

**RESOLUTION NO. 122 -2011, AUTHORIZING THE
CREATION OF A UTILITY EASEMENT FOR USE BY
NATIONAL GRID FOR SERVICE TO THE
COMPRESSED NATURAL GAS (CNG) FUELING
STATION AT THE WEST END HIGHWAY FACILITY
(COMMACK TRUCK GARAGE)**

WHEREAS, the Commack Truck Garage represents a valuable asset for the residents of the County of Suffolk; and

WHEREAS, KeySpan Gas East Corporation d/b/a National Grid ("National Grid"), a New York corporation, has requested that it be granted an easement on a portion of this property in order to provide underground primary service to the proposed Compressed Natural Gas (CNG) fueling station to be located at the Commack Truck Garage; and

WHEREAS, this legislature as lead agency, has previously made a SEQRA determination, under Resolution 605-2009 (IR 1553-2009), that installation of infrastructure constitutes Type II action in that (1) maintenance or repair involving no substantial changes in an existing structure or facility;(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part; (25) purchase or sale of furnishings, equipment or supplies, has no significant adverse impact on the environment based on the criteria contained in section 617.7(c), which completes SEQRA; and

WHEREAS, this legislature has authorized funds for design and construction of said Commack Truck Garage CNG infrastructure under Resolution 979-2009 (IR 1921-2009); and

WHEREAS, the CNG operations at the Commack Truck Garage and the development of the business and industrial area require access to utility infrastructure; and

WHEREAS, there exists a need to define those areas where utility construction will be permitted; now, therefore be it

1st **RESOLVED**, that the grant of a non-exclusive easement be and is hereby authorized to be granted to the following public utility companies as noted above and as described in Exhibits "A" and "B" appended hereto, to lay, re-lay, operate, maintain and remove such infrastructure items as water mains, water supply and distribution appurtenances, fire hydrants, services, electrical mains, switchgear, transformers, vaults, services, conduit, copper communications cable, fiber optic communications cable, cross-connect cabinets, gas mains and valves and services and other such unscheduled equipment that may be necessary for distribution and provision of service to :

KeySpan Gas East Corporation d/b/a National Grid ("National Grid"), a New York corporation; and

Such other providers of services as the County may judge necessary or desirable; and be it further

2nd **RESOLVED**, that the Director of the Division of Real Property Acquisition and Management of the Department of Environment and Energy is hereby authorized to execute easement agreements in a form in substantial compliance with the model easement annexed hereto as Exhibit "C"; and be it further

3rd **RESOLVED**, that this Legislature, being the lead agency under the State Environmental Quality Review Act, New York Environmental Conservation Law Article 8 ("S.E.Q.R.A."), and Chapter 279 of the Suffolk County Code, hereby determines that this resolution constitutes a Type II action pursuant to Title 6 NYCRR Part 617.5(c) (20) since it is mainly administrative in nature and implements a project for which SEQRA has been completed; and, be it further

4th **RESOLVED**, that, in accordance with Section 279-5(C)(4) of the Suffolk County Code, the Suffolk County Council on Environmental Quality is hereby directed to prepare and circulate any appropriate SEQRA notices of determination in accordance with this resolution.

Attachments:

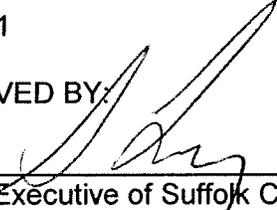
Exhibit A – Map of Proposed Easement

Exhibit B – Written Description of Proposed Easement

Exhibit C – Utility Easement Agreement

DATED: March 8, 2011

APPROVED BY:



County Executive of Suffolk County

Date:

MAR 23 2011

UTILITY EASEMENT AGREEMENT

THIS INDENTURE, made this ____ day of _____, 2011, by and between County of Suffolk, a municipal corporation of the State of New York with offices at Suffolk County Center, Center Drive, Riverhead, New York 11901 (hereinafter referred to as "Grantor"); and KeySpan Gas East Corporation, d/b/a National Grid ("National Grid"), a New York corporation having its principal office at 175 East Old Country Road, Hicksville, New York 11801, hereinafter referred to as "Grantee").

RECITALS

1. The Grantor is the owner of approximately 9.63 acres known as West End Highway Facility (the "Commack Truck Garage") and Grantor has good title thereto.
2. Grantee proposes to construct and install an improvement known as CNG Fueling Station at the Commack Truck Garage, identified as Project Number 5602, (the "Project").
3. Grantor has agreed to grant to Grantee a non-exclusive easement for utility purposes, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant and convey to the Grantee, its successors and assigns, an easement on, under, over, across and in a portion of the Commack Truck Garage premises, of which a map or survey is attached hereto and made a part hereof as Exhibit "A", and which is described in Exhibit "B" (hereinafter referred to as the "Easement" or the "Easement Area"), also attached hereto and made a part hereof.

1. **Recitals.** The parties represent that the foregoing recitals are true and correct and hereby incorporated into this Easement as if fully set forth herein.
2. **Grant of Easement.** Grantor does hereby grant and convey to the Grantee and its agents, successors and assigns, a non-exclusive easement in, on, under, over, upon, across and through the Easement Area for utility purposes including, but not limited to, constructing, laying, installing, operating, maintaining, relocating, repairing, replacing, improving, removing and inspecting water, sewer, drainage, gas, electric, cable, telephone or other utilities, as well as ingress and egress in, over, under, upon, across and through the Easement Area, with full rights and authority to enter upon and excavate the Easement Area as may be necessary, useful or convenient, provided however, that the same shall be promptly restored to the condition existing prior to such excavation, and further provided that the use by Grantee of such Easement Area shall not unreasonably interfere with Grantor's use thereof.

3. **Use of Easement Area.** Grantee shall have the right to do all things necessary, useful or convenient for the purpose set forth in Section 2 hereof. Grantor hereby covenants with Grantee that Grantee shall have quiet and peaceful use and enjoyment of the easement granted herein, subject to the conditions herein set forth. The Grantee agrees reasonably and promptly to restore the Easement Area or other areas of the Commack Truck Garage disturbed by the Grantee in connection with its use of the Easement Area to the condition which existed prior to the disturbance.

4. Also granted to Grantee is the privilege of access from the adjacent street across the Commack Truck Garage to the Easement Area.

5. The utility facilities and associated appurtenances and accessories as from time to time installed, constructed and maintained by Grantee in the Easement Area shall at all times be and remain the property of Grantee, and be replaced, maintained and serviced exclusively by Grantee.

6. **Covenants Running with the Land.** This Easement, and all the rights, conditions, covenants and interests set forth herein and created hereby are intended to and shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

7. **Perpetual Duration.** This Easement shall be perpetual in duration.

8. **Rights Reserved.** The easement rights granted herein are non-exclusive in nature and are subject to all matters of record and to any other easements hereinafter granted by Grantor. Grantor shall have the right to use the Easement Area, or any portion thereof, or any property of Grantor adjoining the Easement Area for any purpose not inconsistent with the use and enjoyment of the rights granted herein in favor of Grantee. Other than landscaping, pavement, buildings and structures existing on the date hereof, which may be maintained and repaired as Grantor reasonably determines, Grantor agrees not to erect within the Easement Area any permanent buildings, structures or physical obstructions of any kind, including trees and shrubbery, or permit the same to be so erected, except such as Grantee may specifically consent to in writing, which consent shall not be unreasonably withheld or delayed.

9. **Compliance with Requirements.** Grantee covenants, warrants and represents that it shall, at all times, comply with any and all orders, directives, requests and rules and regulations of the Grantor and of each and every municipality, department and/or agency having jurisdiction of the Easement Area or of any work to be performed therein.

10. **No Gratuities.** The Grantee represents and warrants that neither the Grantee nor any official, officer, or employee of Grantee, has offered or given any

gratuity to any official, employee or agent of Grantor, Suffolk County, New York State, any political subdivision thereof or to any political party with the purpose or intent of securing favorable treatment with respect to the awarding or amending of an agreement, or the making of any determinations with respect to the performance of an agreement, and that Grantor has read and is familiar with the provisions of Suffolk County Local Law Number 32-1980.

11. **Execution.** Grantee warrants and represents that its execution of this Easement has been properly authorized. The Easement shall not be of any force or effect until ratified by the Suffolk County Legislature, and approved by the Executive of Suffolk County.

12. **No Waiver.** This Easement is not a waiver by Grantor of any claim for damage or for use of any property not restored promptly, nor a waiver by Grantor of any claim for personal injury. Grantee shall be liable for any such claims based upon its act or omission in connection with its use of the Easement and Grantee agrees to indemnify Grantor and hold it harmless from any such liability.

13. **Warranty of Title.** Grantor covenants that it is seized of the Property and, for itself, its successors and assigns, forever warrants its title thereto and will defend the easements and right-of-ways herein granted, forever, against all lawful claims and demands.

14. **Miscellaneous.** No modification or amendment of this Easement shall be of any force or effect unless in writing executed by both Grantor and Grantee and recorded in the Suffolk County Clerk's Office. This Easement sets forth the entire agreement between Grantor and Grantee relating to the Easement and all subject matter herein, and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

IN WITNESS WHEREOF, the Grantor and Grantee have duly executed this Easement as of the date first above written.

County of Suffolk

**KeySpan Gas East Corporation, d/b/a
National Grid**

By: _____
Name:
Deputy County Executive

By: _____
Name:
Title:

Date: _____

Date: _____

Approved as to Legality:
Christine Malafi, County Attorney

By: _____
Robert A. Braun
Assistant County Attorney

Date: _____

Approved:
Division of Real Estate

By: _____
Name:
Title:

Date: _____

MUNICIPAL ACKNOWLEDGEMENT

STATE OF NEW YORK }

SS:

COUNTY OF SUFFOLK }

On the _____ day of _____ in the year 2009 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgement)

CORPORATE ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the _____ day of _____ in the year 2009 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgement)

Exhibit A

Easement Map or Survey
(attached)

Exhibit B

Description of Easement Area
(attached)

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on

March 8, 2011

and that the same is a true and

correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res.

1095

Res. No.

12A

March 8, 2011

Motion:

Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:

Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:

Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Vilorio-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					/
3	Kate M. BROWNING					
4	Thomas MURATORE					
6						
7	Jack EDDINGTON					
9	Ricardo MONTANO					
10	Thomas CILMI					
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.					
8	William J. LINDSAY, P.O.					
	Totals	16	1	1	1	1

MOTION	
<input checked="" type="checkbox"/>	Approve
<input type="checkbox"/>	Table?
<input type="checkbox"/>	Send To Committee
<input type="checkbox"/>	Table Subject To Call
<input type="checkbox"/>	Lay On The Table
<input type="checkbox"/>	Discharge
<input type="checkbox"/>	Take Out of Order
<input type="checkbox"/>	Reconsider
<input type="checkbox"/>	Waive Rule
<input type="checkbox"/>	Override Veto
<input type="checkbox"/>	Close
<input type="checkbox"/>	Recess
APPROVED <input checked="" type="checkbox"/>	FAILED <input type="checkbox"/>
No Motion <input type="checkbox"/>	No Second <input type="checkbox"/>

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
<input type="checkbox"/> NOT ADOPTED

Tim Laube

Roll Call Voice Vote