



## RESOLUTION

AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT AND CONSENT TO  
JOINT USE WITH EVERSOURCE

### *CITY OF NASHUA*

*In the Year Two Thousand and Seventeen*

**WHEREAS** R-16-048 authorized a location off Stadium Drive (Sheet E, Lot 1359) as the replacement site for the David W. Deane Skateboard Park currently located on Bridge Street;

**WHEREAS** Eversource holds a 100' foot wide easement on parcel E-1359;

**WHEREAS** elements of the new skateboard park will encroach into Eversource's easement area; and

**WHEREAS** Eversource has determined the encroachments in their proposed locations are acceptable with the execution of an agreement substantially similar to the attached Agreement and Consent to Joint Use to define the joint use of the easement to the parties' mutual benefit.

**NOW THEREFORE** *be it resolved by the Board of Aldermen of the City of Nashua* that the Mayor is authorized to enter into an agreement substantially in the form of the attached.

**LEGISLATIVE YEAR 2017**

**RESOLUTION:**

**R-17-106**

**PURPOSE:**

**Authorizing the City to enter into an Agreement and Consent to Joint Use with Eversource**

**ENDORSERS:**

**Alderman-at-large David W. Deane**

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:**

**None.**

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**ANALYSIS**

This legislation gives Board of Aldermen approval for the Mayor to enter into an agreement similar to the attached Agreement and Consent to Joint Use between Nashua and Eversource. Eversource's easement gives Eversource the right to "remove all structures or obstructions, which are now or may hereafter be found within the limits of the" 100' easement area. The design for the new skateboard park includes parking, sidewalks, landscaping and other improvements within the 100' easement area. Without this or a similar agreement in place, Eversource could remove all such improvements without notice and without liability to the City.

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**Approved as to form:**

**Office of Corporation Counsel**

**By:**

Drewley Clarke

**Date:**

May 18, 2017

Return to:  
PSNH dba Eversource Energy  
Attn: E.. N. Snyder  
P.O. Box 330  
Manchester, NH 03105

**AGREEMENT AND CONSENT TO JOINT USE**

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, doing business as Eversource Energy, a New Hampshire corporation with its principal place of business at 780 North Commercial Street, Manchester, New Hampshire, 03105 (hereinafter called EVERSOURCE); and 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 Stephen Dookran, Engineer, 9 Riverside Street, Nashua, NH 03062 (hereinafter called NASHUA);

**WITNESSETH THAT**

WHEREAS, EVERSOURCE acquired a 100' foot wide easement by deed of Lillian E. Hartwell, dated March 4, 1950 and recorded in the Hillsborough County Registry of Deeds, Book 1249, Page 456 (hereinafter called the Easement), which is essential to its operations in the Nashua area and has poles, lines and appurtenant equipment across portions of the Easement;

WHEREAS, NASHUA is the fee owner of property located on/off Stadium Drive in Nashua, New Hampshire, a portion of which is subject to the Easement;

WHEREAS, NASHUA wishes to construct and maintain a portion of a parking lot, landscaping (to include loam and seed, shrubs and dwarf tree planting), a sidewalk, handicap signs, a storm water basin and a Stadium Drive Skate Park sign (hereinafter called the Encroachments), between EVERSOURCE structures 30 and 32 on distribution line # 3223, as shown on a set of eight plans entitled "City of Nashua, New Hampshire, David W. Deane Skateboard Park at Stadium Drive, September 2016", dated September 14, 2016, latest revision dated November 7, 2016 and prepared by City of Nashua, City Engineer's Office (hereinafter called the Plan), which is attached hereto and made a part hereof, but not recorded herewith;

WHEREAS, EVERSOURCE desires to cooperate with NASHUA in the construction/retention and maintenance of the Encroachments, and NASHUA desires to cooperate with EVERSOURCE to protect its easement rights.

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

(1) This Agreement runs solely with the parcel of land as shown on the Plan and described in the Easement.

(2) EVERSOURCE consents to the construction and maintenance of the Encroachments and the use of a portion of the Easement by NASHUA as described above and shown on the Plan; such consent is not to be deemed a waiver of any of its rights under the Easement.

(3) NASHUA and EVERSOURCE agree to jointly use a certain portion of the Easement as described above and shown on the Plan, subject to the conditions contained herein.

(4) NASHUA and EVERSOURCE agree to use their best efforts to cooperate in said joint use and to use their 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.

(5) NASHUA agrees to take all safety precautions when working under and near EVERSOURCE's high voltage electric transmission lines, including but not limited to compliance with applicable Occupational Safety and Health Administration (OSHA) requirements.

(6) NASHUA agrees to provide notification to EVERSOURCE prior to beginning construction and/or maintenance of the Encroachments adjacent to EVERSOURCE facilities and equipment within the Easement. Notification to EVERSOURCE shall be addressed to Donald S. Di Buono, Lead Engineer, NH Transmission Line Engineering or his successor at P.O. Box 330, Manchester, New Hampshire, 03105 or at telephone number (603)634-2875.

(7) NASHUA agrees to use its best efforts to construct and maintain the Encroachments in a reasonable manner so that it does not interfere with or damage the towers, poles, cables or any other equipment owned, constructed or maintained by EVERSOURCE. NASHUA agrees to cover the full reasonable costs to EVERSOURCE for any such interference or damage as a result of its construction and/or maintenance activities within the Easement. NASHUA further agrees to cover the full reasonable costs to EVERSOURCE in advance for any relocation, bracing,

changing and raising of any towers, poles, cables, or any other equipment owned, constructed or maintained by EVERSOURCE as may be required to properly operate, maintain, repair, rebuild, patrol and remove the same as a result of its construction and/or maintenance activities within the Easement.

(8) NASHUA agrees to construct and/or maintain the Encroachments such that they do not prevent EVERSOURCE from replacing, repairing, rebuilding, operating, patrolling and removing its towers, poles, cables or any other equipment owned, constructed or maintained by EVERSOURCE, or from complete and unobstructed access to and along the EVERSOURCE distribution line # 3223. NASHUA acknowledges that placement of a hard surface parking area within PSNH's easement corridor creates the potential for damage to the parking area by PSNH maintenance vehicles (which may include large track mounted heavy equipment). PSNH assumes no liability for said damage, and NASHUA agrees to indemnify, defend and save harmless PSNH from and against any and all loss, cost, damage, and expense and against any and all claims, actions or proceedings for property damage arising out of placement of the paved surface within PSNH's easement corridor.

(9) Eversource reviews and accepts site plan submittals only to the extent that specific plan details are required for the evaluation of the requested joint use. Eversource review of submitted site plans is not to be construed as a comprehensive engineering or drafting review, and therefore Eversource is not responsible for any loss suffered as a result of plan discrepancies unrelated to the requested joint use. NASHUA agrees that any field changes in the Plan within the Easement during construction or thereafter, or any blasting activities, future construction or change of use within the Easement shall be subject to prior written approval by EVERSOURCE. Requests for approval shall be addressed to Donald S. Di Buono, Lead Engineer, NH Transmission Line Engineering or his successor. EVERSOURCE's approval will not be unreasonably withheld.

(10) NASHUA agrees not to pile any snow or construction materials or store any equipment within the Easement.

(11) NASHUA agrees not to construct any permanent structures, including storage sheds, within the Easement without the prior approval of Eversource pursuant to the terms of this Agreement

(12) NASHUA agrees not to place any wells or septic systems within the Easement.

(13) NASHUA agrees that following construction and/or maintenance of the Encroachments to dispose of all waste material outside the Easement; grade, resoil and reseed in a reasonable manner wherever necessary; employ any necessary erosion control measures; and restore and maintain the Easement in a condition acceptable to EVERSOURCE.

(14) Nashua agrees and acknowledges that Eversource, by exercise of its right to build, rebuild and reconfigure its utility lines, may in the future need to place poles, structures, and/or guy anchors within the area to be occupied by the proposed parking lot, and this need may reduce the number of available parking spaces. Eversource will work to avoid the need to occupy parking spaces to the extent that such avoidance will not incur additional engineering and construction costs for Eversource.

(15) NASHUA agrees to obtain and keep in force during the term of this Agreement any and all permits or approvals required by any authority having jurisdiction over construction of this nature, and shall be responsible for payment of any and all taxes levied on it.

(16) NASHUA agrees to indemnify, defend and save harmless EVERSOURCE from and against any and all loss, cost, damage, expense and claims, and against any and all claims, actions or proceedings for property damage, personal injury or death arising out of the use of the rights granted herein and not resulting from acts or omissions of EVERSOURCE or its agents or subcontractors.

(17) Any consent, express or implied, by either party to a breach by any other party of a covenant, or a condition contained herein, shall not constitute a waiver of any prior or succeeding breach of any covenant or condition contained herein.

(18) This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, administrators, successors and assigns.

(19) The Agreement shall be interpreted in accordance with the law of the State of New Hampshire and it shall be specifically enforceable.

(20) This Agreement contains the entire Agreement between the parties and any amendment thereof shall be in writing and executed by the parties to this Agreement.

(21) This Agreement and any amendments thereto shall be recorded in the Hillsborough County Registry of Deeds.

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

CITY OF NASHUA

PUBLIC SERVICE COMPANY  
OF NEW HAMPSHIRE d/b/a Eversource Energy

\_\_\_\_\_  
Mayor James W. Donchess, Esq.

By: \_\_\_\_\_  
Theresa M. Feuersanger, Supervisor  
Transmission & Distribution Rights of Way &  
Survey Engineering

State of New Hampshire  
County of

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by James W. Donchess, Esq., Mayor of The City of Nashua, a New Hampshire municipal corporation, on behalf of the municipality.

\_\_\_\_\_  
Notary Public/Justice of the Peace

State of New Hampshire  
County of Hillsborough

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by Theresa M. Feuersanger, Supervisor, Transmission & Distribution Rights of Way & Survey Engineering, on behalf of Public Service Company of New Hampshire doing business as Eversource Energy, a New Hampshire corporation.

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Notary Public/Justice of the Peace