

**Service Agreement No. 2617**

**Execution Version**

**ENGINEERING, PROCUREMENT & CONSTRUCTION AGREEMENT**

This Engineering, Procurement & Construction Agreement (“Agreement”), dated as of April 2, 2021 (the “Effective Date”), is made by and between New York Transco, LLC (the “Company”), having its principal place of business at 1 Hudson City Center, Hudson, New York, Holcim (US) Inc. (“Holcim”), a Delaware corporation with an office located in Ravena, New York and New York Independent System Operator, Inc. (“NYISO”), a New York not-for-profit corporation. The Company and Holcim shall each be referred to as a “Party,” and shall be referred to collectively as the “Parties.” The terms “Party” and “Parties” as used herein shall not include NYISO or any successor Independent System Operator.

**RECITALS**

**WHEREAS**, the Company and Niagara Mohawk Power Corporation, d/b/a National Grid, (“National Grid”) proposed a Public Policy Transmission Project to satisfy an identified Public Policy Transmission Need (the “Transmission Project”);

**WHEREAS**, NYISO selected the Transmission Project as the more efficient or costeffective transmission solution to satisfy an identified Public Policy Transmission Need and has directed the Company to proceed with the Transmission Project;

**WHEREAS**, the Company entered into a development agreement, dated January 10, 2020, with NYISO (“Development Agreement”) to ensure that the Transmission Project will be constructed and in service in time to satisfy the Public Policy Transmission Need;

**WHEREAS**, the Transmission Project requires certain modifications to the relays located at the Holcim substation;

**WHEREAS**, the Parties desire to set forth the terms and conditions for conducting certain design activities and for access to the Holcim substation, as specified in **Exhibit A** to this Agreement, to ensure the development and interconnection of the Company’s Transmission Project remains on schedule with the contemplated in service date in the Development Agreement; and

**WHEREAS**, NYISO is a signatory to this Agreement consistent with *American Electric Power Service Corporation*, 112 FERC ¶ 61,128 at P 10 (2005), to ensure that NYISO is kept fully apprised of the matters addressed herein so that NYISO may be kept aware of any reliability and planning issues that may arise.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

**1. Information Requirements; Scope of Work; Access Rights.**

1.1 The Parties acknowledge that they are entering into this Agreement in order to

NYISO Agreements --> Service Agreements --> EPCA among Transco, Holcim and NYISO

ensure the timely development and interconnection of the Transmission Project, as contemplated in the Development Agreement and accompanying milestone schedule to that agreement (the

“Development Schedule”). In connection with the NYISO System Impact Study performed to determine the impacts of the interconnection of the Transmission Project on the NYISO-controlled electric transmission grid, NYISO has determined that the Holcim substation is affected by the Transmission Project and the Company desires Holcim to begin to perform such work associated with the necessary modifications to its facilities identified in Exhibit A to accommodate the interconnection of the Transmission Project. Holcim agrees to perform the work consistent with the provisions of this Agreement.

1.2 Holcim’s scope of work is set forth in Exhibit A of this Agreement, and incorporated herein by reference (the “Holcim Work”). The Parties acknowledge that Holcim’s scope of work shall be limited to the provision of existing drawings, schematics, specifications, criteria and data related to the Transmission Project (specifically related to the Holcim substation), and that the Company’s Contractor shall be responsible for performing the engineering design, procurement and construction of the Transmission Project, including any modifications to the Holcim substation, and any and all costs related to such modifications. The Parties specifically acknowledge that, upon completion of the work hereunder, the Company shall have no current or on-going obligation for the operation and maintenance for any modified or upgraded equipment at the Holcim substation or any other component comprising the Holcim substation, nor shall Company be responsible for any future repairs for any modified or upgraded equipment at the Holcim substation.

1.3 Holcim hereby grants to the Company, Company’s employees, representatives, consultants and contractors, including but not limited to Company’s Contractor, the non-exclusive right to enter upon Holcim’s property, as and where needed to access the Holcim substation, subject to the terms and conditions herein, to conduct the engineering design, procurement and construction of the Transmission Project, including any modifications to the Holcim substation, and as may otherwise be reasonably required for the Company to exercise its rights and comply with its obligations under this Agreement. The Company shall provide written notice to Holcim three (3) days in advance of its presence on Holcim’s property, and shall use commercially reasonable efforts to minimize interference with Holcim’s use and occupancy of the Holcim substation.

1.4 Subject to the terms of this Agreement, the Company shall perform the actions set forth in Exhibit B attached hereto.

1.5 In performance of the Holcim Work hereunder, Holcim:

a. shall use commercially reasonable efforts to perform the Holcim Work;  
and

b. shall at all times perform in material compliance with all applicable federal, state and local laws and ordinances and all lawful orders, rules and regulations of any governmental authority.

1.6 All capitalized terms not otherwise defined in Attachment 1 of this Agreement shall have the meanings ascribed to such terms in the NYISO's Open Access Transmission Tariff



(“OATT”) inclusive of Attachment P and, if not defined therein, then Attachment X of the OATT.

## **2. Representatives.**

All work pertaining to the Holcim Work that is the subject of this Agreement will be approved by and coordinated only through designated and authorized representatives of the Company and Holcim (“Representative”). Each Party shall promptly, following the Effective Date, provide the other Party in writing with the name and contact information of such Representative. Each Party may change its Representative, from time to time, by written notice to the other Party.

## **3. Work Duration and Reports.**

3.1 The Parties agree to the estimated schedule set forth in Exhibit C attached hereto (the “Schedule”). If Holcim is unable to complete the Holcim Work within the time periods specified in Exhibit C, Holcim shall notify the Company of such delay and the reason(s) why additional time is required, and shall provide a revised estimate of when the Holcim Work can be completed.

3.2 Holcim agrees to provide to the Company periodic reports on the status of the Holcim Work at intervals as agreed by the Parties, and also shall provide status reports upon the reasonable request of the Company.

## **4. Payment.**

4.1 Holcim shall perform the Holcim Work at no cost to Holcim, and the costs of any modifications to the Holcim substation shall be paid directly by the Company to Company’s Contractor. The Holcim Work is estimated to cost no more than \$50,000 (the “Estimated Cost”). The actual costs to be paid by the Company will be the actual costs incurred by Holcim for the Holcim work, which may vary from the Estimated Cost. Holcim shall provide to the Company an itemized monthly invoice for any Holcim Work performed during the previous 30-day period, as necessary. The Company shall pay such invoice within thirty (30) days of receipt from Holcim.

4.2 No later than three (3) months after completion of the Company Work, Holcim shall provide an itemized invoice for any final costs for Holcim Work.

4.3 The Company has the sole responsibility to reimburse Company’s Contractor for work performed by the Company’s Contractor.

## **5. Term and Termination.**

5.1 This Agreement shall be effective, as of the Effective Date, upon its execution by both Parties and shall remain in effect until performance has been completed hereunder to the satisfaction of the Company, unless terminated earlier pursuant to its terms.



5.2 If a Party breaches any material term or condition of this Agreement and fails to cure the same within thirty (30) business days after receiving written notice from the other Party specifying such material breach, the non-breaching Party may (a) terminate this Agreement immediately upon notice to the breaching Party, or (b) agree in writing that the breaching party is diligently pursuing a cure, and extend the cure period at its sole discretion, subject to immediate termination upon notice.

5.3 In addition to any other termination rights provided in this Agreement, the Company may terminate this Agreement at any time upon ten (10) days' prior written notice to Holcim.

5.4 For termination pursuant to Sections 5.2 and 5.3, the terminating Party shall pay to the non-terminating Party any reasonable and verifiable costs, fees, penalties and charges incurred by the non-terminating Party as a result of such termination; provided, however, that the remedy specified in this Section 5.4 shall not be the non-terminating Party's exclusive remedy in the event of such termination.

## **6. Notice.**

Any notices, requests, or other correspondence and communication given under this Agreement shall be in writing and must be sent (a) by hand delivery, (b) by registered or certified mail, return receipt requested, (c) by a reputable national overnight courier service, postage prepaid, or (d) by facsimile transmission, addressed to a Party at its address or telephone facsimile number set forth below, with the original of such facsimile to be delivered within two (2) business days thereafter by one of the other means set forth in this Article 6. For purposes of this Agreement, notices sent by hand delivery, overnight courier or facsimile (if followed by the original as required by this Article 6) shall be deemed given upon receipt and notices sent by registered or certified mail shall be deemed given three (3) business days following the date of mailing. Either Party may give notice, as herein provided, specifying a different person, address or facsimile number than that which is listed below.





For Holcim:  
Holcim (US) Inc.  
1916 US Route 9W  
Ravena, NY 12143  
Attn: Plant Manager  
Phone: 518-756-5006  
E-mail: kendall.walden@lafargeholcim.com

For the Company:  
New York Transco, LLC  
1 Hudson City Center  
Hudson, NY 12534  
Attn: Paul Haering  
Phone: (518) 444-4880  
E-mail: Paul.Haering@NYTransco.com

With required copy to:  
Holcim (US) Inc.  
8700 W. Bryn Mawr Ave., Suite 300  
Chicago, IL 60631  
Attn: Legal Department  
773-372-1061  
Shelbee.hundley@lafargeholcim.com

## **7. Confidentiality.**

7.1 Unless otherwise required by applicable law, rule or regulation, the Company and Holcim agree to maintain the confidentiality of this Agreement and any and all Confidential Information, during the term of this Agreement and for a period of two (2) years following the expiration or any termination of this Agreement, except that the Company and Holcim may disclose any and all Confidential Information provided by a Party hereunder on a need-to-know basis to its employees, agents, counsel, representatives and Affiliates (and its Affiliates' employees, agents, counsel and representatives) who have first been advised of the confidentiality provisions of this Agreement. Neither Party shall use such Confidential Information except for the purposes identified herein without the prior written approval of the disclosing Party.

7.2 The receiving Party shall not be precluded from, nor liable for, disclosure or use of Confidential Information that: (a) is in or enters the public domain, other than by a breach of this Article; (b) 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; (c) is developed by the receiving Party or its representatives independently of any disclosure under this Agreement, as evidenced by written records; (d) is disclosed more than two (2) years after the termination or expiration of this Agreement; (e) is disclosed following receipt of the disclosing Party's written consent to the disclosure of such Confidential Information; or (f) 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.

7.3 Anything in this Article or the Agreement to the contrary notwithstanding, the receiving Party or its representative(s) may disclose Confidential Information of the other Party

to the extent the receiving Party or its representative(s) is required to do so by 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 Confidential Information. The receiving Party shall reasonably cooperate with the disclosing Party's efforts to obtain such protective order.

7.4 Each Party hereby acknowledges and agrees (a) that the Confidential Information of the other Party is a valuable trade secret of the other Party and that any unauthorized disclosure thereof could cause irreparable harm and loss to the other Party, and (b) that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement and that each Party shall be entitled to specific performance and/or injunctive relief as a remedy for any such breach or threatened breach. Such remedy shall not be deemed to be the exclusive remedy for any such breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

7.5 No license or right to any trade secret, business method, patent (now issued or hereafter issuing), trademark, trade name, copyright or any other intellectual property of a disclosing Party is granted by this Agreement.

## **8. Indemnification.**

Each Party (each, an "Indemnitor") agrees to indemnify, hold harmless and defend the other Party and its Affiliates, and the trustees, directors, officers, employees, and agents of each of them (each, an "Indemnitee"), from and against any and all damages, losses, costs, expenses (including reasonable attorneys' fees and disbursements), causes of action, suits, claims, fines, penalties and liabilities, in tort, contract, or otherwise resulting from claims of third parties arising, or claimed to have arisen, as a result of any acts or omissions of the Indemnitor under this Agreement or the Holcim 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.

## **9. Disclaimer of Damages/Limitation of Liability.**

9.1 Subject to the obligations set forth in Article 8, neither Party shall be liable to the other Party for any indirect, consequential, exemplary, special, incidental or punitive damages, including without limitation loss of use or lost business, revenue, profits or goodwill, arising in connection with this Agreement, the Holcim Work performed hereunder, and/or the intended use thereof, under any theory of tort, contract, warranty, strict liability or negligence; provided, however, that the Company shall be liable to Holcim for any actual monetary damages related to or arising from loss of use or lost business (including lost revenue and profits) that are directly caused by work performed by the Company inside the Holcim substation, and not related to a planned outage, so long as Holcim has prior written notice of such planned outage.

9.2 Subject to Section 9.1 above, the total liability of the Indemnitor to the

Indemnitor in connection with this Agreement shall be limited to direct monetary damages proven by Indemnitor. The foregoing limitation applies to all causes of actions and claims,

including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts. The Parties acknowledge and accept the reasonableness of the foregoing disclaimers and limitations of liability. This Section 9.2 shall survive the expiration or any termination of this Agreement.

9.3 Nothing in this Agreement shall be construed to create or give rise to any liability on the part of NYISO, and the Parties expressly waive any claims that may arise against NYISO under this Agreement.

9.4 The Parties acknowledge and understand that the signature of the authorized officer of NYISO on this Agreement is for the limited purpose of acknowledging that representatives of NYISO have read the terms of this Agreement. The Parties and NYISO further state that they understand that FERC desires that the Parties keep NYISO fully apprised of the matters addressed herein as well as any reliability and planning issues that may arise under this Agreement, and that the signature of the NYISO officer shall not in any way be deemed to imply that NYISO is taking responsibility for the actions of any Party, that NYISO has any affirmative duties under this Agreement or that NYISO is liable in any way under this Agreement.

## **10. Warranty.**

10.1 The Company warrants to Holcim that (i) the design, engineering, consulting, and other professional services provided as part of the Holcim substation modifications shall be performed by or through Contractor with reasonable skill, care, and diligence and in accordance with customarily accepted professional practices; (ii) the substation modifications shall perform as intended; and (iii) the equipment, materials, construction and installation portions of such modifications, as applicable, shall be free of defects (collectively, the "Warranty"). If during the two (2) year period commencing upon the completion of such modifications (the "Warranty Period"), Holcim notifies the Company that the modifications or any portion thereof fails to meet the Warranty or Contractor or the Company otherwise become aware of any such failure, the Company shall, at its own expense, request that Contractor repair, replace, re-perform, or correct any modifications or portion thereof that does not comply with the Warranty. Upon completion of any repair or replacement work, Contractor shall perform such tests, if any, as shall be reasonably necessary to demonstrate the cure of the specific item of work that failed to meet the Warranty. With respect to any corrective work performed pursuant to this Section 10.1, the Warranty Period shall be extended with respect to such corrective work so as to expire on the first anniversary of the date such corrective work (including all associated testing) is completed. The Parties acknowledge that, under certain circumstances, it may not be possible for Contractor to commence any corrective work promptly upon receiving notice or becoming aware that such corrective work is required hereunder; therefore, the Parties agree that any such delay (on account of a delay in receiving any required outage, scheduling conflict or otherwise), including a delay that prevents commencement prior to the expiration of the applicable Warranty Period, shall not limit or obviate the Company's obligation to have Contractor perform such corrective work (including all associated testing) in accordance with the terms and conditions of this Section 10.1.



10.2 Holcim shall provide Contractor with reasonable access to the Holcim substation for the purpose of performing its Warranty obligations under this Section 10; provided, however, that such access shall (i) not interfere with the ongoing operation of any portions of the substation then in operation, and (ii) be conducted in coordination with Holcim and the Transmission Owner, and on such schedule as Holcim may reasonably require so as to avoid any adverse impact on Holcim's operation, access, or other use of the substation.

## **11. Force Majeure.**

Any delay in or failure of performance under this Agreement (other than a failure to comply with a payment obligation) shall not be considered a breach of this Agreement if and to the extent caused by events (each, a "Force Majeure Event"), beyond the reasonable control of the Party affected, including but not limited to acts of God, governmental restrictions, strikes, riots, wars or other military action, fires, floods, vandalism, or sabotage. Market conditions and/or fluctuations (including a downturn of any Party's business) shall not be deemed Force Majeure Events. A Force Majeure Event shall not include acts of negligence or intentional wrongdoing by the Party claiming such Force Majeure Event.

The Party whose performance is affected by a Force Majeure Event shall promptly notify the other Party, giving details of the Force Majeure Event, and the obligations of the Party giving such notice shall be suspended to the extent caused by the Force Majeure Event and for so long as the Force Majeure Event continues, and the time for performance of the affected obligation hereunder shall be extended by the time of the delay caused by the Force Majeure Event. During the continuation of the Force Majeure Event, the nonperforming party shall (a) exercise commercially reasonable due diligence to overcome the Force Majeure Event; (b) to the extent it is able, continue to perform its obligations under this Agreement; and (c) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure Event requires.

## **12. Insurance**

12.1 Prior to the commencement of any Holcim 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 and shall provide written notice of any such self-insurance. Unless the Company elects to self-insure, the Company shall have its insurer furnish to Holcim 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 Holcim Work under this Agreement. If the Company elects to self-insure, it shall provide proof of insurance to Holcim prior to the commencement of any Holcim Work under this Agreement.

12.2 Each Party shall be separately responsible for insuring its own property and operations.





### **13. Governing Law; Change in Law**

13.1 When not in conflict with or preempted by federal law, including, without limitation, Part II of the Federal Power Act, 16 U.S.C. §§824d, *et seq.*, and Part 35 of Title 18 of the Code of Federal Regulations, 18 C.F.R. §§35, *et seq.*, each as may be modified from time to time, this Agreement shall be construed and governed in accordance with the law of the State of New York without giving effect to any choice or conflict of law rule that would cause the application of the law of any jurisdiction other than the State of New York.

13.2 If, during the term of this Agreement, the Applicable Laws are changed or new Applicable Laws are enacted, and such changed or new Applicable Laws result in the imposition of charges or costs that are materially different than the terms agreed to in this Agreement as of the Effective Date, or makes the performance of the obligations hereunder impossible, then upon the request of the affected Party made no later than six (6) months after the effective date of such change or addition to the Applicable Laws, the Parties shall meet to negotiate in good faith such amendments to this Agreement as are necessary to fulfill the purposes of this Agreement and to give effect to the original intentions of the Parties as negotiated and agreed to herein. In the event the Parties are unable to reach agreement within thirty (30) days following such request, the matter shall be resolved in accordance with Article 21 herein.

### **14. Amendments.**

All amendments to this Agreement shall be in written form executed by the Parties.

### **15. Assignment; Successors and Assigns.**

15.1 Neither Party shall assign this Agreement to any third party without the express written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that either Party (a) may assign all or part of this Agreement to any Affiliate and (b) may assign all or part of this Agreement to any other entity providing financing to such Party (as collateral or otherwise); provided further, however, that the assigning Party must provide fifteen (15) days prior notice to the non-assigning Party of such an assignment and the assigning Party shall not be released from its obligations and liabilities under this Agreement following such an assignment.

15.2 This Agreement shall be binding on the successors and permitted assigns of both Parties.

15.3 In the event of a permitted assignment, the assigning Party shall provide prior notice to the other Party.

15.4 In the event of a permitted assignment, assignee shall assume all obligations of assignor and assignor shall not be released from liability following an assignment.

### **16. Severability.**

If any term or provision of this Agreement is held illegal or unenforceable by a court with jurisdiction over this Agreement, all other terms in this Agreement will remain in full force, the

illegal or unenforceable provision shall be deemed struck. In the event that the stricken provision materially affects the rights, obligations or duties of either Party, the Parties shall substitute a provision by mutual agreement that preserves the original intent of the Parties as closely as possible under applicable law.

**17. Merger.**

This Agreement, including all exhibits, schedules and attachments, embodies the entire agreement between the Parties. The Parties shall not be bound by or liable for any statement, writing, representation, promise, inducement or understanding not set forth herein.

**18. Representations and Warranties of Authority.**

Each Party represents and warrants to the other that:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- b. the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action by such Party; and
- c. the execution and delivery of this Agreement by such Party and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws of such Party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or material default under, the provisions of any material contract by which either Party is bound.

These representations and warranties shall survive the expiration or termination of this Agreement.

**19. No Third Party Beneficiaries.**

Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**20. No Waiver**

Each Party further agrees that no failure or delay by the other Party in exercising any of its rights under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement.

**21. Independent Contractor; No Partnership; No Agency; No Utility Services**

The Company and Holcim 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.

## **22. Dispute Resolution**

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. Cooperation**

Holcim shall use reasonable efforts to cooperate with the Company's development and financing of the Transmission Project by: (a) providing status updates and other information reasonably requested by the Company regarding Holcim's performance of the Holcim Work; and (b) providing information reasonably requested by the Company to facilitate the financing of the Transmission Project; provided, however, that this Article 22 shall not require Holcim to incur any costs or expenses.

## **24. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute only one legal instrument.

*[The remainder of this page left intentionally blank]*



The Parties hereby execute this Agreement by the signature of their authorized agents as of the date first written above.

**Holcim (US) Inc.**

By: Michael Nixon

Name: Michael Nixon

Title: Vice President, Manufacturing

Date: March 30 2021

**New York Transco, LLC**

By: \_\_\_\_\_

Name: Victor Mullin

Title: President

Date: \_\_\_\_\_

The signature below of the authorized officer of New York Independent System Operator, Inc. is for the limited purpose of acknowledging that a representative of NYISO has read this Agreement as of the \_\_\_ day of March, 2021.

**New York Independent System Operator**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The Parties hereby execute this Agreement by the signatories below, authorized agents as of the date first written above.

**Holcim (US) Inc.**

**New York Independent System Operator, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Victor Mullin

Title: \_\_\_\_\_

Title: President

Date: \_\_\_\_\_

Date: 4/2//2021

The signature below of the authorized officer of New York Independent System Operator, Inc. is for the limited purpose of acknowledging that a representative of NYISO has read this Agreement as of the \_\_ day of March, 2021.

**New York Independent System Operator**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



The Parties hereby execute this Agreement by the signature of their authorized agents as of the date first written above.

**Holcim (US) Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**New York Transco, LLC**

By: \_\_\_\_\_

Name: Victor Mullin

Title: President

Date: \_\_\_\_\_

The signature below of the authorized officer of New York Independent System Operator, Inc. is for the limited purpose of acknowledging that a representative of NYISO has read this Agreement as of the 31<sup>st</sup> day of March, 2021.

**New York Independent System Operator**

By: \_\_\_\_\_

Name: Æø½,øÆß ŸÚ Œ³."

Title: .½ª—Æª-.øa2"Ù Œß-"a3 · Œª-±'Æ½ª -¥ø²².²¹

## **Attachment 1**

### **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 Engineering, Procurement & Construction 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.

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

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

**“Company Required Actions”** means all duties, responsibilities, and obligations to be performed by the Company as contemplated by Exhibit B of this Agreement.

**“Confidential 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 memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (ii) preceding. **“Damages”** shall have the meaning set forth in Article 8 of this Agreement.

**“Contractor”** shall mean Burns & McDonnell.

NYISO Agreements --> Service Agreements --> EPCA among Transco, Holcim and NYISO

“Development Agreement” shall have the meaning set forth in the Recitals.

Engineering, Procurement & Construction Agreement

“Development Schedule” shall have the meaning set forth in Section 1.1.

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

“Facilities Study Report” shall mean that certain Facilities Study Report finalized as part of the Company’s interconnection request submitted with the NYISO (NYISO Queue No. 543).

“Force Majeure Event” shall have the meaning set forth in Article 11 of this Agreement.

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

“Holcim Work” means all duties, responsibilities, and obligations to be performed by Holcim as contemplated by Section 1.2 and Exhibit A of this Agreement.

“Implementation Work” shall have the meaning set forth in Exhibit A of this Agreement.

“Indemnatee” shall have the meaning set forth in Article 8 of this Agreement.

“Indemnitor” shall have the meaning set forth in Article 8 of this Agreement

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

“Network Upgrade Facilities” shall mean the least costly configuration of commercially available components of electrical equipment that can be used, consistent with good utility practice and Applicable Reliability Requirements (as defined in the NYISO Open Access Transmission Tariff) to make the modifications or additions to the New York State Transmission System that are required for the proposed Transmission Project to connect reliably to the system in a manner that meets the NYISO Transmission Interconnection Standard.

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

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

“OATT” shall have the meaning set forth in Section 1.6.

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

“Representative” shall have the meaning set forth in Article 2 of this Agreement.

“Schedule” shall have the meaning set forth in Section 3.1 and Exhibit C of this Agreement.

“Transmission Project” shall have the meaning set forth in the recitals of this Agreement.

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“Transmission Owner” shall mean Holcim’s current interconnecting electric utility, National Grid.

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## **EXHIBIT A**

### **SCOPE OF HOLCIM WORK**

#### **Project Background**

The Transmission Project identified by the NYISO as “Q#543 Segment B Project” and studied by the NYISO in its System Impact Study includes the following high-level scope of work:

- ☐ A new 54 mile 345/115 kV double-circuit transmission line from Schodack to Pleasant Valley;
- ☐ A new Knickerbocker 345 kV switching station;
- ☐ The demolition and complete rebuild of the Churchtown switching station; ☐ Modifications to the existing Pleasant Valley 345 kV substation;
- ☐ A new Van Wagner Capacitor Bank Substation;
- ☐ The retirement of various 115 kV lines between the Greenbush 115 kV station and Pleasant Valley 115 kV station; and
- ☐ Reconfiguration of the transmission line #12.

It is understood by the Parties that the current Transmission Project scope of work is materially consistent with the scope as listed above and as documented in the NYISO System Impact Study and the Facilities Study Report.

#### **Holcim Work shall generally consist of the following:**

- A. Project management and engineering services (at no cost to Holcim) for the review of submitted Company documents for the Network Upgrade Facilities (as defined herein) in connection with the Transmission Project.
- B. Project management and engineering services (at no cost to Holcim) for providing the necessary Holcim design criteria and standards, drawings, as-built drawings, vendor drawings, specifications, procedures, and any design, procurement and/or construction standards necessary for the Company or Contractor to complete the design, procurement and construction. All drawings shall be provided in the format in which they are available, primarily PDF or Vellum.
- C. Holcim drawings, specifications and standards necessary for the Company or Contractor to pursue Article VII and/or local permitting under applicable New York laws and regulations.
- D. Timely review of the Company’s engineering documents and packages, approval of technical designs, equipment specifications, construction drawings, relay settings and approve specifications for any equipment; provided, however, the Contractor will create and approve any purchase orders and relay settings as needed.



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E. Provide Company, Company's Contractor and Contractor's sub-contractors reasonable access to the Holcim substation as needed to perform the engineering, procurement, and construction activities.

**Specific Holcim Work items include:**

1. Support design and engineering in connection with the Transmission Project consistent with the proposed scope of work in the NYISO System Impact Study Report and the NYISO Facilities Study.
2. The NYISO System Impact Study has determined that the Holcim substation is affected by the Transmission Project.
3. At no cost to Holcim, Support procurement and related procurement activities as requested by the Company. Contractor is responsible for identifying and procuring any long-lead time items.
4. Review, from time to time, Holcim work contemplated herein and conduct other project management, administration, and oversight activities in connection with the work contemplated by this Exhibit.
5. Participate in, or establish as requested, design review meetings to discuss designs submitted, standards that are to be included/adjusted, and have necessary attendance at regularly occurring project review and coordination/review meetings during the course of the Transmission Project.
6. Develop a detailed schedule for execution of any Holcim Work and updates as requested.
7. Provide support for agency reporting as needed.
8. Provide review and comment of constructability, construction sequencing, and proposed outage planning as needed.
9. Provide oversight of Holcim Work.
10. Support start up commissioning and testing, including coordination with the Contractor to determine the relay and protective setting, and required notifications to the Transmission Owner.
11. It is anticipated that Project upgrades and modifications to the Holcim substation will require the existing Relay Protection and Control Schemes, to be reviewed. Holcim shall provide

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any existing substation relay setting calculations and relay files, in currently available format.

Holcim shall provide standard protection guidelines or system protection philosophies.

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12. Provide support to Contractor so that the relay coordination between the Company Substations and the Holcim substation can be effectively performed.
13. Provide support and guidance on the NERC FAC-008 rating of new equipment and, based on ownership of the asset, define who will be the rating authority for each applicable requirement.
14. Support engineering and construction activities by granting access to the Holcim substation and any rights-of-way as needed.
15. Provide updates and revisions to Holcim drawings as needed, at no cost to Holcim.
16. Provide input to Contractor on Substation equipment signage as needed.
17. Update Holcim substation equipment procedures to reflect modifications as needed.
18. Provide technical and/or procedural assistance with the mutual crafting of operating procedures for all Transmission Project elements affecting Holcim substation.
19. Provide available physical arrangement drawings for Holcim substation control buildings, identifying the available space for equipment, wire and panel placement.
20. Provide Holcim designees for review of engineering and design, construction, commissioning, outage planning and coordination, and other items as needed.
21. Approve the use of outside experts, counsel, consultants, and contractors in furtherance of the Holcim Work contemplated herein as needed, or as requested by the Company.
22. Provide a detailed listing of any technical materials that are required by Holcim.

The Holcim Work contemplated by this Exhibit and this Agreement does not include any permitting activities or any construction, relocations, alterations, modifications, or upgrades with respect to any Company, Holcim or third party facilities or the Transmission Project (“Implementation Work”), nor does Holcim make any commitment to undertake such Implementation Work; provided, however, that Holcim acknowledges that formal signature by Holcim may be required as determined by local permitting requirements and if so required, Holcim agrees to execute such permits on a timely basis.

For the avoidance of doubt: Holcim shall not have any responsibility for seeking or acquiring any real property rights in connection with the Holcim Work, the Transmission Project or this

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Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests.

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For further avoidance of any doubt, the Holcim Work contemplated by this Exhibit and this Agreement shall occur at no cost to Holcim.

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## **EXHIBIT B**

### **COMPANY REQUIRED ACTIONS**

#### **Company Required Actions**

The Company Required Actions shall consist of the following:

1. Perform design and engineering in connection with the Transmission Project consistent with the proposed scope of work in the NYISO System Impact Study Report and Facilities Study Report.
2. Contractor will coordinate any activities needed with Holcim's Transmission Owner, National Grid.
3. Support Transmission Project construction activities by coordinating, scheduling, and obtaining outages with the NYISO and any Holcim station or lines, and by issuing and/or holding the outage permits.
4. The Company or Company's designee shall prepare and submit to Holcim for review and approval, all necessary engineering packages needed.
5. The Company or Company's designee shall prepare and submit to Holcim for review and approval, all necessary procurement / equipment specifications and drawings.
6. The Company or Company's designee shall prepare and submit to Transmission Owner for review and approval, all necessary engineering packages needed.
7. The Company or Company's designee shall prepare and submit to Transmission Owner for review and approval, all necessary procurement / equipment items.
8. The Company or Company's designee shall setup, run and coordinate, at a minimum, monthly meetings for project status, support and updates.
9. The Company shall prepare, file for, and use commercially reasonable efforts to obtain all required governmental and utility approvals necessary to perform its obligations under this Agreement.
10. If and to the extent applicable or under the control of the Company, provide complete and accurate information regarding the Company's project and all applicable data, drawings and specifications, as needed.



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11. Other responsibilities and access deemed necessary by the Company or Holcim to facilitate performance of the Holcim Work.
12. Conduct a survey of the Holcim substation to identify the boundaries of the property owned by Holcim and any easements encumbering such property, as needed.
13. Perform or allow the Company or Company's designee to perform soil borings and sampling to determine soil characteristics for potential foundation design, as needed.
14. The Company or Company's designee will perform the procurement of equipment and materials required to incorporate the Transmission Project.
15. The Company will work with equipment suppliers to ensure that the manufacturers' warranties are in the name of Holcim for Holcim owned / retained upgrades.
16. The Company or Company's designee will perform all required construction required to incorporate the Transmission Project.
17. The Company or Company's designee will perform all required start up testing and commissioning of the newly installed or modified substation equipment required to incorporate the Transmission Project.

The Company Required Actions, along with the Holcim Work, shall be performed at Company's cost, and at no cost to Holcim.

### **Current Scope of Work**

#### **Holcim Substation ("Holcim")**

Holcim is a 115kV substation located in Ravena, New York. Holcim as currently identified in the NYISO System Impact Study, this facility will have line #8 rerouted from Central Hudson's Pleasant Valley 115kV Substation to Churchtown Switching Station. Due to this change, the Holcim substation existing transmission line #8 relays will need to be replaced with new relays, drawings will be updated to reflect the changes, and line relay settings will be performed. Additionally, a CCVT and a Line Trap will be installed to establish a PLC communication channel for transmission line #8.

### **Specifications**

Company and Contractor will utilize Contractor's procurement specifications for equipment and material procurement.

Company and Contractor will utilize Contractor's construction specifications for construction.

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## **Primary Electrical Scope**

The following narrative describes the primary electrical work required to support these installations.

### Instrument Transformers

- ☐ One (1) 115kV Capacitively Coupled Voltage Transformer (CCVTs) with associated junction boxes will be installed on the line side of 115kV switch #DS888 for transmission line #8 PLC communication.

### Line Trap and Line Tuner

- ☐ One (1) 115kV, 2000A, Line Trap mounted on top of the new CCVT for line #8.
- ☐ One (1) Line Tuner for transmission line #8 PLC communication.

### Primary Bus

- ☐ Aluminum strain conductor for the CCVT and Line Trap with associated connectors will be installed.

### Ground Grid

It is assumed that the existing station ground grid is adequate for the instrument transformer installations. Grounding connections will be installed to ground the new equipment installed.

### Conduits

New PVC conduits will be installed from the new control enclosure to the proposed equipment as needed. This includes, but is not limited to the following:

- ▶ Two (2) conduits for new 115kV CCVT and Line Tuner ▶  
Conduits between the CCVT and Line Tuner

Conduit fill calculations will be performed in accordance with NEC standards to confirm proper cable and conduit sizing. It is assumed that the existing cable trench and cable tray systems are already adequately sized to accommodate additional cables.

### Low Voltage Power and Control

New low voltage (600V) power and control cable will be installed between new equipment and the new control enclosure. Voltage drop calculations will be performed to verify that cables are sized such that an acceptable voltage drop is maintained.

### Material Design

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A bill of materials (“**BOM**”) will be developed for the station installations. Minor Materials will be added to the bill of materials as they are identified during detailed design.

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### Structural Scope

Includes the design of the foundations and structures and the necessary calculations and reports.

#### Structures

To support the installation of the new substation equipment, the following structures will be required:

- ▶ One (1) galvanized steel single phase 115kV CCVT/Line Trap support ▶  
Structural supports for Line Tuner and junction boxes

### Foundations

Geotechnical data will be collected and will be used, along with base reactions from the support structures, to design new foundations. The following foundations will be designed:

- ▶ One (1) pier foundations for CCVT and Line Trap

### **Conceptual Scope**

The existing transmission line #8 EM relays at Holcim shall be replaced with the following list of microprocessor relays for a high-speed line protection scheme and requirement for a DTT scheme for breaker failure protection of the center breaker in the line #8 bay at Churchtown.

(1) The line #8 to Churchtown “A” package will include one (1) ERL Phase L-pro 4000 distance relay. This relay will interface with new communications package to provide high speed line protection (DCUB) and DTT transmit/receive.

(2) The line #8 to Churchtown “B” package will include one (1) SEL-311C distance relay.

(3) The circuit breaker R8 relaying will include one (1) SEL-351-6 relay to provide automatic reclosing following the line faults. This relay will also provide sync check supervision for closure of the breaker R8.

(4) The line #8 to Churchtown Transfer Trip package will include:

(a) One (1) RFL-9780 for DCUB XMT/RCV

(b) One (1) RFL-9780 for DTT XMT/RCV

The existing panels in the control building do not have enough space to install the new relays. A new panel will replace the existing Eaton Cabinet that currently houses control switches for the 115kV disconnect switches. These control switches will be relocated to the new panel and will be re-wired as needed.

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Station drawings and labels will be updated to reflect the transmission line updates at Holcim.

### **Controls & Integration**

Station drawings and labels will be updated to reflect the transmission line updates at Holcim. The new relays will be connected to the existing Sage 2300 RTU for SCADA communications. This includes running cables from the relays to the existing SEL-3530 RTAC and programming the SEL-3530 RTAC to interface with the new relays. This assumes that the existing SEL-3530 RTAC is connected to the RTU and can be used as a communication processor in order to get SCADA data from the new relays to the National Grid control center. This assumes that the leased line currently at Holcim will remain in use to carry this data and will not need to be upgraded.

### **Relay settings**

Relay settings for the reconfigured 115kV transmission line #8 will be performed. Setting calculations will be developed to document the design basis for each relay. Native relay setting files will be created for each relay based on the associated setting calculation.

### **Deliverables**

Upon successful completion of design, drawings and relay settings will be issued for construction.

#### **30% Deliverables**

- a. One-line Diagrams
- b. General Arrangement
- c. Substation Elevations
- d. Foundation Plan
- e. Conduit Plan
- f. Grounding Plan
- g. Preliminary Bill of Materials

#### **60% Deliverables**

- a. One-line Diagrams
- b. Three-line Diagrams
- c. Panel Front Views
- d. Communications Diagram
- e. Protective Relay Schematics
- f. Control Schematics
- g. Connection and Panel Wiring
- h. AC and DC Diagrams
- i. AC and DC Wiring Diagrams
- j. General Arrangement
- k. Substation Elevations and Details



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## 1. Structural Steel Plan and Detail

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- m. Foundation Plan and Details
- n. Conduit Plan and Details
- o. Cable and Conduit Schedule
- p. Grounding Plan and Details
- q. Equipment Drawings (Approval Drawings)
- r. Complete Bill of Materials

90% Deliverables

- a. One-line Diagrams
- b. Three-line Diagrams
- c. Panel Front Views
- d. Communications Diagram
- e. Protective Relay Schematics
- f. Control Schematics
- g. Connection and Panel Wiring
- h. AC and DC Diagrams
- i. AC and DC Wiring Diagrams
- j. Relay Setting calculations and native relay files
- k. General Arrangement
- l. Structural Steel Plan and Detail
- m. Substation Elevations and Details
- n. Foundation Plan and Details
- o. Conduit Plan and Details
- p. Cable and Conduit Schedule
- q. Grounding Plan and Details
- r. Equipment Drawings (As-builts)
- s. Complete Bill of Materials

IFC Package

- a. Updated 90% deliverables with applicable comments incorporated

**As per Exhibit A, Holcim will be requested to provide support in the above activities, including but not limited to the supply of drawings, specifications, criteria used to design Holcim's stations, etc., provide timely reviews of Company's engineering, and provide final approval of technical designs, equipment specifications, construction drawings, and relay settings as required. Such support shall be provided at no cost to Holcim.**

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### **Exhibit C: Schedule**

Below is an estimated schedule and Holcim shall endeavor to complete the work in the timeframes and schedules mutually agreed upon by the Parties. The Schedule provided below contains the dates the Company or its designee will provide design packages to Holcim for review and comment. Holcim shall have fourteen (14) days to provide a consolidated set of comments to the Contractor.

<b>Station</b>	<b>Owner</b>	<b>O&amp;M</b>	<b>Revised 30% Package Submittal</b>	<b>Protection Control &amp; Physical 60% Package Submittal</b>	<b>Protection Control &amp; Physical 90% Package Submittal</b>	<b>Relay Settings Submittal</b>
Holcim	Holcim	National Grid	Complete	28-Feb-2021	04-June-2021	11-July-2021

Upon execution of this Agreement, the Parties shall develop and agree upon the schedule of the services, taking into account the Company's anticipated schedule for submittal of information to Holcim and the commitments made to the NYISO for completion of the overall project by the Company. Holcim agrees to provide comments or approvals in accordance with the agreed upon schedule.

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### **Exhibit D: Insurance Requirements**

The Company agrees to provide a Certificate of Insurance or Memorandum of Insurance evidencing the existence of insurance policy(ies) issued to it or self-insured coverage limits, satisfactory to the coverages and minimum limitations set forth below, and not subject to cancellation or material change without giving thirty (30) days prior written notice to Holcim, which policy(ies) or equally satisfactory renewals or extensions thereof shall be maintained in force during the term of this Agreement, as follows:

- ☐ 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 (CGL), including Contractual Liability, and Product/Completed Operations Liability Insurance covering all insurable operations required under the provisions of this Agreement with the following minimum limits of liability:  
Combined single limit - \$1,000,000 per occurrence
- ☐ Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of either Party under or in connection with this Agreement with minimum limits of:  
Combined Single Limit - \$1,000,000 per occurrence.

Holcim shall be included as an Additional Insured on the Company's liability insurance policy(ies) with respect to the activities governed by this Agreement.