

## **COST REIMBURSEMENT AGREEMENT No. 1949**

This **COST REIMBURSEMENT AGREEMENT** (the "*Agreement*"), is made and entered into as of October 19, 2012 (the "*Effective Date*"), by and between **ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION**, a not-for-profit corporation organized and existing under the laws of the State of New York, having an office and place of business at 584 Phoenix Drive, Rome, New York 13441 (the "*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*".

### **RECITALS:**

**WHEREAS**, Developer, the principal economic development organization serving the New York State Counties of Oneida and Herkimer, is facilitating a project to develop a 391.63+/- acre site located in the Town of Marcy, County of Oneida, State of New York (as depicted on the Marcy Site Survey Map attached to this Agreement as Exhibit G, the "*Site*") for purposes of locating thereon a semiconductor manufacturing and/or other nanotechnology-oriented facility (the "*Marcy Nanocenter at SUNYIT Project*"); and

**WHEREAS**, Developer has determined that the Marcy Nanocenter at SUNYIT Project has multiple public purposes and serves an important public use, benefit and purpose by supporting and encouraging economic development in a region that has long-suffered from economic decline; and

**WHEREAS**, Developer believes that the Marcy Nanocenter at SUNYIT Project will benefit the public at large by, among other things, creating as many as 5,000 new jobs, driving a net positive economic impact to the area of up to \$730,000,000, and otherwise having a transformational impact on the economies of Oneida and Herkimer Counties and the entire Mohawk Valley Region; and

**WHEREAS**, a portion of Company's existing Porter—Terminal #6 115kV transmission line runs through the easterly portion of the Site; and

**WHEREAS**, Developer has requested that Company relocate said portion of the existing 115kV transmission line owned by Company which runs through the easterly portion of the Site to a new location at the Site; and

**WHEREAS**, Company has conducted and provided to Developer a facility study dated May, 2010, a copy of which is attached as Attachment 1 to Exhibit A hereto (the "Facility Study") generally describing certain work necessary to accomplish the construction of a new 115kV transmission line and removal of said portion of the existing 115kV transmission line, and related tasks; and

**WHEREAS**, Company is willing to construct and own such new 115 kV transmission line and remove the existing 115kV transmission line owned by Company as contemplated by the Facility Study, subject to (i) reimbursement by Developer of all Company costs and expenses incurred in connection therewith, (ii) Developer's prior acquisition and delivery of certain real property interests as specified in this Agreement, and (iii) Developer's performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Developer Work (as defined herein).

**NOW, THEREFORE**, in consideration of the premises and 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; "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, schedules, attachments, and exhibits, and any subsequent written amendments, supplements, or modifications thereto as may be mutually agreed to and executed by the Parties.

"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 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, NPCC, and NYSRC requirements, any other applicable reliability standards.

"Balance Amount" shall have the meaning set forth in Section 9.1 of this Agreement.

"Certificate Holders" means, in the case of the Developer, SUNY, the State, SUNYIT, SUNYIT Foundation, Research Foundation and FSMC. In the case of Company, there are no Certificate Holders.

"CEII" shall have the meaning set forth in Section 21.3 of this Agreement.

"Company" means 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.

"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 documented to Developer's reasonable satisfaction, and including, without limitation, any such costs that may have been incurred by Company 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, 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 reasonable costs of outside experts, consultants, counsel and contractors, all other reasonable third-party fees and costs, and all reasonable costs of obtaining any required consents, permits, rights, releases,

approvals, or authorizations acquired by Company, including, without limitation, the Line Approvals.

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

"Company Work Cost Estimate" shall have the meaning set forth in Section 4.2 of this Agreement.

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

"DASNY" means Dormitory Authority of State of New York, a public benefit corporation organized and existing under the laws of the State of New York, having an office and place of business at 515 Broadway, Albany, New York 12207.

"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.

"Developer" means Economic Development Growth Enterprises Corporation, a not-for-profit corporation organized and existing under the laws of the State of New York, having an office and place of business at 584 Phoenix Drive, Rome, New York 13441.

"Developer Work" means all duties, responsibilities, and obligations to be performed by Developer as contemplated by Section 3.2 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 Exhibit E to this Agreement.

"Environmental Law" shall mean any environmental or health and safety-related law, regulation, rule or ordinance 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.

"ESDC" means New York State Urban Development Corporation d/b/a Empire State Development Corporation, a public benefit corporation organized and existing under the laws of the State of New York, having an office and place of business at 633 Third Avenue, New York, New York 10017.

"Existing Line" means that portion of the existing Porter-Terminal #6 115 kV Transmission Line identified in Attachment 1 to Exhibit A to this Agreement.

"Existing Line Approvals" shall have the meaning set forth in Exhibit A to this Agreement.

"Existing Line Easement" shall have the meaning set forth in Exhibit F to this Agreement.

"Existing Line Removal Date" means the date on which the Company releases or terminates the Existing Line Easement.

"Facility Study" shall have the meaning set forth in the fourth Recital above. The Facility Study is set forth in Attachment 1 to Exhibit A to this Agreement.

"Farmer Property" means, collectively, those certain parcels of real property, containing 55.64 +/- acres of land, conveyed to Developer by Margaret L. Farmer (a/ka/ Margaret Farmer and Margaret C. Farmer), Individually, and as the Sole Surviving Trustee of the Farmer Living Trust, dated April 16, 2004, and as Co-Trustee of the Farmer Family Irrevocable Trust, dated September 11, 2007, and others, by means of a Warranty Deed dated December 28, 2011 and recorded on January 4, 2012 in the Oneida County Clerk's Office as Instrument No. 2012-000218.

"FERC" shall have the meaning set forth in Section 21.3 of this Agreement.

"Force Majeure Event" shall have the meaning set forth in Section 19.1 of this Agreement.

"FSMC" means Fort Schuyler Management Corporation, a not-for-profit corporation organized and existing under the laws of the State of New York, having an office and place of business at 100 Seymour Road, Utica, New York 13502.

"Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry situate in the region where the Project is located 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 criteria, rules, guidelines, and standards, NPCC criteria, rules, guidelines, and standards, NYSRC criteria, rules, guidelines, and standards, and NYISO 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.

"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.

"Indemnifying Party" shall have the meaning set forth in Section 12.1 of this Agreement.

"Line Approvals" shall mean the New Line Approvals and the Existing Line Approvals.

"Marcy Nanocenter at SUNYIT Project" shall have the meaning set forth in the first Recital above.

"Marcy Site Survey Map" shall mean that certain survey map of the Site which is attached to this Agreement as Exhibit G.

"Monthly Estimate Payment" shall have the meaning set forth in Section 8.2(b) of this Agreement.

"Monthly Invoice" shall have the meaning set forth in Section 8.2(a) of this Agreement.

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

"New Line" means the personal property assets constituting the new 115kV transmission line and related facilities described in the Facility Study to be constructed by Company in connection with the relocation of the Existing Line.

"New Line Approvals" shall have the meaning set forth in Exhibit A to this Agreement.

"New Line Property Rights" shall have the meaning set forth in Exhibit B 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.

"NYPSC" shall mean the New York Public Service Commission.

"NYSRC" shall mean the New York State Reliability Council or any successor organization.

"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 6.4 of this Agreement.

"Prepayment" shall have the meaning set forth in Section 8.1 of this Agreement.

"Project" means the work, services, materials, equipment and tasks to design, engineer, construct, install, test and commission the New Line, remove the Existing Line and release the Existing Line Easement as contemplated by this Agreement.

"Project Manager" means the respective representative of Developer and the Company appointed pursuant to Section 7.1 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 (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 Exhibit D to this Agreement.

"Receiving Party" shall mean the Party receiving Proprietary Information.

"Reimbursement Amount" shall have the meaning set forth in Section 9.1 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 21 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 10.1 of this Agreement.

"Research Foundation" means The Research Foundation of State University of New York, a not-for-profit corporation organized and existing under the laws of the State of New York, having an office and place of business at 35 State Street, P.O. Box 9, Albany, New York 12201-0009.

"Resources" shall have the meaning set forth in Section 19.1 of this Agreement.

"Site" shall mean 335.99 +/- acre portion of SUNY's Campus and the 55.64 +/- acre Farmer Property, as depicted on the Marcy Site Survey Map attached to this Agreement as Exhibit G.

"State" means the State of New York.

"SUNY" means State University of New York, an educational corporation organized and existing under the laws of the State of New York, having an office and place of business at State University Plaza, Albany, New York 12246.

"SUNYIT" means the SUNY Institute of Technology at Utica/Rome, a State-operated institution which comprises a part of SUNY.

"SUNYIT Foundation" means the Institute of Technology Foundation at Utica/Rome, Inc., a New York not-for-profit corporation.

"Third Party Warranties" shall have the meaning set forth in Article 11 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 9.1 of this Agreement.

"Work" means the Developer Work and/or the Company Work, as applicable.

## 2.0 **Effectiveness and Term**

2.1 This Agreement shall become effective as of the Effective Date.

2.2 This Agreement shall remain in full force and effect until performance has been completed hereunder and final payment to Company or reimbursement of Developer, as applicable, has been made as contemplated by Article 9 of this Agreement.

## 3.0 **Work**

3.1 Subject to the terms of this Agreement, Company shall use commercially reasonable efforts to perform the work described in Exhibit A attached to this Agreement (the "Company Work").

3.2 Subject to the terms of this Agreement, Developer shall use commercially reasonable efforts to perform the work described in Exhibit B attached to this Agreement (the "Developer Work"). All of the Developer Work shall be performed at Developer's sole cost and expense.

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



4.0 **Reimbursement of Company's Actual Costs; Tax Filings**

4.1 Developer shall pay or reimburse Company for all Company Reimbursable Costs.

4.2 The current good faith estimate of the Company Reimbursable Costs, exclusive of any applicable taxes, is reflected in Section 15 of the Facility Study (the "Company Work Cost Estimate"). The Company Work Cost Estimate is an estimate only and shall not limit Developer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company or its Affiliates.

4.3 (a) The Company agrees to treat the Company Reimbursable Costs paid hereunder as non-taxable payments in the Company's tax returns filed with the Internal Revenue Service ("IRS"), provided, however, that, if the Company Reimbursable Costs are determined to be taxable, whether as the result of a determination by the IRS or due to the Company's determination that a change in applicable law makes such payments taxable, the Company will report such Company Reimbursable Costs as taxable, subject to Section 4.3(b), (c) and (d) below.

(b) Notwithstanding anything in Section 4.3(a) to the contrary, if the Company determines that there is a change in applicable law that requires the Company to treat any Company Reimbursable Costs paid hereunder as taxable income, the Company shall provide the Developer 60 days written notice prior to filing any tax return that reports Company Reimbursable Costs as taxable income and the Company shall allow the Developer reasonable opportunity to consult with the Company's tax advisors regarding the proposed tax treatment of Company Reimbursable Costs.

(c) If the Company treats Company Reimbursable Costs paid hereunder as non-taxable on its tax returns and subsequently receives notice from the IRS that it disagrees with the tax treatment of the Company Reimbursable Costs, the Company shall promptly notify the Developer and shall allow the Developer reasonable opportunity to consult with the Company's tax advisors before the Company consents to any IRS determination regarding the Company Reimbursable Costs. If the Company determines to challenge any IRS determination that Company Reimbursable Costs are subject to taxation any such challenge shall be at Developer's sole cost and expense. Developer shall indemnify the Company for all liabilities, costs and expenses the Company or its Affiliates may incur in challenging such IRS determination including, but not limited to, all taxes, penalties, interest, legal and accounting fees. The Developer shall deposit collateral, reasonably acceptable to the Company, as security for Developer's obligation to indemnify the Company.

(d) Notwithstanding anything in this Section 4.3 to the contrary, the Company shall retain sole control over its tax returns and any final determinations or decisions made by the Company with respect to such tax returns as referred to herein will be made in the Company's sole discretion.

## 5.0 **Changes in the Work**

- 5.1 Any requests for additions, modifications, or changes to the Company Work or the Developer Work shall be communicated in writing by the Party making the request. If the Parties mutually agree to an 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. The Preliminary Milestone Schedule and the Company Work Cost Estimate shall be adjusted as mutually agreed by the Parties to reflect any such agreed addition, modification, or change to the Work.
- 5.2 The foregoing notwithstanding, neither Party is required to obtain the consent of the other Party for any change to the Party's Work if such change is made in order to comply with any Applicable Requirement(s) or Good Utility Practice 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 industry codes and standards.

## 6.0 **Performance Commencement; Preliminary Project Milestone Schedule; Conditions to Proceed**

- 6.1 Company shall commence performance of the Company Work promptly following Company's receipt of the Prepayment. Developer shall commence performance of the Developer Work promptly following the Effective Date.
- 6.2 If and to the extent any Company Work will be performed by Company's direct employees, Company will use commercially-reasonable efforts to have such Company Work performed during normal working hours.
- 6.3 The foregoing notwithstanding, 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.

### 6.4 **Preliminary Project Milestone Schedule.**

The preliminary project milestone schedule for the Company Work and the Developer Work is set forth on Exhibit C attached hereto and incorporated herein by reference ("Preliminary Milestone Schedule"). The Preliminary Milestone Schedule is a projection only and is subject to change. 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.

- 6.5 **Construction Commencement.** Company shall not be obligated to proceed with physical construction of the New Line unless and until all of the following conditions have been satisfied:

- (i) Developer has delivered, or arranged to deliver, and Company has received, all New Line Property Rights,
- (ii) all Required Approvals for the Work have been received, are in form and substance satisfactory to the Parties, have become final and non-appealable and commencement of construction is permitted under the terms and conditions of such Required Approvals, and
- (iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.6 Decommissioning Commencement. Company shall not be obligated to proceed with de-energizing, decommissioning or removing the Existing Line unless and until all of the following conditions have been satisfied:

- (i) the New Line has been completed, energized and placed in commercial operation by the Company,
- (ii) all Required Approvals for the Work have been received, are in form and substance satisfactory to the Parties and have become final and non-appealable, and
- (iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.7 Existing Line Easement Termination. Company shall not be obligated to release or terminate the Existing Line Easement unless and until all of the following conditions have been satisfied:

- (i) the Existing Line has been decommissioned and all of its components removed from the Existing Line Easement area,
- (ii) all Required Approvals for the Work have been received, are in form and substance satisfactory to the Parties and have become final and non-appealable, and
- (iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

## 7.0 Project Managers; Meetings; Sharing of Documentation

7.1 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 its project manager (each, a "Project Manager"). Each Party may change its Project Manager, from time to time, by written notice to the other Party. The foregoing notwithstanding, in no event shall Project Managers be authorized to amend or modify the provisions of this Agreement.

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

## 8.0 **Prepayment; Further Payments**

8.1 Within ten (10) Days following the Effective Date, Company shall invoice Developer for a prepayment of Fifty Thousand Dollars (\$50,000) ("*Prepayment*") representing Company's good faith estimate of the Company Reimbursable Costs Company has incurred up to but not including the Effective Date pit, is the Company Reimbursable Costs Company expects to incur from the Effective Date through the end of the first full calendar month following the Effective Date. Developer shall pay the Prepayment to Company within five (5) Days of the invoice due date. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence any Company Work prior to its receipt of the Prepayment.

8.2 (a) Commencing in the first full calendar month following the Effective Date, Company shall invoice Developer on or about the tenth (10<sup>th</sup>) Day of each calendar month during the term of this Agreement for the estimated Company Reimbursable Costs Company expects to incur in the following calendar month (each, a "*Monthly Invoice*").

(b) Each Monthly Invoice shall include an itemized and reasonably documented reconciliation of the total Company Reimbursable Costs actually incurred in the preceding calendar month to the estimated Company Reimbursable Costs for such preceding calendar month paid by Developer pursuant to the prior Monthly Invoice (the "*Monthly Estimate Payment*"). If the total of all Company Reimbursable Costs actually incurred in such preceding calendar month is greater than the Monthly Estimate Payment for that calendar month, Company shall include the balance in the current Monthly Invoice as an additional amount due. If the Monthly Estimate Payment for such preceding calendar month was greater than the total Company Reimbursable Costs actually incurred in that preceding calendar month, Company shall credit the difference to Developer in the current Monthly Invoice.

(c) With respect to the initial Monthly Invoice issued under this Agreement, the reconciliation contemplated by subparagraph (b), above, shall consist of a reconciliation of the Prepayment to the total Company Reimbursable Costs actually incurred through the end of the first full calendar month following the Effective Date (including the Company Reimbursable Costs incurred by Company up to but not including the Effective Date).

8.3 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 Developer payment due under this Agreement is not received in full within five (5) Days of the applicable invoice due date, the amount remaining unpaid after that time shall be subject to interest as calculated pursuant to the terms 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 of the applicable invoice due date, Company may suspend any or all Company Work pending receipt of all amounts due from Developer; any such suspension shall be without recourse or liability to Company.

8.4 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 upon written notice to Company :

Name: Mr. Steven DiMeo  
Title: President  
Economic Development Growth  
Enterprises Corporation  
Address: 584 Phoenix Drive  
Rome, NY 13441

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

Unless otherwise directed by the Company, payments to the Company shall be made by wire transfer to:

Wire Payment: JP Morgan Chase  
ABA#.021000021  
Credit: National Grid USA  
Account#.77149642

Unless otherwise directed by Developer, payments to Developer shall be made by wire transfer to:

Bank: NBT Bank, National  
Association ABA#: 021303618  
Credit: Economic Development Growth  
Enterprises Corporation  
Account #: 7004105162

## 9.0 **Final Payment**

- 9.1 Within ninety (90) Days following the Existing Line Removal Date, 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 is greater than the Total Payments Made, Company shall provide a final reasonably itemized and reasonably documented 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, Company shall reimburse the difference (the "Reimbursement Amount") to Developer.
- 9.2 The Reimbursement 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 Reimbursement Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to the terms of this Agreement.

## 10.0 **Required Approvals and Related Termination Rights**

- 10.1 Subject to Section 19.4 of this Agreement, the obligations of each Party under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises, releases and Line Approvals from any local, state, or federal regulatory agency or other governmental agency (which may include, without limitation and as applicable, the NYISO, the NYPSC, SUNY, Research Foundation, FSMC) or 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. Developer acknowledges that, as a consequence of releasing the Existing Line Easement pursuant to New York Public Service Law, Section 70, the Company may be required by applicable law or regulation to compensate the Company's customers for such release and Developer agrees that any such amount, and any other costs incurred by the Company resulting from conditions imposed on the Company by the NYPSC in granting New York Public Service Law, Section 70 approval, shall be included within the meaning of the term Company Reimbursable Costs and shall be reimbursed by Developer.

10.2 Subject to Section 19.4 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, 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 Section 18.3 for all Company Reimbursable Costs and the Company's obligation to refund any Reimbursement Amount that is due. All of the Company's actual costs in connection with obtaining Required Approvals shall be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Developer.

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) IN CONNECTION WITH THIS AGREEMENT. COMPANY MAKES NO WARRANTIES OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE NEW LINE, THE EXISTING LINE, THE PROJECT, OR ANY COMPANY WORK PERFORMED IN CONNECTION THEREWITH, 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. DEVELOPER ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT, SERVICES OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE COMPANY WORK, INCLUDING ITEMS INCORPORATED IN THE COMPANY WORK ("THIRD PARTY WARRANTIES"), ARE NOT TO BE CONSIDERED WARRANTIES OF COMPANY AND COMPANY MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY THIRD PARTY WARRANTIES.

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

## 12.0 **Indemnification and Liability**

- 12.1 To the fullest extent permitted by applicable law (including, without limitation, in the case of Company, the applicable provisions of any governing federal or state tariff), each Party (the "Indemnifying Party") shall indemnify and hold harmless, and at the other Party's option, defend the other Party, its Affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees (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, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by any Indemnified Party to the extent caused by the negligence, unlawful act or omission, or intentional misconduct of the Indemnifying Party, its Affiliates or their respective contractors, officers, directors, servants, agents, representatives, and employees, arising out of or in connection with any Work performed pursuant to this Agreement, except to the extent such Damages are caused by the negligence, unlawful act or omission, or intentional misconduct of the Indemnified Party, its Affiliates or their respective contractors, officers, directors, servants, agents, representatives, or employees.
- 12.2 Developer shall protect, indemnify and hold harmless 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 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 (a) 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 or the Company Work, shall not exceed the aggregate amount of all payments made to Company by Developer as Company Reimbursable Costs under this Agreement.
- (b) The limitation contained in Section 12.3(a) shall not apply to damages for personal injury (including, without limitation, death) to the extent such damages are covered by proceeds from the Company's third party insurance policies.



- 12.4 Neither Party shall be liable to the other Party or to any Indemnified Party for any consequential, indirect, special, incidental, multiple, or punitive damages 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. Anything in this Agreement to the contrary notwithstanding, if any Party's or Indemnified 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.
- 12.5 Neither Party shall be liable to the other Party or to any Indemnified Party for claims or damages for lost profits, delays, loss of use or business interruption, 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 any third party. 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 Work), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the Site, 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, or (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement.
- 12.7 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation or expiration of this Agreement.
- 13.0 **Insurance; Employee and Contractor Claims**
- 13.1 During the term of this Agreement, each Party, at its own cost and expense, shall procure and maintain insurance in the form and amounts set forth in Exhibit H.

Company may elect to self-insure some or all of its obligations under this Section, provided that Company is licensed or qualified to self-insure by the State of New York if such authorization is required. If Company elects to self-insure under this Section, it shall provide written notice of such election to Developer and Developer's Certificate Holders (at the address set forth in Paragraph 1 of Exhibit H) prior to commencing any Company Work.

Prior to commencing the Company Work, Company shall furnish to Developer and the Developer's Certificate Holders (at the address set forth in Paragraph 1 of Exhibit H) certificates of insurance evidencing the insurance coverage required by this Section.

Prior to commencing the Developer Work, Developer,, shall furnish to Company certificates of insurance evidencing the insurance coverage required by this Section.

13.2 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 or expiration of this Agreement

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

#### 14.0 **Examination, Inspection and Witnessing**

14.1 Subject to Developer's and its representatives' compliance with Company's security, safety, escort and other access requirements, Developer and/or its representatives may inspect and examine the Company Work, or witness any test with respect to the Company Work, from time to time when and as mutually agreed by the Parties, at Developer's sole cost and expense and with reasonable prior notice to Company. Any such inspections and examinations shall be scheduled during normal business hours.

14.2 Company and Developer shall each maintain records and books of account pertaining to their respective Work hereunder. To the extent that Generally Accepted Accounting Principles (GAAP) apply to such records and books of account, the Party maintaining the same shall do so in accordance with GAAP and such principles shall be consistently applied during the term of this Agreement. Each Party or its designated representative(s) shall be afforded access for audit purposes (including the right to make copies), at its sole cost, during the performance of this Agreement and for two (2) years after the Existing Line Removal Date, or longer if required by law, to all of the other Party's records, books, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and all other documents or data but only to the extent relating to the Work under this Agreement.

#### 15.0 **Safety**

15.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives, and subcontractors involved with such Party's 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, subcontractors, 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.

15.2 While on the property (including, without limitation, easements or rights of way) of, or accessing the facilities of, the other Party, each Party's employees and/or contractors and agents shall at all times abide by the other Party's safety standards and policies, switching and tagging rules, and escort and other applicable access requirements. The Party owning or controlling the property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities 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.

#### 16.0 **Environmental Protection; Hazardous Substances or Conditions**

16.1 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), and Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law, except to the extent such Hazardous Substances are or were released or generated at or on any such property or facility through the negligent or unlawful act or omission of Company or any of its Affiliates or contractors or

any of their respective officers, directors, agents, servants, employees or representatives.

- 16.2 Developer agrees to hold harmless, defend, and indemnify Company, its Affiliates and contractors, and their respective directors, 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, 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, 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 Company, or of any of its Affiliates or contractors or of any of their respective directors, officers, agents, servants, employees or representatives 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, cancellation or earlier termination of this Agreement.
- 16.3 Upon the discovery thereof, 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 the Site or any other Developer owned, occupied, managed, used, 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. 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, and to promptly, fully, and in writing, communicate the results thereof to Company. Developer's provision to 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 which Company did not already have as of the Effective Date under applicable law, nor shall Developer's obligations under this Agreement, or under law, be decreased or diminished thereby.

## 17.0 **Suspension of Work**

- 17.1 Subject to Section 17.2, below, Developer may interrupt, suspend, or delay the Company Work following written notice to Company specifying the nature and expected duration of the interruption, suspension, or delay. Company will use commercially reasonable efforts to suspend performance of the Company Work as requested by Developer. Developer shall be responsible to pay Company (as part of Company Reimbursable Costs) for all costs incurred by Company that arise as a result of such interruption, suspension or delay.
- 17.2 As a precondition to the Company resuming the Company Work following a suspension under this Article, the Preliminary Milestone Schedule and Company Work Cost Estimate shall be revised as mutually agreed by the Parties to reflect the interruption, suspension, or delay. Adjustments to the Company Work Cost Estimate shall reflect any costs or expenses the Company incurs as a result of the interruption, suspension, or delay.

## 18.0 **Right to Terminate Agreement**

- 18.1 Notwithstanding any other provision of this Agreement, if either Party (a) fails to comply with any of the material 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 shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written prior notice to the other Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of failure to pay amounts when due), to terminate this Agreement upon delivery of written notice to the other Party.
- 18.2 Subject to Section 18.3 of this Agreement, (a) Developer may terminate this Agreement for convenience, such termination to be effective thirty (30) Days following the date of Company's receipt of Developer's written notice of termination, and (b) either Party may terminate this Agreement under the circumstances contemplated by, and in accordance with, Section 10.2 of this Agreement.
- 18.3 In the event of any termination of this Agreement, following receipt of written notice of such termination each Party shall promptly discontinue its performance of Work hereunder to 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, nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order return its facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements.

In the event of any early termination or cancellation of the Company Work or this Agreement, Developer shall pay Company:

- (i) all Company Reimbursable Costs for Company Work completed on or before the effective date of termination or cancellation;
- (ii) all other Company Reimbursable Costs incurred by Company 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 which cannot be reasonably avoided or mitigated.

## 19.0 **Force Majeure**

19.1 A "*Force Majeure Event*" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, riot, war, terrorism, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and permit requests necessary in connection with the Company Work or the Developer Work, or order by any federal or state regulatory agency, or other similar causes 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.

19.2 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 mutually agreed 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, in whole or in part, with no further obligation or liability; provided, however, that, notwithstanding any such terminations, Developer shall pay the Company all of the Company Reimbursable Costs in accordance with Section 18.3 of this Agreement, and the Company shall pay to Developer any Reimbursement Amount that is due.

19.3 Within thirty (30) Days after the termination 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.

19.4 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 (i) the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement or (ii) the Company providing any documentation as referred to in Section 22.1 of this Agreement.

## 20.0 **Ownership of Assets, Plans, Specifications and Documents.**

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 Company Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.

21.0 **Proprietary and Confidential Information; Critical Energy Infrastructure Information**

21.1 The Receiving Party and its Representatives 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 or its Affiliates' 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 contemplated by this Agreement, without the prior written approval of the Disclosing Party. All Proprietary Information disclosed by or on behalf of a Disclosing Party shall be and remain the property of such Disclosing Party. The Receiving Party shall cause its Representatives to comply with its obligations contained in this Article; 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 disclosed to it or its Representatives by or on behalf of Company or its Affiliates will be used solely for the Project and will not be used in violation of any applicable laws, rules or regulations.

21.2 Subject to Section 21.3, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information if such Proprietary Information (i) is in or enters the public domain, other than by a breach of this Article, (ii) 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 or its Representatives, as evidenced by written records; (iii) is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement as evidenced by written records; (iv) is disclosed more than three (3) years after the Effective Date; or (v) is required to be disclosed for safety reasons, provided that such determination is reasonable under the circumstances and Disclosing Party is notified as soon as reasonably possible.

Anything in this Article or the Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information disclosed by or on behalf of the Disclosing 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 Proprietary Information.

21.3 The Parties acknowledges that information and/or data disclosed under this Agreement may include "critical energy infrastructure information" under applicable Federal Energy Regulatory Commission ("*FERC*") rules and policies



("CEII"). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC regulations, rules, orders and policies) applicable to any such CEII 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 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 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 status and is otherwise treated as confidential.

With respect to CEII, 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.

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

## 22.0 Grants to Developer

22.1 Developer has obtained various reimbursement grants, including reimbursement grants from ESDC and DASNY, to help it pay for part of the cost of developing the Site, including the cost of the Project. Procedurally, in order to obtain reimbursement under any of these grants for its Site development costs, including its Project costs, Developer must submit requisitions to the grantor in question accompanied by such supporting documentation as the grantor may require. Such documentation typically includes, but is not necessarily limited to, documentation that the work which is the subject of the requisition has been satisfactorily completed, and paid for. Company agrees to reasonably cooperate with and assist Developer in the latter's efforts to obtain reimbursement from its grantors, including ESDC and DASNY, for Project Costs incurred. Without limiting the generality of the foregoing, Company agrees to provide such documentation regarding the Company Work as Developer may reasonably request so that Developer can submit the same to its grantors, including ESDC and DASNY. The foregoing notwithstanding, nothing in this Section shall require Company to (i) enter into or undertake any commitment with or to ESDC, DASNY, any other grantor or any other third party or (ii) provide or agree to any documentation that is inconsistent with the terms of this Agreement, in whole or in part, or that may expose or subject the Company to liability to, or claims by, ESDC, DASNY, other grantors or any other third party, except as set forth in Section 22.2.

22.2 This Agreement shall be subject to, and the Parties shall comply with, the Non-Discrimination and Affirmative Action Policies attached hereto as Exhibit I.

### 23.0 Miscellaneous

23.1 **Governing Law.** 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. Company and Developer agree to submit to the personal jurisdiction of the New York State courts, or the United States District Courts in New York, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

23.2 **Subcontracting.** 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.

23.3 **Assignment.** Any Party may assign this Agreement or any part thereof to any of its Affiliates, provided, that, such assignee shall be bound by the terms and conditions of this Agreement and, provided, further, that no such assignment shall relieve the assigning Party of its duties and obligations under this Agreement without the written consent of the non-assigning Party, such consent not to be unreasonably withheld, conditioned or delayed.

Notwithstanding anything to the contrary contained in this Section or elsewhere in this Agreement, Developer may, without Company's consent, collaterally assign and/or grant a security interest in this Agreement to SUNY, Research Foundation and FSMC and/or any leasehold mortgagee of the lands constituting all or some portion of the Site, provided, however, that no such collateral assignment may amend or purport to amend any term or condition of this Agreement, or impose or seek to impose any obligations or responsibilities on Company and, further, that any such collateral assignment or leasehold mortgage shall be subject and subordinate to the New Line Property Rights, it being understood by Developer that the New Line Property Rights shall have lien priority as set forth in the Real Property Standards and strict adherence to such Standards is and shall be a material element to Developer's obligations under this Agreement.

- 23.4 **Independent Contractor; No Partnership; No Agency; No Utility Services.** 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.
- 23.5 **Dispute Resolution.** Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Each Party shall designate one or more representatives with the authority to negotiate the 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 sixty (60) 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 agreement of both Parties to participate in such an alternative dispute resolution process.
- 23.6 **Compliance with Law; Effect of Applicable Requirements, Etc.** 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.

If and to the extent a Party is required or prevented or limited in taking any action or performance 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).

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 any Applicable Requirements.

23.7 **Notices.** 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, (ii) upon acknowledgment of receipt if sent by facsimile, (iii) upon the expiration of the third (3<sup>rd</sup>) business Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) business 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 addresses:

To Developer: Mr. Steven DiMeo  
President  
Economic Development Growth  
Enterprises Corporation  
584 Phoenix Drive  
Rome, NY 13441  
(315) 338-0393

To Company: Mr. William Malee  
Director, Transmission Commercial Services  
40 Sylvan Road  
Waltham, MA 02451  
(781) 907-2422

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

23.8 **Interest on Overdue Amounts.** If any payment due under this Agreement is not made when due, the Party obligated to make such payment shall pay to the other Party interest on the unpaid amount at an annual rate equal to the lesser of (i) two percent (2%) above the prime rate of interest from time to time published under "Money Rates" in The Wall Street Journal (or if at the time of determination thereof, such rate is not being published in The Wall Street Journal, such comparable rate from a federally insured bank in New York, New York as the Party receiving payment may reasonably determine), or (ii) the maximum rate of interest permitted by applicable law, the rate in either case to be calculated daily from and including the due date until payment is made in full.

23.9 **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.

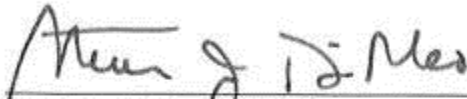
- 23.10 **Headings.** The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.
- 23.11 **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 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.
- 23.12 **Prior Agreements; Modifications.** This Agreement and the schedules, attachments, and exhibits attached hereto 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.
- 23.13 **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. All obligations and rights of the Parties expressed herein shall be in addition to, and not in limitation of, those provided by applicable law.
- 23.14 **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.
- 23.15 **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.

- 23.16 **Validity.** Each Party hereby represents that it has the right, power and authority to enter into this Agreement and that the provisions of this Agreement constitute valid and legally binding obligations of such Party enforceable in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law). Each Party further represents that the execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement (or equivalent document), of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 23.17 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument. This Agreement may also be executed via counterpart facsimiles or in "PDF" format by electronic mail upon (a) the facsimile or emailing by each Party of a signed signature page thereof to the other Party, with, in the case of facsimile, return receipt requested and received and (b) the Parties' agreement that they will each concurrently post a fully executed original counterpart of this Agreement to the other Party.

*[Signatures are on following page.]*

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

**ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION**

By:   
Name: Steven J. DiMeo  
Title: President

**NIAGARA MOHAWK POWER CORPORATION d/b/a National Grid**

By:   
Name: William L. Malee  
Title: Director, Transmission Commercial

**LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS**

Exhibit A                      Company Work

    Attachment 1 to Exhibit A    Facility Study

Exhibit B                      Developer Work

Exhibit C                      Preliminary Milestone Schedule

Exhibit D                      Real Property Standards

Exhibit E                      Environmental Due Diligence Procedure

Exhibit F                      Existing Line Easement Description

Exhibit G                      Map of Site

Exhibit H                      Insurance Requirements

Exhibit I                      Non-Discrimination and Affirmative Action Policies



## **Exhibit A Company Work**

The Company Work shall consist of the following:

A. Prepare, file for, and use commercially reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state and federal governmental agencies and the NYISO for Company to construct, install, commission, own, use, operate, and maintain the New Line, including, without limitation, preparation and submission to the NYPSC of a Part 102 Report (and obtaining any required NYPSC authorizations or approvals in connection therewith) or any other necessary regulatory filing or filings for the New Line (the "New Line Approvals").

Prepare, file for, and use commercially reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state or federal governmental agencies, the NYISO and any other third parties for Company to decommission, dismantle and remove the Existing Line and release or terminate the Existing Line Easement (including, without limitation, preparation and submission to the NYPSC of a Part 102 Report and obtaining any required NYPSC authorizations or approvals in connection therewith and obtaining any required NYPSC authorizations or approvals under Section 70 of the New York Public Service Law to release the Existing Line Easement) or any other necessary regulatory filing or filings relating thereto (the "Existing Line Approvals"). The Existing Line Approvals shall also include the preparation and submission to the holder of the Company's first mortgage indenture of an application for any required release from the lien thereof and the issuance of such release or releases upon terms and conditions deemed satisfactory to the Company and Developer in their respective reasonable discretion.

The foregoing notwithstanding, the Company shall not have any responsibility for seeking or acquiring any real property rights, including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither the Agreement nor the Company Work include securing or arranging for Developer or any third party to have access rights in, through, over or under the New Line Property Rights or any other real property owned or controlled by the Company; any such access rights will be the subject of separate written agreements.

B. Prepare, file for, and use commercially reasonable efforts to obtain any other Required Approvals that must be obtained by Company to enable it to perform the work contemplated by this Exhibit.

C. Design, engineer, procure, and, subject to Section 6.5 of the Agreement, construct, test and place into service the new Company-owned and/or operated facilities, and the modifications to existing Company-owned and/or operated facilities, as contemplated in

the Facility Study (Attachment 1 to this Exhibit), including, without limitation, the new 115 kV transmission line, to accomplish the relocation and replacement of the Existing Line. Referencing Section 13 of the Facility Study, the alternative "B" path for the New Line right-of-way was selected for the Project.

D. Subject to Section 6.6 and 6.7 of the Agreement, decommission, dismantle and remove the Existing Line and terminate the Existing Line Easement.

E. Review, from time to time, permitting, licensing, real property, and other materials, including, without limitations, all documents and materials related to the New Line Property Rights and any Required Approvals.

F. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated by this Exhibit.

G. Inspect, review, witness, examine and test, from time to time, the Company Work and conduct other project management, administration and oversight activities in connection with the Company Work contemplated by this Exhibit.

H. Perform any other reasonable tasks necessary or advisable in connection with the matters contemplated by this Exhibit (including, without limitation, any changes thereto) or as reasonably requested by Developer.

## **Attachment 1 to Exhibit A**

### **Facility Study**

## **Exhibit B Developer Work**

The Developer Work shall consist of the following:

- A. Developer shall use commercially reasonable efforts to acquire 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 Line, as determined to Company's satisfaction in its sole discretion (the "*New Line Property Rights*"). Developer shall convey, or arrange to have conveyed, to the Company all New Line Property Rights, each such conveyance to be in form and substance satisfactory to Company in its sole discretion, it being understood by both Parties that such New Line Property Rights to be conveyed to the Company will be in the form of fee title and/or easements over real property.
- B. In securing the New Line Property Rights, 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 Company's 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.
- C. Developer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.
- D. If and to the extent applicable or under the control of the Developer, Developer shall provide complete and accurate information regarding the Project and the Site, including, without limitation, constraints, space, requirements, underground or hidden facilities and structures, and all applicable data, drawings and specifications.
- E. Developer shall provide adequate and continuous access to the site or sites where Company Work is to be performed. Such access is to be provided to Company and its contractors and representatives for the purpose of enabling them to perform the Company Work as and when needed and shall include adequate and secure parking for Company and contractor vehicles, stores and equipment.

## Exhibit C Preliminary Milestone Schedule

Task	Milestone	Date	Responsible Part
1.	Execute Agreement	October 2012	Developer/Company
2.	Complete all filings for Required Approvals needed in connection with Engineering, Procurement and Permitting	June 2013	Company
3.	Complete acquisition and transfer of all New Line Property Rights to Company	Within 2 months following receipt of all Required Approvals	Developer
4.	Commence construction work for New Line	Within 3 months following receipt of all Required Approvals and all New Line Property Rights, whichever occurs last (subject to any delay resulting from conditions contained in any Required Approval and, subject further, to any weather-related delay or moratorium on construction, seasonal or otherwise)	Company
5.	New Line Energization, Testing and Acceptance	Within 6 months following commencement of construction work for New Line	Company
6.	Removal of Existing Line	Within 2 months following Task 5 completion	Company
7.	Termination of Existing Line Easement	Within 1 month following Task 6 completion	Company

8.	Project Close-out	Within 3 months following Task 7 completion	Developer/Company
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The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension. For the avoidance of doubt: potential or estimated delays in the issuance of Required Approvals or the acquisition of New Line Property Rights are not included in such preliminary schedule.

**Exhibit D**  
**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 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 guidelines unless expressly authorized in writing by NMPC.

### **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 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/transferable easement (each as further described below) for the New 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 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 Facilities have been constructed, operational tests have been completed, and the New 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 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 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 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 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 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 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 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 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 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 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 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 Facilities. 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 Facilities.

**Exhibit E**  
**Environmental Due Diligence Procedure**

National Grid  
 Environmental Procedure No. 19  
 Environmental Due Diligence

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**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:

<u>Revision</u>	<u>Date:</u>	<u>Description</u>
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 fill titer 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.

PRINTED COPIES ARE NOT DOCUMENT CONTROLLED. FOR LATEST AUTHORIZED VERSION PLEASE REFER TO THE NATIONAL GRID ENVIRONMENTAL INFONET SITE.

## **Exhibit F**

### **Existing Line Easement Description**

Those certain easements which form a 100' wide easement corridor designated as the "Niagara Mohawk Power Corporation Easement" on the Marcy Site Survey Map and in which the Porter Terminal #6 Line is located. These easements are more particularly described in the following instruments: (a) Right of Way from Katherine B. Edic to Niagara Mohawk Power Corporation dated December 20, 1961 and recorded on January 3, 1962 in the Office of the Clerk of Oneida County, New York in Book of Deeds 1709 at Page 409, (b) Right of Way from William Harlen to Niagara Mohawk Power Corporation dated December 21, 1961 and recorded on January 3, 1962 in the Office of the Clerk of Oneida County, New York in Book of Deeds 1709 at Page 405, (c) Right of Way from Ludwik Kubinski and Mary Kubinski to Niagara Mohawk Power Corporation dated December 19, 1961 and recorded on January 3, 1962 in the Office of the Clerk of Oneida County, New York in Book of Deeds 1709 at Page 421, and (d) Right of Way from Frank W. Mahanna to Niagara Mohawk Power Corporation dated December 21, 1961 and recorded on January 10, 1962 in the Office of the Clerk of Oneida County, New York in Book of Deeds 1710 at Page 139 (the "Existing Line Easement").

**Exhibit G**  
**Marcy Site Survey Map**

## **Exhibit H 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, Harbor Workers Compensation Act & the Jones Act.
  - Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with 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
  - 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
  - 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: Risk Management, A-4  
300 Erie Boulevard West  
Syracuse, NY 13202

Company shall provide such certificates or evidence of insurance to Developer and Developer's Certificate Holders at the following address:

To: Economic Development Growth Enterprises Corporation  
Attn: Mr. Steven DiMeo, President  
584 Phoenix Drive  
Rome, NY 13441  
(315) 338-0393

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, both Parties shall furnish to each other with copies of any accidents report(s) sent to the a 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. 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. Company shall include Developer and Certificate Holders as additional insureds for all coverages except for the Workers Compensation and Employers Liability Insurance in order to provide Developer and Certificate Holders with protection from liability arising out of the activities of Company relating to the Project and associated Work.

**Exhibit I**  
**Non-Discrimination and Affirmative Action Policies**



## **Non-Discrimination and Affirmative Action Policy**

It is the policy of the State of New York and ESDC to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds.

- 1) The recipient of State funds represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
  - a) Grantee shall (i) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer. Layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
  - b) At the request of the AAO, the Grantee shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or authorized representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Grantee's obligations herein.
- 2) The Grantee is encouraged to include minorities and women in any job opportunities created by the Project; and to solicit and utilize M/WBE firms for any contractual opportunities generated in connection with the Project.
- 3) Grantee represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the AAO and shall permit access to its books and records by ESDC, or its designee for the purpose of ascertaining compliance with provisions hereof.
- 4) Failure to comply with the terms and conditions of Non-Discrimination and Affirmative Action Program set forth herein shall constitute an event of default as set forth in Section 8 of the Agreement.
- 5) Grantee shall include or cause to be included, paragraphs (1) through (4) herein, in every contract, subcontract or purchase order with a Contracting Party executed in connection with the Project, in such a manner that said provisions shall be binding upon each Contracting Party as to its obligations incurred in connection with the Project.

### **NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS**

#### **Affirmative Action**

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in paragraph 2) herein, and developed by ESDC.

#### **Affirmative Action Office ("AAO")**

Shall mean ESDC's Affirmative Action Officer or his/her designee, managing the affirmative action program for ESDC.

**Contracting Party**

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor applying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by the ESDC and (ii) any borrower or grantee receiving funds from the ESDC pursuant to a loan or grant document.

**Minority Business Enterprise (“MBE”)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decision of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

**Minority Group Member**

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups, (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic Origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Island; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

**Minority and Women-Owned Business Enterprise Participation**

Minority and Women-owned Business Enterprise participation efforts are not limited to the efforts suggested herein, and the role of M/WBE firms should not be restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such efforts may include but not be limited to:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women’s trade associations;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation the ESDC contract;
- (e) Utilizing the resources of the ESDC Affirmative Action Unit to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts;
- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities with M/WBE firms, where appropriate; and
- (g) The Contracting Party shall remit payment in a timely fashion.

**Women-owned Business Enterprise (“WBE”)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

## **ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS**

### **Affirmative Action**

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in paragraph 2) herein, and developed by ESDC.

### **Affirmative Action Officer (“AAO”)**

Shall mean ESDC’s Affirmative Action Officer or his/her designee, managing the affirmative action program for ESDC

### **Best Efforts – Minority and Women-owned Business Enterprise Participation**

For the purposes of this Agreement, it is understood that (i) best efforts are not limited to the efforts specified herein, and (ii) the role of M/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women’s trade associations. Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE participation is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation on the Contract;
- (e) Utilizing the resources of the AAO identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts;
- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contracting Party will meet its obligations herein; and
- (g) Remitting payment in a timely fashion.
- (h) A Contracting party’s best efforts will be assessed by examining the total dollar value of the work performed by M/WBEs. The total dollar value of the work performed by M/WBEs will be determined as: (i) the dollar value of the work subcontracted to M/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more M/WBEs – the contract price multiplied by the percentage of the entity’s profits/losses which are to accrue to M/WBE(s) under the Contracting Party’s agreement; or (iii) where the M/WBE is the Contracting Party – the contract price.

### **Contract**

Shall mean (i) a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a Contracting Party, providing for a total expenditure in excess of \$5,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in whole or in part with ESDC funds and (ii) any loan or grant agreement funded in whole or in part with ESDC funds.

## **ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS**

### **Contracting Party**

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by ESDC and (ii) any borrower or grantee receiving funds from ESDC pursuant to a loan or grant document.

### **Minority Business Enterprise (“MBE”)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

### **Minority Group Member**

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

### **Subcontract**

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a Contracting Party and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESDC funds.

### **Women-owned Business Enterprise (“WBE”)**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.