

FIRST AMENDMENT TO SITE USE AGREEMENT

FIRST AMENDMENT TO SITE USE AGREEMENT (this "Amendment") made the _____ day of July, 2016, by and between **Public Service Company of New Hampshire d/b/a Eversource Energy**, a New Hampshire corporation, of 780 North Commercial Street, Manchester, New Hampshire ("PSNH"), and the **City of Laconia**, with offices at 45 Beacon Street East, Laconia, New Hampshire ("City").

WHEREAS, PSNH and the City are parties to a certain Site Use Agreement dated October 1, 1998, and recorded in the Belknap County Registry of Deeds on October 9, 1998 at Book 1494, Page 303 (the "Agreement"), which covers the PSNH property abutting Lake Opechee, on Messer Street in the City of Laconia, designated as City Tax Map 171, Lot 158-2, known as PSNH's Messer Street Substation property (the "Property"); and,

WHEREAS, PSNH and the City desire hereby to amend certain provisions of the Agreement, as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PSNH and the City agree as follows:

1) Section 1 of the Agreement is amended to add a new Section 1.2 as follows:

"1.2 Commencing on the date of this Amendment, the City is permitted to make the following additional improvements to the Property, at the City's sole cost and expense:

- a. To add gravel to both sides of the existing boat ramp located on the Property;
- b. To make repairs and improvements to the existing parking lot area by adding necessary gravel and to do the necessary grading, as required and when required; provided, however, that the City shall at all times comply with the applicable provisions of Section 11 of the Agreement in the performance of any such work by the City or its contractors. In the performance of any such work, the City shall at all times assure that access to and ingress and egress to and from PSNH's Messer Street Substation is not prevented or interfered with.
- c. To plant and maintain native vegetation along the shoreline of Lake Opechee, in proximity to the existing boat ramp."
- d. To add a monofilament and lead tackle collector abutting the existing boat ramp located on the Property. The City of Laconia Conservation Commission will be responsible for properly disposing of the waste from the monofilament collector in accordance with all rules and laws of the State of New Hampshire. Collector will be similar in size and appearance to the collector depicted in Exhibit A attached hereto;

2) Section 2 of the Agreement is amended to add a new Section 2.2 as follows:

“2.2 The indemnification, hold harmless and defense provisions of Section 2 above shall be deemed to also cover and include any and all incidents, events or occurrences of the spill or discharge, leaking, dumping, disposal, abandonment, placement or other physical occurrence of any oil, gasoline, fluid, solvent, petroleum-based product or similar liquid or substance, or dangerous or hazardous waste, chemical, material or substance of any kind on, into, over or under the Property, or associated with or related to or resulting from any use of the Property or the boat ramp, and from whatever source, any and all clean up or remediation thereof necessary, or required at any time by any governmental agency or authority or other third party, intending hereby to cover and include any and all environmental impacts of any kind relating to the uses authorized by this Agreement, at or on the Property at any and all times, only excepting any such impacts directly caused by or resulting from the maintenance and operation of PSNH’s Messer Street Substation by PSNH or its contractors.”

3) Section 6 of the Agreement is amended to add new Section 6.2 as follows:

“6.2 To the extent necessary, PSNH further grants permission to the City to relocate the existing portable toilet from its current location near the boat ramp to an area further into the parking area on the Property, at least 33 feet distant from the shoreline of Lake Opechee, on the side opposite of the PSNH Messer Street Substation.”

4) Section 10 of the Agreement is amended to add new Section 10.2 as follows:

“10.2 PSNH and the City agree to the placement of a new approximate 6 foot x 8 foot kiosk to the right side of the existing boat ramp on the Property. The kiosk will have 2 sides and a roof with a plexiglass locked bulletin board displaying lake and water quality information. See Exhibit B for a depiction of the proposed kiosk. The kiosk will also display an Eversource logo and PSNH information, the content thereof to be agreed upon by the City with PSNH. Said kiosk is to be installed and maintained by the City, or its representatives, at the City’s sole cost and expense.”

5) Except as so amended by this Amendment, the Agreement is acknowledged by the parties to be in full force and effect in accordance with the terms thereof.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

EXECUTED by the parties as of the date and year first written above.

**Public Service Company of New Hampshire
d/b/a Eversource Energy**

By: _____
Name: Timothy P. Powers
Title: Supervisor – Real Estate

City of Laconia

By: _____
Name: Scott Myers
Title: City Manager

Exhibit A



Exhibit B



Phil

SITE USE AGREEMENT
MESSER STREET SUBSTATION

814496

AGREEMENT made and entered into this 18th day of OCTOBER, 1998, by and between **Public Service Company of New Hampshire**, with offices at 1000 Elm Street, Manchester, New Hampshire ("PSNH"), and the **City of Laconia**, with offices at 45 Beacon Street East, Laconia, New Hampshire ("City").

WHEREAS, PSNH is the owner of a certain parcel of land located on Messer Street, in the City of Laconia, designated on City Tax Map 171 as Lot 158-2 (the "Property");

WHEREAS, said Property, which also abuts Lake Opechee, contains PSNH's Messer Street Substation, and also a gravel parking area, some grassy areas, and a gravel boat ramp into Lake Opechee;

WHEREAS, PSNH allows general public access to and use of the Property for recreational purposes as a public park, including for boating, fishing, swimming and sunbathing, and use of said boat ramp into Lake Opechee for such purposes;

WHEREAS, the City is desirous of making certain improvements to the parking areas and boat ramp on the Property with the specific purpose of reducing siltation in Lake Opechee through the boat ramp, such improvements being more particularly shown on the City's design drawings prepared by Fluett Engineering Associates for the City's Lake Opechee Water Quality Improvement Project, Drawing Nos. 1-P, 2, 3 & 4, copies of which are attached hereto and made a part hereof as Attachment A (the "Plans");

WHEREAS, the making of such improvements may cause an increase in public usage of the Property; and,

WHEREAS, PSNH is willing to allow the improvements to be made on the Property and to continue to allow public access to and use of the Property, subject to and on all of the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promise, covenants, undertakings and other considerations set forth in this Agreement, PSNH and the City agree as follows:

1. Improvements. PSNH consents and agrees that the City, its employees, agents and independent contractors (the "Authorized Parties") may enter upon the Property to perform the improvements described in and shown on the Plans. The City agrees, at its sole expense, to obtain and keep in force at all times any and all governmental permits and regulatory approvals necessary or required to complete the improvements, to construct and install such improvements at all times in compliance with all such permits and approvals, and to complete at its sole expense all work shown on the Plans in a timely fashion.

2. Indemnity. The City agrees to indemnify, save harmless and defend PSNH, its directors, officer and employees, from and against all claims, actions, damages, liability and expense in connection with personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Property caused by the act of omission of the Authorized Parties in construction of the improvements shown on the Plans. Any defense conducted by the City of any such claims, actions, damages, liability and expense will be conducted by attorneys chosen by the City, and the City will be liable for the payment of any and all court costs, expenses of litigation, reasonable attorney's fees and any judgment that may be

BK 1494 PG 303

Attachment B

entered therein. This promise of indemnification shall not apply to conditions existing prior to the start of the City's construction of the improvements.

3. Insurance. The City agrees to maintain, until the completion of construction of all improvements shown on the Plans, comprehensive general liability insurance in at least the limits specified below insuring against the acts or omissions of the Authorized Parties in constructing the improvements shown on the Plans, and naming PSNH as an additional insured with respect to such coverage. The City further agrees to maintain, during the term of this Agreement, comprehensive general liability insurance in at least the limits specified below insuring against all claims, actions, damages, liability and expense in connection with personal injury and/or damage to property arising from the use of the Property by the general public, and naming PSNH as an additional insured with respect to such coverage. Minimum policy limits shall be \$1,000,000 each occurrence, bodily injury and property damage combined. The City agrees to provide a certificate of insurance evidencing such coverage to PSNH upon the execution of this Agreement.

4. Maintenance. The City agrees, at its sole expense, to be responsible for any and all maintenance of the improvements, or maintenance caused by the improvements, shown on the Plans.

5. Trash. PSNH agrees to locate and maintain one or more trash receptacles on the Property. The City agrees to provide regular trash removal services, at its sole expense.

6. Sanitary Facilities. The parties acknowledge that public sanitary facilities may be needed on the Property, depending on the extent of any increased public usage of the Property. The City agrees, at its sole expense, to provide public sanitary facilities on the Property, seasonally or otherwise, as are determined from time to time to be reasonably necessary in the sole discretion of the appropriate City officials.

7. Complaints. The City agrees to assume responsibility for receiving, administering and dealing with any and all complaints arising from the general public's use of the Property.

8. Mowing. PSNH agrees, at its sole expense, to assume the responsibility for mowing of the grassy areas located on the Property.

9. Taxes. The City agrees that real property taxes assessed by the City against the Property will not reflect any increased taxes attributable solely to the value of the improvements constructed or installed on the Property by the City under this Agreement. Notwithstanding the foregoing, the value of any such improvements shall be taxable to PSNH on and after the date that the right of the City and general public under this Agreement to use and enjoy any such improvements is terminated.

10. Signs. PSNH and the City agree to cooperate to erect a sign on Messer Street adjacent to the Property, which will identify the City's efforts to reduce siltation in Lake Opechee, recognize PSNH's ownership of the property, and acknowledge the cooperative effort between PSNH and the City represented by this Agreement. The form and content of such sign will be agreed upon by and be acceptable to both parties, and shall be installed in a manner intended to be permanent so as to avoid the need for periodic replacement of the sign to the extent reasonably possible.

11. Environmental Conditions. The City acknowledges that PSNH has apprised the City of certain environmental conditions on the Property relating to the existence of heavy creosote contamination and coal tar deposits in the same area as the City's proposed parking

area improvements, as shown on PSNH's Laconia Gas Plant Test Boring Map, dated 3/8/95, a copy of which is attached hereto and made a part hereof as Attachment B. PSNH has determined that the City's parking area improvements, consisting of regrading and resurfacing, will not interfere with or impede PSNH's further investigation or remediation of these conditions. Should soil excavation or other remediation of the conditions in this area be determined to be necessary or required in the future during the term of this Agreement, PSNH agrees to repair or replace, at its expense, any damage or disruption caused to the parking area by such remediation. Due to the existence of said environmental conditions, the City agrees that it will assure during construction of the improvements covered by this Agreement that all contractors and others performing any work on the Property abide by a health and safety plan which (a) accounts for the presence of the above-described environmental conditions on the Property, and (b) requires the immediate availability of suitable absorbent and clean-up materials (booms, absorbent pads, etc.) to be used in the event any of the work on the Property or shoreline of Lake Opechee results in release of oily sediments or residues into the lake water or elsewhere.

12. Reservation of Priority of Use and Rights to Terminate. The City acknowledges that the use of the Property by PSNH for its electric utility business operational needs and requirements has absolute priority over any and all permissive uses of the Property by the City and the general public allowed under this Agreement, or otherwise, and PSNH reserves the right the use the Property, or any portion thereof, for such purposes at any time and for such period of time as it may need or require. PSNH shall have the right to terminate this Agreement, and all rights of the City and the general public to use the Property, at any time upon the giving of at least six (6) months prior written notice to the City. To the extent reasonably practicable, PSNH agrees to use its best efforts to give as much additional notice as possible to the City of its intention to terminate, but shall have no obligation to do so.

13. License Only. This Agreement constitutes a license to use real property only, and does not convey or transfer any interest in the Property to the City or the public whatsoever.

14. Governing Law. The interpretation and construction of this Agreement shall be governed by the laws of the State of New Hampshire.

EXECUTED by the parties the day and year first written above.

Public Service Company of New Hampshire
By: Paul E. Ramsey
Name: Paul E. Ramsey
Title: VP - Customer Operations
Duly Authorized

City of Laconia
By: Daniel E. McKeever
Name: Daniel E. McKeever
Title: City Manager
Duly Authorized

RECEIVED

98 OCT - 9 PM 2:12
Rachel M. Normandin
REGISTRY OF DEEDS
BELKNAP COUNTY
Registrar

BK 1494 PG 305