

ATTACHMENT E

**INDEMNIFICATION AND REIMBURSEMENT AGREEMENT BETWEEN CON
EDISON AND TRANSCO FOR THE GOETHALS SUBSTATION**

INDEMNIFICATION AND REIMBURSEMENT AGREEMENT

This **INDEMNIFICATION AND REIMBURSEMENT AGREEMENT** (as the same may be amended in accordance with the terms hereof, this “**Agreement**”), dated as of May 24, 2016 (the “**Effective Date**”), is by and between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation having its principal offices at 4 Irving Place, New York, New York 10003 (“**Con Edison**”) and NEW YORK TRANSCO LLC, a New York limited liability company having its principal offices at c/o Consolidated Edison Transmission, LLC, 4 Irving Place, New York, New York 10003 (“**Transco**”; together with Con Edison, the “**Parties**” and each, a “**Party**”).

RECITALS

WHEREAS, on the date hereof, Con Edison sold to Transco and Transco acquired from Con Edison (the “**Acquisition**”), substantially all of the assets comprising the capital transmission project known as the “Staten Island Unbotting Project - Phase 1” project (the “**SIU Project**”), pursuant to the terms of that certain Asset Purchase Agreement by and between the Parties dated January 7, 2016 (the “**Acquisition Agreement**”); and

WHEREAS, pursuant to the Acquisition, Transco also acquired the economic interest in certain attachment facilities and substation upgrade facilities (the “**Goethals SUF**”) located at the substation located in Goethals, New York (the “**Goethals Substation**”) identified on **Exhibit A** hereto; and

WHEREAS, the Parties desire to enter into this Agreement, to (i) evidence Con Edison’s acceptance of compliance responsibility as the registered Transmission Owner under all applicable reliability rules of North American Electric Reliability Corporation (“**NERC**”) with respect to the Goethals SUF and (ii) provide for, among other things, (a) indemnification of Con Edison by Transco for NERC assessed penalties resulting from any failure of such compliance with respect to the Goethals SUF, and (b) the payment by Transco of all operation and maintenance expenses allocable to the Goethals SUF that are incurred by Con Edison, in each case on the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual representations, warranties, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows.

1. Assumption of NERC Compliance Responsibility: Con Edison shall be solely responsible for complying, and hereby expressly agrees to assume sole responsibility to comply, with all NERC Standards applicable to the Goethals SUF. In furtherance of the foregoing, Con Edison, as it relates to the Goethals SUF, represents and warrants to, and covenants and agrees with, Transco that Con Edison has, on or prior to the date hereof,

registered, and will at all times during the Term maintain such registration, as the Transmission Owner and will not de-register as the Transmission Owner, with NERC of the Goethals SUF.

2. Notice of Violation. In the event Con Edison receives a notice of possible violation (an “NPV”) from Northeast Power Coordinating Council (“NPCC”) associated with the Goethals SUF or if Con Edison identifies a possible violation associated with the Goethals SUF for which it is self-reporting to NPCC, which carries the possibility of financial penalties as to which Con Edison would seek indemnification hereunder, Con Edison shall notify Transco of such NPV in writing (which may be via email) as soon as practicable. Transco may, in its sole discretion, participate in any investigation conducted by Con Edison to determine the cause of the NPV.
3. NERC Compliance Indemnification. To the fullest extent permitted by applicable Law (as defined in that certain Operations & Maintenance Agreement by and between Transco and Con Edison’s affiliate, Orange & Rockland Utilities, Inc., of even date herewith (the “O&M Agreement”)), Transco agrees to indemnify and hold harmless Con Edison, its affiliates (other than Transco and its members), and its and their respective members, trustees, directors, managers, officers, employees, agents and representatives (collectively, “Con Edison Indemnitees”) from and against any and all NERC assessed financial penalties (collectively, “Penalties”) suffered, sustained or incurred by Con Edison or any Con Edison Indemnitee, together with defense costs incurred by Con Edison or any Con Edison Indemnitee with respect thereto (including attorneys’ fees and costs of experts (collectively, “Defense Costs”) to the extent arising out of, relating to or resulting from any failure of compliance with any applicable NERC reliability requirements with respect to the Goethals SUF, except to the extent such Penalties and Defense Costs (i) result solely from the grossly negligent, fraudulent, or intentionally wrongful acts or omissions of Con Edison or any Con Edison Indemnitee, or (ii) are attributable to a systemic issue not directly related to the Goethals SUF. For purposes of clarity, the indemnification herein provided in respect of violations or alleged violations that affect both the Goethals SUF and other Goethals Substation assets shall be apportioned based on how the number of Goethals SUF impacted compares to the total number of functionally equivalent Goethals Substation assets impacted. Con Edison shall assume the defense of any claim subject to indemnification hereunder with counsel chosen by Con Edison and reasonably acceptable to Transco. Transco shall pay its pro-rata costs of Con Edison’s counsel and experts and will have the opportunity to participate in the defense of the claim with its own counsel and at its own expense; provided, however, that if both Parties are named in the action and their joint representation by the same counsel would be inappropriate due to a conflict of interest, then each Party shall bear the costs of its own counsel.
4. Compliance Audit. Transco shall have the right, but not the obligation, to conduct audits with respect to Con Edison’s compliance with NERC Standards applicable to the Goethals SUF. Con Edison agrees to cooperate with such audits and, upon request, provide Transco (or Transco’s agents, subject to Con Edison’s reasonable approval) with access to and/or copies of all records kept in connection with Con Edison’s compliance activities with respect to the Goethals SUF. Such audit and requests for records shall be subject to 30 days’ advance notice, unless otherwise required by NERC / NPCC or any

unplanned external investigation that involves the Goethals SUF.

5. Operation and Maintenance. Con Edison shall operate and maintain the Goethals SUF in a commercially reasonable manner, consistent with Good Utility Practice and in accordance with applicable Law. Without limiting the foregoing, Con Edison agrees that it will perform the same tasks and services (with equivalent quality and frequency) in relation to the Goethals SUF as it performs in relation to other Con Edison-owned assets in the Goethals Substation of like kind. Con Edison further agrees to allow Transco to witness the performance of any material task, including the conduct of any audit, spot check, test or repair (subject, in all cases, to Transco's compliance with Con Edison's security, safety, reliability and operational requirements).
6. Annual Maintenance Plan. Con Edison shall provide Transco, for its review, an Annual Maintenance Plan for the operations and maintenance ("O&M") of the Goethals SUF. Such Annual Maintenance Plan shall be provided to Transco for its review no later than August 31 of each year of the Term. Transco shall have the right to request Con Edison perform additional operations and maintenance services in connection with the Goethals SUF that Transco deems necessary to ensure NERC compliance, provided that Transco pays the costs incurred thereby pursuant to the further provisions of this Agreement. The Initial Maintenance Plan, which will govern the period commencing on the Effective Date through December 31, 2016, is attached as **Exhibit B**.
7. Annual Budget. During the Term, Con Edison shall prepare for Transco's review and approval a Budget for the operations and maintenance of the Goethals SUF. The proposed Budget shall be provided to Transco for its review and approval no later than August 31 of each year. The Initial Budget, which will govern the period commencing on the Effective Date through December 31, 2016, is attached as **Exhibit C**.
8. Obligation to Pay O&M Expenses. During the Term, Transco shall pay all Direct Costs and Indirect Costs (as defined in the O&M Agreement) incurred by Con Edison to operate and maintain the Goethals SUF in accordance with this Agreement, including, without limitation, costs incurred to comply with applicable Law, including Environmental Law, and to conduct any Remediation, restoration or corrective action in connection with any Release or compliance with Environmental Law, in each case to the extent caused by or directly relating to the Goethals SUF and first occurring on or after the Effective Date (each such capitalized term having the meanings ascribed thereto in the Lease) (the "**O&M Expenses**").
9. Calculation of O&M Expense. Calculation of O&M Expenses payable by Transco hereunder shall be determined based upon the costs incurred by Con Edison at the Goethals Substation to operate and maintain the Goethals SUF; provided that (i) property tax attributable to the Goethals SUF will be based on the ratio of gross book value of the Goethals SUF compared to the gross book value of the Goethals Substation (determined by reference to Con Edison's most recent filing with Office of Real Property Tax Services) and (ii) property insurance attributable to the Goethals SUF will be determined as the product of electric property insurance cost multiplied by a fraction, the numerator of which is the book value of the Goethals SUF and the denominator of which is the book value of total electric station and structure plant in service (as calculated from data

provided in Con Edison's most recent FERC Form 1 report). The calculation of O&M Expense payable by Transco from the Effective Date through December 31, 2016 is set forth in the Initial Budget attached as **Exhibit C**.

10. Recovery of Costs from Con Edison. In the event any O&M Expense agreed to and paid by Transco hereunder is determined by FERC to be unjust and unreasonable and not eligible for rate recovery by Transco, Con Edison will specify a new rate, term or condition that is just and reasonable and not unduly discriminatory or preferential and that is thereafter to be used. Subject to any FERC order to the contrary, all prudently occurring costs prior to a FERC decision are fully reimbursable.
11. Invoicing and Payment. Con Edison shall invoice Transco monthly, in arrears or otherwise in accordance with Con Edison's normal billing practices, for all costs payable hereunder. All invoices shall be in reasonable detail and shall be accompanied by all reasonably necessary supporting documentation. Transco shall pay all conforming invoices within thirty (30) days of receipt by wire transfer to an account designated in writing by Con Edison, or by such other means as Con Edison shall specify. Undisputed amounts not timely paid shall incur a finance charge accruing at the prime rate of interest (as announced by the Wall Street Journal from time to time) plus 2% per year.
12. Financial Audit. Transco shall have the right, but not the obligation, to conduct an annual audit with respect to the O&M Expenses. Con Edison agrees to cooperate with such annual audit and, upon request, provide Transco or its agents with access to all records and books kept in connection with the O&M Expenses.
13. Limitation of Liability. Con Edison shall not be liable to Transco hereunder except to the extent of arising from or related to (i) the gross negligence, fraud or willful misconduct of Con Edison or any of its affiliates (other than Transco, non-Con Edison controlled members of Transco, and such members' respective affiliates), and its and their respective members, trustees, directors, managers, officers, employees, agents and representatives (each, a "Con Edison Party") and (ii) acts of discrimination, harassment, retaliation, defamation or other intentional torts committed by Con Edison or any Con Edison Party. In any event, Con Edison's liability hereunder for each event giving rise to such obligation shall be limited to the total of net payments received by Con Edison during the 12 month period preceding the event giving rise to such liability. Neither Party shall be liable to the other under this Agreement for any indirect, special, incidental, special, lost profit, or other consequential damages arising from performance or lack of performance hereunder, regardless of whether such damages are claimed based on contract, warranty, tort (including negligence), strict liability or other legal or equitable principle, or were reasonably foreseeable, or whether the Parties were advised of the possibility of such damages.
14. Term. The term of this Agreement (the "**Term**") shall commence upon the date hereof and expire on the date on which Transco no longer has the Goethals SUF investment in rate base, unless earlier terminated by the mutual written agreement of the Parties. Neither the expiration nor termination of this Agreement shall relieve the Parties of any of its obligations accruing prior to such expiration or termination.

15. Dispute Resolution. In the event of a dispute hereunder, the Parties shall follow the dispute resolution procedure set forth in Article XIV of the O&M Agreement, the provisions of which are hereby incorporated by reference herein as though fully set forth herein, provided that all references to “Provider” and “Owner” shall be read as Con Edison and Transco, respectively.
16. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without giving effect to any choice of law rules or provisions that would cause the application of the laws of any jurisdiction other than the State of New York and without regard to any rule requiring construction against the Party drafting this Agreement.
17. Waiver of Trial by Jury; Jurisdiction. The Parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matter arising out or related to this Agreement, and irrevocably submit to the jurisdiction of the courts of the United States or of the State of New York located in the City and County of New York in connection therewith. Each Party waives any objection to venue in the State of New York.
18. Assignments. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld, delayed or conditioned, except that either Party may assign its rights or obligations hereunder to a purchaser of all or substantially all of its assets who agrees in writing to assume and be bound by the provisions of this Agreement, *provided, however,* that in the case of an assignment by Transco, the proposed assignee is: (i) a reputable entity having a net worth computed in accordance with generally accepted accounting principles which evidences, in Con Edison’s reasonable discretion, the assignee’s financial ability to meet its obligations hereunder, and (ii) not entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in, and the jurisdiction of the courts of, New York State, and (iii) is qualified to become and becomes a tenant under the Lease.
19. Headings. The descriptive headings used in this Agreement are for convenience of reference only and do not constitute part of this Agreement.
20. Amendments; No Waiver. This Agreement may not be amended, nor shall any waiver be effective, except by an instrument in writing signed by both Parties (or, in the case of a waiver, the Party against whom the waiver is sought to be effective). No course of dealing, or failure or delay by either Party in exercising any right provided for herein will be deemed a waiver of such right or any subsequent right hereunder.
21. Entire Agreement. This Agreement, together with the other documents and agreements referenced herein, constitute the entire agreement between Con Edison and Transco concerning the subject matter hereof and supersede any and all prior agreements, written or oral, with respect to such subject matter.
22. Severability. If any provision hereof is held by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, then such determination shall not affect the

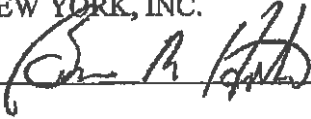
validity of the remaining portions hereof, which other portions shall continue in full force and effect.

23. No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their successors and permitted assigns and is not intended to and will not confer any rights or benefits to any other Person, except that Con Edison Indemnitees are intended third party beneficiaries of this Agreement for purposes of enforcing their rights under Section 3.
24. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
25. Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic transmission), each of which shall be an original and all of which, taken together, shall constitute one and the same instrument.
26. Relationship of the Parties. This Agreement shall not be deemed to create any partnership, agency, joint venture or trust, or to authorize any Party to act as agent, servant or employee of the other. The Parties are independent contractors. Neither Party shall have the power to bind the other without its express written consent.
27. Environmental Representation. To Con Edison's Knowledge, no material Release or material violation of Environmental Law exists with respect to the Goethals SUF on the Effective Date. "Con Edison's Knowledge" means to the knowledge of Gregory E. Pryor (Section Manager EH&S Operations), Fareed Abbassi (Area Manager – Staten Island Substation Operations), and Kevin Donnelly (Area Manager – Westchester North Substation Operations) based on their review of reasonably available documents and information. Transco shall have no liability for any violation of Environmental Law or Release with respect to the Goethals SUF or the Goethals Substation existing on or prior to the Effective Date.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: 

Name: Brian M. Horton

Title: Vice President

NEW YORK TRANSCO LLC

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: _____

Name: _____

Title: _____

NEW YORK TRANSCO LLC

By: Robert Caso

Name: Robert Caso

Title: Vice President - Budget, Finance and
Accounting

EXHIBIT A
GOETHALS SUF

Project							
20937775-Staten Island Unbottling							
Utility Account	Property Unit	Retirement Unit	Major Location	Asset Location	Work Order	Quantity	Cost
353000 E Station Equipment	Feeder	Feeder, Manhole, Ea	GOWANUS SUBSTATION	Gowanus Substation TD: 610100 NY-Kings-Brooklyn	35184	2	411,167.97
353000 E Station Equipment	Feeder	Feeder, Pothead Compartment, Ea	GOWANUS SUBSTATION	Gowanus Substation TD: 610100 NY-Kings-Brooklyn	35184	12	1,233,503.91
353000 E Station Equipment	Feeder	Feeder, Pothead Compartment, Ea	GOWANUS SUBSTATION	Gowanus Substation TD: 610100 NY-Kings-Brooklyn	35191	6	1,157,888.45
353000 E Station Equipment	Feeder	Feeder, Pothead Compartment, Ea	GOWANUS SUBSTATION	Gowanus Substation TD: 610100 NY-Kings-Brooklyn	35205	6	765,972.44
353000 E Station Equipment	Feeder	Feeder, Manhole, Ea	GOWANUS SUBSTATION	Gowanus Substation TD: 610100 NY-Kings-Brooklyn	35205	1	255,324.15
353000 E Station Equipment	Bus	Bus, Switch, Disconnect, Ea	GOETHALS SUBSTATION	Goethals Substation TD: 640100 NY-Richmond-Staten Island	36707	3	8,242,752.02
353000 E Station Equipment	Bus	Bus, Bus, Ea	GOETHALS SUBSTATION	Goethals Substation TD: 640100 NY-Richmond-Staten Island	36707	1	1,454,603.30
357000 E UG Conduit	Conduit - High Pressure 345KV	Conduit-High Pressure 345kv, Iron, 10"	Gowanus S/S To Goethals S/S	TI Gowanus S/S To Goethals S/S TD: 610100 NY-Kings-Brooklyn	29765	4,000	20,217.78
358000 E U/G Conductors & Devices	Cable 345 KV	Cable 345kv, H.P. O.F.P.C.Pap & Cop	TI Gowanus S/S To Goethals S/S	TI Gowanus S/S To Goethals S/S TD: 610100 NY-Kings-Brooklyn	29775	4,000	36,509.90
365000 E O/H Conductors & Devices	Wire 33 KV	Wire 33kv, Alum 33 Kv Aerial, 211 Mc	Outside Plant, NY (CECONY)	Op, City Of Staten Island TD: 640100 NY-Richmond-Staten Island	21716471	45	5,722.78
367000 E U/G Conductors & Devices	Cable 33 KV	Cable 33kv, Poly & Sheath Prot, 211 Mc	Outside Plant, NY (CECONY)	Op, City Of Staten Island TD: 640100 NY-Richmond-Staten Island	21716471	594	75,540.72
397000 C Comm. Eqment	397000 C Comm. Eqment	397000 C Comm. Eqment	General Plant	General Plant	39592	1	15,169.63
Total Project 20937775						8,671	13,674,373

EXHIBIT B

INITIAL ANNUAL MAINTENANCE PLAN

Goethals:

Maintenance for the rest of year:

- Monthly breaker compressor inspection: 1 hour x 7 months = 7 hours
- 6 Month breaker compressor maintenance: 2 hours
- Breaker winterization: 4 hours
- Semi-annual infrared inspection: 1 hours
- Annual pothead inspection: 1 hour

Total maintenance for remainder of 2016 = 15 hours

Annualized maintenance budget:

1 HVB 345kv breakers: PM= 35 hours/year CM=24

PM Requirements (hours per breaker)

- Monthly breaker compressor inspection (1 hr.)
- 6 Month breaker compressor maintenance (2 hrs.)
- Annual Breaker winterization (4 hrs.)
- Diagnostic Testing 5 yr. minor (50 hrs.)
- Diagnostic Testing 10 yr. major (100 hrs.)

2 MO Disconnect Switches: PM=0 CM=4 hours

1 Pothead PM=2 hours CM=1

- Annual visual inspection = 1 hour
- 3 year Pressure Switch calibration = 4 hours

Semi-annual infrared inspections: 1 hour

Total maintenance hours/year = 67

Projected CM hours are based on equipment installed at station.

At Goethals, the following is required for the newly installed equipment as per Protection Systems Maintenance Program (PSMP) 0400-0400 Rev 2.1.

Relay tests ([previously known as Relay calibrations](#)) – 6 years

This includes metering verification, settings comparison and verification of protective relay input/output contacts for both microprocessor relays, 1st and 2nd line.

Voltage and current sensing device testing – 6 years

This includes taking secondary load readings at all relays.

DC Control Circuit ([previously known as Trip checks](#)) – 4 years

Communication system testing – 12 years

Direct fiber (2 channels) and T1 line (2 channels) – Communication failure alarm must be tested for each channel.

Annualized PST budget per feeder:

	FREQ (YEARS)	HOURS	HOURS / FREQ
RELAY TESTS			
1ST & 2ND LINE	6	32	5.3
BKR FAILURE, RECLOSURE	4	32	8.0
CT/PT CIRCUIT VERIFICATION			
1ST & 2ND LINE	6	8	1.3
BKR FAILURE, RECLOSURE	4	16	4.0
DC CONTROL CIRCUIT TESTS	4	128	32
COMMUNICATION TESTS	12	16	1.3
			52 HOURS/YEAR

PST does not anticipate any maintenance in 2016 since it is newly installed equipment.

EXHIBIT C

INITIAL BUDGET

Goethals:

Maintenance for the rest of year:

- Monthly breaker compressor inspection: 1 hour x 7 months = 7 hours
- 6 Month breaker compressor maintenance: 2 hours
- Breaker winterization: 4 hours
- Semi-annual infrared inspection: 1 hours
- Annual pothead inspection: 1 hour

Total maintenance for remainder of 2016 = 15 hours

Estimating \$100 MHR, cost for 2016 at Goethals is \$1,500.

Annualized maintenance budget:

1 HVB 345kv breakers: PM= 35 hours/year CM=24

PM Requirements (hours per breaker)

- Monthly breaker compressor inspection (1 hr.)
- 6 Month breaker compressor maintenance (2 hrs.)
- Annual Breaker winterization (4 hrs.)
- Diagnostic Testing 5 yr. minor (50 hrs.)
- Diagnostic Testing 10 yr. major (100 hrs.)

2 MO Disconnect Switches: PM=0 CM=4 hours

1 Pothead PM=2 hours CM=1

- Annual visual inspection = 1 hour
- 3 year Pressure Switch calibration = 4 hours

Semi-annual infrared inspections: 1 hour

Total maintenance hours/year = 67

Estimating \$100 MHR, average annual cost at Ramapo is approximately \$6,700.

Projected CM hours are based on similar equipment installed at each station.

Annualized PST budget per feeder:

	FREQ (YEARS)	HOURS	HOURS / FREQ
RELAY TESTS			
1ST & 2ND LINE	6	32	5.3
BKR FAILURE, RECLOSURE	4	32	8.0
CT/PT CIRCUIT VERIFICATION			
1ST & 2ND LINE	6	8	1.3
BKR FAILURE, RECLOSURE	4	16	4.0
DC CONTROL CIRCUIT TESTS	4	128	32
COMMUNICATION TESTS	12	16	1.3
52 HOURS/YEAR			

Estimating \$100 MHR, average annual PST cost at Goethals is approximately \$10,400. The cost of \$5,200 applies to G23L and G23M.

Goethals

Maintenance	67
PST	104
	171
30% contingency	51.3
Total Estimated Maintenance	222.3
Estimated MHR	\$100
Estimated Annual O&M Budget	\$22,230

EXHIBIT D

NOTICES

If to Owner, to:

Nabil Hitti
VP Operations
NY Transco LLC
Nabil.Hitti@nytransco.com
781-907-2657

With a copy to:

Kathleen Carrigan
General Counsel New York Transco LLC
Carrigan & Associates LLC
P.O. 5905
6 Elm Street Unit C
Salisbury Ma. 01952
617-455-5329
Kathleen.Carrigan@NYTransco.com

If to Provider, to:

Brian Horton
VP System & Transmission Operations
Consolidated Edison Company of New York, Inc.
hortonb@coned.com
212.460.1210

With a copy to:

Michael Forte
Chief Engineer Transmission Planning
Consolidated Edison Company of New York, Inc.
fortem@coned.com
212.460.3416

and to:

Deputy General Counsel
Consolidated Edison Company of New York, Inc.
crayb@coned.com
212.460.3245