

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to Execute a Perpetual Easement from Massachusetts Electric Company to the City of Lowell over a portion of the Property for the benefit of the City, its successors and assigns to use, operate, repair, replace and reconstruct the Improvements within the Easement Area for the movement and parking of buses and related matters that serve the City, its successors and assigns to use approximately 1,500 square foot portion of the Property located off YMCA Drive in said Lowell.

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BE IT VOTED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City Manager is authorized to execute a Perpetual Easement from Massachusetts Electric Company to the City of Lowell over a portion of the Property for the benefit of the City, its successors and assigns to use, operate, repair, replace and reconstruct the Improvements within the Easement Area for the movement and parking of buses and related matters that serve the City, its successors and assigns to use approximately 1,500 square foot portion of the Property located off YMCA Drive in the City of Lowell and more fully set forth in Exhibit A. Said Easement shall be in the form or substantially the form attached hereto.

BE IT FURTHER VOTED:

That any cost of recording the easement and related plans shall be at the City's expense.

V:easement:masselectricymcadr

**Upon recording, return to:**  
Megan F.S. Tipper, Esq.  
National Grid  
40 Sylvan Road  
Waltham, MA 02451

### **GRANT OF EASEMENT AND AGREEMENT**

This Grant of Easement and Agreement (this "Agreement") made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation having a place of business at 40 Sylvan Road, Waltham, MA 02451 (hereinafter "MEC"), and the **CITY OF LOWELL**, with an address at 375 Merrimack Street, Lowell, MA 01852 (hereinafter, the "City").

WHEREAS, MEC owns a certain parcel of land (the "Property") located in Lowell, Middlesex County, Massachusetts, pursuant to that deed from Charles Freemen to Lowell Electric Light Corporation ("LELC"), recorded with the Middlesex North District Registry of Deeds (the "Registry") in Book **1069**, **Page 79**, which Property is depicted as "GIS ID. 3720-4 NOW OR FORMERLY MASSACHUSETTS ELECTRIC COMPANY BK: 1069 PG: 79" on that plan entitled "ANR SUBDIVISION PLAN, VACANT LOT BY LRTA BUS TERMINAL OFF YMCA DRIVE, LOWELL, MASSACHUSETTS PREPARED FOR NOBIS ENGINEERING, INC." prepared by WSP Transportation & Infrastructure, dated December 6, 2016 and recorded August 24, 2017 with the Registry in Plan Book 243 as Plan 119. LELC merged into the Merrimack-Essex Electric Company as evidenced by that Certificate of Merger recorded with the Registry in Book 1378, Page 529; and Merrimack-Essex Electric Company merged into MEC as evidenced by the Certificate of Merger recorded with the Registry in Book 1571, Page 1;

WHEREAS, the City owns that parcel of land located in Lowell, Middlesex County, Massachusetts off YMCA Drive, more particularly described in a deed from the Massachusetts Bay Transportation Authority dated August 9, 2017 to the City, recorded with the Registry in Book 31406, Page 275 (the "City Land");

WHEREAS, pursuant to that License Agreement by and between the City and MEC dated November 18, 2017, the City constructed and installed certain pavement, sidewalk, curbing, striping and other improvements for the parking of buses (the "Improvements") on a portion of the Property as shown on the improvements plan (the "Improvements Plan") attached hereto as Exhibit B and made a part hereof;

WHEREAS, the City now desires to obtain a perpetual and assignable right and easement in gross over a portion of the Property for the benefit of the City, its successors and assigns, to use, operate, repair, replace, and reconstruct the Improvements for the movement and parking of buses and related matters that serve the City, its successors and assigns, as more particularly described below; and

WHEREAS, MEC has agreed to grant the City such easement subject to the terms and conditions of this Agreement and in consideration for the City granting MEC electrical transmission and distribution easements across the City Land in certain locations, which easements are to be recorded simultaneously

herewith (the "MEC Easements").

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and the MEC Easements, the receipt and sufficiency of which are hereby acknowledged, and in consideration for the mutual covenants and agreements contained herein, the parties covenant and agree as follows:

**A. GRANT OF EASEMENT**

1. MEC hereby grants to the City, its successors and assigns, and the City hereby accepts from MEC for itself and its successors and assigns, with quitclaim covenants, the perpetual and assignable right and easement in gross (hereinafter the "Easement") to (a) use an approximately 1,500 square foot portion of the Property located off YMCA Drive in Lowell, Middlesex County, Massachusetts and shown as "Easement Area A ±1500 SF" (the "Bus Parking Easement Area") on that sketch plan attached hereto as Exhibit A and made a part hereof (the "Sketch Plan"), to use, operate, maintain, repair, replace, and reconstruct the Improvements shown on the Improvements Plan (see Exhibit B) within the Easement Area for the movement and parking of buses; and (b) use an approximately 1,235 square foot portion of the Property (61.77 feet by 20 feet) shown as "Easement Area B ±1235 SF" (the "Lawn Easement Area") on the Sketch Plan for mowing and the maintenance of grass with hand tools or push mowers, and for no other purposes. The Bus Parking Easement Area and the Landscaping Easement Area are hereinafter referred to collectively as the "Easement Area."
2. The City covenants and agrees with MEC that the Easement is being granted by MEC with the Easement Area and the Improvements "AS IS", "WHERE IS" and "WITH ALL FAULTS," and that MEC has made no representation or warranty concerning the condition thereof, environmental or otherwise, or the adequacy of the Easement Area or the Improvements for the City's use. MEC is under no obligation to restore, repair or maintain the Easement Area, the Improvements or to render the Easement Area or Improvements serviceable for access or passage or any other purpose in any respect, and specifically, without limitation, MEC will have no obligation to remove accumulated debris, water, ice or snow. THE CITY HEREBY WAIVES AND MEC HEREBY DISCLAIMS ALL WARRANTIES OF ANY TYPE OR ANY KIND WHATSOEVER (except for Massachusetts Quitclaim Covenants) AS TO THE EASEMENT AREA AND THE IMPROVEMENTS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND USE.
3. MEC, for itself, its successors and assigns, reserves the right to use the Property for any and all activities connected with its present or future operations, including, but not limited to, the rights to pass and repass with vehicles and equipment of various loads and the right to construct, reconstruct, install, maintain, repair, renew, replace, operate and add to any existing or future facilities to meet the needs of Grantor's existing or future business; provided that MEC shall not construct or install any facilities under, on, or above the surface of the Bus Parking Easement Area that would permanently prevent the City from using the Bus Parking Easement Area for the movement and parking of buses. The City covenants and agrees with MEC that the City, its successors and assigns, will not hinder or interfere with any of said activities or with MEC's access to its existing or future structures or utility facilities or to the Property, and the City shall temporarily relocate any buses parked on the Property if requested by MEC in order to permit MEC access to its utility facilities. Notwithstanding the foregoing, MEC agrees not to interfere unreasonably with the City's operations at, or use of, the Easement Area and further

agrees to give the City at least forty eight hours prior verbal notice of any need to temporarily relocate any buses parked on the Easement Area, except that, in the event of an emergency, prior notice shall not be required. The City covenants and agrees with MEC that neither MEC, nor its affiliates, nor any employee or agent of any of them, shall be liable to the City or its successors or assigns with respect to any claims or causes of action or rights to payment of any damages, costs or expenses (including, without limitation, damage to the Improvements) resulting from or in any way connected with the rights herein reserved, including but not limited to damage caused by voltage, fault current or ground current. The City's exercise of its rights in connection with this Agreement and use of the Easement Area and the Improvements is at the City's sole risk. The City hereby further releases all of said parties from any and all such claims or demands. This provision shall survive any release or termination of this Agreement.

4. MEC agrees that the use of the Easement Area for parking purposes shall be exclusive to the City, its successors and assigns, except with respect to MEC in accordance with MEC's reserved rights set forth in Paragraph A(3) above, and MEC further agrees that it shall only park within the Easement Area when it is constructing, reconstructing, installing, maintaining, repairing, renewing, replacing, operating or adding to any existing or future facilities on the Property to meet the needs of Grantor's existing or future business. MEC further agrees to give the City at least forty eight hours prior verbal notice of any need to temporarily relocate any buses parked on the Easement Area, except that, in the event of an emergency, prior notice shall not be required.

## **B. MAINTENANCE OF THE IMPROVEMENTS**

1. The City covenants and agrees with MEC that the City shall perform all work in connection with the maintenance, operation, use, and repair of the Improvements within the Easement Area at the City's sole cost and expense and in accordance with the terms and conditions of this Agreement. The City covenants and agrees with MEC that no other improvements shall be installed on the Property other than the Improvements.
2. When performing maintenance on the Lawn Easement Area, the City shall use hand tools and/or a push mower.
3. The City covenants and agrees with MEC that it shall notify the Director of Construction & Maintenance, Electric Operations Overhead at 978-725-1900, at least twenty-four (24) hours before commencing any significant repair or maintenance work within the Easement Area. The Director may impose whatever restrictions or conditions as he/she determines to be reasonably necessary for the protection of the Property, the Easement Area and MEC's facilities, whether now existing or hereafter installed. The City covenants and agrees that at all times during any significant repair or maintenance work performed on the Easement Area, MEC shall have the right, but not the obligation, to have an observer or observers ("Observer") present at the Property, including the Easement Area, to observe and inspect the work and the Easement Area, and take any necessary action, as determined by MEC in MEC's sole discretion, to protect and ensure the safety and integrity of the Property and MEC's facilities and structures. Regardless of whether MEC's Observer observes any of the work as set forth herein, MEC shall not be liable for injuries, damage, liabilities or claims hereunder, and The City shall not be released from any liability or obligation hereunder.

4. The City covenants and agrees with MEC that the City, its agents, employees, licensees, servants, contractors and invitees, shall take all necessary precautions for the safety of the City, its agents, employees, licensees, servants, contractors and invitees on, about or within the Easement Area and shall comply with all applicable provisions of federal, state and municipal safety laws, regulations, codes and ordinances and all successor laws, regulations, codes and ordinances and thereto to prevent accidents or injury to persons or property on, about or adjacent to the Property and the Easement Area ("Applicable Safety Laws"), including, without limitation, OSHA, the National Electric Safety Code, 220 CMR 125.00 ("Installation and Maintenance of Electric Transmission"), and MGL Chapter 166 Section 21A ("Coming into Close Proximity to High Voltage Lines") except that the required clearance of six feet is insufficient and the minimum clearance allowed by OSHA and all OSHA regulations governing working clearances to electric distribution and transmission lines shall be maintained. Although OSHA Regulations 29 CFR 1926 Subpart CC and 29 CFR 1926.1501 may be specific to equipment that can hoist, lower, and horizontally move a suspended load, all equipment operating within the Property, including the Easement Area, shall maintain the clearances specified in these regulations, including but not limited to cranes, backhoes, excavators, forklifts, pile drivers, and drill-rigs. The City shall ensure all vehicles, equipment or loads maintain the minimum clearances specified in the OSHA standards, and/or comply with the requirements of 29 CFR 1926.1408, if applicable, unless a more restrictive standard applies in which instance the City shall, to the extent applicable, comply with the more restrictive standards for working clearances from energized lines. The City shall also adequately ground any construction vehicles and the Improvements at all times within the Easement Area in accordance with all Applicable Safety Laws, including, without limitation, those referenced above and IEEE Standard 80.
5. Except for the parking of buses or other vehicles that serve the purpose of the City within the Bus Parking Easement Area, the City covenants and agrees with MEC not to load or unload trucks or equipment anywhere within the Easement Area, or stockpile or store, temporarily or permanently, soil, snow, materials, trailers, storage containers, vehicles or supplies upon the Property at any time.
6. The City covenants and agrees with MEC that the City shall not conduct any excavation work within an area bounded by a line drawn twenty-five feet (25') plus two and one half (2.5) times the depth of the excavation from any tower leg, guy wire or guy anchor or other structure of facility, and that the top of any slopes resulting from the excavation shall not be within twenty-five feet (25') of any structure or facility located on the Property. Upon completion of any excavation, the slopes of any banks shall be graded on a slope no steeper than one (1) vertical to five (5) horizontal and stabilized with vegetation or rip rap. In MEC's sole discretion, MEC will use whatever resources necessary to stabilize any of its facilities or structures at the Property destabilized as a result of any such work at the sole cost and expense of the City. Regardless of whether MEC performs any such stabilization, MEC shall not be liable for injuries, damage, liabilities or claims related thereto, and the City shall not be released from any liability or obligation hereunder.
7. The City covenants and agrees that during the maintenance, operation, repair, and use of the Improvements, the City will not injure or damage the Property and the Easement Area nor injure or damage MEC's facilities now or hereafter placed thereon. At the end of each work day, the City will secure its work site in a manner consistent with safe work

practices, such as covering any open trenches with steel plating. Upon completion of any work, the City will properly restore the Easement Area and the Property, in MEC's sole discretion, to as good as a condition as existed prior to the commencement of the work.

8. The City covenants and agrees that it will not place any below or above-ground structures on or within the Property, including pull boxes, lights, signs, sheds, septic systems, pools, manholes or other below or above ground structures, except for the Improvements. The City further covenants and agrees with MEC that the City will not change the grade of the Easement Area, except for minor grading necessary to maintain a safe and level parking area within the Bus Parking Easement Area as shown on the Improvements Plan.
9. The City covenants and agrees with MEC that the City shall not conduct any blasting or use any explosives at or within the Property, including, without limitation, the Easement Area.

#### **C. INDEMNITY AND INSURANCE**

1. The City agrees to the extent permitted by law, or shall cause any party performing work at the Property on behalf of the City to agree, to defend with counsel satisfactory to MEC and to pay, protect, indemnify and save harmless MEC, its employees, agents, directors, officers, affiliates, attorneys, consultants, contractors and subcontractors, from and against any and all liabilities, damages, costs, expenses (including any and all attorney's fees and expenses of MEC), causes of action, suits, claims, demands or judgments of any nature whatsoever arising from the condition of the Property or the exercise of this Agreement by the City or its employees, agents, tenants, servants, contractors, visitors or invitees (collectively, its "Invitees") or any person claiming under any of them, including, without limitation, (i) any work, act or omission to act done in, on or in the Easement Area or any part thereof, by or on behalf of the City, its Invitees, or any person claiming under any of them; (ii) injury to, or the death of, persons or damage to property on the Easement Area or upon adjoining property or in any way growing out of or connected with the installation, construction, use, non-use, condition, possession, operation, maintenance, management, occupation, or repair of the Improvements or the Easement Area by or on behalf of the City, its Invitees, or any person claiming under any of them, or resulting from the condition of the Easement Area; or (iii) violation of any agreement or condition of this Agreement or of any applicable federal, state or local statutes, laws, regulations or other requirements affecting the Improvements or the Easement Area, or the ownership, occupancy or use thereof, by the City, its Invitees, or any person claiming under any of them. The foregoing indemnification shall not include injury or damage directly caused by the gross negligence of MEC or its agents or employees. The City shall take prompt action to defend or indemnify MEC against claims, actual or threatened, but in no event later than notice by MEC to the City of the service of a notice, summons, complaint, petition or other service of process against MEC, alleging damage, injury, liability, or expenses attributed in any way to this Agreement or the acts, fault, negligence, equipment, materials, properties, facilities, personnel, or property of the City, its agents, employees, contractors or suppliers. The City shall defend any such claim or threatened claim, including, as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim. Furthermore and except as set forth above, the City understands and agrees it is responsible for any and all costs and expenses incurred by MEC to enforce this indemnification provision. The provisions of this paragraph shall survive any release of this Agreement.

2. The City covenants and agrees with MEC that neither the City nor any person claiming under the City, nor the employees, agents, tenants, contractors, licensees, invitees or visitors of the City or any such person shall bring onto, store, generate or permit to be stored or generated on, about or adjacent to the Property, including without limitation the Easement Area, any oil, hazardous material, hazardous waste or hazardous substance in reportable quantities, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§6901 et seq (collectively, the "Environmental Laws"). The City shall, to the extent permitted by law, or shall cause any party performing work at the Property on behalf of the City to, indemnify and hold MEC harmless for, from and against any claim, liability, loss, damage or expense, including attorneys' fees, arising out of a breach of any of the covenants or agreements of this paragraph. The provisions of this paragraph notwithstanding, the bringing onto the Easement Area of vehicles and the normal and ordinary operating fluids thereof that are self-contained, non-leaking and necessary for the operation of such vehicles, shall not cause a breach under this paragraph; provided, however, that the City shall, to the extent permitted by law, indemnify and hold MEC harmless from and against any claim, liability, loss, damage or expense, including attorneys' fees, resulting from, or arising out of, the presence of such operating fluids on the Property. The provisions of this paragraph shall survive any release of this Agreement.
3. The City agrees to pay to MEC upon presentation of an invoice, any and all reasonable costs and expenses for environmental assessment, remediation or response activities, including attorney's fees, which MEC may incur as a result of existing conditions on the Property that are discovered as a result of the activities of the City or the employees, agents, tenants, contractors, invitees or visitors of the City while on the Easement Area. The provisions of this paragraph shall survive any release of this Agreement.
4. The City covenants and agrees with MEC that the City shall pay all contractors and/or laborers performing or providing materials for the maintenance and repair of the Improvements so as not to cause or permit any liens, including without limitation mechanics' or materialmen's liens, to be recorded or filed against the Property, and, to the extent permitted by law indemnify and hold MEC harmless for, from and against any loss, claim, damage, liability, cost or expense, including attorney's fees and expenses, caused by any such contractor or laborer or occasioned as a result of any such lien being recorded or filed against the Property. The provisions of this paragraph shall survive any release of this Agreement.
5. During any period in which the City shall be performing any maintenance or repair work with respect to the Improvements or using the Easement Area, the City shall, at its sole cost and expense, obtain and keep in force, or cause the party performing such work on behalf of the City to obtain and keep in force, the insurance coverage in the amounts set forth on Exhibit C attached hereto and made a part hereof.
6. The City hereby releases, to the extent permitted by law, MEC from and against any and all liabilities, losses, damages (to persons and property), costs, expenses (including

attorney's fees), causes of action, suits, claims, obligations and/or demands for judgment whatsoever caused by, arising out of or in any way related to the: (a) MEC's exercise of its rights under this Agreement; (b) the condition of the Property; and (c) MEC's reservation of rights under this Agreement, including, without limitation, Paragraph A(3) herein. Moreover, the City understands that the existence of MEC's facilities on the Property involves some risk, and Licensee, as part of the consideration for this Agreement, hereby releases and waives any right to ask for or demand damages for or on account of loss or injury associated with such facilities not due to gross negligence. The provisions of this paragraph shall survive any release of this Agreement.

#### **D. PERMITS AND LICENSES; COMPLIANCE WITH LAWS**

1. The City covenants and agrees with MEC that the City shall obtain and be solely responsible for all required permits, licenses, rights or other authorizations, including without limitation all necessary environmental permits, licenses, rights or other authorizations, necessary for the operation, repair, use, and maintenance of the Easement Area and the Improvements, and shall provide all copies thereof to MEC.
2. The City covenants and agrees with MEC that the City shall, at its own cost and expense, observe and comply with all applicable present and future laws, ordinances, requirements, orders, directives, rules and regulations of all federal, state and local governments, and all other governmental authorities having jurisdiction over the Easement Area, the Improvements or any part thereof, whether the same are in force at the execution of this Agreement or may in the future be passed, enacted or directed, and the City shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including counsel fees and expenses, that may in any manner arise out of or be imposed because of the failure of the City to comply with the covenants of this paragraph.

#### **E. NOTICES**

1. All notices, demands or other communication under this Agreement shall be in writing and either delivered by hand or mailed (a) by registered or certified mail (return receipt requested) with the United States Postal Service, or (b) by Federal Express or other recognized overnight mail carrier furnishing evidence of receipt to the following:

If to MEC:  
Massachusetts Electric Company  
c/o National Grid  
40 Sylvan Road  
Waltham, MA 02451  
Attention: David Aho, Manager, Real Estate and Survey

with a copy to:  
National Grid USA Service Company, Inc.  
40 Sylvan Road  
Waltham, MA 02451  
Attention: Megan F.S. Tipper, Esq.

If to The City:  
City of Lowell  
375 Merrimack Street  
Lowell, MA 01852  
Attention: Mayor

Any party may change the address at which it is to receive notices by giving notice to the other party as hereinabove set forth. Any notice or other communication in connection with this Agreement shall be deemed duly served when received (or upon attempted delivery if delivery is not accepted).

## F. MISCELLANEOUS

1. It is understood and agreed by and between the parties hereto that the Improvements shall remain the property of the City, its successors and assigns. MEC shall not be responsible for the payment of any taxes on the Improvements.
2. The City covenants and agrees with MEC that the Improvements shall be maintained in good repair and condition at all times. The City acknowledges and agrees that MEC is under no obligation whatsoever to restore, repair, or maintain the Improvements or the Easement Area in any respect.
3. The City agrees that, upon any release of the Easement, the City shall restore the Property to its condition existing prior to the construction of the Improvements at the City's sole cost and expense. If the City fails to commence such restoration within one hundred twenty (120) days following the release of this Easement, MEC shall have the right, but not the obligation, to perform such restoration at the City's sole cost and expense.
4. The rights and easements created hereunder shall be binding on and inure to the benefit of MEC and the City and their respective successors and assigns.
5. This Agreement may be executed in any number of counterparts which together shall constitute one and the same instrument.
6. The terms and provisions herein contained constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants or agreements, express or implied, with respect to the subject matter hereof, other than those expressly set forth herein. Other than the rights expressly granted in this Agreement, there are no other rights or easements granted hereby and none shall be created by implication, necessity or otherwise. No modification or amendment of the provisions of this Agreement shall be binding upon any party hereto unless agreed to in writing by such party.
7. The headings contained in this Agreement are for reference and convenience only, and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.
8. Each of the City and MEC agrees that at any time and from time to time after the execution and delivery of this Agreement, each of them shall, at their own expense, and upon the reasonable request of the other party, execute and deliver such further documents and do such further acts and things as the other may reasonably request in order to more fully carry out the purposes of this Agreement.
9. This Agreement is subject to all encumbrances of whatever kind or nature of record to the extent the same are in force and applicable, and the City covenants and agrees to take the

Easement Area subject to any and all existing rights, restrictions, easements, encumbrances or covenants affecting the Property.

10. The undersigned representatives of the City represent and warrant that the execution, delivery and acceptance of this Agreement and the performance of its obligations have been duly authorized by the City and that said person signing by law has the authority to sign and deliver this Agreement on its behalf.
11. The City and MEC agree that, notwithstanding any other provision of this Easement, if the United States of America, acting by and through the National Park Service, Department of the Interior ("USA") ever succeeds the City as holder of any rights granted by this Easement or is assigned such rights by the City, the USA shall not be subject to the requirements herein regarding indemnification, agreement to hold harmless, acceptance of liability, payments, or insurance, to the extent such requirements are inconsistent with law. MEC acknowledges that the USA is self-insured and may only be liable where Congress has waived its sovereign immunity by statute, such as, with respect to tort claims, the Federal Tort Claims Act. MEC further acknowledges that the USA shall only be required to seek those permits or licenses required of federal agencies under applicable law. Finally, the USA shall not be subject to any requirement that would involve it in an obligation to expend any funds in advance of appropriations for that purpose in violation of the Anti-Deficiency Act, 31 U.S.C. §1341(a)(1). Notwithstanding the foregoing, this provision shall not restrict the USA from requiring any third party contractor performing work on behalf of the USA on the Improvements or otherwise from complying with the indemnification, hold harmless, acceptance of liability, payments, insurance, permits, licenses, or any other actions required to be complied with and/or provided pursuant to this Easement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused these presents to be executed under seal as of this \_\_\_\_ day of February, 2018.

**MASSACHUSETTS ELECTRIC COMPANY**

**CITY OF LOWELL**

By: Its Mayor, duly authorized

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
Name: Edward J. Kennedy

**THE COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as an Authorized Representative of the Massachusetts Electric Company.

Before me,

\_\_\_\_\_  
Notary Public  
My commission expires:

**THE COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

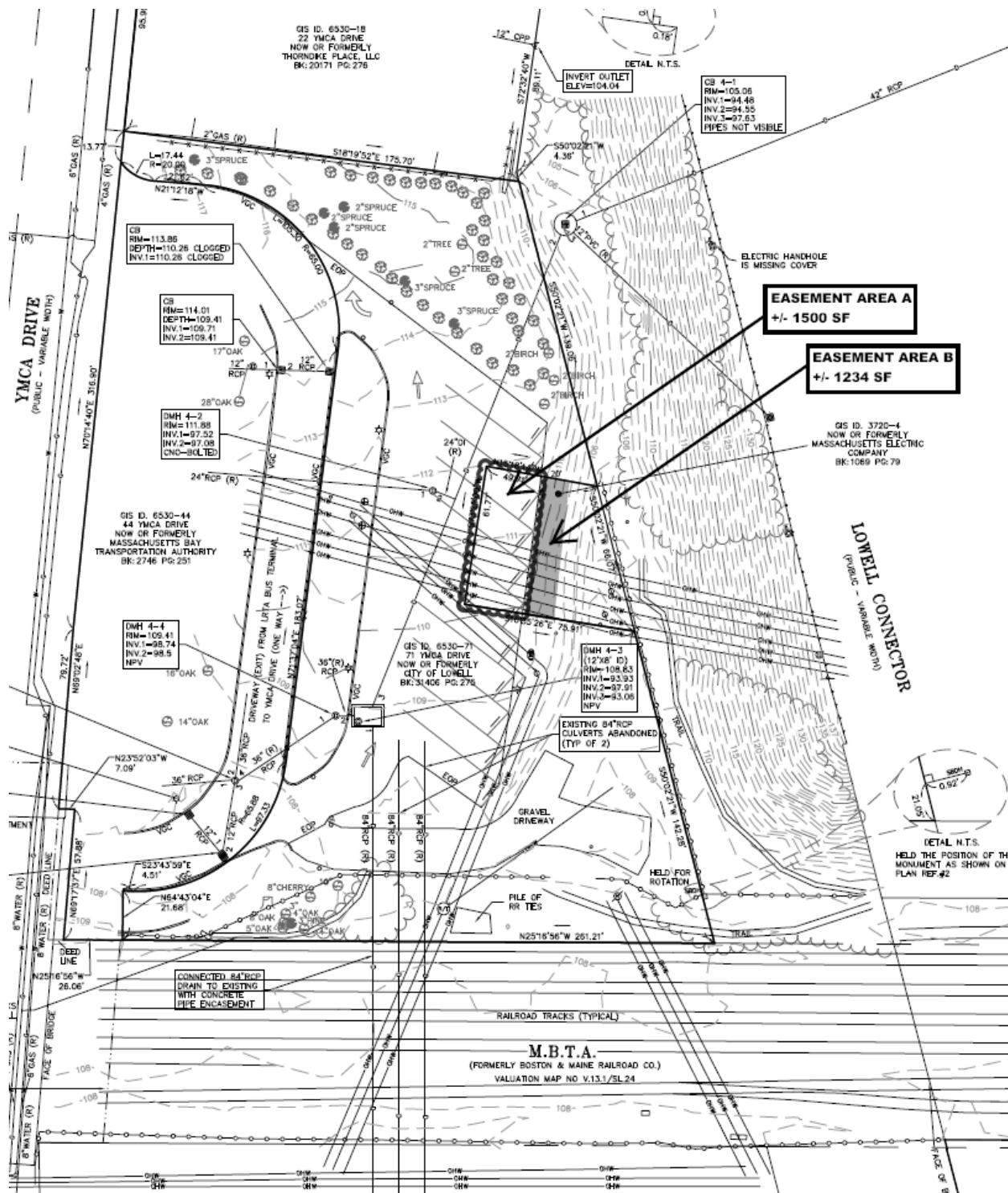
On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared Mayor Edward J. Kennedy proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose as the Mayor of the City of Lowell.

Before me,

\_\_\_\_\_  
Notary Public  
My commission expires:

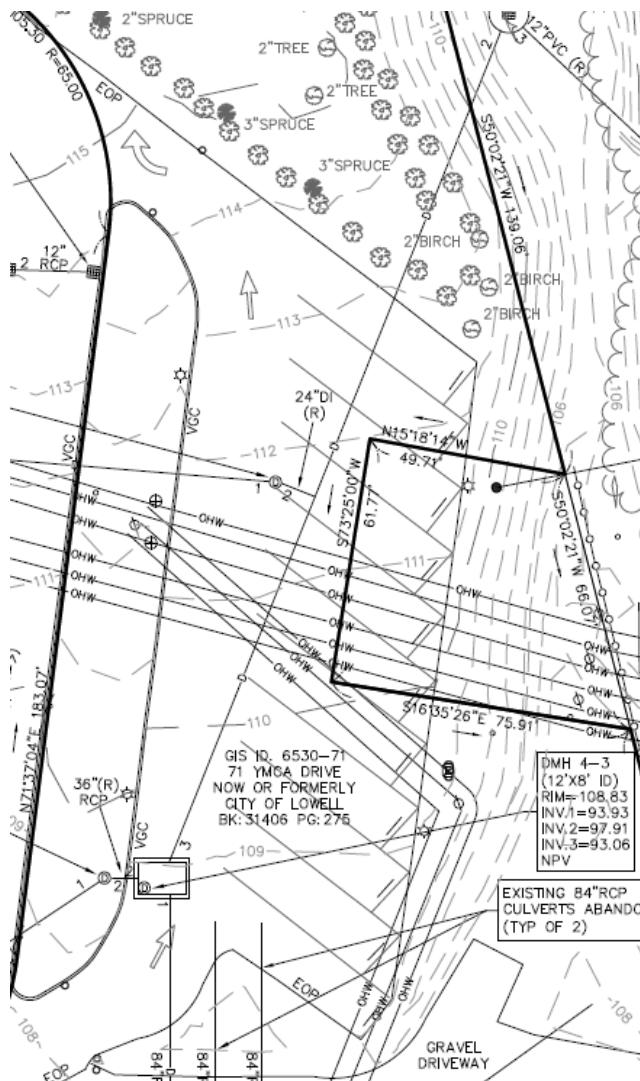
## EXHIBIT A

### SKETCH PLAN



**EXHIBIT B**  
**IMPROVEMENTS PLAN**

**LEGEND**



GIS ID. 3720-4  
NOW OR FORMERLY  
MASSACHUSETTS ELECTRIC  
COMPANY  
BK:1069 PG:79

GIS ID. 6530-71  
71 YMCA DRIVE  
NOW OR FORMERLY  
CITY OF LOWELL  
BK:31406 PG:276

EXISTING 84"RCP  
CULVERTS ABANDC  
(TYP OF 2)

- SBDH □ STONE BOUND DRILL HOLE
- SB □ CONCRETE BOUND
- GUY WIRE
- ¶ STUMP
- ◎ ROCK
- CATCH BASIN
- DOUBLE CATCH BASIN
- △ CULVERT
- ◎ DRAIN MANHOLE
- ☒ ELECTRIC BOX
- E☒ ELECTRIC HANDHOLE
- ☒ ELECTRIC METER
- ☒ UTILITY POLE WITH RISER
- ∅ UTILITY POLE
- ☒ UTILITY POLE WITH TRANSFORMER
- ☒ UTILITY WITH RISER AND TRANSFOR
- DECIDUOUS TREE
- CONIFER TREE
- SHRUB
- SIGN (SINGLE POSTED)
- CONCRETE TIRE STOP
- ⊕ BOLLARD
- POST
- ◊ LIGHT POLE
- BMK BENCHMARK
- BOMO BOLT OVER MAIN OUTLET
- EOP EDGE OF PAVEMENT
- EOC EDGE OF CONCRETE
- VGC VERTICAL GRANITE CURB
- SRW STONE RETAINING WALL
- CMP CORRUGATED METAL PIPE
- RCP REINFORCED CONCRETE PIPE
- CPP CORRUGATED PLASTIC PIPE
- CI CAST IRON
- INV. INVERT
- BOH BUILDING OVERHANG
- CNO COULD NOT OPEN
- NPV NO PIPES VISIBLE
- PROPERTY LINE
- RIGHT OF WAY LINE
- ABUTTERS LINE
- O-O-O CHAIN LINK FENCE
- X-X-X WOOD STOCKADE FENCE
- DRAIN LINE
- WATER LINE
- GAS LINE
- OVERHEAD WIRES
- Y-Y-Y TREE LINE
- — — INTERMEDIATE CONTOURS
- — — INDEX CONTOURS
- - - - EDGE OF WATER

## EXHIBIT C

### INSURANCE REQUIREMENTS

1. **Insurance Requirements.** From the commencement of the Agreement, through final expiration or longer where specified below, the City shall provide and maintain, at its own expense, insurance policies, intended to be primary (with no right of contribution by any other coverage available to National Grid USA, its direct and indirect parents, subsidiaries and affiliates including, without limitation, MEC (collectively, the “Insured Entities”)), covering all operations, work and services to be performed under or in connection with this Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least B+, which at least meet or exceed the requirements listed herein:

- (a) **Workers’ Compensation and Employers Liability insurance** as required by the State in which the work activities under this Agreement will be performed. The employer’s liability limit shall be at least \$500,000 each per accident, per person disease, and disease by policy limit.
- (b) **Commercial General Liability (CGL) Insurance**, covering all operations to be performed by or on behalf of the City under or in connection with this Agreement, with minimum limits of:

Combined Single Limit	- \$1,000,000 per occurrence
General Aggregate &	
Product Aggregate	- \$2,000,000 each

Coverage shall include: contractual liability (with this Agreement being included under the definition of “Insured Contract” thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U), additional insured as required in Section 5 below, and shall contain a separation of insureds condition. If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least two years thereafter.

- (c) **Automobile Liability**, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of the City under or in connection with this Agreement with minimum limits of:

Combined Single Limit - \$1,000,000 per occurrence

Additional insured as required in Section 5 below.

- (d) **Umbrella Liability or Excess Liability** coverage, with a minimum per occurrence limit of \$4,000,000. This coverage shall run concurrent to the CGL required in Section 1(b) above, shall apply excess of the required automobile, CGL and employer’s liability coverage required in this Exhibit, and shall provide additional insured status as required in Section 5 below.
- (e) **Commercial Property Insurance**, on an “all risk” basis, covering all personal property of every description owned or brought onto the Property by the City, its employees, agents, contractors, tenants, subtenants or assignees, including stock-in-trade, furniture, fittings, trade fixtures, in an amount not less than one hundred percent (100%) of the full replacement cost thereof.
- (f) **Watercraft Liability**, if used in connection with this Agreement, with the same minimum limits of liability as outlined in Section 1(b) above, and naming the Insured Entities, including their officers and employees, as additional insured as required in Section 5 below.

- (g) **Aircraft Liability**, if used in connection with this Agreement, with a limit of liability of not less than \$10,000,000 combined single limit per occurrence, and naming the Insured Entities, including their officers and employees, as additional insured as required in Section 5 below. Such coverage shall not include a per-passenger or per seat coverage limit.
- (h) **Contractors Pollution Liability (CPL)** covering any sudden and accidental pollution liability which may arise out of, under, or in connection with this Agreement, including all operations to be performed by or on behalf of the City, or that arise out of the City's use of any owned, non-owned or hired vehicles, with a minimum liability limit of not less than \$1,000,000 combined single limit per occurrence.

This requirement may be satisfied by providing either this CPL policy, which would include naming the Insured Entities, including their officers and employees, as additional insured's as outlined in Section 5 below; **OR** by providing coverage for sudden and accidental pollution liability under the CGL and commercial automobile insurance policies required above, limited solely by the Insurance Services Organization (ISO) standard pollution exclusion, or its equivalent.

In the event the City is unable to secure and/or maintain any or all of this sudden and accidental pollution liability coverage, the City agrees, to the extent permitted by law, to indemnify and hold the Insured Entities harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement.

2. **Intentionally Deleted.**
3. **Limits:** Any combination of Commercial General Liability, Automobile Liability and Umbrella Liability policy limits can be used to satisfy the limit requirements in Sections 1(b), (c) and (d) above.
4. **Self-Insurance:** Proof of qualification as a qualified self-insurer, if approved in advance in writing by an Insured Entities' representative, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Agreement. Such acceptance shall become a part of this insurance provision by reference herein.

For Workers' Compensation, such evidence shall consist of a copy of a current self-insured certificate for the State in which the work will be performed.

5. **Additional Insured and Loss Payee:** The intent of the Additional Insured requirement under the CGL, Auto, CPL, Umbrella/Excess, Aircraft and Watercraft policies is to include the Insured Entities, their directors, officers and employees, as Additional Insured for liabilities associated with, or arising out of, all operations, work or services to be performed by or on behalf of the City, including ongoing and completed operations, under this Agreement. The following language should be used when referencing the additional insured status: **National Grid USA, its direct and indirect parents, subsidiaries and affiliates shall be named as additional insured.**

To the extent the City's insurance coverage does not provide the full Additional insured coverage as required herein, the City agrees, to the extent permitted by law, to indemnify and hold harmless the Insured Entities against any and all liability resulting from any deficiency in the City's insurance coverage that may be out of compliance with this insurance requirement.

6. **Waiver of Recovery:** The City and its insurance carrier(s) shall waive all rights of recovery against the Insured Entities and their directors, officers and employees, for any loss or damage covered under

those policies referenced in this Agreement, or for any required coverage that may be self-insured by the City. To the extent the City's insurance carriers will not waive their right of subrogation against the Insured Entities, the City agrees, to the extent permitted by law, to indemnify the Insured Entities for any subrogation activities pursued against them by the City's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Insured Entities or their employees, sub-contractors or agents.

7. **Contractors:** In the event the City uses contractors in connection with this Agreement, it is expressly agreed that the City shall have the sole responsibility to make certain that all contractors are in compliance with these insurance requirements and remains in compliance throughout the course of this Agreement, and thereafter as required. The City shall remain liable for the performance of the contractor, and such subcontract relationship shall not relieve the City of its obligations under this agreement.

Unless agreed to in writing by the Risk & Insurance Department of National Grid USA, any deductible or self-insured retentions maintained by any contractor, which shall be for the account of the contractor, and shall not exceed \$100,000. In addition, contractor shall name both the City and the Insured Entities as additional insureds under the Commercial General Liability and Umbrella/Excess Liability insurance. If requested by a representative of the Insured Entities, the City shall provide the Insured Entities with an insurance certificate from its contractor evidencing this coverage.

In the event any contractor is unable to maintain all of the same insurance coverage as required in this Agreement, the City agrees to the extent permitted by law to indemnify and hold the Insured Entities harmless against any and all liability resulting from any deficiency in contractor's insurance coverage that may be out of compliance with these insurance requirements.

8. **Insurance Certification:** Upon execution of this Agreement, the City shall promptly provide the Insured Entities with (a) **Certificate(s) of Insurance** for all coverages required herein at the following address:

National Grid  
Attn: Risk & Insurance, Bldg. A-4  
300 Erie Boulevard West  
Syracuse, NY 13202

The City shall provide the Insured Entities with at least 30 days prior written notice at the above address of any cancellation or diminution of the insurance coverage required in this Agreement.

9. **Insurance Obligation:** If any insurance coverage is not secured, maintained or is cancelled and the City fails immediately to procure other insurance as specified, MEC has the right, but not the obligation, to procure such insurance and to invoice the City for said coverage.
10. **Incident Reports:** The City shall furnish the Risk & Insurance Department of National Grid USA at the address referenced in Section 8 above with copies of any non-privileged accident or incident report(s)(collectively, the "Documents") sent to the City's insurance carriers covering accidents, incidents or events occurring as a result of the performance of all operations, work and services to be performed by or on behalf of the City under or in connection with this Agreement, excluding any accidents or incidents occurring on the City's property not included in the Property. If any of the Insured Entities are named in a lawsuit involving the operations and activities of the City associated with this Agreement, the City shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by MEC. However, in the event such Documents are deemed

privileged and confidential (Attorney/Client Privilege), the City shall provide the relevant facts of the accident or incident in a format that does not violate such Attorney/Client Privilege.

11. **Other Coverage:** These requirements are in addition to any which may be required elsewhere in this Agreement. In addition, the City shall comply with any governmental site specific insurance requirements even if not stated herein.
12. **Coverage Limitation:** Nothing contained in this article is to be construed as limiting the extent of the City's responsibility for payment of damages resulting from all operations, work and services to be performed by or on behalf of the City under or in connection with this Agreement, or limiting, diminishing, or waiving the City's obligation to indemnify, defend, and save harmless the Insured Entities in accordance with this Agreement.



Eileen M. Donoghue  
*City Manager*

Kara Keefe Mullin  
*Assistant City Manager*

September 20, 2018

Mayor William J. Samaras  
and  
Members of the City Council

REFERENCE: Future NPS Bus Parking Lot – Parcels 15 and 16

Dear Mayor Samaras and Members of the City Council:

The City recently completed construction on a bus parking area at the Gallagher Terminal. Following the construction of the parking lot, the City, National Park Service (NPS) and National Grid have collaborated extensively and drafted the attached permanent easement for the lot. Approval of this easement represents a significant step in moving the land exchange process forward and could not have been possible without the collective effort of National Grid and NPS.

The next step for the land swap, already in progress, will be an easement from the MBTA through the Gallagher Terminal property. The Law Department has prepared the necessary Vote for this permanent easement for your approval.

If you have any questions please feel free to contact Diane Tradd at the Department of Planning and Development at 978-674-1401.

Sincerely,

  
Eileen M. Donoghue  
City Manager

EMD/ns  
Attachment  
cc: Diane N. Tradd, Assistant City Manager/DPD Director  
Christine P. O'Connor, City Solicitor  
Craig Thomas, Deputy Director  
Claire V. Ricker, Chief Design Planner  
Joseph Giniewicz, Urban Renewal Project Manager