

# Attachment A

**Service Agreement No. 2447**

**COST REIMBURSEMENT AGREEMENT**

This **COST REIMBURSEMENT AGREEMENT** (the “*Agreement*”), is made and entered into as of February 19, 2019 (the “*Effective Date*”), by and between **GREENWAY CONSERVANCY FOR THE HUDSON RIVER VALLEY**, a New York State public benefit corporation having an office and place of business at 625 Broadway, 4<sup>th</sup> Floor, Albany New York 12207 (“*Developer*”) and **NIAGARA MOHAWK POWER CORPORATION** d/b/a National Grid, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the “*Company*”). Developer and Company may be referred to hereunder, individually, as a “*Party*” or, collectively, as the “*Parties*”.

**WITNESSETH**

**WHEREAS**, Company and Developer have entered into a License Agreement dated as of November 29th, 2017 with respect to the Developer’s use in connection with the Albany–Hudson Electric Trail (the “*AHET*”) of a portion of certain Company real property located in Rensselaer and Columbia counties (the “*License Agreement*”); and

**WHEREAS**, Developer has requested that Company perform certain work, as more specifically described below, to relocate a portion of Company’s existing facilities, including the Nassau-Hudson #9, 34.5kV sub-transmission line, the Greenbush-Nassau #6 34.5 kV sub-transmission line, and multiple distribution feeders, for the purpose of accommodating Developer’s installation, in connection with the AHET, of the Improvements on the Premises (as such terms are defined in the License Agreement); and

**WHEREAS**, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Developer of all actual Company costs and expenses incurred in connection therewith, (ii) Developer’s acquisition and delivery of certain real property interests as contemplated in this Agreement, (iii) Developer’s performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Developer Required Actions (as defined below); and (iv) receipt of any and all “*Required Approvals*”, as set forth in Section 18.1, in a form acceptable to Company;

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

**1.0 Certain Definitions**

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

“Affiliate” means any person or entity controlling, controlled by, or under common control with, any other person or entity; “control” of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

“Agreement” means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

“AHET” shall have the meaning set forth in the preamble to this Agreement.

“Applicable Requirements” shall mean all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority, NYISO, NYSRC and NPCC requirements, and any applicable reliability standards.

“Balance Amount” shall have the meaning set forth in Section 8.1 of this Agreement.

“Breaching Party” shall have the meaning set forth in Section 21.1 of this Agreement.

“CEIP” shall have the meaning set forth in Section 25.4 of this Agreement.

“CIP” shall have the meaning set forth in Section 25.4 of this Agreement.

“Company” shall have the meaning set forth in the preamble to this Agreement.

“Company Approvals” shall have the meaning set forth in Exhibit A to this Agreement.

“Company Reimbursable Costs” means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Company Work or otherwise incurred by Company and/or its Affiliates in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Company Work or otherwise in connection with the Project, all applicable overhead, overtime costs, all federal, state and local taxes incurred (including, without limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

“Company Work” means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

“Damages” shall have the meaning set forth in Section 12.1 of this Agreement.

“Day” means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

“Defect Notice” shall have the meaning specified in Section 3.2 of this Agreement.

“Developer” shall have the meaning set forth in the preamble to this Agreement.

“Developer Approvals” shall have the meaning set forth in Exhibit C to this Agreement.

“Developer Project” shall mean Developer’s installation of the Improvements on the Premises, as contemplated by the License Agreement.

“Developer Required Actions” means all duties, responsibilities, and obligations to be performed by Developer as contemplated by Section 3.3 of this Agreement.

“Disclosing Party” shall mean the Party disclosing Proprietary Information.

“Dollars” and “\$” mean United States of America dollars.

“Effective Date” shall have the meaning specified in the preamble of this Agreement.

“Environment” shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

“Environmental Due Diligence Procedure” is set forth in Schedule II to this Agreement.

“Environmental Law” shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

“Existing Facilities” shall have the meaning set forth in Exhibit A to this Agreement.

“Existing Facilities Approvals” shall have the meaning set forth in Exhibit A to this Agreement.

“Facilities Approvals” shall mean the New Facilities Approvals and the Existing Facilities Approvals.

“FERC” shall mean the Federal Energy Regulatory Commission.

“FERC Approval Date” shall mean the date as of which FERC grants approval of this Agreement without condition or modification.

“Force Majeure Event” shall have the meaning set forth in Section 23.1 of this Agreement.

“Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to refer to acceptable practices, methods, or acts generally accepted in the region in which the Project is located during the relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC, NYISO, NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities.

“Governmental Authority” means any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over this Agreement or any activities contemplated herein or hereby (including, without limitation, the Company Work and/or the Developer Required Actions), whether in whole or in part.

“Hazardous Substances” means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

“Indemnified Party” and “Indemnified Parties” shall have the meanings set forth in Section 12.1 of this Agreement.

“Initial Prepayment” shall have the meaning set forth in Section 7.2 of this Agreement.

“Improvements” shall have the meaning set forth in the License Agreement.

“IRS” shall mean the US Internal Revenue Service.

“Land Use Approvals” shall have the meaning set forth in Exhibit C to this Agreement.

“Land Use and Permitting Approvals” shall mean the Land Use Approvals and the Facilities Approvals.

“License Agreement” shall have the meaning set forth in the preamble to this Agreement.

“License Agreement Non-Compliance(s)” shall have the meaning set forth in Section 27.5 of this Agreement.

“Negotiation Period” shall have the meaning set forth in Section 18.2(b) of this Agreement.

“NERC” shall mean the North American Electric Reliability Corporation or any successor organization.

“New Facilities” means the personal property assets constituting the facilities to be moved, constructed and/or modified and placed in service by Company to accomplish relocation of the Existing Facilities as contemplated by the Company Work and Exhibit A to this Agreement.

“New Facilities Approvals” shall have the meaning set forth in Exhibit A to this Agreement.

“New Property Rights” shall have the meaning set forth in Exhibit C of this Agreement.

“Non-Breaching Party” shall have the meaning set forth in Section 21.1 of this Agreement.

“Non-Disclosure Term” shall have the meaning set forth in Section 25.3.4 of this Agreement.

“NPCC” shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

“NYISO” shall mean the New York Independent System Operator, Inc. or any successor organization thereto.

“NYPSC” shall mean the New York Public Service Commission.

“NYSRC” shall mean the New York State Reliability Council or any successor organization thereto.

“Party” and “Parties” shall have the meanings set forth in the preamble to this Agreement.

“Preliminary Milestone Schedule” shall have the meaning set forth in Section 5.2 of this Agreement.

“Premises” shall have the meaning set forth in the License Agreement.

“Project” means the Company Work.

“Project Manager” means the respective representatives of each of the Developer and Company appointed pursuant to Section 10.1 of this Agreement.

“Proprietary Information” means (i) all financial, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates’ agents, servants, contractors, representatives, or employees) to the Receiving

Party or its Representative(s) in connection with this Agreement and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

“Real Property Standards” are set forth in Schedule I to this Agreement.

“Quarterly Report(s)” shall have the meaning set forth in Exhibit A to this Agreement

“Receiving Party” shall mean the Party receiving Proprietary Information.

“Refund Amount” shall have the meaning set forth in Section 8.1 of this Agreement.

“Release” shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

“Representatives” shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party’s and its Affiliates’ officers, directors, employees, contractors, counsel and representatives.

“Requesting Party” shall have the meaning set forth in the Real Property Standards.

“Required Approvals” shall have the meaning set forth in Section 18.1 of this Agreement.

“Resources” shall have the meaning set forth in Section 23.1 of this Agreement.

“Threat of Release” shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

“Total Payments Made” shall have the meaning set forth in Section 8.1 of this Agreement.

“Unrelated Company Work” shall have the meaning set forth in Section 18.2(b) of this Agreement.

“Work” shall mean the Developer Required Actions and/or the Company Work, as applicable.

## 2.0 **Term**

- 2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

## 3.0 **Scope of Work**

- 3.1 The Company's scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "Company Work"). This Agreement does not provide for, and the Company Work shall not include, provision of generation interconnection service or transmission service.
- 3.2 The Company shall use commercially reasonable efforts to perform the Company Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of all of the Company Work, Developer shall have the right to notify the Company in writing of the need for correction of defective Company Work that does not meet the standard of this Section 3.2 (each, a "Defect Notice"). If the Company Work is defective within the meaning of the prior sentence, then, following its receipt of a timely Defect Notice with respect thereto, the Company shall promptly correct, repair or replace such defective Company Work, as appropriate, provided, that, Company shall not have any obligation to correct, repair or replace such defective Company Work unless the defect in the Company Work has (or is reasonably likely to have) a material adverse impact on the Developer's implementation of the Developer Project as contemplated by the Parties as of the Effective Date. The remedy set forth in this Section is the sole and exclusive remedy granted or available to Developer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.
- 3.3 Subject to the terms of this Agreement, Developer shall use reasonable efforts to perform the actions described in Exhibit C attached to this Agreement (the "Developer Required Actions"). All of the Developer Required Actions shall be performed at Developer's sole cost and expense. For the avoidance of doubt: all costs and expenses incurred by Company arising from any delay in performance of any Developer Required Action(s), or from any modification thereof, including, without limitation, any delay in securing any New Property Rights and/or Land Use and Permitting Approvals, shall be paid by Developer as part of Company Reimbursable Costs, which costs and expenses may include, without limitation, mobilization/demobilization costs and redesign costs.

- 3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with such other Party's contractors, subcontractors and representatives, as needed to facilitate the Company Work.

#### **4.0 Changes in the Work**

- 4.1 Subject to Section 4.2, below, (a) any Developer requests for material additions, modifications, or changes to the Work shall be communicated in writing by Developer to Company, and (b) if the Parties mutually agree to such addition, modification, or change to the applicable Work, such agreement shall be set forth in a written document signed by both Parties specifying such addition, modification or change. Any additional costs arising from such addition, modification or change to the Work shall be paid by Developer as part of Company Reimbursable Costs.
- 4.2 The foregoing notwithstanding, the Company is not required to notify Developer of, or to obtain the consent or agreement of the Developer for, any change to the Company Work if such change (a) will not materially interfere with Developer's ability to implement the Developer Project as contemplated by the Parties as of the Effective Date, or (b) is made in order to comply with any Applicable Requirement(s), Good Utility Practice, the Company's applicable standards, specifications, requirements and practices, or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable codes and standards. The Preliminary Milestone Schedule shall be adjusted accordingly and any additional costs arising from such change shall be paid by the Developer as part of Company Reimbursable Costs.

#### **5.0 Performance and Preliminary Milestone Schedule; Conditions to Proceed**

- 5.1 If Company Work is performed outside of normal working hours, Developer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Company Work outside of normal working hours if the Company determines, in its sole discretion, that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.
- 5.2 The preliminary project milestone schedule for the Company Work and the Developer Required Actions is set forth in Exhibit B, attached hereto and incorporated herein by reference ("Preliminary Milestone Schedule"). The Preliminary Milestone Schedule is a projection only and is subject to change with or without a written adjustment to such Schedule. Neither Party shall be liable for failure to meet the Preliminary Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the Project.

- 5.3 Commencement of Company Work. Company will proceed with the Company Work promptly following Company's receipt of the Initial Prepayment.
- 5.4 **[Reserved]**
- 5.5 Procurement Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any procurement in connection with the Company Work unless and until all Company Reimbursable Costs invoiced to date have been paid in full to Company.
- 5.6 Construction Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with construction for any portion or component of the Company Work unless and until all of the following conditions have been satisfied:
- (i) Developer has delivered, or arranged to deliver, and Company has received, all real property rights necessary for Company to complete such portion or component of the Company Work, including, without limitation, all New Property Rights required for such portion or component,
  - (ii) all Required Approvals for the Company Work from Governmental Authorities having jurisdiction with respect to this Agreement or the Company Work (including, without limitation, the Company Approvals and the Land Use and Permitting Approvals) have been received, are in form and substance satisfactory to the Company, if received from any such Governmental Authorities, have become final and non-appealable under the relevant governing law and regulations, and commencement of such construction is permitted under the terms and conditions of such Required Approvals,
  - (iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.
- 5.7 Decommissioning Commencement. Company shall not be obligated to proceed with de-energizing, decommissioning or removing the Existing Facilities unless and until all of the following conditions have been satisfied:
- (i) the New Facilities have been completed, energized and placed in commercial operation by the Company,
  - (ii) all Required Approvals for the Company Work (including, without limitation, the Company Approvals and the Land Use and Permitting Approvals) have been received, are in form and substance satisfactory to the Company and, if received from Governmental Authorities, have become final and non-appealable under the relevant governing law and regulations,
  - (iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **[Reserved]**

7.0 **Developer Obligation to Pay Company Reimbursable Costs; Invoicing; Taxes**

7.1 Developer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment and any estimates contained in any Quarterly Report) shall not limit Developer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates.

7.2 Once the FERC Approval Date has occurred, Developer shall provide Company with a prepayment of **\$4,905,713** ("*Initial Prepayment*"), such amount representing Company's current estimate of the Company Reimbursable Costs to perform the Company Work. The Company shall invoice Developer for the Initial Prepayment. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence any Company Work under this Agreement prior to Company's receipt of the Initial Prepayment.

7.3 **[Reserved]**

7.4 Company may invoice Developer, from time to time, for unpaid Company Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments and invoice Developer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice. If any payment due to Company under this Agreement is not made when due, Developer shall pay Company interest on the unpaid amount in accordance with Section 9.1 of this Agreement. In addition to any other rights and remedies available to Company, if any payment due from Developer under this Agreement is not received within five (5) Days after the applicable invoice due date, Company may suspend any or all Work pending receipt of all amounts due from Developer; any such suspension shall be without recourse or liability to Company.

7.5 The Company acknowledges Developer has provided an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Developer ("*Sales Tax Exemption Certificate*"). During the term of this Agreement, Developer shall promptly provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Developer's exemption status. If Developer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Developer.

7.6 **[Reserved]**

- 7.7 Company's invoices to Developer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Developer may designate, from time to time, by written notice to the Company:

Greenway Conservancy for the Hudson River Valley  
Attn: Andy Beers  
Director, Empire State Trail  
625 Broadway, 4th Floor  
Albany, NY 12207  
Phone: (518) 473-3835  
Email: Andy.beers@hudsongreenway.ny.gov

- 7.8 All payments made under this Agreement shall be made in immediately available funds.

Payment instructions: Unless otherwise directed by the Company, all payments made under this Agreement to the Company shall be made by check issued by Developer. Payments to Company shall be mailed to:

National Grid  
PO Box 29805  
New York, NY 10087-29805  
Project: AHET – Path  
Attention: Jen Schlegel

## 8.0 **Final Payment**

- 8.1 Within one hundred and eighty (180) Days following the earlier of (i) the completion of the Company Work, and (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Developer under this Agreement (“*Total Payments Made*”). If the total of all Company Reimbursable Costs actually incurred is greater than the Total Payments Made, the Company shall provide a final invoice to Developer for the balance due to the Company under this Agreement (the “*Balance Amount*”). If the Total Payments Made is greater than the total of all Company Reimbursable Costs actually incurred, Company shall reimburse the difference to Developer (“*Refund Amount*”). The Refund Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 9.1 of this Agreement.

9.0 **Interest on Overdue Amounts**

9.1 If any payment due under this Agreement is not made within ninety (90) days of the invoice date, the Party obligated to make such payment shall pay to the other Party interest on the unpaid amount calculated in accordance with Section 35.19a of the FERC's regulations (18 C.F.R. 35.19a) from and including the due date until payment is made in full.

10.0 **Project Managers; Meetings**

10.1 Promptly following the Effective Date, each Party shall designate a Project Manager responsible for coordinating the Party's Work and shall provide the other Party with a written notice containing the name and contact information of such Project Manager ("Project Manager"). In no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

11.0 **Disclaimer of Warranties, Representations and Guarantees**

11.1 DEVELOPER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO DEVELOPER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE EXISTING FACILITIES, THE NEW FACILITIES, THE PROJECT, OR ANY COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

## 12.0 **Liability and Indemnification**

- 12.1 To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Developer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, an "*Indemnified Party*" and, collectively, the "*Indemnified Parties*"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, for economic damage, and for claims brought by third parties for personal injury, property damage or other damages, incurred by any Indemnified Party to the extent arising out of or in connection with this Agreement, the Project, or any Work (collectively, "*Damages*"), except to the extent such Damages are directly caused by the negligence, intentional misconduct or unlawful act of the Indemnified Party as determined by a court of competent final jurisdiction.
- 12.2 Without limiting the foregoing, Developer shall defend, indemnify and save harmless Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees servants, agents, contractors, and representatives, from and against any and all liabilities, losses, costs, counsel fees, expenses, damages, judgments, decrees and appeals resulting from (i) any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien asserted by any of Developer's contractors, subcontractors or suppliers in connection with any Work, the Developer Project or the Project, or (ii) any claim of trespass, or other third party cause of action arising from or are related to reliance upon or use of the New Property Rights by the Company or any other Indemnified Parties for the purposes contemplated herein.

Without limiting the foregoing, Developer shall protect, indemnify and hold harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates (including, without limitation, the costs consequences of any tax liabilities resulting from a change in applicable law or from an audit determination by the IRS) as the result of or attributable to payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.

- 12.3 To the fullest extent permitted by applicable law, the Company's total cumulative liability for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall not exceed the aggregate amount of all payments made to Company by Developer as Company Reimbursable Costs under this Agreement.
- 12.4 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.
- 12.5 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for claims or damages in connection with or related to this Agreement for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

- 12.6 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: Company shall have no responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or as a result of (a) the inability or failure of Developer or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by Developer under this Agreement (including, without limitation, the Developer Required Actions), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the site(s) where Work is or will be performed, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Developer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any failure or inability of Developer to perform any of its obligations or responsibilities under the License Agreement or to otherwise comply with the terms and conditions thereof, (e) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (f) suspension of Work during peak demand periods or such other times as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

- 12.7 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Developer's insurance.

- 12.8 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

### 13.0 **Insurance; Employee and Contractor Claims**

- 13.1 Prior to the commencement of any Company Work and during the term of the Agreement, the Company, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or the Company may elect to self-insure one or more of the insurance coverage amounts set forth in Exhibit D of this Agreement.

- 13.2 Prior to the commencement of any Work and during the term of the Agreement, the Developer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or Developer may elect to self-insure one or more of such coverage amounts to the extent authorized or licensed to do so under the applicable laws of the State of New York, provided, that, the Developer provides written notice of any such election to the Company prior to the commencement of any Work under this Agreement.
- 13.3 Unless the Developer elects to self-insure in accordance with Section 13.2 hereof, the Developer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to the commencement of any Work under this Agreement.
- 13.4 Each Party shall be separately responsible for insuring its own property and operations.
- 13.5 Anything in this Agreement to the contrary notwithstanding, each Party shall be solely responsible for the claims of its respective employees and contractors against such Party and shall release, defend, and indemnify the other Party, its Affiliates, and their respective officers, directors, employees, and representatives, from and against such claims. Notwithstanding any other provision of this Agreement, this Section shall survive the termination, cancellation, completion or expiration of this Agreement.
- 14.0 **Assignment and Subcontracting**
- 14.1 The Company may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Developer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Developer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Developer shall be independent contractors. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **[Reserved]**

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with its Work or any other activities contemplated by this Agreement. In connection with the performance contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 (“*OSHA*”), as amended from time to time. During the term of this Agreement, the Party owning or controlling the applicable property or facilities shall have the authority to suspend the other Party’s access, work or operations in and around such property or facilities in connection with any performance under this Agreement if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by the other Party’s employees, agents, representatives or contractors in connection with any such performance.

## 18.0 Required Approvals

- 18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform its respective Work under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases (including, without limitation and as applicable, the Land Use and Permitting Approvals and the Company Approvals) from any Governmental Authority (which shall include the FERC and may also include, without limitation and as applicable, the NYPSC) and from any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "Required Approvals"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.
- 18.2 (a) Subject to Section 18.2(b) and Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable (each, a "Failed Approval"), this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Developer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Sections 21.3 and 21.4 hereof) for all Company Reimbursable Costs. For the avoidance of doubt (and anything in this Agreement to the contrary notwithstanding): (i) all of the Company's actual costs in connection with seeking and/or reviewing any Required Approvals shall also be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Developer, and (ii) any failure or inability of Developer to obtain any Required Approval or any other licenses, permits, permissions, certificates, approvals, authorizations, rights, consents, franchises and/or releases from any Governmental Authority, property owner or any other third party that may be required for Developer to implement, construct, operate or maintain the AHET, in whole or in part, shall not excuse Developer's obligation to pay all Company Reimbursable Costs incurred during the term of this Agreement, even if such failure or inability makes or renders any related Company Work performed hereunder without value or use to Developer.

(b) In the event of a Failed Approval, prior to either Party exercising any termination right under Section 18.2(a), the Parties agree to engage in good faith discussions, for a period not to exceed 60 days following the Failed Approval Notice Date (the “*Negotiation Period*”), to (i) determine whether there is any portion of the Company Work that the Parties mutually agree is not impacted by such Failed Approval and that, despite the existence of such Failed Approval, can be fully and lawfully performed, without adverse impact to the Company or its operations, outside the municipality or other jurisdiction that denied, issued or failed to issue the Failed Approval (“*Unrelated Company Work*”) and (ii) seek to negotiate a mutually acceptable amendment of this Agreement to modify the scope of the Company Work, and any other terms of this Agreement, in a manner that would allow continued performance of any such Unrelated Company Work in light of the Failed Approval. Nothing in this Section 18.2(b) shall prevent either Party from exercising any termination right under Section 18.2(a) of this Agreement if required to do so in order to comply with any Applicable Requirement (including, without limitation, to comply with the terms or conditions of any Failed Approval).

- 18.3 If, during the term of the License Agreement, any Governmental Authority informs Company or Developer that any aspect of the Company Work was completed without one or more Developer Approvals or Land Use and Permitting Approvals and that, as a result, additional or modified Required Approvals are necessary to authorize, legalize, maintain and/or complete any aspect of the Company Work (including, without limitation, construction, operation and/or maintenance of the New Facilities or removal and decommissioning of the Existing Facilities) in accordance with Applicable Requirements, Developer hereby agrees to seek and obtain (at its own expense) all such necessary additional or modified Required Approvals in form and substance satisfactory to Company in its sole discretion.

If, during the term of the License Agreement, any Governmental Authority issues a fine, ticket, notice of violation and/or penalty to Company and/or Developer for failure to obtain any Developer Approvals or Land Use and Permitting Approvals, Developer will promptly take all necessary steps to resolve such fine, ticket, notice of violation and/or penalty to Company’s satisfaction, and Developer will pay any such fines or penalties and any other Company costs associated with the resolution of same.

If, during the term of the License Agreement, any Governmental Authority determines that any aspect of Company Work (including, without limitation, construction, operation and/or maintenance of the New Facilities) is not lawful or authorized in its present use, location or configuration and, as a result, must be terminated, removed, modified, relocated and/or reconfigured, nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations. Developer will be responsible for all of Company's costs associated with such work.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

19.1 The Company shall in no event be liable to Developer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on any Developer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or which the Company, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives may discover, release, or generate at or on such properties or facilities through no negligent or unlawful act of the Company, and Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law.

Developer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, members, managers, partners, officers, agents, servants, employees and representatives from and against any and all claims and/or liability in connection with, relating to, or arising out of (i) the presence, discovery, release, threat of release or generation of Hazardous Substances at or on any Developer- or third party- owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property), or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.) in connection with this Agreement, the Company Work or the Developer Project, except to the extent such presence, discovery, release, threat of release, generation or breach is or are directly and solely caused by the negligent or unlawful act of the Company or of any person or entity for whom the Company is legally responsible. The obligations under this Section shall not be limited in any way by any limitation on Developer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the expiration, completion, cancellation or earlier termination of this Agreement.

19.2 Developer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in any Developer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement. Prior to Company's commencement of the Company Work, Developer shall be obligated to use its best efforts (including, without limitation, the use of DIGSAFE or other similar services) to adequately investigate the presence and nature of any such Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, on, under, over, or in any Developer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement and to promptly, fully, and in writing, communicate the results thereof to the Company. Developer's provision to the Company of the information contemplated in this Section shall in no event give rise to any liability or obligation on the part of the Company, nor shall Developer's obligations under this Agreement, or under law, be decreased or diminished thereby.

20.0 **[Reserved]**

21.0 **Right to Terminate Agreement**

21.1 If either Party (the "*Breaching Party*") (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the "*Non-Breaching Party*") shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this Agreement. Subject to compliance with Section 22.1 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be terminated upon prior written notice (i) by Company in the event that Company Work under this Agreement is suspended or delayed for a period exceeding sixty (60) consecutive days as the result of any continuing dispute between the Parties, (ii) by either Party in the event that the License Agreement is terminated, or (iii)

under the circumstances contemplated by, and in accordance with, Section 18.2 of this Agreement.

- 21.3 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts relating to its Work upon terms that are reasonably expected to minimize all associated costs, provided, however, that nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations.
- 21.4 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Developer shall also pay Company for:
- (i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;
  - (ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;
  - (iii) all Company Reimbursable Costs incurred to unwind Company Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;
  - (iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and
  - (v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

## 22.0 **Dispute Resolution**

22.1 Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Following the occurrence of a dispute, each Party shall designate one or more representatives with the authority to negotiate the particular matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the written agreement of both Parties to participate in such an alternative dispute resolution process.

### 23.0 **Force Majeure**

23.1 A “*Force Majeure Event*” shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by any Governmental Authority in approving regulatory, license and/or permit requests necessary in connection with the Company Work or the Developer Required Actions, order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party’s reasonable control. Without limiting the foregoing, a “Force Majeure Event” shall also include unavailability of personnel, equipment, supplies, or other resources (“*Resources*”) due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their, respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties’ continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement; provided, however, that, notwithstanding any such termination, Developer shall pay the Company all of the Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this Agreement.

- 23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.
- 23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **Compliance with Law**

- 24.1 Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance of its Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

25.0 **Proprietary and Confidential Information**

- 25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.
- 25.2 **GENERAL RESTRICTIONS.** Upon receiving Proprietary Information, the Receiving Party) and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Article to the extent caused by its Representatives. Developer agrees that any Proprietary Information will be used solely for the Project and will not be used, either directly or indirectly, for the Developer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

- 25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:
- 25.3.1 is in or enters the public domain, other than by a breach of this Article; or
  - 25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or
  - 25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or
  - 25.3.4 is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the termination or expiration of this Agreement, whichever occurs later (the “Non-Disclosure Term”); or
  - 25.3.5 is disclosed following receipt of the Disclosing Party’s written consent to the disclosure of such Proprietary Information; or
  - 25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law (including, without limitation, by Article 6 of the New York State Public Officers Law), by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party’s efforts to obtain such protective order.

25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include “Critical Energy / Electrical Infrastructure Information” under applicable FERC rules and policies (“*CEII*”) and critical infrastructure protection information as defined under applicable NERC standards and procedures (“*CIP*”). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC regulations, rules, orders, standards, procedures and policies) applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party’s or Disclosing Party’s Affiliates’ facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or CIP to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party’s and its Affiliate’s prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII or CIP status, as applicable, and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party’s obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no longer required to be kept confidential under applicable law, or (iii) the date as of which the Disclosing Party provides written notice to the Receiving Party that such CEII or CIP, as applicable, is no longer required to be kept confidential, whichever is later. With respect to CEII and CIP, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII and CIP, as applicable.

25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

25.6 This Article shall survive any termination, expiration, completion or cancellation of this Agreement.

## 26.0 **Effect of Applicable Requirements; Governing Law**

- 26.1 If and to the extent a Party is required to take, or is prevented or limited in taking, any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).
- 26.2 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine, and applicable Federal law. The Company and Developer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

- 27.1 **NOTICES; FORM AND ADDRESS.** All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered (provided, that, if the date of receipt is not a Day, then the date of receipt shall be deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgment is not a Day, then the date of receipt shall be deemed to be the immediately succeeding Day), (iii) upon the expiration of the third (3<sup>rd</sup>) Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party at the following address:

To Developer:

Greenway Conservancy for the Hudson River Valley  
Attn: Andy Beers  
Director, Empire State Trail  
625 Broadway, 4th Floor  
Albany, NY 12207  
Phone: (518) 473-3835  
Email: Andy.beers@hudsongreenway.ny.gov

With a copy to:

Greenway Conservancy for the Hudson River Valley  
Attn: Scott Keller  
Acting Executive Director  
625 Broadway, 4th Floor  
Albany, NY 12207  
Phone: 518 473-3835  
Email: hrvg@hudsongreenway.ny.gov

To Company:

Niagara Mohawk Power Corporation  
Attn: Ms. Kathryn Cox-Arslan  
Director, Commercial Services  
40 Sylvan Road  
Waltham, MA 02451  
(781) 907-2406  
Email: kathryn.cox-arslan@nationalgrid.com

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

- 27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.
- 27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.
- 27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency or conflict exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

- 27.5 PRIOR AGREEMENTS; MODIFICATIONS; LICENSE AGREEMENT. This Agreement and the schedules, attachments and exhibits attached hereto, together with the License Agreement, constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein, if any. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section. For the avoidance of doubt: nothing in this Agreement shall be deemed to supersede, amend, modify or revise any terms or conditions of the License Agreement and the License Agreement shall remain in full force and effect in accordance with its terms. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the License Agreement, the terms of the License Agreement shall govern and control. Company may elect to suspend performance under this Agreement if Developer or any of its contractors fails to comply with any term(s) or condition(s) of the License Agreement, whether in whole or in part (a “License Agreement Non-Compliance(s)”); in the event that Company suspends performance as contemplated by this sentence, Company shall recommence performance promptly following Developer’s cure of all existing License Agreement Non-Compliances.
- 27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.
- 27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.
- 27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.

- 27.10 COMPANY NOT STATE CONTRACTOR. Company shall not, by virtue of entering into this Agreement, or otherwise taking any action hereunder, be considered a "state contractor" and under no circumstances shall Company be expected or required to comply with or be bound by any practices or policies that apply to Developer in Developer's capacity as a public or quasi-public entity, or to any party deemed to be "doing business" with the State of New York, including, by way of example only, any prevailing wage rules, hiring goals or procurement requirements.
- 27.11 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.

*[Signatures are on following page.]*

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

**GREENWAY CONSERVANCY FOR THE HUDSON RIVER VALLEY**

By:   
Name: Scott Keller  
Title: Acting Executive Director

**NIAGARA MOHAWK POWER CORPORATION**

By:   
Name: Kathryn Cox-Arslan  
Title: Director, Commercial Services

**LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS**

Exhibit A	Scope of Company Work
Exhibit B	Preliminary Milestone Schedule
Exhibit C	Developer Required Actions
Exhibit D	Insurance Requirements
Schedule I	Real Property Standards
Schedule II	Environmental Due Diligence Procedure

## Exhibit A: Scope of Company Work

The term “*Existing Facilities*” means the Company’s Nassau-Hudson #9, 34.5kV sub-transmission line between Nassau Substation and Hudson Substation, Greenbush-Nassau #6 34.5 kV sub-transmission line between Greenbush Station and Nassau Substation, and multiple distribution feeders located in Rensselaer and Columbia Counties, to be relocated as contemplated by this Exhibit to accommodate Developer’s installation, in connection with the AHET, of the Improvements on the Premises.

The term “*New Facilities*” shall mean the personal property assets constituting the facilities and associated items moved, relocated, constructed and/or modified and placed in service by Company to accomplish relocation of the Existing Facilities as contemplated by this Exhibit.

The Company Work shall consist of the following:

1. With the exception of any Land Use and Permitting Approvals (all of which are to be obtained by Developer), Company will prepare, file for, and use reasonable efforts to obtain all required licenses, consents, permissions, certificates, approvals, and authorizations from all Governmental Authorities (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to perform the Company Work (the “*Company Approvals*”).

The term “Company Approvals” shall not include any Land Use and Permitting Approvals; Developer shall be solely responsible for obtaining all Land Use and Permitting Approvals.

2. Subject to Sections 5.5, 5.6 and 5.7 of the Agreement, Company will design, engineer, procure, construct, modify, test and place into service the new Company-owned and/or operated facilities, and the modifications to, and/or relocations of, existing Company-owned and/or operated facilities, including, without limitation, the New Facilities, and decommission, dismantle and remove existing assets and facilities, to accomplish the relocation and replacement of Existing Facilities.

At present, this work is anticipated to include, without limitation, the following:

### *Distribution Feeders*

- Replacement and relocation of 33 distribution poles
- Replacement and relocation of 43 distribution anchors and/or guys
- Removal of existing guys and installation of 9 distribution span guys
- Removal of existing guys and installation of 3 distribution push braces
- Re-attachment or removal of 19 distribution conductors to establish necessary clearance to ground
- Replacement of one street light
- Replacement of Switches/cutout 3
- Replacement/Relocation of 5 residential transformers

*Greenbush-Nassau #6 34.5 kV sub-transmission line*

- Replacement of 5 structures: 124, 125, 146, 148, 97
- Installation of 5 laminated wood structures: 64, 74, 173, 174, 175
- Installation of a push brace on structures 138, 10
- Installation of 4 stub poles: 63S, 96S, 125S, 134S
- Installation of span guys on 4 structures: 63, 96, 125, 134
- Replacement and relocation of guy/anchor on 17 structures: 60, 61, 62, 97, 101, 102, 139, 143, 144, 145, 181, 122, 123, 140, 142, 171, 172
- Replacement of Insulators on 1 structure: 98

*Nassau-Hudson #9, 34.5kV sub-transmission line*

- Replacement of 16 structures: 76, 82, 98, 136, 130, 11, 18, 74, 75, 77, 137, 307, 362, 372, 404, 405
- Install new structure 77.5
- Installation of 2 laminated wood structures: 83, 280
- Installation of 6 push braces on structures: 130, 161
- Installation of 14 stub poles: 1S, 81S, 103S, 105S, 162S, 288S, 289S, 45S, 116S, 129S, 136S, 263S, 264S, 319S
- Installation of span guys on 14 structures: 1, 81, 103, 105, 162, 288, 289, 45, 116, 129, 136, 263, 264, 319
- Removal of guy and anchors on 3 structures: 89, 215, 287
- Replacement and relocation of guy/anchor on 9 structures: 78, 79, 133, 60, 80, 84, 195, 262, and 144 (but keeping anchor)
- Replace insulators on 4 Structures: 10, 12, 17, 138

*General*

- Vegetation clearing, earthwork, grading, and/or excavation.
- Installation of erosion and sediment controls and compliance with any other requirements of permitting authorities or with other Applicable Requirements.
- Access installation.
- Obtain system outages where necessary to conduct all work associated with relocations. For the avoidance of doubt: no outages for the bike path construction are included.

For the avoidance of doubt and without limiting any provision of this Exhibit or the Agreement: the term “Company Work” shall include, without limitation, the

Company's relocation of any of its existing poles or other facilities or assets as determined by Company to be necessary or desirable in connection with the AHET, and the actual costs and expenses thereof shall be included in the Company Reimbursable Costs.

3. Company will conduct project management, administration and oversight activities with respect to the Company's work contemplated by this Exhibit, including, without limitation:
  - Use of a Project Manager and project management team to administer the Company's work under this Agreement and coordinate with Developer in connection with the Developer Required Actions.
  - Coordination of multiple Company and affiliate departments that will support the Company's work.
  - Provide Developer with written quarterly project progress reports to include estimates of project spend and milestone schedule updates ("Quarterly Report(s)").
  - Perform activities including, but not limited to, creation of as-built drawings, property record updates, final invoicing, permit closures, and project closeout.
4. Company will inspect, review, witness, examine and test, from time to time, Company's work contemplated herein.
5. Company will review, from time to time, permitting, licensing, real property, and other materials relating to the work contemplated herein, including, without limitations, all documents and materials related to the New Property Rights and any Required Approvals.
6. Company will retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.
7. Company will perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

The Company Work may be performed in any order as determined by the Company.

The Company Work shall not be deemed to include or incorporate any obligations or responsibilities of Developer, its affiliates or its contractors under the License Agreement and Developer shall be and remain solely responsible for the performance and completion of all such obligations and responsibilities. For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Company Work, the Developer Project or this Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company Work include granting, securing or arranging for Developer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company; any such access rights would be the subject of separate written agreements.

NOTE: Company's specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-751; ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time.

**Exhibit B: Preliminary Milestone Schedule****PRELIMINARY MILESTONE SCHEDULE**

<b>Task</b>	<b>Milestone</b>	<b>Estimated Timeframe</b>	<b>Responsible Party</b>
1.	Execute Agreement	Effective Date	Developer/Company
2.	Commence construction for relocation of the identified New Facilities	March 2019	Company
3.	Complete construction for relocation of the identified New Facilities	August 2019	Company
4.	Complete construction of the Albany–Hudson Electric Trail	December 2020	Developer

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension. The Company does not and cannot guarantee or covenant that any outage necessary in connection with any Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals or the acquisition of New Property Rights are not included in such preliminary schedule. Neither Party shall be liable for failure to meet this Preliminary Milestone Schedule, any milestone date contained or referenced herein, or any other projected or preliminary schedule in connection with this Agreement or the Project.

### Exhibit C: Developer Required Actions

The Developer Required Actions shall consist of the following:

1. Developer shall use reasonable efforts to acquire, at its sole cost and expense, (i) all easements, access rights, rights-of-way, fee interests, and other rights in property necessary to accommodate Company's construction, installation, testing, ownership, use, operation, and maintenance of the New Facilities, any relocation of Existing Facilities, and any other Company Work and (ii) any new, expanded or modified easements, access rights, rights-of-way, fee interests, and other rights in property relating to the Company's existing assets and facilities that Company concludes to be necessary or desirable in connection with the AHET or the Company Work, as determined to Company's satisfaction in its sole discretion (the "New Property Rights"). Developer shall convey, or arrange to have conveyed, to the Company all New Property Rights, each such conveyance to be in form and substance satisfactory to Company in its sole discretion and without charge or cost to Company.
2. Developer acknowledges and agrees that the Company is required to abide by all Applicable Requirements, including, without limitation, any and all permitting, land use, zoning, planning and other such Applicable Requirements. Developer shall prepare, file for, and use reasonable efforts to obtain, on the Company's behalf:
  - (i) all required subdivision, zoning and other special, conditional use or other such land use permits or other related discretionary permits, approvals, licenses, consents, permissions, certificates, variances, zoning changes, entitlements or any other such authorizations from all Governmental Authorities and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities and for Company to decommission, dismantle and remove the Existing Facilities, each in form and substance satisfactory to Company in its sole discretion and without charge or cost to Company (the "Land Use Approvals");
  - (ii) all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all Governmental Authorities (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities, each in form and substance satisfactory to Company in its sole discretion and without charge or cost to Company (the "New Facilities Approvals"); and
  - (iii) all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all Governmental Authorities (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to decommission, dismantle and remove the Existing Facilities, each in form and substance satisfactory to Company in its sole discretion and without charge or cost to Company (the "Existing Facilities Approvals").

3. In undertaking or performing any work required of it under the terms of this Agreement, including, without limitation, securing the New Property Rights and the Land Use and Permitting Approvals, Developer shall comply, at all times, with (i) the Real Property Standards, including, without limitation, performing all obligations of the Requesting Party as contemplated by the Real Property Standards, and (ii) the Environmental Due Diligence Procedure, as each may be updated, amended or revised from time to time. Developer shall coordinate with the Company's Environmental Department; the Company's Project Manager will provide Developer with the name and contact information for an appropriate Company representative in the Company's Environmental Department.
4. Developer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement ("Developer Approvals").
5. If and to the extent applicable to the Company Work, provide complete and accurate information regarding the Developer Project.
6. Other responsibilities and access deemed necessary by Company to facilitate performance of the Company Work.

### Exhibit D: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of New York. If required, coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.
  - Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:
    - (A) Bodily Injury - \$1,000,000/\$1,000,000  
Property Damage - \$1,000,000/\$1,000,000  
OR
    - (B) Combined Single Limit - \$1,000,000  
OR
    - (C) Bodily Injury and Property Damage per Occurrence - \$1,000,000  
General Aggregate & Product Aggregate - \$2,000,000 each
  - Umbrella or Excess Liability, coverage with a minimum limit of \$ 4,000,000.
  - Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.
1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Developer shall provide such certificates or evidence of insurance to Company at the following address:
- To: National Grid c/o Niagara Mohawk Power Corporation  
Attention: Director, Commercial Services  
FERC Jurisdiction  
40 Sylvan Road  
Waltham, MA 02451
- Company shall provide such certificates or evidence of insurance to Developer at the following address:
- To: Greenway Conservancy for the Hudson River Valley  
Attn: Andy Beers  
Director, EmpireState Trail  
625 Broadway, 4th Floor  
Albany, NY 12207  
Phone: (518) 473-3835  
Email: Andy.beers@hudsongreenway.ny.gov
2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.
4. To the extent requested, each Party shall furnish to the other Party copies of any accidents report(s) sent to the furnishing Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work for the Project under this Agreement.
5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.
6. By the date that such coverage is required, each Party represents to the other Party that it will have full policy limits available and shall notify the other Party in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.
7. Developer shall name the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Developer relating to the Project and associated Work.

## Schedule I: Real Property Standards

### 5.0 STANDARDS AND REQUIREMENTS RELATING TO THIRD PARTY ACQUISITION AND TRANSFER OF REAL PROPERTY INTERESTS TO NIAGARA MOHAWK POWER CORPORATION FOR ELECTRIC FACILITIES

#### Note Regarding Application/Reservation of Rights

The standards set forth herein are intended to apply generally in cases where real property interests shall be acquired by third parties and transferred to Niagara Mohawk Power Corporation (“*NMPC*”) in connection with the construction of new electric facilities (the “*New NMPC Facilities*”). *NMPC* advises, however, that it may impose additional or modified requirements in its sole discretion and/or on a case-by-case basis and, therefore, reserves the right to amend, modify or supplement these standards at any time prior to transfer/acceptance. Third parties shall not deviate from these standards unless expressly authorized in writing by *NMPC*, or the terms of the Agreement between *NMPC* and such third party to which these standards are attached expressly provide otherwise.

#### 5.1 General Requirements

Unless otherwise expressly authorized in writing by *NMPC*, a third party requesting relocation of *NMPC* electric facilities and/or responsible for siting and constructing the New *NMPC* Facilities (the “*Requesting Party*”) shall acquire all interests in real property that, in the opinion of *NMPC*, are necessary for the construction, reconstruction, relocation, operation, repair, maintenance, and removal of such Facilities. Further subject to the standards set forth herein, the *Requesting Party* shall obtain *NMPC*’s approval of the proposed site or sites prior to the *Requesting Party*’s acquisition or obtaining site control thereof. As a general rule, except for railroads, public lands and highways, the *Requesting Party* shall acquire a fee-owned right-of-way or a fully-assignable/transferrable easement (each as further described below) for the New *NMPC* Facilities in all cases where *NMPC* will be assuming ownership thereof. The *Requesting Party* shall pay and be solely responsible for paying all costs and expenses incurred by the *Requesting Party* and/or *NMPC* that relate to the acquisition of all real property interests necessary and proper to construct, reconstruct, relocate, operate, repair, maintain and remove, as applicable, the New *NMPC* Facilities. The *Requesting Party* shall pay and be solely responsible for paying all costs associated with the transfer of real property interests to *NMPC*, including, but not limited to, closing costs, subdivision costs, transfer taxes and recording fees. The *Requesting Party* shall reimburse *NMPC* for all costs *NMPC* may incur in connection with transfers of real property interests. Title shall be transferred only after having been determined satisfactory by *NMPC*. Further, *NMPC* reserves the right to condition its acceptance of title until such time as the New *NMPC* Facilities have been constructed, operational tests have been completed, and the New *NMPC* Facilities placed in service (or determined by *NMPC* to be ready to be placed in

service), and the Requesting Party is strongly advised to consult with NMPC's project manager as to the anticipated sequencing of events.

The Requesting Party will be responsible for payment of all real estate taxes (i.e., county, village, city/town and/or school) until such time as title has been transferred to NMPC (allocation of responsibility for payment of real estate taxes following the transfer to be determined on a case-by-case basis).

Prior to such transfer, the Requesting Party shall furnish to NMPC the original costs of any improvements by type/category of property; i.e., conductors, towers, poles, station equipment, etc. These original costs will show year of construction by location of such improvements. This information may be transmitted by NMPC to Federal, State or local governmental authorities, as required by law.

5.1.1 Title Documentation; Compliance with Appropriate Conveyancing Standards

The real property interests necessary for the construction, reconstruction, relocation, operation, repair, maintenance and removal of the New NMPC Facilities shall be conveyed to NMPC in fee simple (by warranty deed) or by fully-assignable/transferable easement approved by NMPC, with good and marketable title free and clear of all liens, encumbrances, and exceptions to title for a sum of \$1.00. With respect to any approved conveyance of easements, the Requesting Party shall subordinate pertinent mortgages to the acquired easement rights. The Requesting Party shall indemnify, defend, and hold harmless NMPC, its agents and employees, officers, directors, parent(s) and affiliates, and successors in interest, from all liens and encumbrances against the property conveyed. The Requesting Party further agrees to provide to NMPC a complete field survey (with iron pin markers delineating the perimeter boundaries of the parcel or the centerline of the entire right-of-way in the case of an electric transmission line), an abstract of title (of at least 40 years or such longer period as may be required by NMPC on a case-by-case basis), and a 10-year tax search for real property interests to be transferred to NMPC. The Requesting Party shall be required to provide NMPC with a title insurance commitment with a complete title report issued by a reputable and independent title insurance company for any real property rights in fee or easement that are to be transferred to NMPC. At the time of the transfer of such interests to NMPC, the Requesting Party shall provide a title insurance policy naming NMPC as the insured covering the real property interests, in fee or easement, that are to be transferred to NMPC.

The Requesting Party shall provide such title documentation and title insurance as shall be required by the NMPC real estate attorney assigned to review and close the transfer of ownership from the Requesting Party to NMPC. The Requesting Party shall request direction from such attorney with respect to preparation of abstracts of title, title insurance commitments and policies, and preparation of boundary surveys that comply with ALTA/ACSM Land Title Survey Standards and which must conform to proposed legal descriptions. The Requesting Party will be provided legal forms which include acceptable language and format for title transfer. Title shall be determined satisfactory by the NMPC real estate attorney in his or her sole discretion.

Title requirements of NMPC shall be of a reasonable nature and consistent with legally sound title practice in the applicable jurisdiction. Without limiting the foregoing, title shall not be encumbered by any liens or encumbrances superior to or on par with any applicable lien of NMPC's indentures or otherwise deemed objectionable by the NMPC real estate attorney so assigned. All title insurance fees and premiums (including, without limitation, costs of title insurance policy endorsements) shall be paid by the Requesting Party at or prior to the date of transfer.

The Requesting Party shall provide to NMPC conformed copies of all necessary real property interests not prepared by, or directly for, or issued to NMPC.

5.1.2 Forms

The Requesting Party shall use NMPC-approved forms (including form subordination agreements) for obtaining, recording and transferring fee-owned right-of-way and easements. Proposed changes to such forms shall be discussed with and agreed upon with the assigned NMPC real estate attorney.

**5.2 Areas Where Easements/Permits Are Acceptable**

5.2.1 Railroads

Where the New NMPC Facilities shall cross railroads, the Requesting Party shall obtain railroad crossing permits or other standard railroad crossing rights prior to constructing the crossing.

5.2.2 Public Land

Where the New NMPC Facilities shall cross public land, the Requesting Party shall obtain an easement for the crossing and/or any permits necessary to construct, operate and thereafter maintain such Facilities.

5.2.3 Highways and other Public Roads

Where the New NMPC Facilities shall cross highways or other public roads, the Requesting Party shall obtain crossing permits, easements, or other standard highway crossing rights prior to constructing the crossing, from the agency or agencies authorized to issue such rights.

5.2.4 Off Right-of-Way Access

In all cases, the Requesting Party shall obtain access/egress rights to the New NMPC Facilities acceptable to NMPC. Where construction and maintenance access along the fee-owned or easement strip is not possible or feasible, the Requesting Party shall obtain easements for off right-of-way access and construct, where necessary, permanent access roads for construction and future operation and maintenance of the New NMPC Facilities. NMPC will review the line route for maintenance access and advise the Requesting Party of locations requiring permanent off right-of-way access. The Requesting Party shall obtain permanent easements and construct the permanent maintenance access roads. Typically, a width easement of 25 feet maximum shall be obtained for off right-of-way access, but the dimensions shall be per NMPC requirements on a case-by-case basis.

The Requesting Party shall obtain all necessary rights of access and licenses, including adequate and continuing rights of access to NMPC's property, as necessary for NMPC to construct, operate, maintain, replace, or remove the New NMPC Facilities, to read meters, and to exercise any other of its obligations from time to time. The Requesting

Party hereby agrees to execute any such further grants, deeds, licenses, assignments, instruments or other documents as NMPC may require to enable it to record such rights-of-way, easements, and licenses.

#### 5.2.5 Temporary Roads

The Requesting Party shall obtain temporary easements for access roads which are necessary for construction, but not for future operation and maintenance of, the New NMPC Facilities. NMPC shall concur with respect to any temporary roads being acquired versus permanent roads. If any disagreements occur with respect to the type of road being needed, NMPC's decision shall be final. In the event NMPC determines that permanent roads will not be required for operation and maintenance (including repair or replacement), easements for temporary roads shall not be assigned or otherwise transferred to NMPC by the Requesting Party.

#### 5.2.6 Danger Trees

If it is determined that the fee-owned or principal easement strip is not wide enough to eliminate danger tree concerns, the Requesting Party shall obtain additional permanent easements for danger tree removal beyond the bounds of the principal strip. The additional danger tree easement rights may be general in their coverage area, however if a width must be specified, NMPC Forestry shall make that determination but in no case shall less than 25' feet be acquired beyond the bounds of the principal strip.

#### 5.2.7 Guy and Anchor Rights

The Requesting Party shall obtain an additional permanent fee-owned strip or easement for guys and anchors when the fee-owned or principal easement strip is not wide enough to fully contain guys, anchors and, other such appurtenant facilities.

### 5.3 **Dimensions**

Dimensional requirements with respect to electric station/substation facilities will vary on a case-by-case basis. In all cases, however, the Requesting Party shall obtain sufficient area to allow safe construction, operation and maintenance of the New NMPC Facilities, in conformity with applicable land use and environmental laws, rules and regulations, including, without limitation, bulk, setback and other intensity requirements of applicable zoning ordinances, subdivision regulations, and wetlands setback requirements. Basic width for the fee-owned or easement strip for 115kV transmission lines shall be 100 feet, with the transmission facility constructed in the center of the strip. NMPC will advise the Requesting Party if there will be any additional right-of-way requirements. This requirement may be modified by the agreement of the parties as the scope of the project is further developed or if there are changes to the project. Where extreme side-hill exists, additional width beyond the 25 feet may be required on the uphill side of the strip to allow additional danger tree removal.

Where guyed angle structures are to be installed, additional fee strip widths or permanent easement shall be obtained by the Requesting Party on the outside of the angle to provide for installation of guys and anchors within the fee-owned strip or permanent easement. The width of the additional strip shall be a minimum of 25 feet. The length of the strip shall be sufficient to assure that all guys and anchors will fall within the fee-owned strip. A 125' strip will then be typically required.

#### **5.4 Eminent Domain**

If condemnation in NMPC's name is required, the Requesting Party shall contact NMPC's project manager for additional details on any assistance NMPC may provide. Typically, the Requesting Party shall prepare all acquisition maps, property descriptions and appraisals. Contact shall be made with NMPC's surveyor, right-of-way supervisor and legal department, and all requirements shall be closely followed. The Requesting Party shall also prepare an Environmental Assessment and Public Need report (Environmental Impact Statement or equivalent) and any other report or reports which may be required. A certified survey may also be required. NMPC must approve the Requesting Party's attorney for all condemnation hearings and proceedings. NMPC participation in such proceedings will be required at the Requesting Party's sole cost and expense. The Requesting Party shall contact NMPC attorneys prior to undertaking any condemnation proceedings for proper procedures to follow. To the extent legally permissible, NMPC reserves the right to refuse the use of condemnation by the Requesting Party (if the Requesting Party has the legal authority to commence and conduct an eminent domain proceeding), or by itself, in its sole discretion.

#### **5.5 Use of Existing NMPC Right-of-Way**

Existing NMPC right-of-way will not be available for use for the New NMPC Facilities unless NMPC Engineering, Planning and Operating departments agree to the contrary. The Requesting Party will pay a mutually acceptable cost to use such lands if NMPC gives internal approval.

#### **5.6 Public Right-of-Way**

If the Requesting Party must use public right-of-way for the New NMPC Facilities, the Requesting Party shall arrange for and reimburse NMPC and/or other utilities for any relocation which may be necessary.

#### **5.7 General Environmental Standards**

The Requesting Party agrees that, prior to the transfer by the Requesting Party of any real property interest to NMPC, the Requesting Party shall conduct, or cause to be conducted, and be responsible for all costs of sampling, soil testing, and any other methods of investigation which would disclose the presence of any Hazardous Substance which has been released on the Property or which is present upon the Property by migration from an external source, and which existed on the Property prior to the transfer, and shall notify

NMPC in writing as soon as reasonably practicable after learning of the presence of Hazardous Substance upon said Property interest. The Requesting Party agrees to indemnify, defend, and save NMPC, its agents and employees, officers, directors, parents and affiliates, harmless from and against any loss, damage, liability (civil or criminal), cost, suit, charge (including reasonable attorneys' fees), expense, or cause of action, for the removal or management of any Hazardous Substance and relating to any damages to any person or property resulting from presence of such Hazardous Substance. The Requesting Party shall be required, at its sole cost and expense, to have a Phase I Environmental Site Assessment ("Phase I ESA") conducted on any such property which may be legally relied upon by NMPC and which shall be reviewed and approved by NMPC prior and as a condition to transfer. NMPC further reserves the right, in its sole discretion, to require that the Requesting Party have a Phase II Environmental Site Assessment conducted on any such property, also at the Requesting Party's sole cost and expense, if NMPC determines the same to be necessary or advisable, which (if required) shall be reviewed and approved by NMPC prior and as a condition to transfer.

## **5.8 Indemnity**

The Requesting Party shall be responsible for defending and shall indemnify and hold harmless NMPC, its directors, officers, employees, attorneys, agents and affiliates, from and against all liabilities, expense (including litigation costs and attorney's fees) damages, losses, penalties, claims, demands, actions and proceedings of any nature whatsoever for construction delays, construction or operations cessations, claims of trespass, or other events of any nature whatsoever that arise from or are related to an issue as to the sufficiency of the real property interests acquired or utilized by the Requesting Party for the construction, reconstruction, relocation, operation, repair, and maintenance of the New NMPC Facilities.<sup>1</sup> In no event shall NMPC be held liable to the Requesting Party or third parties for consequential, incidental or punitive damages arising from or any way relating to an issue as to the sufficiency of the real property interests acquired or utilized by the Requesting Party (including, but not limited to, those real property interests from NMPC) for the construction, reconstruction, relocation, operation, repair, and maintenance of the New NMPC Facilities.

**Schedule II: Environmental Due Diligence Procedure**

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<b>Environmental Due Diligence</b>	Date:	08/07/08

## FOREWORD

National Grid is committed to conducting business in a manner that preserves the quality of the environment by continuously seeking ways to minimize the environmental impact of past, present and future operations. We believe that aggressively addressing environmental issues is good business and in the best interest of the communities we serve, our employees, our shareholders, and all our other stakeholders. It is also in the best interest of National Grid stakeholders to minimize, to the extent practical, environmental exposure to the corporation.

National Grid will promote continual improvement in our environmental management systems (EMS) and environmental performance and will develop internal standards to guide activities when no appropriate laws or regulations exist. This Environmental Procedure (EP) No. 19 was developed to document the due diligence procedures utilized by National Grid in the course of property management and transactions.

Questions or inquiries regarding information provided in this chapter should be referred to the Director of Environmental Management, New England, New York-North, New York-South or Generation/LIPA.

Approved by David C. Lodemore  
Vice President, Environmental

### Record of Change

Date of Review/Revision:

Revision	Date	Description
0	04/01/06	Initial Issue
1	01/15/07	Change in requirements for due diligence.
2	08/07/08	Change in requirements for due diligence.
3		
4		
5		
6		

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## 1.0 OBJECTIVE

This chapter outlines the appropriate level of environmental due diligence that National Grid performs for the transaction of properties. The work practices contained in this Environmental Procedure are consistent with those contained in ASTM International Standards and “All Appropriate Inquiry” federal legislation.

## 2.0 DEFINITIONS

*Property:* Real property including, but not limited to, electrical facilities, gas facilities, substations, office buildings, operations centers, staging areas, vacant land and rights-of-way (ROWS).

*Property Transaction:* Property transactions are defined to include:

- The sale or lease of a National Grid-owned property to a third party;
- The termination of a lease for a property currently leased by National Grid from a third party;
- The purchase or lease by National Grid of a property from a third party; and,
- Entering into an easement for a transmission or subtransmission right-of-way corridor or utility facility.

## 3.0 DUE DILIGENCE PROCESS

All environmental due diligence activities in support of a property transaction must be coordinated through the Environmental Department with support from the Legal Department and Property Assets Departments. The level of due diligence, which should be commensurate with the transaction and its potential risk, may range from a site walk to a Phase II ESA. The due diligence should be conducted early in the property management process since the results of the due diligence could impact property management decisions. The due diligence must be conducted by Environmental Department personnel and/or by a qualified environmental consultant under the direction of the Environmental Department.

A Phase I due diligence must gather all readily available information on the property’s environmental conditions using the following steps:

### 3.1 Records Review

Records that are readily available regarding current and past facility operations should be reviewed. Information that should be researched may include but not be limited to:

- Oil-filled equipment management;
- Use of hazardous materials;
- Former aboveground or underground storage tank locations;
- Presence of dry wells or other underground injection structures;
- A determination regarding whether an environmental deed restriction has been placed on the property;

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- Former pole storage locations;
- Information regarding the facility's historic use;
- Spill history/records;
- Facility drawings;
- Company archives;
- Facility documents and reports (e.g., asbestos surveys); and,
- Other site-specific information.

### **3.2 Interviews with Knowledgeable Personnel**

Personnel that are knowledgeable regarding current and former facility operations should be interviewed. For National Grid owned or operated properties, current employees should be interviewed. If current employees are unable to provide sufficient information regarding past operations, former employees should be interviewed.

### **3.3 Site Inspection/Data Collection**

A site inspection should be conducted of the facility. Items to be noted may include but not be limited to:

- Aboveground or underground storage tanks;
- Stained soils or concrete;
- Current location of oil-filled equipment storage;
- Unusual odors;
- Groundwater monitoring wells;
- Drywells, catch basins, drainage swales;
- Soil/material stockpiles;
- Waste storage areas;
- Asbestos-containing materials;
- Wastewater treatment;
- Adjacent property usage;
- Presence of hydraulic equipment; and,
- Stressed vegetation.

The collection of samples for analysis is not required for all property transactions. In cases where National Grid is not the current owner or operator of the property, samples may only be collected with the written permission of the current property owner. Based on the records review, site inspection, interviews, and data collection, the Environmental Department shall determine whether sample collection is appropriate. Other factors to consider include:

- Facilities with limited operational histories (e.g., office work, transmission line ROW) generally will not require the collection of samples.
- Facilities with current and/or former oil-filled equipment storage areas, waste management areas, gas liquid storage areas, or hazardous waste storage areas

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generally will require sample collection. The Environmental Department will determine the suite of parameters for laboratory analysis.

- Facilities with former locations of aboveground or underground storage tanks generally will require sample collection if insufficient documentation exists regarding the previous tank closure.
- Facilities with current and/or former utility equipment storage locations (e.g., pole storage, mercury regulator storage, oil-filled equipment storage) generally will require sample collection.

### **3.4 Due Diligence Documentation**

A written report of the results of the environmental due diligence must be developed under the direction of the Environmental Department. The report must state a conclusion regarding whether environmental contamination was observed or is potentially present at the facility. If remedial actions were undertaken, the report must document the conduct of the remedial actions and the environmental conditions present post-remediation. Prior to finalization, the report must be reviewed by both the Environmental and Legal Departments (Environmental Counsel). The written report must be distributed to the requesting party (i.e., Facilities, Property Assets), the Environmental Department and the Legal Department (Environmental Counsel).

### **3.5 Environmental Department Recommendation**

The Environmental Department, utilizing the information gathered by the due diligence effort and documented in the due diligence report, must make a written recommendation regarding the proposed property transaction. The recommendation shall include a general assessment of liability exposure that may be incurred through execution of the transaction. The recommendation must be distributed to the requesting party (i.e., Facilities, Property Assets) and the Legal Department (Environmental Counsel).

## **4.0 MINIMAL ACTIONS FOR PROPERTY TRANSACTION INVOLVING THE DISCONTINUATION OF NATIONAL GRID OWNERSHIP OR OPERATIONS**

Regardless of the presence or absence of contamination, the following actions must be completed prior to property transaction:

- All underground storage tanks and above ground storage tanks must be removed.
- The integrity of all underground hydraulic lifts must be evaluated. If the property is slated to be demolished either by National Grid or the future property owner, the underground hydraulic lifts shall be removed.
- All groundwater monitoring wells must be properly closed unless prohibited by the applicable regulatory agency.
- All non-operational utility equipment must be removed.

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## **5.0 DIVERGENCE FROM THE GUIDANCE CONTAINED IN THIS CHAPTER**

The Vice President of Environmental has the authority to approve divergence from the guidance contained in this Environmental Procedure. Such decisions will be made on a case-by-case basis taking into account site-specific conditions.

## **6.0 COORDINATION WITH PROSPECTIVE BUYERS OF NATIONAL GRID PROPERTIES**

Prospective buyers of National Grid property have the right to conduct, at their own expense, an environmental assessment. It is in the buyer's best interest to perform a due diligence inquiry in order to obtain exemption from liability under Federal and State Superfund laws. National Grid may share environmental information related to the subject property with the prospective buyer under a signed confidentiality agreement, however the buyer may not rely on this information solely in meeting their due diligence requirement. National Grid must have the right to receive a copy of the environmental assessment report from the prospective buyer. Any sharing or dissemination of information between parties should be coordinated by the Law Department.

When dealing with a prospective buyer of National Grid property, no verbal representations or warranties should be made by Company personnel with respect to the environmental status of the property. Any written representations should be reviewed by the Law Department prior to release to a prospective buyer.

National Grid should always cooperate with a prospective buyer in the performance of their environmental assessment. A letter of consent or other form of access agreement will be required for site access. The form of the agreement will be determined by the Environmental Department in consultation with the Legal Department. The Law and Environmental Departments should be contacted in advance of sharing environmental information to the buyer. Work products generated by the prospective buyer for National Grid property should be made available for review by the Environmental and Law Departments.

## **7.0 POST-TRANSACTION REQUIREMENTS**

Upon completion of the transaction, the Environmental Department must be notified. The following information, as appropriate, should be provided:

- Date of closing;
- Name of new owner;
- Address of new owner; and,
- Copies of all reports and documents generated by the transaction.

For sale of National Grid facilities with an EPA Generator ID, the Environmental Department will notify the EPA of the sale transaction and the new owner. Environmental will also determine whether any other state and/or federal permits or registrations require closure or transfer.