

## MEMORANDUM OF AGREEMENT

**THIS AGREEMENT** is made and entered into this 26 day of March, 2020 between the City of Beverly, Massachusetts (hereinafter referred to as “Beverly” or the “City”), acting through its Mayor Michael Cahill, and New England Power Company d/b/a National Grid (hereinafter referred to as “NEP”), acting through Brian Gemmell, Vice President Transmission Asset Management, Authorized Representative.

WHEREAS, NEP is proposing to relocate its existing 115kV N-192 electric transmission cable within a new duct bank and manhole system located beneath Beverly city streets between the Veteran’s Memorial Bridge and the East Beverly #51 Substation and to remove the existing transmission cable (the “Project”);

WHEREAS, on or about April 2021, NEP is planning to commence work on the Project, subject to having received all necessary rights, permits, and approvals, such work to include without limitation the installation of duct banks, manholes, and the cables; and

WHEREAS, both Beverly and NEP have been discussing the mitigation of impacts from construction of the Project within Beverly’s streets;

NOW, THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged, Beverly and NEP hereby agree as follows:

1) Consulting Engineer:

- a) To ensure the Project does not adversely affect City infrastructure and planned construction projects along the construction route, Beverly intends to hire an engineering consultant to oversee construction of the Project as more specifically set forth below. Since this is an expense that Beverly would not have incurred but for the Project and is intended to minimize impacts to City infrastructure, NEP agrees to pay the City of Beverly’s reasonable expenses for engineering consultants for work directly related to the Project. Such expenses paid by NEP shall not exceed \$200,000. Both parties agree that the engineering consultant for Beverly needs to be on site during many activities, including, but not limited to: excavation, cable and manhole installation, and backfilling (“civil construction”). The parties further agree that the consulting engineer shall be the City’s principal point of contact for the Company and shall be available and authorized at all times to respond to the Company’s questions and to resolve any construction-related issues.
- b) The estimate of \$200,000 is based on NEP’s estimated production rate of their contractor. If the total time for civil construction extends beyond eighteen (18) months and/or the duration of specific civil construction task extend beyond what has been estimated by the City and NEP engineers, the not-to-exceed amount to be paid by NEP shall be reviewed for adequacy and modified accordingly. The resident engineer shall be hired and paid directly by the City. The City shall submit the invoices received from the engineer to NEP for reimbursement and NEP shall reimburse the City within 60 days of receipt of any invoice. The consulting engineer will observe construction activities but will not have the

authority to direct National Grid contractors. No monies paid for under this provision may be used to oppose the Project in any public or private settings or discussions.

2) Stakeholder Relations:

- a) NEP's Stakeholder Relations Representative and other specific representatives of NEP shall be available to meet with and respond to questions from City officials, business leaders and residents during and prior to construction regarding specific concerns such as traffic, safety, relocating bus stops and on-street parking and environmental issues. The Stakeholder Relations Representative shall meet with and provide the City with two-week look ahead reports describing the construction activities planned for the upcoming two weeks. The Stakeholder Relations Representative will make all efforts to speak with all business and all commercial property owners abutting the route in person one week prior to any work taking place. The Stakeholder Relations Representative will also make periodic stops to businesses while construction is taking place.
- b) NEP will continue to maintain its Project website throughout the duration of the Project. The website address shall be listed on any material sent to residents and on all Project signage. The City shall provide a link on its website to the Project website and shall have meaningful input into the site's content. In addition to the English language content, the Project website shall include a brief description of the Project in Spanish and Portuguese and direct Spanish and Portuguese speaking individuals to NEP's Stakeholder Relations Representative if they need further translation of the information appearing only in English.
- c) NEP shall publicize and maintain a hotline phone number and process for reporting emergencies after business hours.

3) General Coordination and Cooperation:

- a) As soon as NEP is reasonably certain of the start and end dates of Project construction it shall provide those dates to the City. The City DPW shall coordinate the collection of schedules from other City departments for that construction period and provide same to NEP. Those schedules will be included as part of the construction specification for incorporation by NEP's contractor in the construction schedule to the extent practicable. NEP agrees to work with the Mayor of Beverly and his designee(s) to make any final adjustments to the contractor's construction schedule. The City recognizes that the construction schedule may require revisions during the Project's lifecycle. Project milestones, updated as necessary, shall be posted on the Project website.
- b) The City understands that time is of the essence and agrees, to the extent that it is able, to expedite the granting of all local permits licenses and approvals that maybe required for NEP to proceed with the Project. To further that purpose, the City agrees to not oppose NEP's petition to the Energy Facilities Siting Board for: (a) approval of the Project under

G.L. c. 164, §§ 69J and 72; and (b) individual and comprehensive exemptions from the City of Beverly Zoning Ordinance pursuant to G.L. c. 40A, § 3.

- c) NEP will provide the City with NEP's construction bid documents (specifications and plans) and the date on which it intends to issue its RFP for a construction contractor. The City agrees to provide its construction requirements to NEP in sufficient time for incorporation into the Project construction specifications as appropriate.
  - d) During manhole and duct bank construction, as well as cable installation and removal, NEP shall have a construction supervisor assigned full time to the Project and available to respond to any questions and/or concerns. NEP's construction specifications will require that the contractor provide a Project Manager who will, among other responsibilities, maintain a permanent presence at the Project site for the duration of the Project and act as the contractor's point of contact with individuals and groups, as well as the City of Beverly and all its departments; representatives of local neighborhood groups; and representatives of local businesses. The Project Manager shall be responsive to City officials 24 hours a day/seven days a week and to residents and businesses during hours of construction.
  - e) Upon completion of the Project, NEP shall provide Beverly with copies of as-built plans and all engineering and survey information produced by and for NEP relating to the installation of the Project within public and private ways of the City of Beverly.
- 4) Surveys and Damage:
- a) NEP shall work with City officials to ensure that residents and businesses along the construction route have the opportunity to participate in pre-construction photo/video surveys to document the pre-construction condition of residences and businesses along the construction route. Residents and businesses shall be entitled to receive a copy of the survey taken from their property upon written request. Prior to construction, NEP shall mail a letter to all abutters (including property owner and tenant) of the approved construction route explaining the survey process.
  - b) NEP shall require its contractor to have a detailed process to handle claims of damage to persons, vehicles or property to Beverly residents, visitors, business owners or the City itself as a result of Project construction activities. This process shall be in place prior to the start of construction. Information on how to submit claims to the Contractor will be included as part of the Project website. To ensure that the Contractor is being responsive, NEP agrees that its contract with the selected contractor for the Project shall require the contractor to provide notice of damage claims weekly to the Stakeholder Relations Representative. This Representative shall provide the City Engineer a weekly list of the number of claims made, the date they were made and whether the claims have been resolved. The Parties understand that such damage claims constitute private matters between the claimant and Contractor and that neither the contractor nor NEP may disclose private information to the City. NEP's agreement to acquire claims processing information

and provide it to the City is not an agreement or acceptance by NEP to be responsible for compensating for claims resulting from the negligence, gross negligence, reckless misconduct or intentional acts of the Contractor.

- c) NEP agrees to minimize and mitigate potential impact to City streets by requiring its contractor to use rubber tires, rather than metal tracks, on heavy equipment operating within the public way. NEP further agrees to repair any asphalt or sidewalks that are damaged as a result of Project construction vehicles and activities. NEP in its discretion may perform pre-construction photo/video surveys to document the pre-construction condition of the public streets and ways along the Project route that is approved by the Energy Facilities Siting Board as well as any side streets designated as detours during construction.
- 5) Traffic Management Plan:
- a) NEP shall identify streets to be temporarily closed due to manhole installation and include such in a Traffic Management Plan (TMP) that NEP shall develop in consultation with Beverly public safety officials. In addition, NEP shall require the anticipated timing of closures be carried out by the contractor and the amount of notice required written into the TMP. Whenever possible, NEP shall post road closures on the Project website no less than 48 hours in advance of any such detours or transportation limitations. NEP shall make every effort to avoid the need for detours when possible.
  - b) The TMP shall be approved by the City Engineer and Police Chief and in consultation with the Fire Chief prior to the issuance of any street opening permit. Information on road or land closing and detour shall be posted on the website in a timely manner.
  - c) NEP shall require its cable contractor or sub-contractors to post “no parking” signs, approved by the City Engineer, at least 48 hours in advance of where construction is planned. Signs will list days and times of “No Parking” in large and legible font. In the event that a vehicle is parked in the work zone, NEP shall make reasonable efforts to identify and acquire nearby locations where vehicles could be moved for easy retrieval and at no cost to the owners. Signs will be immediately removed at the conclusion of work in a given area.
  - d) As part of the TMP, NEP shall require the construction contractor to rent two additional mobile electronic traffic message sign boards to be deployed in coordination with the City DPW. NEP shall incorporate the City’s specific sign requirements and material into contract documents. NEP will have available two additional mobile electronic traffic message boards, above and beyond what is required in the TMP to be deployed at any time by NEP at the request and sole discretion of the City.
  - e) NEP shall make every effort to ensure the businesses along the route have customer access during construction.

f) In consultation with the City, NEP's contractor shall secure any necessary police details during construction along the approved route. If the City determines that additional directed patrols are necessary to manage traffic on designated detours and other side roads, NEP agrees to reimburse the City for such additional directed patrols up to \$150,000. In order to obtain reimbursement, the City shall submit to NEP detailed invoices from the Beverly Police Department on a monthly basis, which at a minimum shall include the name of the officer, the time and location of the patrol and the work request number that NEP will provide.

6) Shade Trees

a) In the event NEP contractor(s) remove public shade trees after consultation with the City's Arborist and in compliance with all applicable state laws and ordinances, NEP or its contractor shall replace the trees removed in accordance with Beverly's tree replacement policies (every inch in caliper that is removed is replaced by planting trees in locations determined by the City Arborist) and any newly planted trees must be guaranteed for two years after planting.

b) Any required cutting of tree roots may only be performed after consultation with the City Arborist. Those trees subject to root cutting shall be guaranteed by the contractor for at least one year after root cutting and shall be replaced pursuant to City policy if ordered by the City Arborist.

7) Underground City Infrastructure:

a) Any City of Beverly infrastructure requiring relocation and/or implementation of any system by-pass shall be performed by NEP and its contractors. NEP shall identify such relocation or by-pass work in drawings with the proposed relocation plan. NEP shall indicate if relocation is permanent or temporary during construction and if temporary, infrastructure shall be returned to original location prior to restoration. Any temporary and/or permanent utility relocation plan shall be approved by the City's Department of Public Works in advance of the relocation. NEP and its contractors shall perform the relocation work in consultation with the City Department of Public Works.

b) NEP's contractor shall take standard care to protect the integrity of any gravity services either exposed during construction, or unseen during construction (i.e., that have been crossed above by the Project). NEP's contractor shall repair any gravity lateral services located within five feet of the proposed Project ductbank that fail within 180 days after the permanent patching as described in paragraph 10(a).

8) Parking: NEP shall require its contractor to obtain a permit as set forth in Exhibit C allowing the contractor to block access to metered parking spaces. Licenses shall be obtained from the City's Engineering Department in advance of such blocking. The rate for such permit shall be \$15 day per space.

9) Construction:

- a) NEP shall require its contractor(s) to leave the construction site in broom-swept condition at the close of each construction each day. NEP shall require its contractor to establish a dust control procedure. In the event of snow, NEP's contractor shall ensure the work area is plowed.
- b) Construction work hours shall be limited to 7:00 am to 4:30 pm on weekdays, inclusive of clean-up activities. On weekends, construction may begin no earlier than 8:00 am. The City acknowledges, however, that work may need to be done on weekends and holidays for certain activities that are time-sensitive or that once started must be completed, including for instance cut-overs, cable splicing and work requiring outages. The City further acknowledges that NEP must comply with the work hours established by the MBTA for work occurring on the MBTA ROW. NEP shall prohibit its contractor from conducting any "pre-work" that generates a noise disturbance prior to 7:00 am on weekdays and 8:00 am on weekends, such as starting construction vehicles. As noted above, there will be certain exceptions when NEP will need to extend work outside of these work hours such as during cable splicing which will take approximately a 12-hour shift per day. During those instances and 48-hours prior to commencing any work requiring extended work hours, NEP shall submit in an e-mail to the City Engineer an explanation of the reasons and the duration of the extended work hours. With respect to non-MBTA regulated work, NEP shall request in such email approval from the City to proceed, which approval shall not be unreasonably withheld. The City shall not enforce its noise and construction hour regulations when NEP has received the approval required by this paragraph.
- c) NEP shall require its contractor to place a sign, with National Grid's logo, phone, and Project website at all worksites during the Project.
- d) NEP shall receive approval from the City Engineer of any construction staging area on public property. Daily staging near the construction work site, which will be removed at the end of the day as set forth in paragraph 9(a) herein, is not subject to this provision and shall not require prior approval.
- e) NEP shall require its contractor to remove any unused equipment or materials from the worksite each evening.
- f) NEP and/or its contractor shall consult with the City's Director of Health and shall ensure that effective rodent controls are established. Should the rodent population be displaced (leave its natural habitat) because of the Project, then NEP and/or its contractor, at their sole cost and expense, shall retain the services of a professional exterminating company to abate the rodent migration problem. This service must adequately and sufficiently solve the problem.

- g) NEP will identify and provide contact information to the City of the appropriate and direct construction contacts who will be available 24 hours a day 7 days a week to the City for operational questions and concerns and to be available in the event of an emergency.

10) Pavement Restoration:

- a) NEP agreed that streets excavated in support of the installation of the cable and the removal of the N-192 cable shall be repaved curb-to-center line and to repaint any center lines and other lines disturbed by construction; except that NEP agreed to repave curb-to-curb and repaint the center lines and any other lines present prior to construction as set forth in Exhibit A. The City, however, wants to use its own resources and contractors to perform the final pavement restoration along the Project route. Accordingly, NEP shall permanently patch the area excavated during cable installation and removal and shall pay the City \$2,750,000, which is the amount that NEP estimated it would have spent on the permanent roadway repaving. "Permanently patch" shall mean to repave, at a minimum, to a depth of 6 inches consisting of binder and finished course with a minimum of 1½ inches of finished course. However, with the consent of the City's Engineering Department prior to excavation, the minimum depth may be decreased.
- b) NEP will make incremental payments to the City in accordance with the schedule set forth in Exhibit B.
- c) The City shall use these funds to repave the roadways that are excavated during cable installation and removal. If funds remain following the repaving of roadways excavated during cable installation and removal, the City may use those funds to repave or restore detours and other secondary roadways disturbed during the Project and to mitigate other Project impacts.
- d) The City acknowledges that its failure to repave and restore the roadways would damage NEP's and National Grid's reputations and, therefore, agrees to complete the repaving and restoration using the funds provided by NEP within 18 months of the City's acceptance of responsibility for the roadway following inspections as set forth in Paragraph 10(e); provided, however, that National Grid shall not unreasonably withhold agreement to a one-time request from the City for an extension of no more than 6 months. If the City fails to complete final repaving of a roadway excavated by NEP within this time period, NEP may in its sole discretion either (i) agree to extend the time for the City to complete the repaving of the roadway in question, or (ii) to complete the repaving of the roadway in question itself. NEP shall give the City 30-days written notice before exercising its rights under (ii) of this section. In the event that NEP elects to complete the repaving, it may in its sole discretion choose to repave the roadway in question to the extent set forth in Exhibit A, and the City agrees to pay NEP the commercially reasonable cost of such repaving within 90 days of receipt of NEP's repaving invoice, which shall be NEP's sole remedy in the event that subparagraph (ii) is triggered.

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- e) The City will inspect NEP's permanent patching of City-owned roadways within 60 days of National Grid's request to inspect. NEP agrees to repair any defects identified by the City. If no defects are identified by the City following the City's inspection, the City shall be solely responsible for the condition of the roadways.
- f) The City, if necessary, will advocate before the City Council and/or other municipal boards that the different or additional repaving conditions are not imposed by the City Council or other municipal body in connection with any permits or approvals, including grants of location under G.L. c. 166, § 22. In the event that different or additional paving is imposed as a condition, the parties agree that the provisions of this section 10 shall be re-opened for further negotiation.
- g) NEP shall replace any portion of a sidewalk that must be removed for manhole and/or duct line installation or during N-192 cable removal to City standards and of the same materials as existing. The City will decide the extent of restoration, as some sidewalks are in poor condition and will require improvement to meet ADA requirements if disrupted, including the installation of handicap access ramps and crosswalks.

11) Electric and Magnetic Fields (EMF)

- a) To help allay any concerns around the health effects of EMF, NEP agrees to the following:
  - i) To fund the City's request for an EMF expert to provide an independent review of the EMF report and analysis performed by Exponent. NEP's total contribution to this EMF expert shall not exceed \$20,000, including expenses. NEP will provide the EMF expert with Exponent's EMF reports, EMF testimony and EMF calculations that were part of the EFSB filing. NEP's agreement to pay for the EMF expert is conditioned upon the following:
    - (1) National Grid will be allowed to review the resume or resumes of potential experts to and provide feedback to the City on whether the potential experts are qualified to review and analyze EMF data and potential health effects;
    - (2) The independent EMF expert shall have a relevant engineering or physics background that would enable him or her to successfully interpret the data provided and perform calculations using an industry accepted software program;
    - (3) The independent EMF expert should either be qualified as an expert witness in public health and epidemiology or have the appropriate relevant experience in epidemiology and public health;



- (4) The EMF expert will finalize his or her review and report as soon as possible, but in no event later than 60 days from the date of delivery of Exponent's report to the reviewing expert.
      - (5) In order to meet National Grid's regulatory and accounting requirements, the EMF expert shall submit the invoice to NEP for payment for an amount not to exceed \$20,000.
    - b) NEP's will make every commercial reasonable effort to install the cable at a depth of no less than 30" from the top of the conduit to the pavement and in a delta configuration in all areas except for at the immediate proximity of the manhole locations. NEP, however, retains the sole discretion to install the cable at a different depth and configuration when in NEP's professional judgment doing so is warranted to ensure installation of the cable in a safe, efficient, cost-effective and/or least impactful manner. NEP will notify the City before installing any cable at a depth of less than 30" depth and/or in a non-delta configuration except for in the immediate proximity of the manhole.
- 12) NEP acknowledges and understands that it must comply with M.G.L. ch. 166, section 22 and City Ordinances pertaining to the construction of underground conduits, cables, wires, manholes and/or the tearing up of streets, including but limited to City Ordinance §253-3, §253-6, §253-13 and §253-15. In the event that the City Council, acting pursuant to its authority under Chapter 253 of the City's Ordinance, imposes conditions that NEP believes are inconsistent with this agreement or unduly burdensome and/or costly, the parties agree to re-open this agreement for negotiation. NEP agrees that, to the extent that it has a list of locations and persons along the construction route who may be entitled to receive notice of any hearing required, it will provide the City Clerk with a copy. This provision is not intended to and does not delegate to NEP the responsibility of giving any required notice, which shall remain with the City Clerk to the extent required by law. Additionally, NEP agrees to reimburse the City for the cost of mailing required notices and making any necessary publications.
- 13) Indemnification. NEP agrees to indemnify, defend and hold harmless the City, its officers, employees, boards, commissions, and agents from and against all suits and claims of liability of every name and nature, for or on account of any injuries to persons or damage property to the extent arising out of the negligence, gross negligence, recklessness, or intentional acts or fault of NEP in relation to the Project or this Agreement. .
- 14) Entire Agreement: This agreement constitutes the entire agreement between NEP and the City of Beverly regarding the mitigation of impacts to the City by NEP that are attributable to construction of the Project. The City agrees not to require further mitigation other than what has been agreed to herein. Further, the City agrees to waive any and all permit or other fees and/or surcharges otherwise associated with the excavation and paving of public streets, including those related to the City's Pavement Condition Index. The parties may agree, however, that due to unforeseen circumstances


such that construction start or completion is delayed by more than 180 days, to re-open negotiations and amend this agreement. Agreement to re-open negotiations shall not be unreasonably withheld and any amendments to this Agreement shall be in writing and executed by both parties.

Signed this 26 day of March, 2020 by the parties' authorized representatives.

CITY OF BEVERLY

By:   
Michael P. Cahill, Mayor

NEW ENGLAND POWER COMPANY d/b/a/ NATIONAL GRID

By:   
Brian Gemmell, Vice President, Electric Transmission Asset Management

## **EXHIBIT A**

### **REPAVING SCOPE OF WORK**

If under Section 10 of this Agreement NEP elects to complete permanent repaving, then it agrees to do so curb-to-curb along the following streets within the Cable Installation Alignment:

- a. Park Street (length 445 feet)
- b. Broadway, between Park Street and Cabot Street (length 1,610 feet);
- c. Cabot Street, where the Cable cross from Broadway to Thorndike Street (length 50 feet);
- d. Thorndike Street, from Cabot Street to Endicott Street (length 540 feet);
- e. Endicott Street, from Thorndike Street to Hale Street (including Monument Square) (length 670 feet); and
- f. Hale Street, from Thorndike Street to Lothrop Street (length 2,235 feet).

In addition to the above, NEP agrees to restore the pavement curb-to-curb in any of the following areas of the route:

- g. Where the Cable trench crosses the centerline and must traverse both sides of the street; and
- h. Where both removal and installation work occur within the same segment of street.

**EXHIBIT B**

**Schedule for NEP's Installation Payments of Repaving Costs to City**

In Paragraph 10(a), above, NEP agreed to pay the City of Beverly \$2,750,000, which the City will use to permanently repave the roadways excavated by NEP during the Project. NEP shall make payment installments in accordance with the following milestones:

1. 15% at the time of the City's mobilization for its repaving project;
2. 25% complete progress payment - three (3) months after mobilization;
3. 25% complete progress payment - six (6) months after mobilization;
4. 25% complete progress payment - nine (9) months after mobilization; and
5. 10% final payment after acceptance of work.

**EXHIBIT C**

City of Beverly, Massachusetts  
Parking Department  
191 Cabot Street, Beverly, Massachusetts

**LICENSE TO BLOCK METERED PARKING AREA**

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Vehicle Manufacture (If Applicable) \_\_\_\_\_

Plate # (If Applicable) \_\_\_\_\_

Days Required \_\_\_\_\_

# Spaces Needed \_\_\_\_\_

**\$ 15 PER DAY PER SPACE**

**TOTAL DUE**

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SIGNATURE OF REPRESENTATIVE

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