

State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES 25 Capitol Street – Room 120 Concord, New Hampshire 03301 <u>Office@das.nh.gov</u>

> Joseph B. Bouchard Assistant Commissioner (603) 271-3204

Catherine A. Keane Deputy Commissioner (603) 271-2059

December 24, 2019

His Excellency, Governor Christopher T. Sununu and the Honorable Council State House Concord, New Hampshire 03301

## **REQUESTED ACTION**

Authorize the Department of Administrative Services to enter into a **sole source** supplemental contract with Liberty Utilities, (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (vc# 177543) Londonderry, New Hampshire, for a total price not to exceed \$569,004, in accordance with the settlement agreement of the extra costs associated with the installation and operation of the temporary heating facilities in Concord, NH during the period of March 1, 2017 through November 1, 2018. The contract shall take effect upon Governor and Council approval and shall terminate upon payment of the fourth and final monthly invoice in approximately five months.

The cost of the contract will be paid in 4 monthly installments of \$142,251, contingent upon availability and continued appropriations through various individual Department of Administrative Services budgeted utility line expenditures.

## **EXPLANATION**

The Department of Administrative Services (DAS) was notified in June of 2016 that Concord Steam was closing effective May 31, 2017. DAS worked with the Governor's Office and the General Court to obtain authority and funding to install new permanent heating systems at 26 state owned facilities. There was not sufficient time to properly design, bid and enter into contracts with contractors to install the required heating infrastructure for all 26 state owned buildings before the 2017-2018 heating season. As a result on November 10, 2016, the Public Utilities Commission approved a settlement agreement and transfer of Assets between Concord Steam and Liberty Utilities (EnergyNorth Natural Gas) Corp d/b/a/ Liberty Utilities. DAS worked with Liberty Utilities to develop a plan to install temporary boilers and related infrastructure to provide heat to the state buildings while the permanent heating plants were designed and competitively bid.

Charles M. Arlinghaus Commissioner (603) 271-3201 His Excellency, Governor Christopher T. Sununu and the Honorable Council December 24, 2019 Page 2 of 3

On May 17, 2017, item # 79, DAS sought and obtained approval from Governor and Council to enter into a contract with Liberty Utilities, through the use of third party contractors, to design, construct and operate temporary boilers at two locations in Concord. The temporary boilers were located at the Department of Justice building and the Governor Hugh Gallen Office Park. With these two temporary boiler plants, DAS was able to provide heat to 24 of the 26 state owned buildings. The value of the contract was \$2,725,000 with a contract term beginning on March 1, 2017 through November 1, 2018.

The contractors hired by Liberty Utilities, completed the first phase of the work in early July of 2017. DAS was notified after Phase I was completed that Liberty Utilities had encountered extra costs that were not anticipated to complete the project to meet the State's requirements and timeline. Listed below is a summary of those costs.

Concord Steam Conversion Project Liberty Utilities Contract Summary 11/19/2019				
Description Contractor Amount				
Temporary Boiler Rental	Powerhouse Engineering and Equipment	\$1,284,710		
Construction Services	RH White	\$1,319,759		
Engineering	Nobis Engineering	\$71,100		
Boiler Operator Services	NRG	\$80,004		
Additional Construction Costs	RH White	\$481,360		
Boiler Inspection Services	Blake	\$22,360		
Sub Total		\$3,259,293		
Less Amount Paid		(\$2,690,289)		
Balance Due		\$569,004		

His Excellency, Governor Christopher T. Sununu and the Honorable Council December 24, 2019 Page 3 of 3

This project was complicated and had strict time constraints that had to be met in order to utilize the existing steam distribution system. Some additional costs were incurred due to the tight timeline and unforeseen conditions that were encountered during the project. This request is retroactive because it took some time to be able to obtain the required back up information and negotiate a fair and reasonable price for the additional work.

Respectfully submitted,

Charles M. Arlinghaus, Commissioner

Supplemental Contract

#### between

#### Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

and

#### New Hampshire Department of Administrative Services

This Supplemental Contract is made as of December  $\mathcal{U}$ , 2019, by and between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, a New Hampshire corporation and public utility as defined by RSA 362:2 with a place of business at 15 Buttrick Road, Londonderry, New Hampshire ("Liberty") and the New Hampshire Department of Administrative Services, a state agency authorized to manage state buildings pursuant to RSA 21-I with an office at 25 Capitol Street, Concord, New Hampshire ("State"). Liberty and State are also individually referred to as a "Party" or collectively as the "Parties."

WHEREAS, Concord Steam provided steam heat to 23 state owned buildings located in Concord, NH; and

WHEREAS, Concord Steam closed operations on May 31, 2017, leaving the State with a critical need to obtain temporary steam heat to these state owned buildings while the State developed engineering and bidding documents to construct new permanent heating plants for these 23 state owned building; and

WHEREAS the State and Liberty entered into a Special Contract that was approved by NH Governor and Council on May 17, 2017 to have Liberty, through the use of third party contractors, provide engineering services, and supply, install and operate temporary steam boilers and the required infrastructure, in order to provide steam service to several State buildings in Concord, NH: and

WHEREAS, Liberty provided the engineering services and supplied, installed and operated the temporary steam boilers through the use of third party contractors as required by the Special Contract; and

WHEREAS the cost to provide the engineering services and supply, install and operate the temporary steam boilers through the use of third party contractors exceeded the not to exceed price of \$2,725,000 established by that Special Contract; and

WHEREAS, the State agrees to pay for the reasonable extra costs associated with the engineering and supply, installation and operation of the temporary steam boiler plants:

NOW THEREFORE, the State agrees as follows:

#### 1.0 Obligation of State of New Hampshire

1.1 The State agrees to pay Liberty an additional \$569,004 as a supplemental payment for the temporary steam boiler services received as detailed below:

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С	oncord Steam Conversion Project	
L	iberty Utilities Contract Summary	
	11/19/2019	·····
Description	Contractor	Amount
		,
Temporary Boiler Rental	Powerhouse Engineering and Equipment	\$1,284;710
Construction Services	RH White	\$1,319,759
Engineering	Nobis Engineering	.\$71,100
Boiler Operator Services	NRG	\$80,004
Additional Construction Costs	RH White	\$481,360
Boiler Inspection Services	Blake	\$22,360
Sub Total		\$3,259,293
Less Amount Paid	•	(\$2,690,289)
Balance Due		\$569,004
		]

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1.2 The State agrees to pay \$569,004 in four equal monthly payments in the form of a surcharge of \$142,251 beginning on the first monthly bills after approval of this Supplemental Contract by NH Governor and Council and ending four months later.

#### 2.0 Obligations of Liberty

2.1 Liberty shall include a surcharge on the first 4 monthly bills following approval of this Agreement by NH Governor and Council for the account serving the temporary steam boilers located at 33 Capitol Street.

#### 3.0 Effective Date and Term of Supplemental Contract

3.1 This Supplemental Contract shall become effective on the date it is approved by NH Governor and Council.

3.2 This Supplemental Contract shall terminate upon receipt of the final fourth surcharge payment from the State to Liberty.

3.3 In no event shall the amount of the supplemental payment exceed \$569,004. This shall be considered complete and full payment by the State for temporary heating services approved in the Special Agreement approved by NH Governor and Council on May 17, 2017.

#### 4.0 Notices

4.1 Any notice required or desired to be served pursuant to this Supplement Agreement shall be in writing. In the absence of written notice of a change of address to the other Party to this Supplemental Contract, any such notice shall be hand delivered or mailed, certified mail (return receipt requested, first class, postage prepaid) or sent by national recognized express courier (e.g. Federal express, United Parcel Service, etc.), or faxed to Liberty or State at the following addresses:

Liberty Utilities (EnergyNorth Natural Gas) Corp; d/b/a Liberty Utilities Liberty: 116 North Main Street Concord NH 03391 Attention: Legal Department Tel: (603) 724-3135 Fax: (603) 421-1769 Email: Michael.Sheehan@libertvutilities.com

State:

State of New Hampshire **Department of Administrative Services** 25 Capitol Street, Room 120 Concord NH 03301 Attention: Charles M. Arlinghaus Tel: (603) 271-3201 Email: Charles.Arlinghaus@das.nh.gov

Notices shall be effective upon receipt or upon addressee's refusal to accept. Faxed notices shall be effective upon confirmation of their receipt.

#### 5.0 Non-Appropriation

5.1 This Agreement is contingent on the availability and continued appropriation of funds, and in no event shall the State be liable for any payments in excess of such appropriated funds.

#### 6.0 Governing Law

6.1 This Supplemental Contract is entered into and shall be construed in accordance with the laws of the State of New Hampshire, excluding its choice of law, rules or rulings. The Parties agree that any actions, suits, or claims with respect to this Supplemental Contract shall be brought in a state court located in the State of New Hampshire.

#### 7.0 Privity

7.1 This Supplemental Contract is entered into solely for the benefit of the Parties and not for the benefit of any other persons or entities. No other persons or entities may enforce it for their benefit nor shall they have any claim or remedy for its breach. The Parties do not intend to confer third-party beneficiary status on anyone.

#### 8.0 Entire Agreement

8.1 This Supplemental Contract supersedes, terminates, and merges all prior, collateral, and contemporaneous agreements, written or oral, between the Parties relating to its subject matter.

#### 9.0 Waiver

9.1 Notwithstanding any other provisions to the contrary, no waiver by either Party of any default of the obligations contained in the Supplemental Contract to be performed by the other Party shall be construed as a waiver of any succeeding default or breach of such obligation, or the waiver of any other obligation or condition.

#### 10.0 General

10.1 Section headings are for convenience and reference only, and may not be construed to explain, amplify, or modify the provisions of this Supplemental Contract.

10.2 Provisions of this Supplemental Contract may be changed or waived, but only by a written instrument, signed by authorized representatives of both Parties.

10.3 The parties acknowledge that recitals set forth above are an integral part of this Supplemental Contract and shall be the same contractual significance as any other language.

10.4 If any terms of this Supplemental Contract are invalid or declared invalid by order of a court or other governmental body having jurisdiction (an "Invalidating Event"), the Parties agree to renegotiate, in good faith, the affected material terms of this Supplemental Contract, thus remedying the material and adverse effect of any such Invalidating Event in a way that is in compliance with any order or rule.

10.5 This Supplemental contract may be executed in one or more counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, State and Liberty have caused this Supplemental Contract to be executed by their respective representatives, duly authorized, as of the day and date first above written.

SERVICES

LIBERTY UTILITIES (ENERGY NORTH · NATURAL GAS) CORP., d/b/a/ LIBERTY UTILITIES\_

BY President look

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DEPARTMENT OF ADMINISTRATIVE

STATE OF NEW HAMPSHIRE

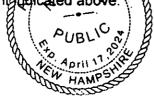
(Print Name). Title: ommis scoker Date:

Date:

State of New Hampshire County of Rocking NOTARY PUBLIC/JUSTICE OF THE PEACE

On the  $\overrightarrow{\mathcal{AO}}$  day of

 $20 I_{4}$ , there appeared before me, in the State and county foresaid a person who satisfactorily identified herself as Susan Fleck, and acknowledged that she executed this document for icated above



OFFICE OF THE ATTORNEY GENERAL

BY

rint Name)

spistant Attorney General Title: Date:

In witness thereof, I hereunto set my hand and official seal.

Notary Public Justice of the Peace

My Commission Expires:

ARP (Date 20

The foregoing contract was approved by Governor and Council of New Hampshire on:

Signed:\_\_\_\_\_

(Print Name)

Title:

## UNANIMOUS WRITTEN CONSENT RESOLUTIONS OF THE BOARD OF DIRECTORS OF LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.

#### December 19, 2019

The undersigned, being all of the Directors of Liberty Utilities (EnergyNorth Natural Gas) Corp., a corporation duly incorporated in the State of New Hampshire (the "Corporation"), do hereby waive all notice of the time, place and purposes of meetings of the Board of Directors of the Corporation and consent, pursuant to the New Hampshire Business Corporation Act, to the adoption of the following resolutions with the same force and effect as if adopted at a duly convened meeting of the Board of Directors of the Corporation and hereby direct that this written consent be filed with the minutes of the proceedings of the Board of Directors of the Corporation:

- **RESOLVED:** That the Board hereby deems it advisable and in the best interests of the Corporation and thus hereby authorizes the Corporation to enter an Agreement with the State of New Hampshire, through the Department of Administrative Services ("NH DAS"), a copy of which is attached to this Consent Resolution, which provides for NH DAS to pay \$569,004 to the Corporation, representing the agreed balance due for the Concord Steam conversion project, and provides for the Corporation to agree that no further amounts are due from NH DAS for this project.
- **RESOLVED:** That Susan Fleck, as President of the Corporation, is hereby authorized, empowered and directed, for and on behalf of the Corporation, to do, and to cause any and all of the Corporation's counsel and advisors to do, any and all acts, deeds and things, and to sign, seal, execute, acknowledge, file, record and deliver any and all documents, instruments, certificates or undertakings which may be or may become necessary, desirable or appropriate to effectuate the purposes of the foregoing resolution, and to incur and pay all such fees and expenses as they shall in their good faith and judgment determine to be necessary, desirable or advisable to carry out fully the intent and purposes of the foregoing resolution and the execution by them of any such document, instrument or certificate or the payment of any such fees and expenses or the doing by him of any act in connection with the foregoing matters shall conclusively establish his authority therefor and the approval of the documents, instruments or certificates so executed, the expenses so paid, the filings so made and the actions so taken.

- **RESOLVED:** That all actions heretofore taken by the Board or any officer of the Corporation in connection with any matter referred to in or contemplated by any of the foregoing resolutions be, and hereby are approved, ratified and confirmed in all respects.
- **RESOLVED:** That the Board hereby authorizes the Secretary or any other officer of the Corporation to certify to any person a copy of these resolutions and the names and signatures of the Corporation's officers or employees hereby authorized to act in the premises, and any person to whom such a certificate is delivered is hereby expressly authorized to rely upon such certificate until formally advised by a like certificate of any change therein, and is hereby authorized to rely on any such additional certificates.

Notice of the meeting and all other formalities in connection with these consent resolutions and the matters addressed therein are hereby waived.

Effective as of the 19th day of December, 2019.

Ian Robertsof ector Johnny Johnston, Director

Lori C. Auten, Director

Charles F. Bass, Director

W. Robert Keating, Director

- **RESOLVED:** That all actions heretofore taken by the Board or any officer of the Corporation in connection with any matter referred to in or contemplated by any of the foregoing resolutions be, and hereby are approved, ratified and confirmed in all respects.
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Ian Robertson Johnston, Director Johnny

Lori C. Auten, Director

Charles F. Bass, Director

W. Robert Keating, Director

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# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on July 23, 1945. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 13462

Certificate Number : 0004632009



#### IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 24th day of December A.D. 2019.

William M. Gardner Secretary of State





State of New Hampshire DEPARTMENT OF ADMINISTRATIVE SERVICES OFFICE OF THE COMMISSIONER 25 Capitol Street – Room 120 Concord, New Hampshire 03301

VICKI V. QUIRAM Commissioner (603)-271-3201 JOSEPH B. BOUCHARD Assistant Commissioner (603)-271-3204

May 3, 2017

His Excellency, Governor Christopher T. Sununu and the Honorable Council State House Concord, New Hampshire 03301

Sole Source/Retroactive

#### **REQUESTED ACTION**

Authorize the Department of Administrative Services to enter into a **retroactive**, **sole source** contract with Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (VC# 177543) Londonderry, New Hampshire, for a total price not to exceed \$2,725,000, to install and operate temporary heating facilities for several state owned buildings located in Concord, NH. Upon Governor and Council approval, the contract will be effective from March 1, 2017 through November 1, 2018 with the option to extend the contract subject to Governor and Council approval for one additional year ending November 1, 2019.

The cost for the contract will be paid in 15 monthly installments with \$2,180,000 being paid in FY 2018 and the balance \$545,000 being paid in FY 2019, contingent upon availability and continued appropriations through various individual Department of Administrative Services budgeted utility line expenditures.

#### **EXPLANATION**

This contract is required to provide temporary heating for 24 state owned facilities that obtain steam from Concord Steam. The Department of Administrative Services (DAS) was notified in June of 2016 that Concord Steam is closing effective May 31, 2017. DAS is working with the Governor's Office and the legislature to obtain authority and funding to install the new permanent heating systems. There was not sufficient time to properly design, bid and enter into contracts with contractors to install the required heating infrastructure at all 24 state owned buildings before the 2017-2018 heating season. On November 10, 2016, the Public Utilities Commission approved a settlement agreement and transfer of Assets between Concord Steam and Liberty Utilities (EnergyNorth Natural Gas) Corp d/b/a/ Liberty Utilities. DAS worked with Liberty Utilities to develop a plan and design to install temporary boilers and related infrastructure to provide heat to the state buildings while the permanent heating plants are designed and competitively bid. His Excellency, Governor Christopher T. Sununu and the Honorable Council May 3, 2017 Page 2 of 2

Under a special tariff that requires approval from the Public Utilities Commission, DAS is requesting authority to enter into a retroactive, sole source contract with Liberty Utilities to design, construct and operate temporary boilers at two locations in Concord. The temporary boilers will be located at the Dept. of Justice and the Governor Hugh Gallen Office Park. With these two temporary heating plants, DAS will be able to provide heat to 24 of the 26 state owned buildings beginning on May 31, 2017 through November 1, 2018. Time is of the essence. The temporary plants will use the existing steam piping distribution systems and in order to minimize damage to the steam distribution systems we need to keep the steam pipes warm and not let them cool for an extended period of time. In order to meet the May 31, 2017 deadline, Liberty Utilities has, at its risk, initiated work under the Special Contract pending Governor and Council approval. Retroactive approval of this work is requested effective March 1, 2017.

The total cost of the project shall not exceed \$2,725,000 which will be paid through 15 monthly payments beginning in July of 2017. This cost will include all costs except for the actual natural gas. The natural gas will be billed separately at tariff rates to the various state agencies. The cost to heat the state facilities with the temporary heating plants is projected to be at or below FY 17 totals.

Respectfully submitted,

Commissioner

#### SPECIAL CONTRACT - NATURAL GAS

### CONTRACT NO. NHPUC 2017-01

#### Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

with

## New Hampshire Department of Administrative Services

Date of Execution: Effective Date: Date of Termination:

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March 1, 2017 March 1, 2017 (subject to Commission approval) September 30, 2018, unless terminated earlier or extended

Authorized by Order No. \_\_\_\_\_ (\_\_\_\_, 2017) in Docket No. DG 17-xxx

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#### STATEMENT OF SPECIAL CIRCUMSTANCES THAT JUSTIFY DEPARTURE FROM EXISTING TARIFF

- The New Hampshire Department of Administrative Services ("NHDAS") seeks to have portable natural gas-fired steam boilers ("Boilers") installed at two or more locations in Concord, New Hampshire (the "Boiler Locations") to provide temporary steam service to twenty-three state-owned buildings (the "State Buildings"). The Boilers need to be operating by May 31, 2017, the projected date that NHDAS's current steam provider will cease doing business. NHDAS does not currently have the authority to borrow money to pay for the costs related to the Boilers. Absent the terms of this Special Contract, the State Buildings would either be without steam service or would be exposed to unreasonably high steam rates beginning June 2017.
- 2. At NHDAS's request, Liberty Utilities (EnergyNorth Natural Gas) Corp. ("Liberty") agreed to take the steps necessary to ensure NHDAS will have temporary steam service as of May 31, 2017, under the terms of this Special Contract. Specifically, Liberty will engage an engineer, arrange for the required utility connections, and contract for the rental, installation and operation of the Boilers. Liberty will include the costs related to the Boilers, without any markup, in a surcharge to NHDAS's natural gas bills.
- 3. The services Liberty agrees to perform under this Special Contract are services not contemplated by Liberty's Tariff. Accordingly, this Special Contract, subject to New Hampshire Public Utilities Commission approval, is necessary to provide NHDAS with the steam services it needs. For the reasons described above, the departures from Liberty's Tariff that are embodied in this Special Agreement are just and consistent with the public interest under the particular circumstances of this case.

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#### SPECIAL CONTRACT

#### between

#### Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

and

#### New Hampshire Department of Administrative Services

This Special Contact is made as of March 1, 2017, by and between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, a New Hampshire corporation and public utility as defined by RSA 362:2 with a place of business at 15 Buttrick Road, Londonderry, New Hampshire ("Liberty"), and the New Hampshire Department of Administrative Services, a state agency authorized to manage state buildings pursuant to RSA 21-1 with offices at 25 Capitol Street, Concord, New Hampshire ("NHDAS"). Liberty and NHDAS are also individually referred to as a "Paŕty" or collectively as the "Parties."

WHEREAS, NHDAS wishes Liberty to supply, install, and operate Boilers, through the use of approved third-party vendors, at the Boiler Locations in Concord, New Hampshire to provide steam service for the State Buildings; and

WHEREAS, NHDAS wishes Liberty to include the costs related to supplying, installing, and operating the Boilers in the regular monthly utility bills that Liberty will send to NHDAS for natural gas service; and

WHEREAS, Liberty's Tariff does not provide for, nor is Liberty engaged in the business of, supplying, installing or operating Boilers to provide customers with steam service; and

WHEREAS, subject to the terms, conditions, limitations, and provisions of this Special Contract, and for the reasons stated above, Liberty is willing to arrange for the supply, installation, and operation of the Boilers as requested by NHDAS; and

WHEREAS, the Parties understand that this Special Contract must satisfy the provisions of RSA 378:18 and Puc 1606, and must be approved by the New Hampshire Public Utilities Commission ("Commission"); and

WHEREAS, in the absence of this Special Contract, Liberty's Tariff precludes Liberty from arranging for the supply, installation, and operation of Boilers as requested by NHDAS, thus depriving NHDAS of the benefits associated with this Special Contract;

NOW, THEREFORE, the Parties agree as follows:

#### 1.0 Definitions

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The following words and terms shall be understood to have the following meanings when used in this Special Contract. In addition, except as otherwise expressly provided, where terms used in this Special Contract are defined in Liberty's Tariff for Gas Service ("Tariff"), which includes General Terms and Conditions, Rate Schedules, and Delivery Terms and Conditions (collectively, "Terms and Conditions") and not otherwise defined here, such terms shall have the respective meanings given in Liberty's Tariff. The Terms and Conditions, as they may be in effect from time to time, are also incorporated by reference and made a part of this Special Contract. In the event of any inconsistency between the terms of any incorporated document and this Special Contract, including but not limited to its commercial terms, the terms of this Special Contract will govern.

1.1 The "Boilers" are temporary, portable, natural gas-fired steam boilers to be installed at the Boiler Locations under the terms of this Special Contract.

1.2 "Engineer" is Nobis Engineering, Inc., a New Hampshire corporation with its principal office at 18 Chenell Drive, Concord, New Hampshire, and is the firm that is responsible for the necessary design and engineering services to have the Boilers installed.

1.3 "Boiler Company" is Powerhouse Equipment & Engineering Co. Inc., of 240 Creek Road, Delanco, New Jersey, the firm that will deliver and assist with the installation, connection, and operation of the Boilers.

1.4 "Contractor" is R.H. White Construction Co., Inc., a Massachusetts Corporation authorized to do business in New Hampshire, with a place of business at 615 River Road, Bow, New Hampshire, the firm that will assist with the installation and connection of the Boilers.

1.5 "Service Commencement Date" is the date that any Boiler begins to provide steam service for any State Building under the terms of this Special Contract.

1.6 "Boiler Locations" are the locations in Concord, New Hampshire where the Boilers will be installed as designated by NHDAS on the recommendation of the Engineer. Subject to final determination by NHDAS, the Boiler Locations are anticipated to be: (1) the Department of Justice parking lot located at 33 Capitol Street; and (2) adjacent to the Concord Steam plant facility located at 105 Pleasant Street, and/or such other location(s).

1.7 "State Buildings" are the twenty-three (23) State-owned buildings in Concord, New Hampshire that will receive heating service from the Boilers, and which are listed in Attachment A, hereto.

#### 2.0 Obligations of Liberty

2.1 After receiving NHDAS's consent, described in Section 3.1 below, Liberty shall retain the Engineer to perform the design and engineering services to have the Boilers installed to meet the heating requirements of the State Buildings. Liberty shall pay the costs related to the Engineer's services.

2.2 After receiving NHDAS's consent, Liberty shall arrange for Contractor to connect the water service and electricity service consistent with the Engineer's designs at the Boiler Locations. Liberty shall pay the costs related to Contractor making the water and electricity services available for the Boilers. NHDAS shall open and be responsible for its own accounts with the water and electricity utilities related to the Boilers.

2.3 After receiving NHDAS's consent, Liberty shall arrange for natural gas service to the Boiler Locations, at no charge to NHDAS. Liberty intends to install a separate meter and establish a separate account with NHDAS for natural gas service to each Boiler. Natural gas service will be billed to NHDAS at the tariff rate, plus the surcharges set forth in Section 2.8, below.

2.4 After receiving NHDAS's consent, including a review and approval of the Engineer's design, Liberty shall arrange for Boiler Company and/or Contractor to connect the Boilers to the existing steam

system and to modify the existing steam infrastructure, if necessary, in consultation with Concord Steam Corp., so that the Boilers efficiently serve the State Buildings. Liberty shall pay any costs related to connecting the Boilers and to modifying the existing steam infrastructure that are not paid by Concord Steam Corp. as part of its decommissioning.

2.5 After receiving NHDAS's consent, Liberty shall arrange for the Boiler Company and Contractor to have the Boilers ready for operation by May 31, 2017, to operate the Boilers as of the Service Commencement Date, and to decommission the Boilers when no longer needed by NHDAS. Liberty shall also arrange to have the steam infrastructure disconnected from the State Buildings and to fill the manholes associated with the steam infrastructure utilized by the State.

2.6 For any contract for services or equipment entered into by Liberty pursuant to Sections 2.1, 2.2, 2.4, and 2.5, above, Liberty shall require that the contractor carry general liability and casualty insurance in amounts sufficient to protect NHDAS and that name the State of New Hampshire as an additional insured. For all such contracts, Liberty shall require the contractor to indemnify the State by inclusion of the following language in the contract:

The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

2.7 To the extent Liberty performs any services related to those described in Sections 2.1, 2.2, 2.4, and 2.5, with NHDAS's express consent, Liberty shall charge its fully loaded costs for those services. Liberty shall provide to NHDAS the invoices for all costs incurred in association with work performed or services and equipment provided pursuant to Sections 2.1, 2.2, 2.4 and 2.5, which must be reasonable in nature and in accordance with industry standards. The application of these charges shall be as set forth in Section 2.8.

2.8 Liberty shall include a surcharge (a) on the first 15 monthly bills following the Service Commencement Date for the accounts serving the Boilers, which surcharge will recover the costs incurred under Sections 2.1, 2.2, 2.4, 2.5, and 2.7, and (b) on all monthly bills following the Service Commencement Date for so long as NHDAS uses the Boilers, which surcharge will recover the ongoing costs related to renting, operating and decommissioning the Boilers.

2.9 The total cost passed on to NHDAS pursuant to Section 2.8 shall not exceed \$2,725,000, allocated to no more than \$2,180,000 in State FY2018, and no more than \$545,000 in State FY 2019.

2.10 If the costs that Liberty reasonably incurs under Sections 2.1, 2.2, 2.4, 2.5, and 2.7 are greater than the not-to-exceed amounts in Section 2.9, then NHDAS agrees to take all reasonable steps to obtain the funds necessary to reimburse Liberty, including, but not limited to, seeking Governor and Executive Council approval of an amendment to the not-to-exceed amount in this agreement.

#### 3.0 Obligations of NHDAS

3.1 NHDAS shall provide its consent to the selection of Boilers, the Engineer, the Contractor, and Boiler Company and to the scopes of work before Liberty is obligated to undertake work associated with that consent as set forth in Sections 2.1, 2.2, 2.3, 2.4, and 2.5. Notwithstanding Section 9.1, NHDAS's consent may be conveyed to Liberty by electronic mail.

3.2 NHDAS shall timely provide to Liberty all information requested to have the Boilers operational by May 31, 2017.

3.3 NHDAS shall pay: (a) the surcharges described in Section 2.8; (b) Liberty's approved distribution rate and Liberty's approved Local Distribution Adjustment Charge for the natural gas consumed; and (c) Liberty's approved cost of gas if NHDAS chooses sales service or Liberty's approved transportation charges if NHDAS chooses transportation service.

3.4 NHDAS shall pay the utility bills described in Section 3.3 in the normal course as they become due after the Service Commencement Date.

3.5 NHDAS shall provide at least thirty (30) days' notice to Liberty of the date it will no longer need the Boilers.

#### 4.0 Condition Precedent

4.1 The Parties agree that the provisions of this Special Contract are expressly subject to and conditioned on final Commission approval.

#### 5.0 Effective Date and Term of Special Contract

5.1 This Special Contract shall become effective on the date that the Commission's order approving its terms becomes final, or the date on which the Special Contract is approved by the Governor & Executive Council of the State of New Hampshire, whichever comes later.

5.2 Notwithstanding Section 5.1, any costs Liberty reasonably incurs in furtherance of the Special Contract prior to its effective date shall be recovered as described in Section 2.

5.3 This Special Contract shall terminate on September 30, 2018, unless terminated earlier or extended, pursuant to Sections 5.4 or 5.5, respectively.

5.4 The Special Contract may be terminated prior to September 30, 2018, at NHDAS' sole discretion, provided that NHDAS has reimbursed Liberty for all costs incurred under Section 2.

5.5 NHDAS shall have the option, at its sole discretion, to extend the Special Contract, upon 30days prior written notice to Liberty, up to September 30, 2018. Following any such extension, the termination provisions of Section 5.4 shall continue to apply.

#### 6.0 Force Majeure

6.1 Neither Party shall be liable in damages or otherwise for any failure to perform its obligations under the Special Contract occasioned by or in consequence of any event of force majeure including acts of God, strikes, lockouts, labor disputes or other industrial disturbances, acts of the public enemy or terrorists, civil disturbances, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, or accident to machinery or lines of pipes, partial or total failure, or threat thereof, of Liberty's reserved firm transportation capacity, emergency repair to equipment or lines of pipe, or by a break, or fault, or threat thereof, in Liberty's distribution system, the action or inaction of any court or governmental or public authority which prevents or restricts performance or any other similar or

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dissimilar cause, whether of the kind herein enumerated, or otherwise beyond the control of the Party claiming force majeure, which by the exercise of reasonable due diligence, the Party claiming force majeure is unable to prevent or avoid.

6.2 Upon an event of force majeure the affected Party shall exercise reasonable due diligence to avoid the adverse impacts of a force majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

6.3 As soon as practicable after a force majeure event shall have been remedied, the Party claiming force majeure shall give notice to the effect that the same has been remedied and that the Party has resumed, or is then in a position to resume, the performance of the covenants or obligations affected by force majeure. Nothing contained in this Section shall be construed to require Liberty to settle a controversy with a landowner or settle or prevent a strike or other controversy with employees or with anyone purporting or seeking to represent employees.

#### 7.0 Disclaimer of Liability, Hold Harmless

7.1 In no event shall Liberty, its direct or indirect parents, and their directors, officers, or employees, be liable to NHDAS or to any third party for any special, consequential, incidental, or punitive damages, or damages for lost profits or lost opportunity, whether arising in tort, contract or otherwise that arise under this Special Contract or that arise from Liberty's conduct in carrying out its obligations under this Special Contract.

7.2 NHDAS agrees to hold Liberty, its affiliates, and their respective directors, officers, employees, agents, successors, and assigns, harmless from and against all liabilities, damages, claims, expenses, actions and causes of action, including without limitation reasonable attorney's fees, arising from this Special Contract and from the design, engineering, installation, or operation of the Boilers. This clause shall not apply to any vendors or contractors retained by Liberty in providing the services set forth in this Special Contract.

#### 8.0 Public Regulation

8.1 Liberty is a public utility subject to regulation by the Commission. Liberty's compliance with any order or rule of the Commission, or of any other regulatory or legislative authority with jurisdiction, shall not constitute a breach of this Special Contract.

8.2 In the event the Commission, or any other regulatory or legislative authority with jurisdiction, issues any order or rule that materially and adversely affects the rights and obligations of either Party to this Special Contract, then the affected Party may give written notice to the other requiring renegotiation of the terms and conditions of the Special Contract, and the Parties shall negotiate in good faith to achieve the original objectives of this Special Contract through an amendment to this Special Contract that remedies such material and adverse effect and that is in compliance with the order or rule. Should the Parties fail to agree on such amendment to this Special Contract within sixty (60) days of the issuance of the order or rule, the affected Party may terminate this Special Contract upon providing written notice to the other.

#### 9.0 Notices

9.1 Except as otherwise provided in Section 3.1, any notice required or desired to be served pursuant to this Special Contract shall be in writing. In the absence of written notice of a change of address to the other Party to this Special Contract, any such notice shall be hand delivered or mailed, certified mail (return receipt requested, first class, postage prepaid), or sent by nationally recognized express courier (e.g., Federal Express, United Parcel Service, etc.), or faxed to Liberty or NHDAS at the following addresses:

Company:	Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities 15 Buttrick Road Londonderry, NH 03053 Attention: Legal Department Tel: 603-216-3635 Fax: 603-421-1769
NHDAS	N.H. Department of Administrative Services 25 Capitol Street Concord, NH 03301 Attention: Vicki V. Quiram, Commissioner Tel: 603-271-3201 Email: <u>Vicki.Quiram@nh.gov</u>

Notices shall be effective upon receipt or upon addressee's refusal to accept. Faxed notices shall be effective upon confirmation of their receipt.

#### 10.0 Non-Appropriation

10.1 This Agreement is contingent on the availability and continued appropriation of funds, and in no event shall NHDAS be liable for any payments in excess of such appropriated funds.

#### 11.0 Governing Law

11.1 This Special Contract is entered into and shall be construed in accordance with the laws of the State of New Hampshire, excluding its choice of law rules or rulings. The Parties agree that any actions, suits, or claims with respect to this Special Contract shall be brought before the Commission if the Commission has jurisdiction over the particular claim, otherwise in a state court located in the State of New Hampshire.

#### 12.0 Privity

12.1 This Special Contract is entered into solely for the benefit of the Parties and not for the benefit of any other persons or entities. No other persons or entities may enforce it for their benefit nor shall they have any claim or remedy for its breach. The Parties do not intend to confer third-party beneficiary status on anyone.

#### 13.0 Entire Agreement

13.1 This Special Contract supersedes, terminates, and merges all prior, collateral, and contemporaneous agreements, written or oral, between the Parties relating to its subject matter.

#### 14.0 Waiver

14.1 Notwithstanding any other provision to the contrary, no waiver by either Party of any default of the obligations contained in this Special Contract to be performed by the other Party shall be construed as a waiver of any succeeding default or breach of such obligation, or the waiver of any other obligation or condition.

#### 15.0 General

15.1 Section headings are for convenience and reference only, and may not be construed to explain, amplify, or modify the provisions of this Special Contract.

15.2 Provisions of this Special Contract may be changed or waived, but only by a written instrument, signed by authorized representatives of both Parties.

15.3 The Parties acknowledge that recitals set forth above are an integral part of this Special Contract and shall have the same contractual significance as any other language.

15.4 If any terms of this Special Contract are invalid or declared invalid by order of a court or other governmental body having jurisdiction (an "Invalidating Event"), the Parties agree to renegotiate, in good faith, the affected material terms of this Special Contract, thus remedying the material and adverse effect of any such Invalidating Event in a way that is in compliance with any order or rule.

15.5 This Special Contract may be executed in one or more counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, NHDAS and Liberty have caused this Special Contract to be executed by their respective representatives, duly authorized, as of the day and date first above written.

Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities

ames Sweeney resident

March 1, 2017

New Hampshire Department of Administrative Services

∽" Commissioner

March 1, 2017

Approved for form, substance and execution by the Attorney General

Assistant Attorney General

March / ,2017

This AGREEMENT was approved by Governor and Council on

\_\_\_\_, 2017 as Item # \_\_\_\_\_.

## Exhibit A

## State Buildings

#### Street Address

Department of Justice Upham Walker House Legislative Office Building State House State House Annex State Library Londergan Hall M&S Building Spaulding Hall Annex – SOPS Johnson Hall Dolloff Building Grounds Shop NH Hospital Laundry NH Hospital Warchouse Main Building Paint and Carpentry Shops **Philbrook Building** Thayer Building **Transportation Garage** Howard Recreation Building Pond Place Twitchell Hall

Building

33 Capitol Street 18 Park Street 33 North State Street 107 North Main Street 25 Capitol Street 20 Park Street 101 Pleasant Street 109 Plcasant Street 95 Pleasant Street 105½ Pleasant Street 107 Pleasant Street 117 Pleasant Street 79 South Fruit Street 127 Pleasant Street Pleasant Street 105 Pleasant Street Pleasant Street 121 South Fruit Street 97 Pleasant Street 127A Pleasant Street 99 Pleasant Street 125 Pleasant Street 111 Pleasant Street

#### UNANIMOUS WRITTEN CONSENT RESOLUTIONS OF THE BOARD OF DIRECTORS OF LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.

#### March 1, 2017

The undersigned, being all of the Directors of Liberty Utilities (EnergyNorth Natural Gas) Corp., a corporation duly incorporated in the State of New Hampshire (the "Corporation"), do hereby waive all notice of the time, place and purposes of meetings of the Board of Directors of the Corporation and consent, pursuant to the New Hampshire Business Corporation Act, to the adoption of the following resolutions with the same force and effect as if adopted at a duly convened meeting of the Board of Directors of the Corporation and hereby direct that this written consent be filed with the minutes of the proceedings of the Board of Directors of the Corporation:

- **RESOLVED:** That the Board hereby deems it advisable and in the best interests of the Corporation to enter into that certain Special Contract, a copy of which is attached to this Consent Resolution as Exhibit A, with the New Hampshire Department of Administrative Services, specifically to take the steps necessary to ensure twenty-three state-owned buildings have temporary steam service as of May 31, 2017.
- **RESOLVED:** That James Sweeney, as President of the Corporation, is hereby authorized, empowered and directed, for and on behalf of the Corporation, to do, and to cause any and all of the Corporation's counsel and advisors to do, any and all acts, deeds and things, and to sign, seal, execute, acknowledge, file, record and deliver any and all documents, instruments, certificates or undertakings which may be or may become necessary, desirable or appropriate to effectuate the purposes of the foregoing resolution, and to incur and pay all such fees and expenses as they shall in their good faith and judgment determine to be necessary, desirable or advisable to carry out fully the intent and purposes of the foregoing resolution and the execution by them of any such document, instrument or certificate or the payment of any such fees and expenses or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefor and the approval of the documents, instruments or certificates so executed, the expenses so paid, the filings so made and the actions so taken.
- **RESOLVED:** That all actions heretofore taken by the Board or any officer of the Corporation in connection with any matter referred to in or contemplated by

any of the foregoing resolutions be, and hereby are approved, ratified and confirmed in all respects.

**RESOLVED:** That the Board hereby authorizes the Secretary or any other officer of the Corporation to certify to any person a copy of these resolutions and the names and signatures of the Corporation's officers or employees hereby authorized to act in the premises, and any person to whom such a certificate is delivered is hereby expressly authorized to rely upon such certificate until formally advised by a like certificate of any change therein, and is hereby authorized to rely on any such additional certificates.

Notice of the meeting and all other formalities in connection with these consent resolutions and the matters addressed therein are hereby waived.

Dated and Effective as of the 1<sup>st</sup> day of March, 2017

Ian Robe on. Director

Gregory Sorenson, Director

any of the foregoing resolutions be, and hereby are approved, ratified and confirmed in all respects.

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**RESOLVED:** That the Board hereby authorizes the Secretary or any other officer of the Corporation to certify to any person a copy of these resolutions and the names and signatures of the Corporation's officers or employees hereby authorized to act in the premises, and any person to whom such a certificate is delivered is hereby expressly authorized to rely upon such certificate until formally advised by a like certificate of any change therein, and is hereby authorized to rely on any such additional certificates.

Notice of the meeting and all other formalities in connection with these consent resolutions and the matters addressed therein are hereby waived.

Dated and Effective as of the 1st day of March, 2017

Ian Robertson, Director	
1.	
James Martin	

Gregory Sorensen, Director

## EXHIBIT A

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THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CE CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFO BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING I REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.         IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED pr SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endors certificate does not confer rights to the certificate holder in lieu of such endorsement(s).         PRODUCER Aon Risk Services Northeast, Inc. Boston MA 02110 USA       CONTACT INSURER Boston MA 02110 USA         Iberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (EnergyNorth Ratural Gas) Corp. d/b/a Liberty Utilities IS BUTTICK Road Londonderry NH 03053 USA       INSURER B: NSURER C: INSURER C: I	DRDED BY THE POLICIES NSURER(S), AUTHORIZED ovisions or be endorsed. If ement. A statement on this te.;: (800) 363-0105 E NAUC # 16535 BER: VE FOR THE POLICY PERIOD		
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UNBRELLALIAS OCCUR EACH OCCURREN	*		
EXCESS LIND CLAIMS-MADE			
DED RETENTION			
WORKERS COMPENSATION AND			
EMPLOYERS' LIABILITY Y/N ANY PROPRETOR / PARTNER / EXECUTIVE /			
OFFICERMEMBER EXCLUDED?			
K ves. destribe under			
DESCRIPTION OF OPERATIONS below E.L. DISEASE-POU			
SCRIPTION OF OPERATIONS / LOCATIONS / VEHICLE & (ACORD 181, Additional Remarks Schedule, may be attached if more space is required)			
ertificate Holder is included as Additional Insured in accordance with the policy provisions of the Ge	neral Liability policy.		
ERTIFICATE HOLDER CANCELLATION	meral Liability policy.		
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES B EXPIRATION DATE THEREOF, NOTICE WILL BE OFLIVERED			
POLICY PROVISIONS.			
N.H. Department of Administrative Services 25 Capitol Street			

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## **Business Information**

## **Business Details**

Business Name:	LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.	Business ID:	13462	
Business Type:	Domestic Profit Corporation	Business Status:	Good Standing	
Business Creation Date:		Name in State of Incorporation:	Not Available	
Date of Formation in Jurisdiction:	07/23/1945		·	
Principal Office Address:	15 Buttrick Road, Londonderry, NH, 03053, USA	Mailing Address:	354 Davis Road S100, Oakville ONTARIO, CAN	
Citizenship / State of Incorporation:	Domestic/New Hampshire	.1		
	Last Annual Report 2017 Year:			
		Next Report Year:	2018	
Duration:	Perpetual			
Business Email:	Anne.Francis@AlgonquinPower.com	Phone #:		ç
Notification Email:	NONE	Fiscal Year End Date:	NONE	

## **Principal Purpose**

S.No	NAICS Code	NAICS Subcode	
1	OTHER / PUBLIC UTILITY-NATURAL GAS DISTRIBUTION (1997 AR)		
Page 1	l of 1, records 1 to 1 of 1		

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## **Registered Agent Information**

Name:	C T Corporation System
Registered Office Address:	9 Capitol Street, Concord, NH, 03301, USA
Registered Mailing Address:	9 Capitol Street, Concord, NH, 03301, USA

QuickStart

## Trade Name Information

Business Name	Business ID	Business Status
KEYSPAN ENERGY DELIVERY NEW ENGLAND (/online/BusinessInquire/TradeNameInformation? businessID=114594)	360992	Expired
KEYSPAN ENERGY DELIVERY (/online/BusinessInquire/TradeNameInformation? businessID=115779)	364307	Expired
ENERGYWISE (/online/BusinessInquire/TradeNameInformation? businessID=328542)	271448	Expired
National Grid NH (/online/BusinessInquire/TradeNameInformation? businessID=397219)	584025	Expired

## **Trade Name Owned By**

Name		Title	Address	
Filing History	Address History	View All Other Addresses	, Name History	Shares
	Re	turn to Search Back		

NH Department of State, Corporation Division, State House Annex, 3rd Floor Room 317, 25 Capitol St, Concord, NH 03301 Email: corporate@sos.nh.gov (mailto:corporate%40sos.nh.gov)

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