



RESOLUTION

**AUTHORIZING THE CITY OF NASHUA TO ENTER INTO AN AGREEMENT AND
CONSENT TO JOINT USE WITH LIBERTY UTILITIES AND MAKING A
SUPPLEMENTAL APPROPRIATION OF \$38,394**

CITY OF NASHUA

In the Year Two Thousand and Twenty-One

RESOLVED by the Board of Aldermen of the City of Nashua that the City is authorized to enter into an Agreement and Consent to Joint Use with Liberty Utilities in substantially the same form as the attached.

FURTHER RESOLVED that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to take all necessary actions and prepare and execute the Agreement and Consent to Joint Use and all documents contemplated by, or related or required to effectuate the Agreement and Consent to Joint Use.

FURTHER RESOLVED to appropriate \$38,394.00 of FY2022 unanticipated revenue from Department #160 "Public Works Administration & Engineering", Account #45999 "Miscellaneous Revenue" into Department #160 "Public Works Administration & Engineering, Account #54210 "Construction Services". This represents a one-time payment from Liberty Utilities to cover the City's cost to reline the existing drain line in the area of 39 Swart Terrace, where the new gas main will be installed.



August 13, 2021

City of Nashua – Engineering Department
ATTN: Daniel Hudson, P.E.
9 Riverside Street
Nashua, NH 03062

RE: Agreement and Consent to Joint Use (off Swart Terrace)

Dear Mr. Hudson,

As discussed, and subject to the City of Nashua's approval of the "Agreement and Consent to Joint Use" for 39 Swart Terrace, Nashua, Liberty agrees to compensate the City of Nashua in the amount of \$38,394.00. This one-time payment reflects the City's cost to reline the existing drain line in the area where the new gas main will be installed, parallel to the existing drain line within the above lot.

Liberty will provide this payment in the form of a check prior to the installation of the new gas main.

Sincerely,

A handwritten signature in black ink that reads "Tracy Musto". The signature is written in a cursive, slightly slanted style.

Tracy Musto

Manager, Gas Operations – Construction
Liberty Utilities

After recording return to:
Erica O'Sullivan
Liberty Utilities
9 Lowell Road
Salem, NH 03079

AGREEMENT AND CONSENT TO JOINT USE

AGREEMENT made this ____ day of _____, 2021 by and between the City of Nashua, New Hampshire, a New Hampshire municipal corporation, with a business address of 229 Main Street, Nashua, New Hampshire 03061 and a mailing address c/o Dan Hudson, City Engineer, 9 Riverside Street, Nashua, NH 03062 (hereinafter referred to as **NASHUA**) and **LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.**, a New Hampshire corporation, having its principal place of business at 15 Buttrick Road, Londonderry, New Hampshire 03053 (hereinafter referred to as **LIBERTY**);

WITNESSETH THAT

WHEREAS NASHUA acquired certain temporary and permanent easement rights over premises in Nashua described as Parcel 12, Sheet 12 as shown on the plans entitled "Sewer Easement Plans, North Merrimack River Interceptor II", dated August 6, 1969 and October 12, 1973, Hamilton Engineering Associates, Inc., recorded with the Hillsborough County Registry of Deeds as Plan #8074, by deed of Dudley Orr, Trustee under the will of Kathleen W. Connell and Sylvia Spalding, dated January 21, 1975 and recorded in the Hillsborough County Registry of Deeds in Book 2387, Page 354 (hereinafter the "Sewer and Drainage Easement") which are essential to its sewer and drainage operations in Nashua.

WHEREAS the third paragraph of the Sewer and Drainage Easement states, in part, "The permanent easement shall remain free from construction of any encumbrances either within or over the easement".

WHEREAS the fifth paragraph of the Sewer and Drainage Easement states, "Both temporary and permanent easements shall also include in the City of Nashua the right and privilege to remove natural and man-made obstructions which interfere with the location,

construction, maintenance, replacement and operation of said sewer, embankments, drainage structures, slope protection and appurtenant facilities”.

WHEREAS the property encumbered by the Sewer and Drainage Easement is located at 39 Swart Terrace and is currently owned in fee by Michael Richard Paradis and Melania Marcu (the “**OWNERS**”) by virtue of a deed dated August 17, 2020 and recorded with the Hillsborough County Registry of Deeds in Book 9335, Page 1819.

WHEREAS LIBERTY desires to obtain from the **OWNERS**, and **OWNERS** are desirous of granting to **LIBERTY**, a ten (10) foot wide easement (the “Gas Easement Area”) over their property located at 39 Swart Terrace (“Property”) for the installation of a gas line, a portion of which will cross the Sewer and Drainage Easement, said gas easement being shown on a Plan entitled: Easement Plan for Liberty Utilities in Nashua New Hampshire (Hillsborough County), 39 Swart Terrace, Map 48 Lot 27 over the land of: Michael R. Paradise & Melania Marcu, June 17, 2021, and recorded in the Hillsborough County Registry of Deeds as Plan # _____ (the “**LIBERTY** Easement Plan”).

WHEREAS LIBERTY wishes to enter into an agreement with **NASHUA** to allow **LIBERTY** the right to install, maintain, repair and replace a gas line in a portion of the Sewer and Drainage Easement as depicted on the **LIBERTY** Easement Plan, and to be installed at least five (5) feet north of the existing sewer line (the “Encroachments”).

NOW THEREFORE, the parties hereby agree as follows:

1. **NASHUA** agrees and consents to the construction and maintenance of the Encroachments and use of a portion of the Sewer and Drainage Easement by **LIBERTY** as shown on the **LIBERTY** Easement Plan; such consent is not to be deemed a waiver of any of its rights under the Sewer and Drainage Easement.

2. **NASHUA** and **LIBERTY** agree to use their best efforts to cooperate in said joint use and to use their best efforts to provide each other, when requested, with engineering and surveying plans, maps or information necessary or helpful in locating or determining rights of the other.

3. **NASHUA** and **LIBERTY** agree to provide notification to each other prior to beginning construction and/or performing any maintenance within the Sewer and Drainage Easement.

4. **LIBERTY** agrees that in the event that **NASHUA** ever determines, in its sole discretion, it is necessary to construct, maintain, repair, remove, relocate or replace any **NASHUA** facilities within or to be placed within the Sewer and Drainage Easement, and should such work require the permanent or temporary relocation of the Encroachments in whole or part, **NASHUA** shall provide at least one (1) year’s prior written notice to **LIBERTY** and such relocation shall be done by **LIBERTY** or its agents or subcontractors at the sole cost and expense of **LIBERTY**. Notwithstanding the foregoing, if an emergency situation precipitates the need for such relocation, then **NASHUA** shall notify **LIBERTY** immediately and the parties shall

cooperate in good faith to agree upon a timeline for LIBERTY to complete such relocation, which shall in all events be as soon as is reasonably possible under the circumstances. If any relocation of the Encroachments shall be necessary, NASHUA shall provide an alternative location for the Encroachments within the Gas Easement Area, subject to LIBERTY's approval, not to be unreasonably withheld, conditioned or delayed. All notices sent to LIBERTY pursuant to this Agreement shall be directed to the following address:

Liberty Utilities (EnergyNorth Natural Gas) Corp.
ATTN: Gas Engineering
130 Elm St
Manchester, NH 03101

5. This agreement shall be binding upon and inure to the benefit of the parties and their heirs, successors, legal representatives, and assigns. This agreement shall run with the title to the Property.

6. LIBERTY hereby agrees to indemnify and hold NASHUA harmless from and against any and all liabilities, damages, claims, costs and expenses, including reasonable attorney's fees and court costs, which may be imposed upon or asserted against NASHUA arising from or in any way connected with the Encroachments or arising in any way from this agreement, except to the extent the same arise from the negligence or willful misconduct of NASHUA, its agents, employees or contractors.

7. LIBERTY also hereby agrees to, indemnify and hold NASHUA harmless and accepts all risks of loss associated with respect to the Encroachments, as a result of constructing the Encroachments. NASHUA shall not in any way, be liable or responsible to reimburse LIBERTY for the Encroachments, damage to the Encroachments, replacement cost or otherwise, except to the extent the same arises from the negligence or willful misconduct of NASHUA, its agent, employees or contractors. The construction and use of the Encroachments is at LIBERTY's own risk of loss, which risk is accepted by LIBERTY.

8. This Agreement shall be interpreted in accordance with the laws of the State of New Hampshire. The parties agree that any action arising from or relating to this agreement shall be filed in the Superior Court of Hillsborough County, New Hampshire.

This Agreement and Consent to Joint Use and any amendments thereto shall be recorded at the Hillsborough County Registry of Deeds.

[Remainder of Page Left Intentionally Blank; Signature Page Follows]

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

CITY OF NASHUA

Mayor James W. Donchess, duly authorized

Mayor's authority pursuant to R-21-xxxx approved by the Nashua Board of Alderman on
xxxxxxx.

State of New Hampshire
County of Hillsborough } ss.

The foregoing instrument was acknowledged before me on this _____ day of
_____, 2021, by James W. Donchess, Mayor of the City of Nashua, a New
Hampshire municipal corporation, on behalf of the municipality.

Notary Public

Printed Name

My Commission Expires: _____

**LIBERTY UTILITIES
(ENERGYNORTH NATURAL GAS) CORP.**

Neil Proudman, President, duly authorized

State of New Hampshire
County of _____ } ss.

The foregoing instrument was acknowledged before me on this ____ day of _____, 2021, by Neil Proudman, President, Liberty Utilities (EnergyNorth Natural Gas) Corp. on behalf of said corporation.

Notary Public

Printed Name
My Commission Expires: _____

Michael Richard Paradis

Melania Marcu

State of New Hampshire
County of _____ } ss.

The foregoing instrument was acknowledged before me on this _____ day of _____, 2021, by Michael Richard Paradis.

Notary Public

Printed Name

My Commission Expires: _____

State of New Hampshire
County of _____ } ss.

The foregoing instrument was acknowledged before me on this _____ day of _____, 2021, by Melania Marcu.

Notary Public

Printed Name

My Commission Expires: _____

LEGISLATIVE YEAR 2021

RESOLUTION: R-21-169

PURPOSE: Authorizing the City of Nashua to enter an Agreement and Consent to Joint Use with Liberty Utilities and making a supplemental appropriation of \$38,394

ENDORSERS: Alderman Patricia Klee

COMMITTEE ASSIGNMENT: Budget Review Committee
Planning Board
Board of Public Works

FISCAL NOTE: Supplemental appropriation of money received by Liberty Utilities for a specific purpose.

ANALYSIS

This resolution authorizes the City of Nashua to enter into an Agreement and Consent to Joint Use with Liberty Utilities. As this includes a modification to an easement granted to the City, 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.”

This legislation also appropriates \$38,394 of FY2022 unanticipated revenue from Public Works Administration and Engineering – Miscellaneous Revenue into Public Works Administration and Engineering – Construction Services. This represents a one-time payment from Liberty Utilities to cover the City’s cost to reline the existing drain line in the area of 39 Swart Terrace, where the new gas main will be installed. Charter Sec. 53 permits specific non-budget, supplementary appropriations. There should be notice and a public hearing. A two-thirds vote is required under Charter Sec. 56-b for an item or amount not in the mayor’s budget. A roll call is required under Charter Sec. 49.

This resolution should be referred to the Board of Public Works.

Approved as to account structure, numbers, and amount: **Financial Services Division**
By: /s/ David G. Fredette

Approved as to form: **Office of Corporation Counsel**
By: /s/ Dory Clarke

Date: September 8, 2021