



RESOLUTION

APPROVING A FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT OF CITY LAND AT 21 PINE STREET (MAP 77, LOT 17) AND LAND OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY AT 3 PINE STREET EXTENSION (MAP 77, LOT 2A)

CITY OF NASHUA

In the Year Two Thousand and Twenty-One

WHEREAS, R-19-147 “Authorizing Purchase and Sale of City Land at 21 Pine Street (Map 77, Lot 17) and Land of Public Service of New Hampshire d/b/a Eversource Energy at 3 Pine Street Extension (Map 77, Lot 2A)” was approved by the Board of Aldermen on September 12, 2019, and was entered into as of November 26, 2019 (“Purchase and Sale”);

WHEREAS, due to difficulty in PSNH securing other required easements and COVID-19 related delays, the deadlines in the Purchase and Sale were extended in four (4) earlier amendments to the Purchase and Sale;

WHEREAS, the lot line relocation contemplated by the Purchase and Sale was approved by the City of Nashua Planning Board on July 11, 2019, which lot line relocation plan and related easements will not be recorded until the closing; and

WHEREAS, PSNH has requested additional time, assistance from the City in addressing clean-up on the City lot in the form of landfill fee concessions, and has requested that the location of some of the easements approved in the Purchase and Sale be moved.

NOW, THEREFORE, BE IT RESOLVED that the a Fifth Amendment to the Purchase and Sale, substantially in the form of the attached is hereby approved.

FURTHER RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to prepare and execute all necessary documents related to the lot line relocation, sale, purchase and easements contemplated in the Purchase and Sale Agreement and all amendments thereto.

FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

FIFTH AMENDMENT made as of _____, 2021 by and between PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE doing business as Eversource Energy, (“PSNH”) and the City of Nashua (“City”), parties to that certain Purchase and Sale Agreement dated November 26, 2019 for an exchange of property among PSNH and the City, as amended by Amendments dated March 19, 2020, May 21, 2020, July 24, 2020 and December 11, 2020 (“Agreement”).

WHEREAS, Section 7 of the Agreement conditions PSNH’s performance under the Agreement on obtaining certain Additional PSNH Easements and /or PSNHLicenses (as defined under the Agreement) by March 21, 2021;

WHEREAS, PSNH has been unable to secure such Additional PSNH Easements and /or PSNHLicenses despite its good faith efforts and due diligence and does not anticipate that all necessary additional easements can be obtained prior to the expiration of the Section 7 contingency on March 21, 2021;

WHEREAS, certain of the Additional PSNH Easements and /or PSNHLicenses have required corresponding minor changes to the location of certain access and utility easements required from the City pursuant to Section 3 of the Agreement and as originally depicted on Appendix 2A; the location of such changes are highlighted on the plans attached hereto as Exhibit 1 and the revised final location of such easements are depicted on Exhibit 2 hereto;

WHEREAS, based, in part, on the attached information from PSNH’s environmental consultant, GZA, PSNH requested that the City subsidize disposal of remediated fill and waste material from the City Lot and the City has considered the demands on its landfill space and has offered a compromise as described below, subject to approval by the City’s Board of Public Works and Board of Aldermen ; and

WHEREAS, the parties wish to preserve the transaction under the Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The recitals to this amendment are incorporated into and shall constitute a part of this amendment.
2. The Agreement is revised to: (i) extend the current Section 7 deadline from March 21, 2021 to May 31, 2021; (ii) extend the closing deadline from April 20, 2021 to accommodate such extended Section 7 timeframe to require closing by June 30, 2021; and (iii) extend the Section 3(b) expiration of the PSNH Reserved Easements by ninety (90) days from August 31, 2022 to November 10, 2022 to accommodate the extended closing deadline.
3. The parties agree to work in good faith to accomplish the Closing within ten (10) business days following Board of Alderman approval of this Fifth Amendment.
4. The Agreement’s Appendix 2A plan sheets are replaced with the progress prints dated March 12, 2021 (Map 77, Lot 28 Easement Plan; Map 77, Lot 30 Easement Plan; Street License Area Plan; Map 77, Lot 5 & Map E, Lot 1487 Easement Plan; Map 77, Lot 17 Easement Plan) attached hereto as Exhibit 2.
5. The parties agree that PSNH shall have the right, but not the obligation, to undertake disposal of any, all or none of the materials from the City Lot at the City landfill and the City will accept some of the materials as follows (the “Disposal Terms”):

- a. The City will accept up to 5,000 tons of urban fill, defined as mildly contaminated soils which do not exceed NHDES Soil Remediation Standards, from the City Lot ~~for \$40 a ton, which is 1/2 the current tipping of \$80, for such materials brought to the landfill by PSNH, at its sole cost,~~ at a time mutually agreeable to the City, as determined by its Director of Public Works, and PSNH but in no event later than by June 30, 2022.
- b. The City cannot take the Construction and Demolition (“C & D”) waste. That is pass-through material for the City landfill and the City currently has a high volume coming into its facility.
- c. The City will accept up to 100 tons of asphalt shingles that contain asbestos, properly prepared for disposal, ~~for \$100 per ton, which is 1/2 the current tipping of \$200,~~ for such materials brought to the landfill by PSNH, at its sole cost, at a time mutually agreeable to the City, as determined by its Director of Public Works, and PSNH but in no event later than by June 30, 2022.

All other terms and conditions of the Agreement shall remain unchanged.

EXECUTED by the parties, by their duly authorized undersigned representatives, as of the date first written above.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY**

Name:
Title:

CITY OF NASHUA

Pursuant to Board of Alderman Resolution _____ approved _____

Name: James W. Donchess
Title: Mayor

LEGISLATIVE YEAR 2021

RESOLUTION: **R-21-124, Amended**

PURPOSE: **Approving a Fifth Amendment to Purchase and Sale of City land at 21 Pine Street (Map 77, Lot 17) and land of Public Service Company of New Hampshire d/b/a Eversource Energy at 3 Pine Street Extension (Map 77, Lot 2A)**

ENDORSERS: **Mayor Jim Donchess**

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE: As part of this agreement, the City will waive up to \$200,000 in tipping fees for up to 5,000 tons of urban fill and will waive up to \$10,000 in tipping fees for up to 100 tons of asphalt shingles that contain asbestos. The total of tipping fees waived could be up to \$210,000.

ANALYSIS

This resolution approves a Fifth Amendment to the Purchase and Sale Agreement between the City and Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”). The Purchase and Sale Agreement was authorized by R-19-147.

As the amendment allows new locations for easements, Charter §77 provides that the Planning Board “shall review and make recommendations to the mayor and board of aldermen on all locations for proposed municipal building and facilities, including educational, [and] on the purchase and sale of any land by the city.” Further, one of the contemplated easements is in Mine Falls, which requires input from the Mine Falls Advisory committee. Lastly, the landfill fee concessions are appropriate for referral for a recommendation to the Board of Public Works.

**Approved as to account
number and/or
structure, and amount:**

Financial Services Division

By: _____

Approved as to form:

Office of Corporation Counsel

By: _____

Date: _____

