

Memorandum of Understanding

This Memorandum of Understanding (“MOU”), (hereinafter referred to as the “MOU”) is made as of March ___2021 (the “Effective Date”), by and between Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, incorporated in the State of New Hampshire, having a principal place of business at 15 Buttrick Road, Londonderry, NH 03053 (“Liberty”), the New Hampshire Preservation Alliance (“NHPA”), a New Hampshire domestic nonprofit corporation, located at 7 Eagle Square, PO Box 268, Concord, NH 03302-0268, and the City of Concord, NH, a New Hampshire municipal corporation (the “City”) located at 41 Green Street Concord, NH 03301. Liberty, NHPA, and the City are sometimes hereinafter referred to collectively as the “Parties.”

Purpose

The purpose of this MOU is for the Parties to document their intent as to the future of the gas holder house located at 1 Gas Street, Concord (the “Gas Holder”).

Background

1. Liberty owns the property at 1 Gas Street, which consists of approximately 2.7 acres of land on which the Gas Holder sits (the “Property”).
2. The Gas Holder is in poor physical condition and needs to be repaired or demolished in the near term to reduce safety risks and to satisfy the requirements of maintaining a cap over the building footprint as outlined in Liberty’s Remedial Action Plan, dated April 1, 2015 (“RAP”), and the New Hampshire Department of Environmental Services (“NHDES”) letter of February 24, 2014.
3. The Property, including the area beneath the Gas Holder, was impacted with the byproducts of manufactured gas production at the time of Liberty’s acquisition of the Property, which contamination is identified in the RAP (the “Contamination”) and for which Liberty retains certain environmental liability pursuant to local, state, and federal law.
4. The NHDES conditionally approved the RAP to remedy the Contamination at the Property in their May 29, 2015, letter. The RAP generally calls for removal of potentially mobile sources of manufactured gas production byproducts and the installation of a “cap” over the entire site, including the Gas Holder’s footprint, to act as a barrier between potential future receptors and the remaining contaminants on site. The NHDES has indicated, and the RAP allows for the Gas Holder to serve as a cap over its footprint so long as the Gas Holder structure is sound, and the roof remains intact over the long term. Capping of the remaining site area outside the Gas Holder footprint is a condition of the RAP as part of any future development. Capping the remaining site area is the responsibility of Liberty.

5. The Gas Holder does not satisfy this requirement in its current condition as, among other issues, there is structural damage and holes in the roof.
6. Liberty is responsible for the costs of implementing the RAP, which costs are subject to review and approval by the New Hampshire Public Utilities Commission (“PUC”) and which costs are borne by Liberty’s customers because the Contamination resulted from an approved method to provide gas service.
7. PUC Staff indicated that it would support recovery of money that Liberty contributes to the preservation of the Gas Holder provided that: (1) the amount contributed to preservation is equal or less than what would otherwise have been spent to demolish the Gas Holder, remedy any additional contamination found beneath the Gas Holder or caused by the demolition process, and install a cap over the Gas Holder footprint; and (2) the money is spent on a plan that would ensure the long term viability of the Gas Holder to serve as a cap as provided for in the RAP. PUC Staff’s support does not guarantee PUC approval.
8. A donor has communicated to NHPA that the donor will make \$500,000.00 available to the preservation of the Gas Holder. The donor’s offer is a challenge donation that is contingent on matching funds.
9. In its Report dated, December 21, 2020, Structures North, a consultant hired by NHPA and the City, estimated that it would cost \$411,000 to make repairs to the Gas Holder that would stabilize the structure and address the immediate safety concerns, which would enable the Gas Holder to ultimately serve as a cap under the terms of the RAP, subject to DES approval, and serve as the first “down payment” step in the overall scope of preservation. As indicated in section 14(h) below, this estimate is being refined by NHPA. Liberty shall also have the right, but not the obligation, to confirm this estimate. In its December 21, 2020, Report, Structures North states that these repairs primarily consist of securing the broken compression ring with two steel brackets tied to the “good” end, secured with cables, and securing and weatherproofing the roof and other key features. Structures North refers to this first step as Phase 1.
10. Structures North estimates that the costs to make the necessary repairs to the Gas Holder to ensure its long-term soundness and compliance with the RAP could exceed \$2 million. This second step, which is not presently defined, is referred to as Phase 2.
11. The Parties desire to enter into an agreement for a five-year term during which the Gas Holder would not be demolished. During the term of such an agreement interested parties, including but not limited to NHPA, the City, and Liberty, shall strive to raise the necessary funds and complete Phase 2.

Statements of Intent

12. By this MOU, Liberty, NHPA, and the City formally express their desire to preserve the Gas Holder and express the following steps they intend to take to achieve that goal.

13. Liberty

- a. Liberty intends to allow for NHPA or another non-Liberty entity to hire a contractor to complete Phase 1 (the “Phase 1 Contractor”), subject to Liberty’s approval, not to be unreasonably withheld. NHPA, a contractor hired by NHPA, or another non-Liberty entity will be responsible for hiring and supervising the Phase 1 Contractor. This will involve executing the necessary documents to govern access and to define the roles and responsibilities of Liberty, NHPA (or another non-Liberty entity), and any Contractors.
- b. Liberty intends to refine the estimates to (i) demolish the Gas Holder, (ii) remedy the Contamination to the extent required by applicable laws, which includes any contamination that would have been necessary to address as part of demolition, and (iii) cap the Gas Holder footprint, which refined estimate is for the purpose of determining a more specific amount that Liberty could contribute toward preservation of the Gas Holder (the “Liberty Estimate”). Liberty intends to confer with representatives of NHPA in developing the Liberty Estimate. Liberty intends to communicate the Liberty Estimate to the Parties. Upon receipt of the Liberty Estimate, NHPA and/or the City may elect to have an independent qualified third party review the Liberty Estimate. The Parties shall, in good faith, attempt to negotiate a resolution to any issues identified by the independent qualified third party.
- c. Upon the execution of an agreement to forbear from demolition of the Gas Holder for a period of five years as provided in section 11, above, and commitment to the necessary funding required to complete Phase 1, including the contribution by the NHPA donor and the matching contribution to be made by Liberty and required by the NHPA donor, the Parties intend to proceed to the next steps set forth herein.
- d. When the details of Phase 2 are finalized and determined to satisfy the requirements of the NHDES and conditions of the RAP, as may be revised, Liberty intends to make every reasonable effort to obtain PUC approval to contribute towards the costs of Phase 2 the Liberty Estimate, less funds contributed toward the costs of Phase 1. Liberty will inform the Parties (and others) how they can express their support to the PUC, and the Parties will make every reasonable effort to cooperate in support of such effort. Liberty will contribute the amount of the costs of Phase 2 that is approved and as may be conditioned by the PUC.

- e. If Phase 2 involves another party owning the Property, including the Gas Holder, Liberty intends to convey the Property to that third party for \$1.
- f. Any future conveyance of the Property will be subject to Liberty's obligation to address the Contamination, including any required long-term monitoring. It is the intent of Liberty that future owners will not have any obligation with respect to the Contamination.
- g. Liberty intends to obtain the NHDES-mandated Activity and Use Restriction ("AUR") and will provide the AUR with any other party that owns or operates the Property and such other instruments that ratify Liberty's ongoing liability and obligations regarding the property without contribution by future owners.

14. NHPA

- h. NHPA shall seek updates for Phase 1 costs to secure the Gas Holder in conjunction with Liberty. It is acknowledged that Phase 1 must satisfy requirements of NHDES, that Phase 1 must be completed in 2021, and that the selection of the contractor performing the Phase 1 work and final contract itself are subject to Liberty's prior approval, not to be unreasonably withheld. Liberty shall cooperate as may be reasonably required in order for Phase 1 to be completed in 2021.
- i. NHPA, along with partners, intends to make every reasonable effort to secure funding to complete Phase 2.
- j. NHPA or its designee intends to complete Phase 1, or to arrange for an appropriate entity to do so.
- k. NHPA intends to work with any party that may have an interest to utilize the Property or repurpose the Gas Holder.

15. City

- l. Subject to the City not taking on any liability associated with the Contamination, the City shall consider:
 - i. contributing the expertise of its staff as needed from time to time to facilitate the success of Phase I and Phase II;
 - ii. the Property and/ or Gas Holder for grant-making applications to appropriate sources;
 - iii. statutory programs or other initiatives to encourage investment in the Property; and

iv. providing funding for Phase I and/or Phase II.

The Parties understand and acknowledge that this MOU is not a binding contract. This MOU is a statement of the steps that Liberty, NHPA and the City intends to take toward the common goal of preserving the Gas Holder.

Liberty Utilities (EnergyNorth Natural Gas) Corp.

By: _____
Susan Fleck, President

Date: _____

New Hampshire Preservation Alliance

By: _____
Jennifer Goodman, Executive Director

Date: _____

City of Concord

By: _____
Thomas J. Aspell, Jr., City Manager

Date: _____

Nonclt/jpc/nhpa