

TOWN OF BURKE TOWN BOARD

Resolution # 11 of 2022

**Resolution Approving Road
Use and Crossing Agreement**

July 19, 2022

WHEREAS, New York Power Authority ("NYPA"), Niagara Mohawk Power Corporation d/b/a National Grid ("NG") have filed an Application for a Certificate of Environmental Compatibility and Public Need (the "Application") pursuant to Article VII of the Public Service Law; and

WHEREAS, NYPA, NG and its contractors and subcontractors intend to develop and construct 345kV electric transmission lines and related appurtenances ("Electric Transmission Lines") pursuant to order of the New York Public Service Commission granting a Certificate of Environmental Compatibility and Public Need (collectively, "Electric Transmission Activities"); and

WHEREAS, in connection with the Electric Transmission Activities, NYPA and the Town of Burke (the "Town", together with NYPA collectively referred to as the "Parties") desire to address possible issues relating to the highways, roads, bridges, and other fee-owned land, rights-of-way or easements owned, operated, and/or maintained by the Town; and
;

WHEREAS, to address the possible issues relating to the highways, roads, bridges, and other fee-owned land, rights-of-way or easements owned, operated, and/or maintained by the Town, the Parties desire to enter into a Road Use and Crossing Agreement (the "Agreement"), in substantially the form set forth in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the Town Board now desires to issue this Resolution to authorize and approve the execution of the Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Town of Burke Town Board hereby approves the execution of the Agreement which has been carefully reviewed and drafted; and

BE IT FURTHER RESOLVED, that William Wood, as Supervisor of the Town of Burke Town Board, be, and hereby is, authorized, for an on behalf of the Town to execute and deliver the Agreement, and to do all things and to take all actions as may be necessary for the Town to implement the foregoing resolution; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be filed in the office of the Town of Burke Town Clerk within five (5) days of the date of this Resolution.

The foregoing resolution was voted upon with members of the Town Board voting and signing as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstain/Absent</u>	<u>Signature</u>
William Wood, Supervisor	<u>X</u>	<u> </u>	<u> </u>	<u>[Signature]</u>
Arnold Lobdell	<u>X</u>	<u> </u>	<u> </u>	<u>[Signature]</u>
James Otis	<u>X</u>	<u> </u>	<u> </u>	<u>[Signature]</u>
Timothy Crippen	<u>X</u>	<u> </u>	<u> </u>	<u>[Signature]</u>
Patrick Downing	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Dated: July 19, 2022
Burke, New York

[Signature]
William Wood, Supervisor
Town of Burke Town Board

EXHIBIT A

ROAD USE AND CROSSING AGREEMENT

ROAD USE AND CROSSING AGREEMENT

This **ROAD USE AND CROSSING AGREEMENT ("Agreement")** is entered into this **19th day of July, 2022** by and between the **TOWN OF BURKE**, County of Franklin, State of New York, a municipal corporation in the State of New York, having a mailing address of 5165 State Route 11, P.O. Box 121, Burke, New York 12917, Attn: William Wood, Supervisor ("**Municipality**") and the Power Authority of the State of New York, a corporate municipal instrumentality of the State of New York having an address at 30 South Pearl Street, Albany, New York 12207 ("**Authority**"). Municipality and Authority are hereinafter sometimes referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Authority is engaged in the development and construction of electric transmission facilities in New York; and

WHEREAS, Authority and its contractors and subcontractors (collectively, "**Representatives**") intend to develop and construct 345kV electric transmission lines and related appurtenances (hereinafter, "**Electric Transmission Lines**") pursuant to order of the New York Public Service Commission granting a Certificate of Environmental Compatibility and Public Need (collectively, "**Electric Transmission Activities**"); and

WHEREAS, in connection with the Electric Transmission Activities, the Parties desire to address possible issues relating to the highways, roads, bridges, and other fee-owned land, rights-of-way or easements owned, operated, and/or maintained by the Municipality (collectively, the "**Roads**") over which it will be necessary for Authority and its Representatives to, among other things: (i) traverse with machinery, including but not limited to, trucks, construction machinery and equipment and other related items; (ii) transport equipment and materials; (iii) transport locally sourced materials, such as concrete and gravel; (iv) make specific modifications and improvements (both temporary and permanent) to the Roads (including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and (v) install the Electric Transmission Lines across Roads along Authority's electric transmission line route identified in Exhibit A attached hereto and incorporated herein; and

WHEREAS, Authority will need to conduct certain construction, improvement and restoration activities on existing Electric Transmission Lines partially within the Municipality, some of which may involve construction, improvement and restoration activities in or across Roads; and

WHEREAS, Authority further acknowledges that the nature of vehicular traffic supporting Electric Transmission Activities may potentially exceed normal wear and tear and may potentially require repair and/or replacement during construction; and

WHEREAS, the Municipality seeks assurances from Authority that Authority will pay and/or otherwise indemnify the Municipality for damage to the Roads specifically and solely arising from Utility's Electric Transmission Activities.

NOW, THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Authority and the Municipality, each intending to be legally bound, agree as follows:

1. Authority Responsibilities.

- a. Authority shall be responsible for obtaining any other approvals or permits that are required by applicable law to use and cross the Roads and conduct other Electric Transmission Activities.
- b. Authority agrees that it shall be responsible for ensuring that all debris, garbage, and waste upon the Roads directly related to Authority's Electric Transmission Activities are disposed of in accordance with applicable law.
- c. Authority shall not block or obstruct or interfere with the flow of traffic in both lanes of traffic except to the extent necessary on a temporary basis while work is actively being performed in the vicinity of the Electric Transmission Activities following notice to the Municipality and consultation in accordance with Certificate Conditions 81 and 82¹.
- d. Authority shall require that its Representatives comply with the terms and conditions of this Agreement.
- e. Authority shall not permit any excavation made in or upon any Road to remain open or uncovered either day or night, without having or causing the same to be properly barricaded by day and night and, in addition thereto, shall place at such location flares, red lanterns or other warning devices, by night, so as to properly warn all persons of the danger of such hole or excavation, and any such actions must meet all NYSDOT, County and Town safety requirements where applicable.

2. Road Status and Permitted Routes.

- a. By granting the foregoing consents, Municipality is granting a license and not an easement or other real property interest.
- b. The Electric Transmission Lines will be installed on and occupy the route certificated by the New York Public Service Commission. If the Municipality later determines that any of the Roads identified in Exhibit B are no longer suitable for Electric Transmission Activities, the Parties shall meet and discuss alternatives and a proposed amendment to this Agreement.
- c. Prior to the commencement of construction, Authority will provide a report detailing proposed transportation plan for the Electric Transmission Activities, accompanied by videos showing pre-commencement road

¹ Case 21-T-0340, *Application of New York Power Authority and Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need for the Rebuild of Approximately 100 Linear Miles of Existing 230 kV to Either 230 kV or 345 kV along with Associated Substation Upgrades Along the Existing NYPA Moses-Willis 1&2, Willis-Patnode, Willis-Ryan, and National Grid's Adirondack-Porter 11, 12 and 13 Lines in Clinton, Franklin, St. Lawrence, Lewis, and Oneida Counties, New York*, Draft Certificate Conditions, posted on the docket on May 19, 2022.

conditions. This report and the accompanying videos shall serve as a baseline report ("Baseline Report") of the existing conditions of all roads potentially impacted by Electric Transmission Activities. If the Municipality has any concern about the Baseline Report, the Municipality may take its own videos, which shall be submitted to the Authority and become part of the Baseline Report after consultation with the Authority.

3. Road Damage.

- a. Authority shall be responsible for the cost of any necessary repairs of the Roads required as a result of damage caused by the Electric Transmission Activities; provided, however, that Authority shall not be responsible for the cost of any improvements or repairs (i) scheduled or to be performed on the Roads by the Municipality or (ii) required to remedy damage caused by anyone other than Authority or its successors, assigns, agents, subcontractors, subsidiary or any person or entity affiliated with or acting under the direction of Authority.
- b. Deliverables by the Parties: (i) the Authority will provide to the Municipality an anticipated schedule for the Electric Transmission Activities, which is subject to change and shall be updated by the Authority as it requires; and (ii) the Municipality will provide to the Authority a schedule of its anticipated maintenance work scheduled or to be performed on the Roads.
- c. Municipality shall notify Authority of any improvements or repairs required because of damage caused by Electric Transmission Activities. The Parties shall, within ten (10) days of Authority's receipt thereof, meet to inspect the subject Roads, and agree in writing on all such necessary improvements or repair work and the schedule for the performance thereof. Authority may either (i) perform such work with its own work forces, or with contractors or subcontractors chosen by Authority, or (ii) authorize the Municipality to perform such work and reimburse the Municipality for the cost thereof. If Authority elects to authorize the Municipality to perform such work, then the Municipality shall provide Authority with an itemized cost estimate including cost for materials, direct costs (labor to repair), and indirect costs (costs for reimbursable mileage and employee staff time spent to inspect damage caused by the Authority to the subject roads and the required repair). No work shall be commenced at Authority's expense until Authority has provided the Municipality with written approval thereof, which approval shall not be unreasonably withheld. The Municipality shall, upon completion of said work, provide Authority with an invoice detailing the costs incurred in the performance of such work. If Authority elects to perform such work with its own work forces execution of this agreement will constitute the Municipality's consent for Authority to carry out agreed-upon work.

- d. Notwithstanding the foregoing, if any damage occurs to Roads during, and as a direct result of, Electric Transmission Activities and such damage is, in the reasonable opinion of the Municipality, an immediate danger to the public using said Road, then the Municipality shall undertake immediate emergency repairs to said Road and Authority shall be responsible for reimbursing the reasonable cost of such repairs following receipt of an invoice from the Municipality. Municipality shall provide evidence, including but not limited to photographs or video showing said damage, and location, including identifiers so the Authority may verify the accuracy of the damage and its relation to the Electric Transmission Activities.
- e. Authority shall pay all undisputed invoiced amounts within thirty (30) days from Authority's receipt of the invoice. If Authority disputes any amounts set forth on an invoice, or if Authority disputes that it caused the damage it is being invoiced for, it shall provide a written statement as to its basis for contesting the disputed amount(s) and/or alleged damage within thirty (30) days after Authority's receipt of the invoice. In the event of a dispute, then both Parties shall abide by the procedure set forth herein for dispute resolution in Section 6 below.

4. Insurance.

During the construction of its Electric Transmission Lines and for a period of one year after the completion thereof, Authority shall maintain commercial general liability insurance with a minimum limit of \$5,000,000 per occurrence and in the aggregate annually (which limit may be achieved using a combination of a commercial general liability policy and an excess or umbrella liability policy). During such time period, Authority shall cause the Municipality to be an additional insured under any such policy and shall deliver a certificate of insurance demonstrating such coverage upon request.

Authority may, at its option, elect to self-insure any and all insurance coverages required herein.

5. Indemnification; Liability.

Authority hereby agrees to indemnify and hold harmless Municipality and its Representatives, administrators, agents, employees, directors, officers, successors and assigns from and against any and all claims, suits, actions, damages, costs of every name and description to the extent arising out of or resulting from the negligence or willful misconduct of Authority, except to the extent any said claim, suit, action, damage, or liability is attributable to the negligence or willful misconduct of Municipality. Except to the extent arising from a third-party claim for which Authority is obligated to indemnify

Municipality pursuant to this Section 5, in no event shall Authority or Municipality be liable to the other Party for any incidental or punitive damages, whether at law or in equity.

6. Dispute Resolution.

- a. In the event of a dispute regarding the allocation of responsibility for any debris, garbage, or waste removal or disposal from the Roads, any improvement, repair or restoration of the Roads, or the schedule or cost thereof ("**Dispute**"), the Parties may elect (but shall not be required) to submit to non-binding mediation with a neutral mediator approved by all parties to the Dispute during which each party will have their authorized representatives attempt to negotiate a resolution of the Dispute for a period of thirty (30) days. Unless otherwise agreed to by the Parties, mediation proceedings shall be conducted in Franklin County, New York. Authority and the Municipality shall initially equally split the costs and expenses of the mediator and mediation venue.
- b. If the Parties do not mutually agree to mediation, or if the Dispute is not resolved by mediation or mutual agreement, the Dispute shall be resolved in any court of competent jurisdiction located in the county where the Municipality is located.

7. Term and Termination.

The term of this Agreement shall commence on the date of execution and continue through the completion of remediation/repair of the Roads as required under this Agreement. Notwithstanding the foregoing, upon the occurrence and continuation of any default by Authority under this Agreement, this Agreement may be terminated by the Municipality upon thirty (30) days' prior written notice following Authority's failure to initiate, within thirty (30) days of receiving written notice from the Municipality, reasonable steps to cure any default under this Agreement.

8. Governing Law; Waiver of Jury Trial.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without regard to conflicts of laws principles. **EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY SUCH ACTION, SUIT, OR PROCEEDING. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.**

9. Notice.

Unless otherwise specifically provided herein, all notices to be given hereunder shall be in writing and sent to each Party by personal delivery, nationally-recognized overnight

courier, electronic mail, or certified mail, return receipt requested, which shall be addressed to each Party's respective address set forth in the recitals hereof, or to such other address as said Party shall designate by notice given to the other Party hereto in accordance herewith, and shall be deemed to have been received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of nationally-recognized overnight courier, on the next business day after the date when sent, and (c) in the case of mailing, on the fifth (5th) business day following the date of the postmark on the piece of mail containing such communication.

10. Binding Effect.

This Agreement, and the terms and conditions hereof, shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns.

11. Entire Agreement.

This Agreement sets forth the entire understanding between the Parties concerning the subject matter of this Agreement. There are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the Parties relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of either Party (or any officer, director, employee, or agent of either Party) to induce the other Party to enter into this Agreement or to abide by or consummate any transactions contemplated hereby, except representations and warranties, if any, expressly set forth herein. No alteration, amendment, change or addition to this Agreement shall be binding upon either Party unless in writing and signed by the Party to be charged.

12. Severability.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision, or such portion of a provision, deemed null and void shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect.

13. Further Assurances.

Each Party hereby agrees to execute such further instruments or agreements and take such further actions as may be reasonably requested by the other Party at any time after the execution hereof to give effect to this Agreement and the transactions contemplated hereby, including, without limitation, the Electric Transmission Activities.

14. Counterpart Signatures.

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which shall be deemed an original for all purposes, but all of which together shall constitute one and the same instrument.

15. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective Parties expressly represent and warrant that they are authorized to sign on behalf of such Parties for the purpose of duly binding such Parties to this Agreement.

16. Assignment.

Authority shall have the right to assign this Agreement in whole or in part to the New York Power Authority, to any affiliate of Authority, or to any party obtaining ownership of all or a portion of the Electric Transmission Lines within the Municipality.

IN WITNESS WHEREOF, the Parties have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

TOWN OF BURKE



Name: William Wood

Title: Supervisor

Date:

POWER AUTHORITY OF THE STATE OF NEW YORK

Name:

Title:

Date: