



Public Facilities Committee Agenda

City of Newton In City Council

Wednesday, November 28, 2018

7:00 PM
Room 204

Referred to Public Facilities and Finance Committees

#541-18

Amendments to the Stormwater Use Charge Ordinance

HER HONOR THE MAYOR requesting Chapter 29, Section 120 (a) **Stormwater Use Charge** of the City of Newton Revised Ordinance, 2017 be amended by deleting the current rate structure and replacing it with the following effective July 1, 2019:

Every owner of property in the city shall pay a charge for use of public main drains and stormwater facilities, which shall be based on the following annual rates. Such charge shall be billed quarterly:

1. 1-4 family dwellings \$100.00
2. All other properties: \$0.0425 per square foot of impervious surface area, except that if the square footage charge multiplied by the total impervious area of the parcel equals a sum less than \$150.00, then the annual fee shall be \$150.00.

Referred to Public Facilities and Finance Committees

#512-18

Increase the fee for utility grants of location other than wireless facilities

COUNCILORS CROSSLEY AND GENTILE, on behalf of the Public Facilities and Finance Committees, requesting ordinance amendments to Chapter 17 of the City of Newton Revised Ordinance, 2017 to increase the fees for utility grants of locations other than wireless communications facilities.

***Chairs Note:** The Committee will receive an update on matters relating to regulating wireless attachments on poles in the public way; application forms, batch application fees, licensing of city light poles and other impacts from the new FCC regulations.*

Respectfully submitted,

Deborah Crossley, Chair

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.



City of Newton, Massachusetts
Office of the Mayor

RUTHANNE FULLER
MAYOR

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October 9, 2018
RECEIVED
Newton City Clerk
2018 OCT - 9 AM 11:28
David A. Olson, CMC
Newton, MA 02459

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Councilors:

I write to request that your Honorable Council docket for consideration a request to amend Sec. 29-120 (a) Stormwater Use Charge by deleting the current rate structure and replacing it with the following effective July 1, 2019.

Every owner of property in the city shall pay a charge for use of public main drains and stormwater facilities, which shall be based on the following annual rates. Such charge shall be billed quarterly:

- 1. 1-4 family dwellings..... \$100.00
- 2. All other properties: \$0.0425 per square foot of impervious surface area, except that if the square footage charge multiplied by the total impervious area of the parcel equals a sum less than \$150.00, then the annual fee shall be \$150.00

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller
Mayor

**DRAFT LICENSE AGREEMENT BETWEEN THE CITY OF NEWTON,
MASSACHUSETTS, AND [TBD] REGARDING ATTACHMENT TO CITY-OWNED
STREETLIGHT POLES-CITY DRAFT 1.29.2018**

The City of Newton, Massachusetts, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts (“City” or “Licensor”), and _____ (“_____” or “Licensee”) hereby enter into the following license agreement.

1. The City owns and operates the streetlight pole shown in Attachment 1 to, and covered by, this License Agreement (the “Pole”).
2. Licensee has requested from the City a revocable, non-exclusive license to attach to the Pole its Wireless Communications Facilities (“WCF”), as shown in Attachment 2 to this License Agreement. The Department of Public Works, which exercises control over the use of City-owned streetlight poles, has consented to the attachment of the WCF to the Poles.
3. The City is willing to permit Licensee to attach its WCF to the Pole and Licensee is willing to attach its WCF to the Pole under the terms and conditions set forth in this License Agreement.
4. Pole Location: the Pole and location of the Pole are described in Attachment 1 to this License Agreement.
5. WCF: Licensee’s WCF are described in Attachment 2 to this License Agreement. Attachment 2 shall also include (i) a drawing of the WCF; (ii) the positions of the component parts of the WCF on the Pole; (iii) the identity dimensions of each component part of the WCF; (iv) manufacturers’ specifications for each component part of the WCF; (v) ground clearances of the WCF and any electric meter and the height of the WCF; (vi) a diagram and detailed description of the interconnection of the WCF to local the electric distribution utility, including but not limited to any expected trenching and duct work; and (vii) a photographic simulation of the WCF, any electric meter and any related facilities attached or adjacent to the Pole. In the event that there are any changes in the above information as a result of a City Council grant of location order or regulation or as a result of approved Licensee-proposed changes, Licensee shall prepare a revised Attachment 2 which may be substituted for an original Attachment 2 without the need for an amendment to this License Agreement. Unless they are separately required pursuant to a City Council grant of location order, Licensee shall provide to Licensor and keep current as-built drawings of the WCF. Licensee shall maintain, in a form reasonably acceptable to the City, a current map and list of the locations of all WCF it installs pursuant to this License Agreement.

6. Suitability of the Pole to Accommodate Licensee's WCF: Prior to attaching any WCF to the Pole, the Licensee shall conduct at its own expense and provide to the Licensor a pole structural analysis conducted by a licensed professional engineer to determine whether the attachment of the WCF may proceed without Pole modifications or whether the installation will require reinforcement or replacement of the Pole. If the Pole does not satisfy applicable structural safety standards required to permit the proposed WCF, the Licensor may terminate this License Agreement or with the written consent of the Licensee, construct at the Licensee's sole expense a reinforced or replacement pole that satisfies such structural safety standards and remove at Licensee's sole expense the pole being replaced. Licensee acknowledges that the City has made no warranties or representations regarding the fitness or suitability of any of the Poles for the installation and operation of the WCF. Except as otherwise expressly provided in this License Agreement, Licensee waives its right to recover from, and forever releases and discharges the City from any and all claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the physical or environmental condition of the Pole. The City agrees to allow Licensee to investigate the condition of the Pole and shall reasonably facilitate such investigation as necessary.
7. Non-Exclusive License: This License Agreement is non-exclusive. Subject to its obligations hereunder, the City reserves the right to use the Pole for its own municipal operations or grant use of the Pole to any person or entity at any time during the term of this License Agreement. Such third party use of the Pole shall not interfere with Licensee's use of the Pole.
8. No Creation of Property Interest: Neither this License Agreement nor Licensee's use of a public way shall be deemed to create and does not create for or convey to the Licensee any type of property interest (including but not limited to any fee, leasehold or easement interest in any land) and afford Licensee only a revocable right to use the Pole.
9. Permitted Uses: Licensee's use of the Pole shall be limited to the attachment of its WCF for the operation and maintenance of its personal wireless communications services that are licensed by the Federal Communications Commission ("FCC"). Upon the request of Licensor, Licensee shall provide to Licensor a copy of its FCC permit and license to operate personal wireless communications services. The Licensee shall not use or permit its WCF to be used for any activity violating any applicable local, state or federal laws, rules or regulations.
10. Sub-Licenses Prohibited: Licensee shall not sub-license to or allow any third parties to access the Pole or place on the Pole any facilities for the benefit of such third parties. The provision of facilities that provide collocation space for the benefit of a third party shall

be considered a prohibited sub-license. Any such action shall constitute a material breach of this License Agreement.

11. Access to the Pole: After its obtaining all necessary permits (including, but not limited to, a grant of location from the City Council) and assuming its compliance with the other terms of this License Agreement, the Licensee shall have access to the Pole seven (7) days per week, twenty-four (24) hours per day, for constructing, installing, operating, maintaining, repairing, modifying and removing its WCF; provided, however, that the City may reasonably restrict the hours when access is available when a police detail is required to enable such access; and provided further, such a requirement may be waived in the event that emergency repair or other emergency work is necessary.
12. Installation and Operation of WCF: Licensee shall attach its WCF to the Pole and operate its WCF in accordance with applicable law and industry standards, including but not limited to the National Electrical Safety Code, the National Electric Code, OSHA and the City's code, rules and regulations. The parties acknowledge that Licensee may be subject to conditions attached to the grant of location to attach to the Pole issued by the City Council pursuant to M.G.L.c.166, §22. In the event of any inconsistency between the terms of this License Agreement and a City Council grant of location order, the parties shall confer and use their best efforts to remove such inconsistency.
13. Coordination of Maintenance and Equipment Upgrade Activities: Prior to Licensee engaging in planned or routine maintenance activities, or equipment modifications or upgrades concerning the WCF attached to the Pole, Licensee shall provide seven (7) days' advance notice to the Commissioner of Public Works in order to coordinate such activities with City streetlight operations or other public safety functions. Licensee shall obtain any necessary permits prior to engaging in any such maintenance, modification or upgrade activities. Such advance notice shall not be required in the case of an emergency. Such work and changes shall not interfere with the use of the Poles by the City. The performance of such work and changes may require additional permits from City departments and/or the City Council. Licensee shall have the right to upgrade the WCF subject to any applicable limitations (including but not limited to non-interference obligations under Sections 19 and 42 hereof) under this License Agreement or a City Council grant of location order. For purposes of this License Agreement, an "emergency" is defined as an immediate threat of substantial harm or damage to the health, safety and welfare of the public and/or the property of Licensor or Licensee.
14. Damage to or Destruction of Pole:
15. Reconditioning, Repair or Replacement of Pole:

Commented [a1]: Consider editing 13 and 14 so they are not redundant

Commented [a2]: IF a pole get knocked down the wireless carrier should get the pole replaced and then if the City can recoupe the cost of damages, otherwise if they wait for the City to collect from the insurance company the carrier will lose revenue.

Commented [a3]: Same As above

16. Relocation and Removal of WCF: Licensee shall remove and relocate its WCF at its own expense not later than one hundred twenty (120) days after receiving written notice that removal, relocation, and/or alteration of the WCF is necessary due to:

- a. Construction, expansion, repair, relocation or maintenance of a street or other public improvement project; or
- b. Maintenance, upgrade, expansion, replacement, or relocation of City streetlight poles (which may include the Pole); or
- c. Closure of a street or sale of City property; or
- d. Projects and programs undertaken to protect or preserve the public health or safety; or
- e. Activities undertaken to remove a public nuisance; or
- f. Duty otherwise arising from applicable law.

Licensee's duty to remove and relocate its WCF at its expense under this Section is not contingent on the availability of an alternative location acceptable for relocation.

Licensor will make reasonable efforts to provide an alternative location for relocation of the Licensee's WCF, but regardless of the availability of an alternative site acceptable to Licensee, Licensee shall comply with the notice to remove its WCF as instructed. The Licensee and Licensor shall cooperate to the extent possible to assure continuity of service during relocation of the Licensee's WCF. If the Licensee fails to timely remove or relocate its WCF, the Licensor may remove the WCF at the expense of the Licensee.

17. Electric Power: The Licensee shall be responsible for procuring and paying for any electric power supply and distribution service which are needed to operate its WCF. The parties and the local electric distribution company shall determine any work necessary to enable the WCF to obtain electric power supply and distribution service and whether any trenching or duct installation by Licensee would interfere with any existing underground facilities and their operation and maintenance. Licensee shall be responsible for the costs of interconnection to the local electric distribution company's distribution system (including but not limited to pre-construction surveys and the cost of details) and the costs of relocating any existing underground facilities; provided, however, that Licensor may decline to relocate any of its underground facilities. Any use of electricity by Licensee shall be under Licensee's accounts with the local electric distribution company. Should the need arise, during an emergency, for the use of temporary, emergency power generators for the WCF installed pursuant to this License Agreement, Licensee shall inform the City of the need for such emergency power generators and work with the City

to determine the location(s) at which they will be placed. Licensee will comply with any applicable permitting requirements regarding the use or placement of emergency power generators. Attachment 3 contains descriptions and photos of such emergency power generators, their dimensions, typical placement options, and noise and emission characteristics.

18. Non-Interference: The Licensee and its WCF shall comply with City Council rules and orders regarding non-interference. For the convenience of the Parties, under City Council rules, the Licensee shall not interfere with the operation and maintenance of any wires, cables or equipment already attached to the Pole, including but not limited to streetlights and cable, electrical and telecommunications facilities (including any City communications facilities such as fiber optic cables and copper alarm transmission lines). Each component part of the WCF shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the public way, interfere with the growth and health of public shade trees, or cause safety hazards to pedestrians and motorists. Nor shall any such component obstruct intersection visibility. The WCF shall not interfere with access to or operation of a streetlight, fire alarm cable, municipal fiber optic facilities, fire hydrant, fire alarm, fire station, fire escape, water valves and facilities, sewer facilities, underground vault, valve housing structure, or any other public health or safety facility. The WCF shall not interfere with snow plowing, side walk clearing, leaf removal or the maintenance of public shade trees. The WCF shall not interfere with the City's vegetation management practices and obligations. The Licensee shall not trim or cut any public shade tree without the prior written consent of the City's Director of Urban Forestry and shall otherwise comply with state and local laws pertaining to public shade trees.

In the event of a claim of interference, the Licensee shall follow the following protocol for responding to events of interference: (i) respond to Licensor's request to address the source of interference as soon as practicable but in no event later than twenty four (24) hours of receiving the request; and (ii) provide a written interference remediation report which includes a remediation plan to stop the event of interference, the expected time frame for execution of the remediation plan and any additional information relevant to the execution of the remediation plan.

In the event that interference with any City services cannot be eliminated, Licensee shall shut down its WCF and remove or relocate its WCF that is the source of interference as soon as possible to a suitable alternative location within a public way and made available by the Licensor or a utility pole owner.

19. Right to Remove WCF: Licensee shall have the right to remove, at any time, any WCF that it has installed pursuant to this License Agreement, provided that it notify the City at

least seven (7) days in advance and that it coordinate with City staff regarding the timing and logistics of removal. Licensee shall restore the location after such removal using due care and taking reasonable steps to safeguard and maintain the work area in accordance with generally accepted industry practice and in compliance with applicable laws. Upon removal, Licensee shall no longer be responsible for paying an annual license fee for the WCF attachment during the remainder of the applicable year for which an annual license fee was due.

20. Term of License Agreement: The term of this License Agreement shall commence on the date of execution by both parties (“Effective Date”) and shall expire five (5) years after the first day of the month following Licensee’s acceptance of a grant of location order permitting it to attach its WCF on the Pole. Thereafter, upon mutual agreement of the Parties, this License Agreement shall remain in effect on a year by year basis. In the event that the Licensor determines not to extend the License Agreement beyond the five (5) year term, it shall provide notice to the Licensee at least one hundred twenty (120) days prior to the end of the then current term of the License Agreement. If the Licensor fails to provide timely notice to the Licensee, the then current term of the License Agreement shall be extended by one (1) year.

21. Termination of License Agreement by Either Party:

Either party may terminate this License Agreement if: (1) Licensee has failed to apply for a grant of location within six (6) months of the Effective Date; (2) Licensee is denied a grant of location by the City Council; (3) after having received a grant of location, Licensee fails to commence construction of its WCF within six(6) months of its receipt of a grant of location; or (4) Licensee fails to place in service its WCF within one (1) year after its receipt of a grant of location, by notifying the other party at least fourteen (14) days in advance of the date of termination specified in such notice. With regard to (3) and (4) above, Licensee shall notify Licensor if it in good faith believes that its failure is due to any unreasonable delays by the Licensor or to other circumstances outside of its reasonable control.

Except for non-payment of the annual license fee by Licensee, if there is a breach by a Party with respect to any of the provisions of this License Agreement, the non-breaching Party shall give the breaching Party written notice of that breach. After receipt of the written notice, the breaching Party shall have thirty (30) days in which to cure the breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the nature of the breaching Party’s obligation is such that more than thirty (30) days after notice is reasonably required for its performance the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion, but in no event more than ninety (90) calendar days after receipt of written notice. The non-breaching Party may not maintain any action

or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this paragraph.

22. Termination of License Agreement by Licensee:

In the event that (a) any of the certificates, permits, licenses, or other approvals required by any federal state, and local authorities issued to Licensee is cancelled, expires, lapses, or is otherwise withdrawn or terminated by government authority so the Licensee in its sole discretion determines that it will be unable to use the Pole for its intended purposes; or (b) Licensee reasonably determines that the Pole has become unsuitable for Licensee's use due to subsequent changes in system or network design, then in such event Licensee shall have the right to terminate this License Agreement by written notice. Notice of Licensee's exercise of its right to terminate under this section shall be given to Licensor in accordance with Section 27 of this License Agreement and shall be effective thirty (30) days after the date of such notice. All license fees paid to Licensor as of said effective date of termination, shall be kept by Licensor. Licensee shall comply with its obligations to remove its WCF from the Pole and shall not be obligated to make additional license fee payments based on its use of the Pole after the effective date of termination and timely removal of its WCF.

Notwithstanding anything to the contrary contained herein, provided Licensee is not in default hereunder beyond applicable notice and cure periods,

In addition, Licensee shall have the right to terminate this License Agreement effective as of the annual anniversary of the License Agreement Effective Date provided that Licensee has notified Licensor at least three (3) months prior to the effective date of such termination.

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Commented [a5]: Discuss whether to use the date of installation of the WCF

Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if Licensor fails, within seven (7) days after receipt of written notice of such breach, to perform an obligation required to be performed by Licensor, and if the failure to perform that obligation materially interferes with Licensee's ability to use the WCF on the Pole to provide service; provided, however, that if the nature of Licensor's obligation is such that more than seven (7) days after notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such seven (7) day period and thereafter diligently pursued to completion, but in no event more than twenty (20) days after receipt of written notice.

23. Termination of License Agreement by the City: The City shall have the right in its sole discretion terminate the License Agreement by providing Licensee with notice of such termination at least one hundred and twenty (120) days prior to the date of termination specified in such notice.

24. Remedies: The Parties shall have remedies available to them under law and at equity.

25. Annual License Fees; Payment:

- a. Licensee shall pay to Licensor an annual license fee for use of the Pole to which its WCF are attached. The annual license fee for the first year shall be payable on or before the fifteenth (15th) day of the month following Licensee's receipt of a grant of location to attach its WCF on the Pole. Each subsequent annual license fee shall be paid on or before the anniversary date(s) of the first annual license fee payment(s). Each annual license fee shall be two thousand dollars (\$2,000.00).
- b. Each annual license fee shall be paid by (1) check payable to the City of Newton or (2) upon agreement of the parties, by electronic funds transfer in accordance with bank routing information provided by the City to the Licensee.
- c. In the event that Licensee fails to pay an annual license fee in a timely manner, Licensee shall be responsible for interest on the unpaid principal balance at the rate of eighteen percent (18%) per annum from the due date until payment is made in full.

26. Notices: Notices required or permitted under this License Agreement shall be provided in writing and shall be delivered by certified mail, return receipt requested, or by overnight courier, addressed as follows:

To the Licensor:

City of Newton
City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02456
Attn: City Solicitor

To the Licensee:

The parties may change their above notice information by notifying the other party in accordance with the above notice requirements.

27. Applicable Law: The execution and performance of this License Agreement shall be governed by the laws of the Commonwealth of Massachusetts, applicable, federal law and applicable ordinances, rules and orders of the City.

Commented [a6]: Need to discuss the effect of any shared use of the WCF if the draft is modified to allow for shared use

Commented [a7]: Annual fee, including an escalator, is subject to discussion

28. Venue: In the event that any court action is brought directly or indirectly by reason of this License Agreement, the courts of Middlesex County, Massachusetts shall have jurisdiction over the dispute and venue shall be in Middlesex County, Massachusetts; provided, however, where a matter of federal law is at issue, the federal courts located in Massachusetts shall have jurisdiction and venue shall be in Suffolk County (if no such venue exists, in the Massachusetts federal court closest to the City).
29. Non-Waiver: Waiver by the Licensor of any breach by the Licensee of any term, covenant or condition herein shall not operate as a waiver of any subsequent breach.
30. Liens: The Licensee shall keep the WCF and Pole free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by the Licensee, its employees, agents, affiliates, contractors and subcontractors, and the Licensee agrees to reimburse the city for any costs (including attorneys' fees) incurred in defense of proceedings to enforce or foreclose such liens or in seeking removal of such liens.
31. Operation in Compliance with Law: At all times, Licensee shall operate and maintain its WCF in accordance with all applicable federal, state and local laws and requirements.
32. Operation and Maintenance Contacts: Each party shall make available on a twenty-four (24) hour seven (7) days a week basis operation and maintenance contacts as follows:

For the City:

[Dispatch](#)

[Phone: \(617\) 796-2100](#)

For Licensee:

Such Licensee contact shall be a qualified and experienced representative who is authorized to act for the Licensee in matters pertaining to all emergencies and the day to day operation of the WCF.

Each party shall notify the other party in writing of any change in its above contact information as soon as practicable, but in no case later than three (3) days after such change.

Commented [a8]: City contact TBD; should this be DPW?

33. Video Competition Claims: In the event that a holder of a cable franchise issued by the City pursuant to applicable state and federal law claims that under its terms, its cable franchise should be modified due to this License Agreement or any City grant of location to Licensee (whether or not related to the Pole), the City shall have the right to terminate this License Agreement by giving Licensee notice at least one hundred twenty (120) days prior to the date of termination specified in such notice. The City shall provide the Licensee with any communication from such a holder of a cable franchise in which such assertion has been made.
34. Entire Agreement: This License Agreement contains all of the agreements, promises and understandings between the Licensor and Licensee and supersedes any discussions, agreements or understandings between the parties that preceded the execution of this License Agreement. This License Agreement may not be altered, amended or modified except by an agreement in writing, signed by both parties and specifically referring to this License Agreement.
35. Amendment: No revision of this License Agreement shall be valid unless made in writing and signed by a duly authorized agent of the Licensor and by the Licensor acting by and through its Mayor. No provision may be waived except in writing signed by the Mayor when such waiver is on behalf of the Licensor and a duly authorized signatory of the Licensee.
36. Assignment: This License Agreement may be assigned or transferred at any time to Licensee's successors, affiliates or subsidiaries only upon written consent of the Licensor. Such successors, affiliates or subsidiaries shall meet all of the requirements of this License Agreement, including but not limited to holding requisite FCC license and permits and using WCF on the Pole to provide personal wireless communications services.
37. Severability: If any clause, term or provision of this License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License agreement, then and in that event it is the intention of the Parties that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause, term or provision of this License Agreement that is illegal, invalid, or unenforceable, there be added as part of this License Agreement a clause, term or provision as similar in terms to such illegal, invalid or unenforceable clause, term or provision as may be possible and be legal, valid and enforceable.
38. Insurance: The Licensee shall maintain the following insurance:
- Commercial General Liability Insurance: Comprehensive liability coverage including protective, completed operations and broad form contractual liability, property damage

and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. The limits for such coverage shall be: (1) bodily injury including death, \$1,000,000 for each person, occurrence and \$2,000,000 aggregate; (2) property damage, \$1,000,000 for each occurrence and \$2,000,000 aggregate.

Automobile Liability Insurance: Automobile liability coverage with limits no less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate.

Worker's Compensation Insurance: Full Workers' Compensation Insurance and Employer's Liability with limits as required by Massachusetts law.

To the extent applicable, the City shall be named as an additional insured on all aforementioned insurance coverages as those policies permit. All insurance certificates shall provide that the policies shall not be cancelled without endeavoring to provide the City at least thirty (30) days' prior written notice.

The parties acknowledge that the Licensor is self-insured.

39. Indemnification by Licensee: Licensee shall defend, indemnify and hold Licensor harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of Licensee, its employees, contractors or agents, except to the extent such claims or damages may be due to, or caused by, the negligence or willful misconduct of Licensor, or its employees, contractors or agents. The Licensor will provide the Licensee with prompt, written notice of any written claim covered by this indemnification; provided that any failure of the Licensor to provide any such notice, or to provide it promptly, shall not relieve the Licensee from its indemnification obligations in respect of such claim, except to the extent the Licensee can establish actual prejudice and direct damages as a result thereof. The Licensor will cooperate appropriately with the Licensee in connection with the Licensee's defense of such claim. The Licensee shall defend the Licensor, at the Licensor's request, against any claim with counsel reasonably satisfactory to the Licensor. The Licensee shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of the Licensor and without an unconditional release of all claims by each claimant or plaintiff in favor of the Licensor.

40. Performance Bond:

41. Limitation on Liability: **EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES AND REPRESENTATIVES FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSSES OR DAMAGES FOR LOST REVENUE, LOST PROFITS, LOSS OF DATA, INTERRUPTION OR LOS**

Commented [a9]: A performance bond may be needed in addition to the bond required by ISD for construction if the City wants security in case of damage to the streetlight pole by Licensee or its contractor-for discussion

OF USE OF SERVICE, COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, INTERRUPTIONS OF OPERATIONS OR FOR CLAIMS FOR DAMAGES BY OR TO EITHER PARTY'S CUSTOMERS, WHETHER FORESEEABLE OR NOT, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING OUT OF, OR IN CONNECTION WITH THIS LICENSE AGREEMENT. NOTHING HEREIN SHALL MODIFY OR CONSTITUTE A WAIVER OF THE RIGHTS OF THE CITY UNDER THE MASSACHUSETTS TORT CLAIMS ACT. IT IS ACKNOWLEDGED BY THE PARTIES THAT THE LIABILITY OF THE LICENSOR MAY BE LIMITED UNDER THE PROVISIONS OF THE MASSACHUSETTS TORT CLAIMS ACT.

42. Radio Frequency Emissions: The Licensee shall provide to the City on an annual basis (1) radio frequency emissions test results; (2) proof of compliance with applicable federal radio frequency emissions requirements (including any requirements which apply when more than one party is responsible for radio frequency emissions in or near the Pole location; (3) current practices and procedures for the safety of all persons who perform any work on or under the Pole, pedestrians and motorists, and a certification that such practices and procedures satisfy FCC requirements; and (4) any regulatory action by the FCC with respect to Licensee's operation of wireless communications facilities attached to utility and streetlight poles in any jurisdiction.
43. Environmental, Employee Health and Safety: Each Party shall comply with applicable environmental and employee health and safety laws. Licensee shall have the right to inspect the Pole and the ground at the base of the Pole prior to its construction and installation of WCF for environmental testing purposes, all at Licensee's own expense. Licensor shall be notified at least ten (10) days before such inspection and testing and may attend such inspection and testing. Licensee shall not cause any damage to the Pole or any underground facilities as a result of such inspection and testing. Licensee shall provide to Licensor the results of such inspections and tests. Licensee shall not use, store or dispose of hazardous materials, as defined by federal statute, M.G.L. c.21E, and federal and Massachusetts regulations, as now in effect or as amended or replaced during the term of this License Agreement.
44. Inventory; Recordkeeping: Licensee shall maintain an inventory of WCF attached to the Pole and other City-owned streetlight poles during the term of this License Agreement. Licensee shall provide to Licensor a copy of such inventory within ten (10) days after a written request from Licensor. Such written requests shall be made no more frequently than annually. The inventory shall include GIS coordinates, date of installation, Licensee site ID number and description and type of WCF installation. If the WCF become inactive, the inventory shall include the date of deactivation and the date of removal of

Commented [a10]: The parties should discuss exactly when the inspection and testing are conducted, and what happens if the inspection and testing identify an environmental issue. Need to discuss whether to include language that except as permitted by law, neither party will allow any hazardous substances (as defined)- anything permitted by law should be identified

the WCF. Licensor shall compare the inventory to its own records and review any discrepancies with Licensee.

45. Removal of WCF at end of term or in case of earlier termination: At the expiration or termination of this License Agreement, the Licensee shall, at its sole expense, remove its WCF from the Pole within ninety (90) days after such expiration or termination date. Licensee shall restore the location of its WCF on the Pole to the reasonable satisfaction of the City, reasonable wear and tear and casualty damage excepted. If the time for removal causes the Licensee's WCF to remain on the Pole after the expiration or termination date of the License Agreement, Licensee shall pay to Licensor a pro rata portion of the annual license fee based upon the amount of time that the WCF remains on the Pole (by way of example, 90 days/ 360 days= ¼ of the annual license fee).

46. No Creation of Obligations: The parties acknowledge that as of the date of execution of this License Agreement, the City is under no obligation to make the Pole or any other city-owned streetlight pole available to Licensee or any other party for their use under G.L.c.166, §25A, 47 USC §§224, 253, 332 or any other provision of state or federal law (including but not limited to any final FCC order). No Pole shall be considered a base station for purposes of 47 USC §1455 and related FCC regulations. In the event that the FCC or any federal court determines that (1) the City is obligated to make available the use of City-owned streetlight poles for wireless communications facilities attachments or (2) the amount of the annual license fee is invalid, the Parties hereby agree that the terms of this License Agreement shall remain in effect and that such changes in law shall apply prospectively to any new attachments of WCF to a pole for which the Licensee has obtained a grant of location.

Commented [a11]: Discuss change of law provision

Commented [a12]: Need to revise change in law provision

47. Force Majeure:

Commented [a13]: Discuss whether to add a Force Majeure provision

48. Taxes: Licensee shall remain current in its payment of any property taxes that are payable to the City. Nothing herein shall preclude the Licensee from seeking an abatement or contesting any assessment of property taxes.

Pursuant to M.G.L.c.62C, §49A, Licensee certifies under the pains and penalties of perjury that, to the best of its knowledge and belief, Licensee is in compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

49. No Personal Liability: No official or employee of the Licensor or Licensee shall be personally liable as a result of any default by such party under this License Agreement or as a result of any conduct by such official or employee arising under or in connection with this License Agreement.

- 50. Interpretation: This License Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions.
- 51. No Third Party Beneficiary: This License Agreement benefits only the Licensor and the Licensee and their successor or permitted assigns. There are no third party beneficiaries.
- 52. No Partnership or Joint Venture: The relationship between Licensor and Licensee is solely that of licensor and licensee and the License Agreement does not create a partnership or joint venture.
- 53. Non-Collusion: Licensee certifies under the penalties of perjury that it has entered into this License Agreement in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 54. Counterparts: This License Agreement may be executed in multiple counterparts, each of which is an original. Regardless of the number of counterparts, they constitute only one agreement.
- 55. Public Disclosure: The parties acknowledge that this License Agreement, including exhibits and attachments, constitutes a public record under Massachusetts law.
- 56. Authority: Each party to this License Agreement represents and warrants that the person signing on its behalf has full authority to execute this License Agreement on its behalf.

IN WITNESS WHEREOF, the Parties have executed this License Agreement effective as of the Effective Date.

LICENSOR:

CITY OF NEWTON

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

[ADD NAME OF LICENSEE]

ATTACHMENT 2
LICENSEE'S WIRELESS COMMUNICATIONS FACILITIES

Commented [a14]: DISCUSS WHETHER THIS ATTACHMENT SHOULD CONTAIN SCHEMATICS OF THE WCF AT THE POLE AND BEFORE AND AFTER PHOTOS; THE LEVEL OF DETAIL SHOULD COVER ALL ATTACHED EQUIPMENT AS WELL AS ANY UNDERGROUND CONNECTIONS

ATTACHMENT 3
EMERGENCY POWER GENERATORS

Chapter 17

FEES FOR LICENSING AND PERMITS; AND CIVIL FINES GENERALLY*

- Art. I. In General, §§ 17-1**
- Art. II. Fees for licenses and permits, 17-2—17-20**
- Art. III. Civil Fines/Non-criminal Disposition, §§ 17-21—17-23**

**ARTICLE I.
IN GENERAL**

Sec. 17-1. Licensing authority.

When in these Revised Ordinances or any other ordinance of the city anything is prohibited from being done without the license or permission of a certain officer or board, such officer or board shall have the power to license or permit such thing to be done. (Rev. Ords. 1973, § 11-1)

**ARTICLE II.
FEES FOR LICENSING AND PERMITS**

Sec. 17-2. Fees for places storing gasoline over one hundred twenty gallons.

Fees for licenses for public garages, gasoline stations, private garages and all gasoline tanks over one hundred twenty (120) gallon capacity, and fees for renewal of licenses or certificates of continuation, are established as follows:

- (1) Public garages with or without gasoline permit\$10.00
- (2) Gasoline stations and gasoline or fuel oil permits, with authority to sell gasoline or fuel oil.....\$20.00
plus for each hose\$5.00
- (3) Renewal of permit for year, or certificate of continuation of above described permits
.....\$5.00
- (4) Permit for garage for more than three (3) cars or gasoline tank over one hundred twenty (120) gallon
capacity, private use\$2.00
- (5) Renewal of permit for one year, or certificate of continuation of above described permit.....\$5.00

(Rev. Ords. 1973, § 11-2; Ord. No. 257, 12-19-77)

Cross references—Fire protection and prevention, Ch. 10; hours for gas stations, § 20-55

Sec. 17-3. Fees for certain licenses, permits and fees.

Notwithstanding any contrary provision in any other section of these Revised Ordinances, there shall be paid a fee on an annual basis or unless otherwise noted to the city clerk for each of the following applications, permits, licenses

State law reference—Licenses generally, G.L. c. 140

or charges, the sum set forth as follows:

- (1) Motor vehicle dealer's license first, second and third class..... \$200.00
- (2) Billiard, pool tables, bowling centers (non-coin operated) \$15.00 each
- (3) Dealer in second-hand articles (antique, consignment or pawn broker shops) \$50.00
- (4) Reserved
- (5) Blasting bond permits (G.L. c. 148, § 19).....\$10.00
- (6) Junk collector's license\$100.00
- (7) Junk dealer's license (storage yards)\$100.00
 - a) Dealers in secondhand articles\$50.00
- (8) Lodging house licenses\$50.00
- (9) Dormitory license.....\$50.00
- (10) Musical instrument performers and street singers
 - a) Commercial applicants per event\$20.00
 - b) Non-profit applicants per event.....\$5.00
- (11) Public Auto/Van/Limousine permit fee, each vehicle.....\$25.00
- (12) Taxi license, each vehicle.....\$25.00
 - a) Taxi license, each driver.....\$25.00
 - b) Replacement for lost taxi license, each driver.....\$10.00
- (13) Taxi stand, each location\$15.00
- (14) Sale of municipal ordinances per copy.....\$75.00
 - a) Sale of zoning ordinances per copy.....\$25.00
 - b) Sale of government and officers booklet, per copy.....\$3.00
- (15) Auction permits:
 - a) Auction house, annual permit.....\$100.00
 - b) Auctioneers, per diem\$20.00
- (16) Special permits:

a) Residential district.....	\$350.00
plus \$100.00 for each new unit, not to exceed \$2500 total	
b) Business, mixed use, manufacturing, limited manufacturing	\$750.00
c) All other districts.....	\$2.00
d) Accessory apartments,.....	\$250.00
(City Council—§30 6.7.1.E.1)	
e) Signs.....	\$350.00
(17) Zone change petition	\$350.00
(18) Curb-cut petitions (all districts).....	\$100.00
(19) Offers for city-owned land (all districts).....	\$250.00
(20) Public utility petitions	\$35.00
(21) Recording order granting location of poles, piers, abutments or conduits, alterations or transfers thereof, and increase in the number of wires and cables or attachments under the provisions of G.L. c. 166, § 22	\$25.00
(22) Creditor filings:	
a) Filing & indexing assignment for the benefit of creditors	\$10.00
b) Bulky property attachment.....	\$10.00
Dissolution.....	\$5.00
(23) Name certificates for businesses:	
a) Filing certificate of a person conducting business under any title other than the given name .	\$35.00
b) Filing by a person conducting business under any title other than the given name of a statement or change of his residence, or of his discontinuance, retirement or withdrawal from, or change of location of, such business	\$10.00
c) Furnishing certified copy of certificate of person conducting business under any title other than his real name or a statement by such person of his discontinuance, retirement or withdrawal from such business.....	\$10.00
(24) Assignment of future wages	\$10.00
a) Dissolution	\$5.00
(25) Recording power of attorney	\$10.00