, Form B2) the cost of the required Make-Ready Work and return it to the City.
- 8.4 Any required Make-Ready Work will be performed following receipt by Licensor of completed Form B2. The City shall pay Licensor for all Make-Ready Work completed in accordance with the provisions of Article 4 and APPENDIX I, and shall also reimburse the owner(s) of other facilities attached to said poles for any expense incurred by it or them in transferring or rearranging such facilities to accommodate the City's Facilities. The City shall not be entitled to reimbursement of any amounts paid to Licensor for pole replacements or for rearrangement of Facilities on Licensor's poles by reason of the use by the Licensor or other authorized user(s) of any additional space resulting from such replacement or rearrangement.
- 8.5 Should Licensor reasonably need to attach additional equipment to any of Licensor's poles to which the City is attached, the City will either rearrange the

City's Facilities on the pole or transfer them to a replacement pole as determined by Licensor so that the additional facilities of Licensor may be attached, provided that the rearrangement on the existing pole or transfer to a replacement pole shall not interfere with the City's provision of adequate street and area lighting at the location in question. The rearrangement or transfer of the City's Facilities will be made at the City's sole expense. If the City does not rearrange or transfer its attachments within fifteen (15) days of receipt of written notice from Licensor requesting such rearrangement or transfer, Licensor or Joint User may perform or have performed such rearrangement or transfer and the City agrees to pay Licensor's direct and related indirect costs thereof.

- 8.6 Licensor, when it reasonably deems an emergency to exist, may rearrange, transfer or remove the City's Facilities to Licensor's poles, and without any liability on the part of the Licensor for damage or injury to the City's Facilities, except to the extent that such emergency is the result of the Licensor's negligence or failure to act in accord with good utility practice
- 8.7 License applications received by Licensor from the City and from any other existing or potential licensees for Attachment accommodations on the same pole, prior to the commencement of any Field Survey or Make-Ready Work required to accommodate any licensee, will be processed by Licensor in accordance with the procedures detailed in APPENDIX II attached hereto.
- 8.8 In performing all Make-Ready Work to accommodate the City's Facilities, Licensor will make its best efforts to complete such work in its normal workload schedule as soon as reasonably possible.

ARTICLE 9 CONSTRUCTION AND MAINTENANCE OF ATTACHMENTS

- 9.1 Subject to the terms of the Purchase and Sale Agreement, the City shall, at its own expense, construct and maintain the City's Facilities on Licensor's poles in a safe condition and in a manner reasonably acceptable to Licensor, so as not to substantially conflict with the use of the Licensor's poles by Licensor or by other authorized users of Licensor's poles, nor electrically or otherwise interfere with Licensor's facilities attached thereon. In the event that the City may hire the Licensor to maintain the City's Facilities, it will be the obligation of the Licensor to maintain the City's Facilities in a safe condition.
- 9.2 In the event that the City relocates, materially alters, or replaces its Facilities or installs new City Facilities, Licensor shall specify the point of Attachment on each of Licensor's poles to be occupied by the City's Facilities.
- 9.3 The City shall obtain specific written authorization from Licensor before relocating or materially altering the City's Facilities. Replacement with equipment of the same type, size and kind shall not be considered a material alteration.
- 9.4 All tree trimming made necessary, in the opinion of the Licensor, by reason of the City's desired relocation or material alteration of the City's Facilities, shall be

performed by the City, or by its contractors approved by Licensor, such approval not to be unreasonably withheld, at the sole cost, expense and direction of the City, provided, however, that the City shall obtain any necessary permission from the owners of any trees prior to trimming.

ARTICLE 10

TERMINATION OF LICENSE AND LICENSE AGREEMENT

- 10.1 Any license issued under this License Agreement shall automatically terminate when the City ceases to have authority to construct, operate and/or maintain the City's Facilities on the public or private property at the location of the particular pole covered by the license or if Licensor ceases to have such authority with respect to Licensor's poles.
- 10.2 The City may at any time remove the City's Facilities from a pole after first giving Licensor prior written notice of such removal (APPENDIX III, Form D). Following such removal, no Attachment shall again be made to such pole until the City shall have first complied with all of the provisions of this License Agreement as though no such attachment had previously been made. The removal and replacement of City Facilities shall not be considered a removal subject to the preceding sentence if the location at which such Facilities are attached is left vacant for a period of 60 days or less, or if within said 60 days the City provides notice to the Licensor that it intends to promptly replace, within a specified period of time, any equipment that has been removed.
- 10.3 If the City shall fail to comply with any of the material terms or conditions of this License Agreement so that the City is in substantial breach of its obligations under this License Agreement, or if the City's Facilities are maintained or used in violation of law, and the City shall fail within thirty (30) days after written notice from Licensor to correct such material default or noncompliance, or for a material default which by its nature is not capable of being cured within said thirty (30) days, if the City shall fail to diligently continue to correct such material default, Licensor may at its option terminate this License Agreement. In such circumstances, Licensor may exercise its reasonable discretion to terminate the authorizations covering the poles as to which such material default or noncompliance shall have occurred, or, if the Licensor reasonably deems necessary, all authorizations granted hereunder.
- 10.4 If an insurance carrier shall at any time notify Licensor that the policy or policies of insurance, required under Article 14 hereof, will be canceled or changed so that the requirements of Article 14 will no longer be satisfied, then this License Agreement shall terminate as of the effective date of such cancellation or change, unless prior to the effective date thereof the City shall furnish to Licensor new certificates of insurance including insurance coverage in accordance with the provisions of Article 14 hereof.
- 10.5 In the event of termination of this License Agreement, the City shall within thirty (30) days submit a plan and schedule to Licensor under which the City will remove the City's Facilities from Licensor's poles within six (6) months from date

of termination, at its expense, if required by law to do so, unless the City and Licensor mutually agree to an alternative to removal. The City shall be liable for and shall pay all fees pursuant to the terms of this License Agreement to Licensor until the City's Facilities are removed from Licensor's poles. If the City fails to remove the City's Facilities within such period, and the Licensor is authorized to do so by law, the Licensor may remove such Facilities, and if authorized to do so by law, may charge the City for the reasonable cost of such removal.

- 10.6 Upon termination of the License Agreement as set forth in Article 10, if the City does not remove the City's Facilities from Licensor's poles within the applicable time periods specified in this License Agreement, Licensor shall have the right to remove them at the reasonable expense of the City and without any liability on the part of Licensor to the City therefore except to the extent that Licensor acts negligently; and the City shall be liable for and shall pay all fees pursuant to the terms of this License Agreement to Licensor until such Attachments are removed.

ARTICLE 11 INSPECTIONS OF THE CITY'S ATTACHMENTS

- 11.1 Licensor reserves the right to make periodic inspections of any part of the City's Facilities attached to Licensor's poles.
- 11.2 Licensor will give the City advance written notice of such inspections, except in those instances where, in the sole reasonable judgment of Licensor, safety or emergencies justify the need for such an inspection without the delay of waiting until a written notice has been forwarded to the City.
- 11.3 The making of periodic inspections or the failure to do so shall not operate to relieve the City of any responsibility, obligation or liability assumed under this License Agreement.
- 11.4 No act or failure to act by Licensor with regard to any unlicensed use by the City shall be deemed as a ratification or the licensing of the unlicensed use, and if any license should subsequently be issued, said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this License Agreement or otherwise.
- 11.5 If any inspection under this Article 11 reveals a safety related emergency that gives rise to the removal authority described in Article 8.6, or in which unauthorized attachments as described in Article 12 are discovered, the City agrees to pay for the cost of such inspection. Any other inspection under this Article 11 shall be performed by Licensors at the Licensor's costs.

ARTICLE 12 UNAUTHORIZED ATTACHMENTS

- 12.1 For any of the City's Facilities attached after the effective date of this License Agreement, if any of the City's Facilities shall be found attached to Licensor's poles for which no license is outstanding, Licensor, without prejudice to its other rights or remedies under this License Agreement (including termination) or otherwise, may impose a reasonable charge and require the City to submit in writing, within fifteen (15) days after receipt of written notification from Licensor of the unauthorized Attachment, a pole attachment application. If such application is not received by the Licensor within the specified time period, the City shall remove its unauthorized attachment within fifteen (15) days of the final date for submitting the required application, or Licensor may remove the City's Facilities without liability except to the extent that Licensor acts negligently, and the expense of such removal shall be borne by the City.
- 12.2 For the purpose of determining the applicable charge, absent reasonable evidence to the contrary, provided Licensor was not solely responsible for making such unauthorized Attachment, the unauthorized Attachment shall be deemed as having existed since the date of the agreement first authorizing the attachment of the City's Facilities, and the fees and charges specified in APPENDIX I and any applicable tariff approved by the DPU at the time the unauthorized Attachment is determined shall be applicable thereto and due and payable forthwith whether or not the City is permitted to continue the pole Attachment.

ARTICLE 13 LIABILITY AND DAMAGES

- 13.1 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. To the full extent provided by law, Licensor shall not be liable to the City for any interruption of the City's streetlight service or for interference with the operation of the City's Facilities arising in any manner, except to the extent caused by: a) Licensor's breach of this License Agreement; b) Licensor's negligence; or c) due to Licensor's failure to properly perform maintenance of the City's Facilities, when the Licensor is hired to perform such maintenance.
- 13.2 The City shall exercise reasonable precaution to avoid damaging the facilities of Licensor and of others attached to Licensor's poles. The City shall be liable for any damages it causes to the facilities of Licensor and assumes all responsibility for any and all loss from such damage caused by the City's employees, agents or contractors, other than the Licensor. The City shall make an immediate report to Licensor and any other Joint User of the occurrence of any such damage and agrees to reimburse the respective parties for all reasonable costs incurred in making repairs.

- 13.3 Except as may be caused by the negligence of Licensor, or either of them, or by breach of the Licensor's obligations under this License Agreement, or by breach of any agreement with Licensor to maintain or repair the City's Facilities or any relevant portion thereof, the City shall to the full extent allowed by law, defend, indemnify and save harmless Licensor, or either of them, against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses arising from or in connection with any of the City's obligations under this License Agreement (including reasonable attorneys' fees) including, but not limited to, those which may be imposed upon, incurred by or asserted against Licensor, or either of them by reason of: a) any work or thing done upon the poles licensed hereunder or any part thereof performed by the City or any of its agents, contractors, servants, or employees, other than Licensor; b) any use, occupation, condition, operation of said poles or any part thereof by the City or any of its agents, contractors, servants, or employees, other than Licensor, to the extent that any harm, injury, or damages are proximately caused by the City or its agents, contractors, servants or employees; c) any act or omission on the part of the City or any of its agents, contractors, servants, or employees, except Licensor itself, for which Licensor may be found liable; d) any accident, injury (including but not limited to death) or damage to any person or property occurring upon said poles or any part thereof, arising out of any use of the pole by the City or any of its agents, contractors, servants, or employees; e) any failure on the part of the City to perform or comply with any of the covenants, agreements, terms or conditions contained in this License Agreement; f) payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits arising out of any use of the poles by the City or any of its agents, contractors, servants, employees; or by g) the erection, maintenance, presence, use, occupancy or removal of the City's Facilities by the City or any of its agents, contractors, servants or employees or by their proximity to the facilities of other parties attached to Licensor's poles.
- 13.4 The Licensor shall to the full extent allowed by law indemnify, save harmless and defend the City from any and all claims and demands of whatever kind which are caused by Licensor's negligent maintenance of the City's Facilities, or by any breach of obligations under this License Agreement.
- 13.5 The City shall require all contractors performing work for or on the City's Facilities to agree to the liability, indemnification, and damages provisions in this Article 13.0 for the benefit of Licensor.
- 13.6 Both the City and the Licensor hereby waive any rights to recover from the other for punitive, exemplary or consequential damages arising out of a breach of obligations under this License Agreement.
- 13.7 The provisions of this Article shall survive the expiration or earlier termination of this License Agreement or any license issued thereunder.

ARTICLE 14 INSURANCE

- 14.1 The City shall carry insurance issued by an insurance carrier reasonably satisfactory to Licensor to protect the parties hereto from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly from or by reason of such loss, injury or damage as covered in Article 13 preceding.
- 14.2 The amounts of such insurance, without deductibles:
- 14.2.1 against liability due to damage to property shall not be less than \$1,000,000 as to any one occurrence and \$1,000,000 aggregate; and
- 14.2.2 against liability due to injury to or death of persons shall be not less than \$3,000,000.00 as to any one person and \$3,000,000.00 as to any one occurrence.
- 14.3 The City shall also carry such insurance as will protect it from all claims under any Workers' Compensation Law in effect that may be applicable to it.
- 14.4 All insurance must be effective before Licensor will authorize the City to place the City's Facilities on any pole and shall remain in force until the City's Facilities have been removed from all such poles.
- 14.5 The City shall submit to Licensor certificates of insurance including renewal thereof shown as Form E of APPENDIX III hereto annexed, or such other form reasonably acceptable to Licensor, by each company insuring the City to the effect that it has insured the City for all liabilities of the City covered by this License Agreement; and that such certificates will name the Licensor as an additional insured under the public liability policy and that it will not cancel or change any such policy of insurance issued to the City except after the giving of not less than 30 days' written notice to Licensor. The City shall also notify and send copies to Licensor of any policies maintained under this Article 14.0 written on a "claims-made" basis.
- 14.6 The City shall require all of its contractors hereunder to carry the same insurance type and amount as is required of the City under this License Agreement.
- 14.7 The City retains the right to satisfy its obligations under this Article 14 through a self-insurance program subject to the City providing Licensors with adequate documentation to confirm the financial assurances required by this Article 14.

ARTICLE 15 AUTHORIZATION NOT EXCLUSIVE

- 15.1 Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to the City. Licensors shall have the right to grant, renew and extend rights and privileges to others not parties to this License Agreement, by contract or otherwise, to use any pole covered by this License Agreement; provided, however, that such grant or renewal shall not unreasonably interfere with the rights granted to the City hereunder.

ARTICLE 16 ASSIGNMENT OF RIGHTS

- 16.1 The City shall not assign or transfer this License Agreement or any authorization granted hereunder without the prior written consent of Licensors, which consent shall not be unreasonably withheld.
- 16.2 In the event such consent or consents are granted by Licensors, then this License Agreement shall extend to and bind the successors and assigns of the parties hereto.
- 16.3 Pole space licensed to the City hereunder is for the City's use only, and the City shall not lease, sublicense, share with, convey or resell such space or rights to others without the prior written consent of Licensors. Such consent shall not be unreasonably withheld by the Licensors, unless otherwise required by law, and may be contingent upon Licensors entering into a separate, mutually agreed upon license agreement with such third party. Notwithstanding the foregoing, the City does not waive the right to contend that it has independent rights to lease or otherwise use or assign such pole space (and to exercise such lawful rights, if any) with or without the Licensors's consent, and the Licensors does not waive its position that the City does not have such independent rights.
- 16.4 No contract between the City and any other party regarding maintenance or repair of the City's street lights and related equipment shall be considered an assignment or transfer under Article 16.1.

ARTICLE 17 FAILURE TO ENFORCE; WAIVER

- 17.1 Failure of Licensors or the City to enforce or insist upon compliance with any of the terms or conditions of this License Agreement or to give notice or declare this License Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any other term or condition of this License Agreement, but the same shall be and remain at all times in full force and effect.
- 17.2 Nothing in this License Agreement shall be construed as a waiver of any of the City's rights to regulate, issue permits or licenses, appeal to the DPU or other regulatory body or court, or take any other action as may be required, allowed or authorized by law.

ARTICLE 18 TERM OF AGREEMENT

- 18.1 Unless terminated in accordance with the provisions of this License Agreement, or the terms of the Purchase and Sale Agreement, this License Agreement shall remain in effect for five (5) years from the date hereof. This License Agreement shall renew automatically, unless either of the following occurs. The City may notify the Licensor no later than 30 days prior to the start of the renewal period that it will not renew this License Agreement, or the Licensor may notify the City that it has good cause to refuse to renew. The Licensor must renew unless, acting in good faith, it has good cause to fail to renew and Licensor provides the City with written explanation of reasons for not renewing.
- 18.2 Termination of this License Agreement or any licenses issued hereunder shall not affect the City's or Licensor's liabilities and obligations incurred hereunder prior to the effective date of such termination.

ARTICLE 19 DISPUTE RESOLUTION

- 19.1 In the event of a dispute between the City and Licensor with respect to the scope or cost of any Field Survey, Make-Ready Work, or inspection, or to any other cost due under this License Agreement, the matters in dispute shall be referred to non-binding mediation at the request of Licensor and the City. Such requests may be made anytime after 90 days from the date Licensor submits the disputed Field Survey or Make-Ready Work information to the City, or within 90 days of the City's receipt of any disputed bill or request for payment from the Licensor. All other disputes may be submitted to any court or regulatory authority of competent jurisdiction.
- 19.2 Licensor and the City shall attempt in good faith to agree upon the mediator. Each Party shall bear its costs and expenses, except that the fees and expenses of the mediator shall be divided evenly between the Parties.
- 19.3 Referral of any matter to mediation shall be without prejudice to the Parties to avail themselves of all other remedies available under law or pursuant to the terms of this License Agreement.
- 19.4 Performance by the Parties under the terms of this License Agreement shall not be interrupted or delayed during any mediation except on the written agreement of the parties, but Licensor shall not invoke any termination rights it may have under Article 3.2 or unreasonably invoke any termination rights it may have under Article 10.3 during such time as any bona fide dispute is pending in mediation pursuant to Article 19.1 and Article 19.2.

ARTICLE 20 NOTICES

All written notices required under this License Agreement shall be given by posting the same in first class mail as follows:

To the City: City of Somerville
93 Highland Ave.
Somerville, MA 02155

To Licensor: Verizon New England, Inc., d/b/a Verizon Massachusetts
License Administration
125 High Street, Room 1406
Boston, Massachusetts 02110

To Licensor: NSTAR Electric Company
One NSTAR Way
Customer Care, SUM SW 340
Westwood, MA 02090
Attn: Municipal Account Representative

ARTICLE 21 MISCELLANEOUS

- 21.1 The Parties have freely entered into this License Agreement and agree to each of its terms without reservation. This License Agreement, the Purchase and Sale Agreement, and any applicable terms of the S-2 tariff, or successor rate then in effect, together constitute the entire agreement between the Licensor and the City, and all previous representations either oral or written are hereby annulled and superseded. This License Agreement shall inure to and be binding upon the Parties and their respective successors and assigns, may not be amended except by a writing signed by the Parties, and shall be governed by the laws of the Commonwealth of Massachusetts.
- 21.2 The provisions of this License Agreement are severable and should any provision of this License Agreement be determined by a court or regulatory body of competent jurisdiction to be invalid, the remainder of this License Agreement shall continue in full force and effect.
- 21.3 In the event of any conflict between the terms of this License Agreement and the Purchase and Sale Agreement, the terms of the Purchase and Sale Agreement shall prevail.
- 21.4 The Parties acknowledge that recitals set forth above are an integral part of this Agreement and shall have the same contractual significance as any other language.

In WITNESS WHEREOF, the parties hereto have executed this License Agreement in triplicate on the day and year first above written.

VERIZON NEW ENGLAND, INC.

By _____
(Title)

Date of Execution: _____

NSTAR ELECTRIC COMPANY

By _____
Joseph R. Nolan, Jr.
Senior Vice President

Date of Execution: _____

CITY OF SOMERVILLE

By _____

Date of Execution: _____