

PUBLIC VERSION

GENERAL CONSTRUCTION AGREEMENT

For

**Rochester Gas and Electric Corporation (RGE)
Station 124 Static VAR Compensator Project**

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This GENERAL CONSTRUCTION AGREEMENT (this "Agreement") is made this 5th day of August, 2011 by and between Rochester Gas & Electric Corporation ("Owner" or "Company") with offices located at 89 East Avenue, Rochester, New York 14649 and [REDACTED] ("Contractor" or "Supplier") with offices located at [REDACTED] and covers the Contractor's performance of Work for the Owner, as provided hereunder, including all supplemental addenda hereto and all general and special provisions pertaining to the Work or materials therefor.

Iberdrola USA Management Corporation, an Affiliate of Owner, has full power to act as an agent for Owner, and for the purposes of this Agreement will act as Owner's representative. For good and valuable consideration, the Parties agree as follows:

ARTICLE 1 - GENERAL TERMS; DEFINITIONS

- 1.1 Drawings and Specifications: The intent of the Drawings and Specifications is that the Contractor shall furnish all labor, materials, equipment and transportation necessary for the proper execution of the Work, unless specifically noted otherwise.
- a) Adequacy: Owner will be responsible for the adequacy of the design and for the sufficiency of the Drawings and Specifications.
 - b) Discrepancies: Any discrepancies, inconsistencies, or ambiguities found between the Drawings and Specifications and the site conditions shall be immediately reported to the Owner's field engineering supervisor, who shall promptly correct such inconsistencies or ambiguities in the Drawings or Specifications in writing. Any Work done after such discovery or after the Contractor should have reasonably expected to make such discovery, unless authorized in writing by Owner, will be done at the Contractor's risk.
 - c) Additional Instructions: Owner may issue additional instructions during the progress of the Work by means of Drawings or other media necessary to illustrate changes in the Work.
 - d) Copies Furnished to Contractor and Ownership: Unless otherwise provided, the Contractor will be furnished, free of charge, all required copies of Drawings and Specifications necessary for the execution of the Work. All Drawings, Specifications and copies thereof furnished by the Owner are and shall remain the Owner's property. They are not to be used on any other project and, with the exception of the signed Agreement, sets are to be returned to Owner on request at the completion of the Work. The Contractor shall keep one copy of all Drawings and Specifications on the Work in good order, available to the engineer and to engineer's representative.

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- 1.2 By executing this Agreement, the Contractor represents that it has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated its observations with all the requirements of the Agreement. Contractor shall not be responsible for pre-existing conditions on the project site. The Owner assumes no responsibility whatsoever for ascertaining for the Contractor any facts which the Contractor could have ascertained for itself through such investigation; provided however, the Contractor shall be entitled to rely on the accuracy of all Owner-provided data and information.

The Project Document provisions are complementary, and what is required by any one Project Document shall be as binding as if required by all Project Documents. In the event of any inconsistency between the provisions of two or more Project Documents, the order of supremacy, in descending order, shall be as follows:

1. The purchase order;
2. This Agreement and its Attachments and Appendices
3. The Specifications; and
4. The Drawings

In the event of conflict between any Drawings and the Specifications, the Specifications shall govern; provided, however, that if an item is included only in either the Specifications or Drawings, it shall be treated as if it were incorporated in both and the Work shall be required of the Contractor.

- 1.3 “Affiliate” means with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint stock company, trust or other unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent (10%) or more shall create a rebuttal presumption of control.

“Agreement Sum” has the meaning set forth in Section 8.1 of this Agreement.

“Agreement Time” has the meaning set forth in Section 7.2 of this Agreement.

“Drawings” means the drawings specified in Appendix A, including, but not limited to, final drawings prepared by Contractor which are approved by Owner for use during construction and show the design, location and dimensions of the Work and include, if applicable, plans, elevations, sections, diagrams and other details as may be necessary or desirable to facilitate the effective, efficient and timely construction and commissioning of the Work.

“Energized” means operational, on-line and connected to the transmission system.

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“Final Completion” means Substantial Completion has occurred, the Contractor has satisfactorily completed all of the items on the “punch-list”, the In-Service Date has been achieved and final payment is now due and owing.

“In-Service Date” shall mean the date that Substantial Completion is achieved and the Static VAR Compensator is Energized. Provided however, if the In-Service Date has not been achieved within [REDACTED] of Contractor’s Notice of Substantial Completion for reasons not attributable to Contractor, the In-Service Date shall be deemed to have been achieved upon expiration of that period.

“Parent Guarantee” has the meaning set forth in Section 10.4.

“Project Document(s)” means a purchase order including change orders and this Agreement together with its Attachments and Appendices.

“Specifications” means the specifications and other documents (if any) set out, described or referred to in Appendix A which are provided by or approved by the Owner for use during construction and commissioning of Work.

“Subcontractor” means the Contractor’s subcontractors, and such subcontractors’ subcontractors to include subcontractors of all tiers.

“Substantial Completion” – means delivery by the Contractor of factory test results and completion of site inspection, testing and commissioning and certification that the Work is functionally complete and that the Static VAR Compensator is ready to be Energized in accordance with Appendix K (i.e., that the project can be operated for the purposes for which it is specified even though there may be some minor elements of the Scope of Work, i.e., “the punch-list”, that have yet to be completed).

“Warranty Period” means the period of time commencing on the In-Service Date and ending on the [REDACTED] anniversary thereof.

“Work” or “Services”: means the Contractor’s scope of Work, which includes the supply of labor, tools, material, and equipment, as well as the design, manufacture, transportation, delivery and technical direction, installation, testing, commissioning and site clean-up and restoration of a Static VAR Compensator as described and set forth in the Project Documents.

ARTICLE 2 - OWNER

The Owner is the person or organization identified as such in this Agreement. The term Owner means the Owner or an authorized representative of Owner.

2.1 Services Required of the Owner: The Owner shall provide the lands shown on the Drawings or described in the Project Documents upon which the Work under the

Agreement is to be performed and to be used for right-of-way access. Any material delay beyond [REDACTED] in furnishing these lands by the Owner will be deemed proper cause for adjustment in the Agreement Sum and in the time of completion.

Unless otherwise specified, the Owner will establish base lines necessary for the location of the principal component parts of the work together with a suitable number of benchmarks adjacent to the Work.

The Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities.

- 2.2 Owner's Right to Correct Deficiencies: Subject to the Contractor warranty obligations of Section 4.6, upon failure to perform the Work in accordance with the Agreement and after seven days' written notice to the Contractor during which period Contractor has failed to correct the failure, provided that if such failure is not capable of correction within such seven day period, Contractor has failed to submit a plan of correction reasonably acceptable to Owner within such period and diligently thereafter performed such plan to correction, the Owner may, without prejudice to any other remedy it may have, correct such deficiencies in Work intended to become a permanent part of the project. In such case, an appropriate change order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

If, within the Warranty Period any of the Work is found to be defective or not in accordance with the Agreement, the Contractor shall correct it promptly according to its obligations under Section 4.6 "Warranty/Guarantee": after receipt of a written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition.

All such defective or non-conforming Work shall be removed from the site if necessary and the Work shall be corrected to comply with the Agreement without cost to the Owner. The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

If the Contractor does not remove such defective or nonconforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within [REDACTED] days thereafter, the Owner may upon [REDACTED] days written notice sell such materials or equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor including compensation for additional architectural and/or engineering services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate change order shall be issued. If

the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner..

2.3 Owner's Termination Rights: The Owner shall have the right to terminate this Agreement immediately upon written notice to the Contractor, if the Contractor:

- a) is adjudged as bankrupt, becomes insolvent, admits it cannot pay its debts or assigns its assets for the benefit of its creditors;
- b) commits a material breach of a provision of the Agreement or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
- c) fails to provide a qualified superintendent, enough properly skilled workmen or subcontractors, or proper materials, or fails to make prompt payment therefor.

In the event of termination of the Agreement by the Owner because of Contractor's default or breach wherein Contractor has failed to correct or submit a plan to correct such default or breach within the period specified in Section 2.2 (Owner's Right to Correct Deficiencies), the Owner may take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method and means Owner may select subject to Owner's obligation to reasonably mitigate. In such case, the Contractor shall not be entitled to receive any further payment that may be due as provided by the Agreement, until the Work is finished.

If the unpaid balance of the Agreement Sum shall exceed the expense of finishing the Work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

For Owner's convenience, Owner may terminate this Agreement in whole or in part by giving the Contractor [REDACTED] written notice. In such event, Owner shall make payment to the Contractor for all costs incurred prior to such termination reasonably allocable to the Work performed, under recognized accounting practices. This provision shall not be deemed to limit or otherwise affect the Owner's right to terminate this Agreement for breach or default by the Contractor.

2.4 Owner's Right to Suspend Work: The Owner may at any time suspend the Work or any part thereof, immediately and verbally for reasons of safety, or by giving reasonable notice to the Contractor in writing. The Work shall be resumed by the Contractor within [REDACTED] days after the date fixed in the written notice from the Owner to the Contractor to do so. The Owner shall reimburse the Contractor for reasonable expenses directly incurred by the Contractor in connection with the Work under this Agreement as a result of such suspension.

When the whole or any portion of the Work is suspended for any reason, the Contractor shall properly cover, secure, and protect or cause to be so protected, such Work as may be liable to sustain injury from any cause.

- 2.5 Owner's Right To Inspect Work: Except as may be otherwise provided herein, all Work furnished by the Contractor will be subject to inspection, examination and testing by the Owner at all times during the construction and all places where construction is carried on. The Owner has the right to reject defective Work including defective material and workmanship furnished by the Contractor, and require its correction subject to Contractor's Warranty obligations in Section 4.6 (Warranty/Guarantee). Rejected Work shall be corrected to conform to the Project Documents without charge therefor. The Contractor shall promptly segregate and remove all rejected material from the site.

The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspection that may be required by the Owner. All inspection by the Owner will be performed in such manner as will not unnecessarily delay the Work.

Should it be considered necessary or advisable by the Owner at any time before Substantial Completion of the entire Work to make an examination of the Work already completed, by removing or tearing out same, the Contractor shall on request furnish all necessary facilities, labor, and materials to perform such examination. If the Work subject to such examination is found to be defective or non-conforming in any material respect, due to the fault of the Contractor or its Subcontractors, such uncovering or destruction and reconstruction shall be at the expense of the Contractor. If, however, such Work exposed and examined is found to be satisfactory, the Owner will pay the Contractor the cost of such uncovering or destruction and reconstruction.

- 2.6 Owner's Audit Rights: Owner reserves the right and Contractor shall allow Owner to audit, or cause to have audited, any and all items related to aspects of this Agreement to assure Contractor's compliance therewith. These items shall include, but not be limited to, property, books, records, and computerized data files. This provision shall remain in effect for [REDACTED] following final payment for the Work described in this Agreement. This provision does not apply to the calculations used to determine firm lump sum prices for Work performed under this Agreement except to the extent that knowledge of the amount of taxable portions of Contractor's invoicing is necessary.

ARTICLE 3 - CONTRACTOR

The Contractor is the person or organization identified as such in the Agreement. The term "Contractor" means the Contractor or an authorized representative of Contractor.

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- 3.1 Review of Agreement: The Contractor shall carefully study and compare the provisions of the Agreement and shall at once report to the Owner any error, inconsistency or omission Contractor may discover. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistencies or omissions which are reported to Owner. The Contractor shall do no work without Drawings, Specifications or modifications.
- 3.2 Supervision: All Work shall be done under the direct supervision of the Contractor. The Contractor shall be responsible for construction means, methods, techniques, procedures, and safety, and for coordinating all portions of the Work under the Agreement.
- 3.3 Superintendent: When required by Owner, the Contractor shall employ a qualified superintendent and any necessary assistants, who are acceptable to the Owner, to be in attendance at the project site during the progress of the Work. The superintendent shall have full authority to act on behalf of the Contractor and all communications given to the superintendent shall be considered as given to the Contractor.

Important communications shall be confirmed in writing. Other communications will be so confirmed upon written request, on a case-by-case basis, by the Owner. It shall be the responsibility of the superintendent to coordinate the Work of all the Contractors. The superintendent shall be present on the site at all times required to perform adequate supervision and coordination.

- 3.4 Subcontracts: The Contractor shall submit a list of those Work items which it plans to subcontract and the names of Subcontractors proposed for the Work. Subcontractors may not be changed except at the request or with the approval of the Owner. The Owner shall promptly notify the Contractor in writing if, after due investigation, Owner has reasonable objection to any Contractor on such list and does not accept him. Failure of the Owner to make objection promptly shall constitute acceptance of such Subcontractor.

If the Owner refuses to accept any Contractor on the list submitted by the Contractor, the Contractor shall submit an acceptable substitute and the Agreement Sum shall be increased or decreased by the difference in cost occasioned by such substitute and an appropriate change order shall be issued; however, no increase in the Agreement Sum shall be allowed for any substitution unless the Contractor has acted promptly and responsively in submitting for acceptance any list or list of names as required.

The Contractor is responsible to the Owner for the acts and deficiencies of its Subcontractors, and any of their employees, to the same extent Contractor is responsible for the acts and deficiencies of Contractor's employees. The Contractor shall obtain agreement from the Subcontractors that they will comply with the requirements of this Agreement.

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Nothing contained in this Agreement shall create any contractual relation between any Subcontractor and the Owner.

- 3.5 Contractor's Right To Terminate the Agreement: The Contractor may terminate the Agreement upon [REDACTED] days' written notice to the Owner for any of the following reasons:
- a) if an order of any court or other public authority having jurisdiction, or any act of government caused the work to be stopped or suspended for a period of three months through no act or fault of the Contractor or Contractor's employees;
 - b) if the Owner should fail to pay the Contractor any sum not disputed in good faith within thirty days from the due date. .
- 3.6 Emergencies: The Contractor shall perform any work and shall furnish and install any materials and equipment necessary during an emergency affecting the safety of persons and property. In all cases Contractor shall notify the Owner of the emergency as soon as practicable, but shall not wait for instructions before proceeding to properly protect both life and property. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in the Section 9 Changes in the Work for changes in the Work.
- 3.7 Removal of Equipment: In the case of termination of this Agreement for any cause whatsoever, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of Contractor's equipment and supplies from the property of the Owner, failing which the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.
- 3.8 Cooperation: The Contractor shall cooperate with the Owner and any other contractors as directed by the Owner, who will establish the rights of the various interests involved. The Contractor shall properly connect and coordinate its Work with work done by others.
- 3.9 Use of Premises: The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits and directions of the Owner and shall not unreasonably encumber the premises with its materials.
- 3.10 Layout of Work: It shall be the responsibility of the Contractor to lay out all structures and facilities and establish all grades for the same.
- 3.11 Information Required of Contractor: The Contractor shall promptly furnish weights, bills of material and such other data as are reasonably required by Owner. When required by Owner, the Contractor shall furnish instructions for the installation, operation, care and maintenance of, and lists of recommended spare parts, for the

material or equipment. Unless otherwise specified, four copies of such data shall be furnished.

- 3.12 Independent Contractor: Contractor shall at all times be an independent contractor and be responsible for all acts or omissions of its own employees, and Subcontractors. No act or instruction of Owner shall be deemed to be the exercise of supervision or control of performance hereunder.

ARTICLE 4 - MATERIALS, LABOR AND WORKMANSHIP

- 4.1 Materials and Labor: Unless otherwise specifically noted, the Contractor shall provide and pay for all materials, labor, equipment, tools, water, heat, utilities, transportation and other facilities necessary for the proper execution and completion of the Work. The Contractor is responsible for providing workers, who must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. The Contractor shall at all times be responsible for the conduct and discipline of its employees and/or any Contractor or persons employed by Subcontractors.

Owner reserves the right to require the removal of any personnel of the Contractor who in Owner's opinion may be incompetent, careless, not qualified to perform the Work assigned, or who may have engaged in improper conduct.

- 4.2 Substitution: Certain products have been referred to by name and catalog number in the -Project Documents. No substitutes shall be made without prior written approval of the Owner.
- 4.3 Samples: All samples called for in the Project Documents shall be furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.
- 4.4 Shop Drawings: The Contractor shall provide shop drawings, setting schedules and other such drawings as may be necessary for the prosecution of the Work in the shop and in the field as required by the Drawings or Specifications. Deviations from the Drawings and Specifications shall be called to the attention of the Owner at the time of first submission of the Drawings. The Owner's review of any Drawings shall not release the Contractor from responsibility for such deviations.

By approving and submitting shop Drawings, the Contractor thereby represents that Contractor has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will so do, and that it has checked and coordinated each Shop Drawing with the requirements of the Work and of the Agreement.

- 4.5 Cutting and Patching: The Contractor shall do all cutting, fitting or patching of its Work that may be required to make its several parts come together properly and fit it

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to receive or be received by work of other contractors shown upon, the Drawings and Specifications for the completed structure or any other provisions of the Agreement.

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor. The Contractor shall not endanger any work by cutting, excavating or otherwise altering the Work and shall not cut or alter the work of any other contractor save with the consent of the Owner.

- 4.6 Warranty/Guarantee: All Work, other than designs provided by Owner, its agents or consultants, furnished under this Agreement shall be new and free from defects in design and workmanship, and shall be fit for the ordinary purpose for which such Work is specified in the relevant Project Document. If requested by Owner, the Contractor shall furnish evidence as to the kind and quality of Work supplied. Work not conforming with the provisions of the Agreement, which are not equal to samples reviewed by the Owner, or which in any way do not conform to the S-Project Documents, or (only with respect to material or equipment designed, engineered or specified by Contractor) which are unsuited to the purpose for which they are specified, shall not be furnished or installed and will be considered defective.

In the event of a breach of Contractor's obligation hereunder, Contractor shall remedy the non-conformity as specified below..

Contractor warrants that craft, technical, supervisory and professional personnel that are provided are highly qualified to perform the Work assigned and that all Work performed hereunder shall be of high quality, free from defects, errors or omissions, and in conformance with this Agreement.

Upon written notice from Owner, Contractor shall make promptly and without charge, all necessary changes, corrections, and replacements (including installation of replacement parts) required to make good all defects in the material or equipment or in workmanship during the Warranty Period. Owner shall notify Contractor of all such defects and any breach of these warranties promptly upon discovering them within the Warranty Period.

Contractor shall make good all defects of which it has received notice within the aforementioned Warranty Period. The Warranty Period for any corrected Work shall be extended for a period not to exceed [REDACTED] beyond the original Warranty Period. Contractor shall not be responsible for providing working access to the nonconforming Work, due to any structures or other circumstances provided by Owner or other parties. Contractor shall have no obligation hereunder with respect to any Work which (i) has been improperly repaired or altered without Contractor's approval; (ii) has been subjected to misuse, negligence or accident by someone other than Contractor or its Subcontractors; or (iii) has been used in a manner contrary to Contractor's instructions without Contractor's approval.

EXCEPT AS OTHERWISE SET FORTH HEREIN, THE WARRANTIES AND REMEDIES HEREIN AND IN SECTION 2.2 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE OWNER'S EXCLUSIVE REMEDIES AND CONTRACTOR'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY.

- 4.7 Rejected Work and Materials: Any defective Work shall be removed within [REDACTED] [REDACTED] after written notice is given by the Owner, and the Work shall be re-executed by the Contractor at Contractor's expense. .
- 4.8 Tests: The Contractor shall ascertain by tests or otherwise as agreed to by Owner and Contractor that the Work is in full accordance with the Agreement. Where practicable, all tests shall be made at the place of manufacture. The Contractor shall provide all facilities, apparatus and labor reasonably required for tests and shall bear all of its own expense thereof, except salaries and expenses of representatives of the Owner. The Contractor shall give the Owner at least one week's advance notice before shipment. Up to [REDACTED] after receipt of such notice the Owner may require performance of tests to be witnessed by its representatives and/or require the Contractor to furnish [REDACTED] certified copies of all tests for approval, prior to shipment. There shall be no additional charges for such witness tests or certified copies except as set forth in the Contractor's proposal. However, the Owner will bear the expense of tests conducted on its own premises, [REDACTED] of representatives of the Contractor.
- 4.9 Packing and Marking: All material and equipment to be furnished by the Contractor shall be packed, crated or otherwise suitably protected to withstand shipment to the destination. Each package, crate or part shall be marked plainly with the name of the consignee, shipping destination, the Owner's order number, and such other markings as are required. Complete packing lists, one copy with each package and two (2) copies by mail to the Owner at time of shipment, shall be supplied showing contents and identity of each package.
- 4.10 Work Stoppage: Contractor's personnel shall not honor any union picket lines or strikes nor take part in any work slow down or stoppage nor refuse to report for work, unless such action is protected by any state or federal labor relations law. Notwithstanding the preceding sentence, Contractor shall retain the right to remove its employees from any situation it reasonably determines may pose an unreasonable health or safety risk. Except as set forth above, it shall be the obligation of the Contractor to supply a qualified work force. Owner may terminate this Agreement if Contractor fails to provide a qualified work force within [REDACTED] of Owner's notification to Contractor that a qualified work force has not been supplied.

ARTICLE 5 - INSURANCE

5.1 See Appendix I for Owner's Insurance requirements.

ARTICLE 6 - LEGAL RESPONSIBILITY AND SAFETY

6.1 Indemnification: Contractor will indemnify, defend at its expense and hold harmless the Owner and its Affiliates, directors, officers, employees, and those agents on Owner's property where Work is being performed (the "Indemnitee") from and against any and all claims, demands, suits, losses, costs, fees, damages or expenses it may suffer, or for which it may be held liable, whether including, without limitation, reasonable expenses and attorneys fees incurred in connection therewith, by reason of (A) any patent, trademark, or copyright infringement claim for any design, device, process or procedure used, installed or provided by the Contractor or its agents or Subcontractors under this Agreement; (B) any work-related accident or injury affecting an employee, agent or Subcontractor of the Contractor, arising in connection with Contractor's negligent Work performed under this Agreement; (C) any claim by an agency or instrumentality of the federal, state or any local government, or by an employee, agent or Subcontractor of the Contractor alleging that (i) the Indemnitee is required to maintain worker's compensation or unemployment or any other type of insurance upon any employee, agent or Subcontractor of the Contractor; (ii) the Indemnitee is liable for tax payments or withholding with respect to any employee, agent or Subcontractor of the Contractor; (iii) any employee, agent or Subcontractor of the Contractor is entitled to receive employee benefits from the Indemnitee, including, without limitation, vacation, deferred compensation, medical, pension, 401(k) or any other benefit available to the Indemnitee's employees; and (iv) the Indemnitee is liable to any party, for any reason, due to the negligent performance of Work or omissions by an employee, agent or Subcontractor of the Contractor; (D) bodily injury, including death, to any natural person or persons due to the negligence, recklessness or willful misconduct of the Contractor or its agents or Subcontractors; (E) damage to or destruction of any property including loss of use thereof, due to the negligence, recklessness or willful misconduct of the Contractor, or its agents or Subcontractors. Individual employees, agents and Subcontractors of the Contractor who are performing services for the Contractor as part of the Work for the Indemnitee under this Agreement shall be considered to be employees, agents or Subcontractors of the Contractor for all purposes under this Agreement, notwithstanding any judicial or administrative determination that such employees, agents or subcontractors of the other party should be regarded as employees under applicable law. All actions of the employees, agents and Subcontractors of the Contractor under this Agreement shall be deemed to be actions of the Contractor under these indemnities and this Agreement. In furtherance of the foregoing indemnification and not by way of limitation thereof, the Contractor hereby waives any defense or immunity it might otherwise have under applicable worker's compensation laws or any other statute or judicial decision (including, for Work or services to be conducted in Maine, without limitation, *Diamond International Corp. v Sullivan & Merritt, Inc.* 493 A2d. 1043 (Me 1985)) disallowing or limiting such indemnification, and the Contractor consents to a cause of action for indemnity. Contractor and Owner agree that in the event a claim is filed that alleges, in

whole or in part, joint legal fault (defined as intentional tort or -negligence) on the part of Contractor and an Indemnitee, Contractor will assume the defense, and the cost of defense, of the Indemnitee until such time as there is a either (i) determination of joint fault (defined as intentional tort or negligence) by a judicial body or arbitrator; or (ii) a settlement of the claim signed by both Contractor and such Indemnitee, that apportions joint legal fault (defined as intentional tort or negligence) on such Indemnitee. Once such Indemnitee's joint legal fault (defined as intentional tort or negligence) is so determined and apportioned, Contractor shall be entitled to receive reimbursement of any reasonable amounts paid (including attorney's fees and costs) in the course of performing its indemnification obligations in an amount equal to the percentage of joint legal fault (defined as intentional tort or negligence) attributable to the Indemnitee multiplied by the amount spent by Contractor in connection with the defense of such claim.

- 6.2 Patents and Royalties: If any design, device, material or process covered by letters patent or copyright is used by the Contractor in Contractors Work, Contractor shall provide for such use by legal agreement with the owner of the patent or a duly authorized licensee of such owner. The Contractor shall pay all royalties and license fees. The Contractor shall defend, indemnify and hold harmless the Owner from and against all liability, claims, and losses for infringement of any patent rights, except that the Owner shall be responsible for all such loss when a particular design, process or product of a particular manufacturer or manufacturers is specified by the Owner in the Specification, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, Contractor shall be responsible for such loss unless it promptly gives such information to the Owner. Contractor shall have no obligation hereunder and this provision shall not apply when any action is settled or otherwise terminated without the prior written consent of Contractor.
- 6.3 Permits: All permits, governmental fees and licenses necessary for the proper execution and completion of the Work shall be secured and paid for by the Contractor, unless otherwise specified in the agreement. The parties have agreed Owner shall obtain all of the necessary site and, construction related permits specified in Appendix H. In the event of a delay in the issuance of any such permit, for causes not attributable to either of the parties, then it is agreed that, if necessary, a day for day delay in the schedule of performance shall be allowed as caused by such delayed permit issuance, and, an adjustment in the Agreement Sum due such delay.
- 6.4 Compliance with Laws: The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and orders bearing on the performance of the Work. If the Contractor observes that any of the Project Documents are at variance therewith in any respect, the Contractor shall promptly notify the Owner in writing, and any necessary changes shall be adjusted by appropriate modification. If any regulation, law, rule, regulation, ordinance, by-law etc., and any derivatives including but not limited to permits, licenses or codes, coming into force after date of Contractor's bid should cause an increase of the Contractor's cost, then, with Owner's prior written consent (which consent shall not be unreasonably withheld) the Agreement Sum price shall be adjusted with an amount equivalent to the said increase.

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- 6.5 Written Notice: Written notice shall be considered as duly served when delivered in person or sent by registered mail to the individual, member of the firm or officer of the corporation for whom it was intended, or to the last known business address.
- 6.6 Safety: See Appendix M for Owner's Contractor Safety Requirements. Contractor is to follow these requirements at all times while performing work for Owner.

ARTICLE 7 - TIME

- 7.1 Notice To Proceed: Following execution of the Agreement by the Owner and the Contractor, written notice to proceed with the Work shall be given by the Owner to the Contractor. The date to commence Work is the date established in the Notice. If there is no Notice to Proceed, it shall be the date of the Agreement or such other date as may be established therein.
- 7.2 Agreement Time: The Agreement Time is the period of time allotted in the Agreement for completion of the Work.
- 7.3 Schedule of Completion: The Contractor shall submit, at such times as may reasonably be requested by the Owner, schedules showing the order in which the Contractor proposes to carry out the Work, with dates at which the Contractor will start the various parts of the Work, and the estimated date of completion of each part. The Schedule of Completion shall include the Agreement Time.
- 7.4 Substantial Completion: After Substantial Completion has been achieved, a Certificate of Substantial Completion shall be issued by the Owner. The Certificate does not relieve the Contractor of its obligation to complete all the Work including punch-list items as required to achieve Final Completion. It entitles the Owner to occupy the Work or designated portions thereof for the use for which it is specified. Risk of loss shall pass to Owner when Owner issues a Certificate of Substantial Completion or the Static VAR Compensator is Energized, whichever comes first..
- 7.5 Progress and Completion: It is expressly understood by the Contractor and Owner that time is important in the performance of this Agreement.

The Contractor shall begin the Work on the date of commencement set forth in the Written Notice to Proceed. The Contractor shall carry the Work forward expeditiously with adequate forces and shall complete it within the Agreement Time.

If a date or time of completion is included in the Agreement, it shall be the date of Substantial Completion as defined herein, including authorized extensions thereto, unless otherwise provided.

- 7.6 Delays Damages: If the Contractor shall neglect, fail, or refuse to complete the Work within the time specified for Substantial Completion in this Agreement, then the Contractor does hereby agree, as a part consideration for entering into this Agreement, to pay to the Owner, as liquidated damages (“Delay Liquidated Damages”) and not as a penalty, the sum of [REDACTED] of the Agreement Sum [REDACTED] for [REDACTED] beyond the date specified for achieving Substantial Completion in the Agreement until Substantial Completion is achieved. The “Delay Liquidated Damages shall be capped at [REDACTED] of the Agreement Sum, as such Agreement Sum may be amended by Change Order (the “Delay Liquidated Damages Cap”).

The said amount is fixed and agreed on by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which the Owner will sustain by failure of the Contractor to complete the Work on time, such as loss of revenue, service charges, interest charges, delays caused to other construction activities of Owner by failure to perform this Contract, and other damages, some of which are indefinite and not susceptible of easy proof, said amount is agreed to be a reasonable estimate of the amount of damages which the Owner will sustain and said amount shall be deducted from any monies due or that may become due to the Contractor. If monies owed to Contractor under this Agreement are insufficient to cover said Delay Liquidated Damages, then the Contractor shall pay the amount of the difference. The Delay Liquidated Damages identified herein shall be the Owner’s sole and exclusive remedy and Supplier’s sole and exclusive liability for failure to achieve Substantial Completion by the date specified herein for achieving Substantial Completion.

- 7.7 Unforeseen Conditions: In the event unforeseen conditions require an increase in the Owner's cost obligation of [REDACTED] percent or more from that agreed to in Appendix “B”, this Agreement will be modified by supplement Agreement covering said Increase. In the event it is determined that any change from the description of Work contained in this Agreement is required, approval must be secured from the Owner prior to the beginning of such work. Where the change is substantial, written approval must be secured.

Reimbursement for increased work and/or substantial change in the description of Work shall be limited to costs covered by written modification, change order, or extra work order approved by the Owner.

ARTICLE 8 - PAYMENTS

- 8.1 Agreement Sum: The Agreement Sum is stated in Appendix B (Contract Price) and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Agreement. The Agreement Sum is fixed. Work that is required which is not included in the Scope of Work shall be done on a fixed price basis or on a

time and materials basis as agreed to by the Owner and Contractor prior to the commencement of such out of scope work.

Before the first invoice, the Contractor shall submit a complete breakdown of the Agreement Sum showing the value assigned to each part of the Work including an allowance for profit and overhead. Upon approval of the breakdown of the Agreement Sum by the Owner, it shall be used only as a basis for the Contractor's invoice.

For lump-sum agreements the Contractor is to provide invoicing showing material costs and the total cost of the project or applicable portion thereof.

8.2 Payments: On or before the tenth day of each month, or as otherwise specified in this Agreement, the Contractor shall submit to the Owner an itemized invoice showing the percentage and value of the Work completed during the previous month, including materials received and stored on the job site. Invoices shall be submitted utilizing American Institute of Architects (AIA) forms 702 and 703, as set forth in Appendix E to this Agreement. Each invoice shall be accompanied by the Contractor's wavier and release in the form of Appendix J-1 or Appendix J-2 for final invoice.

_____ days after acceptance of the invoice, the Owner shall make payment to the Contractor of _____ percent of the undisputed amount. Payment may be withheld and may be paid directly to third parties in accordance with Paragraph 8.3 if Contractor has failed to comply with its lien obligations under Paragraph 8.5 herein.

Final payment shall be made _____ days after final acceptance of the Work but in no event later than _____ days from the In-Service Date unless Owner determines that Contractor has failed to achieve Final Completion during such time period.

The Contractor warrants that title to all Work covered by an invoice, whether incorporated in the project or not, will pass to the Owner upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 8 as "liens"; and that subject to Owner's continued obligation to make payments owed, no Work covered by an invoice will have been acquired by the Contractor, or by any other person performing the Work at the site or furnishing materials and equipment for the Work, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor, or its Subcontractors or suppliers.

8.3 Payments Withheld: The Owner may withhold, or, on account of subsequently discovered evidence, nullify the whole or part of any invoice to such extent as may be necessary to protect itself from loss on account of:

a) defective Work not remedied;

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- b) third party claims filed or reasonable evidence indicating probable filing of such claims which Contractor has failed to remove within a reasonable period of time after receiving notice of such;
- c) failure of the Contractor to make payments due to Subcontractors, its suppliers or employees;
- d) reasonable indication that the Work will not be completed within the Agreement Time;
- e) prosecution of Work that does not comply with the Project Documents;
- f) failure of the Contractor to submit estimates of partial payments, or lack of accurate supporting data;
- g) invoicing which is incorrect; or
- h) breach of any material term or condition of this Agreement.

When the above grounds are removed, or the Contractor provides a bond satisfactory to the Owner which will protect the Owner in the amount withheld, payment shall be made for such amounts withheld.

8.4 Payment Disclaimer: In no event shall payment or partial payment by Owner for any material or service rendered by Contractor be construed as Owner's acceptance of that material or service. Such payment by Owner to Contractor in no way releases Contractor from any of its obligations under this Agreement.

8.5 Final Completion and Final Payment: When the Contractor determines that the Work is substantially complete in accordance with the Project Documents, the Contractor shall, together with Owner, prepare a punch-list of items to be completed or corrected by Contractor. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Agreement. When Contractor achieves Final Completion, upon receipt of written notice that the Work is ready for , final inspection and acceptance, and upon receipt of final invoice, the Owner will promptly make such inspection and, when Owner finds the Work conforming to the Project Documents under the Agreement and the Agreement fully performed, Owner will make final payment in accordance with time periods set forth in Section 8.2..

Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner (1) an Affidavit that all Contractor's payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as indicated in Section 8.2 and Appendix forms J-1 or J-2, as applicable. If any subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien,

including all costs and reasonable attorney's fees provided that Contractor has failed to remove any such lien within a reasonable time after being notified of its filing.

If after Substantial Completion of the Work and -occurrence of the In-Service Date, Final Completion thereof is materially delayed through no fault of the Contractor, the Owner shall, without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed.

The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- 1) outstanding liens;
- 2) faulty, defective, or nonconforming Work;
- 3) failure of the Work to comply with the requirements of the Agreement, or
- 4) terms of any warranties or guarantees required by the Agreement.

The acceptance of final payment shall constitute a waiver of all payment claims by the Contractor except those previously made in writing and still unsettled.

8.6 Reimbursable Costs and Overhead:

8.6.1 Reimbursable Costs: In cost-plus-fixed fee or cost-plus-percentage agreements, or when in determining costs of extra work, or work performed against allowances, Reimbursable Costs shall be defined as the sum of the following: Labor, material and miscellaneous costs, less all rebates, refunds, and return deposits. All claims for reimbursement shall be supported by invoices and payrolls.

1. Labor costs shall include only the following:

- a. Payroll wages of workmen employed directly on the Work at the job site.
- b. Payroll wages or salaries of superintendents, foremen or other supervisory personnel engaged full-time at the job site in direct supervision of the Work on permanent or temporary assignment approved by the Owner.
- c. Traveling and living expenses of workmen or supervisory personnel necessarily imported for the Work from outside the job site jurisdiction and with the approval of the Owner.
- d. All payroll charges such as Social Security payments, unemployment insurance, workmen's compensation premiums, pension and retirement

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allowances, vacation and sick leave allowances applicable to wages paid to employees engaged directly on the Work at the job site.

2. Material costs shall include only the following, which shall be obtained by the Contractor at the most favorable prices available, subject to approval of the Owner:

- a) Cost of all materials furnished by the Contractor and permanently incorporated into the Work.
- b) Cost of all materials furnished by the Contractor for temporary construction, less the salvage value of any such material retained or resold by the Contractor with the approval of the Owner.

3. Miscellaneous costs shall include only the following:

- a) Rental costs, at rental rates approved by the Owner, for equipment hired or owned by the Contractor, while used in the Work or retained at the job site exclusively for use in the Work, plus cost of fuel and normal maintenance if not included in the rental rates.
- b) Cost of transportation to the job site of materials and rental equipment necessary exclusively for the Work, and the return of rental equipment to the location from which it is obtained.
- c) Cost of all fees, permits, inspection, insurance, and taxes necessary exclusively for the Work, and paid by the Contractor.
- d) All other costs incurred by the Contractor in connection with the Work (excluding without limitation those costs defined as overhead) which costs are specifically approved in writing by the Owner.
- e) Cost of all Work subcontracted by the Contractor with the approval of the Owner.

8.6.2 Overhead: Shall include all items normally understood as constituting overhead and without limiting the generality of the foregoing shall include the services and expenses of the Contractor, its officers, engineers, surveyors, timekeepers, accountants, auditors, general and trade superintendents, and all similar personnel not engaged full-time at the job site in performing or supervising the Work. It shall include expenses incurred by the Contractor in procuring and accounting for materials and labor for the Work, exclusive of cost and transportation of materials and labor, and shall include the transportation, depreciation and loss of all tools other than rental equipment.

- 8.6.3 Claims for Payment of Reimbursable Costs: Shall be submitted in the form prescribed by the Owner, including itemized cost breakdown, together with supporting data.

ARTICLE 9 - CHANGES IN THE WORK

- 9.1 Change Orders: The Owner reserves the right to order changes in the Work through additions, deletions or other revisions. All such changes in the Work shall be authorized by change order, and shall be executed under the applicable conditions of the Agreement. The Agreement Sum and Agreement Time of completion affected by the change shall be adjusted at the time the change order is executed.

A change order is a written order to the Contractor signed by the Owner, issued after the execution of the Agreement, authorizing a change in the Work and/or an adjustment in the Agreement Sum or Agreement Time. A change order may also be signed by the Contractor if the Contractor agrees to the adjustment in the Agreement Sum or the Agreement Time. The Agreement Sum and the Agreement Time may be changed only by a change order that is signed by both the Owner and the Contractor.

The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- 1) By mutual acceptance of a lump sum properly itemized;
- 2) By unit prices stated in the Agreement or subsequently agreed upon; or
- 3) By cost and a mutually acceptable fixed or percentage fee.

If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed change order that application of the agreed unit prices to the quantities of work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship. However, the Owner shall have the right to adjust the quantities provided in the Agreement by as much as [REDACTED] without a corresponding change in the unit price for the item(s) involved.

- 9.2 Differing Site Conditions: Should concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Agreement or should unknown physical conditions below the surface of the ground of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement be encountered, the Agreement Sum shall be equitably adjusted by change order upon claim by either party made within [REDACTED] after the first observance of the conditions.

- 9.3 Claims for Additional Costs: If the Contractor claims that additional costs are involved because of (1) any written interpretation of the Agreement issued by the Owner or (2) any order by the Owner to stop the Work where the Contractor was not at fault, or (3) any other event the Contractor shall submit such claim by giving the Owner written notice thereof within [REDACTED] days after the occurrence of the event or of the time Contractor first becomes aware of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim for additional compensation shall be valid unless so made. Any change in the Agreement Sum resulting from such claim shall be authorized by change order.

ARTICLE 10 - MISCELLANEOUS PROVISIONS

- 10.1 Governing Law: This Agreement shall be governed by and construed according to the laws of the State where the Work is being performed.
- 10.2 Non-Assignment: The Contractor shall not assign this Agreement in whole or in part nor any right hereunder without the prior written consent of Owner. The assignment by the Contractor of this Agreement or any interest therein, or of any money due or to become due by reason of the terms hereof without written consent of Owner shall be void.
- 10.3 Cleaning Up: The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work the Contractor shall remove from the Owner's property, and from all public and private property, all temporary structures, rubbish and waste materials, tools, construction equipment, machinery, and surplus materials, leaving the site smooth, clean and true to line and grade.
- 10.4 Parent Guarantee: Simultaneously with execution of this Agreement, Contractor shall deliver to Owner a duly executed Parent Guarantee substantially in the form attached hereto in Appendix P (the "Parent Guarantee".)
- 10.5 Interest: Any moneys not paid when due to either party under this Agreement shall bear interest at the legal rate in force at the place of the project.
- 10.6 Arbitration: All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment as provided herein, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in force unless the parties mutually agree otherwise. Any arbitration proceedings shall take place in the State of New York. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

The Contractor shall not cause a delay of the Work because of the pendency of arbitration proceedings, but Contractor shall only continue working until the arbitrators shall have an opportunity to determine whether or not the Work shall continue during the pendency of the arbitration proceedings

The demand for arbitration shall be filed in writing with the adverse party, and with the American Arbitration Association and shall be served by registered mail to the last known address of each. The demand shall be made within a reasonable time after the dispute has arisen. In no case, however, shall the demand be made later than the time of final payment, except as may be otherwise expressly stipulated in the Agreement.

. In no case shall punitive damages be awarded to either party in any arbitration resulting from performance under this Agreement. Once the arbitral award is determined and, if applicable, apportioned, the prevailing party shall be entitled to receive reimbursement from the non-prevailing party of any amounts paid including attorney's fees and costs incurred hereunder in connection with the arbitration proceeding. Any such award of attorney's fees and costs shall take into account the apportionment of joint legal fault (defined as intentional tort or negligence), if any, among the parties.

The award of the arbitrators shall be in writing and acknowledged like a deed to be recorded and a duplicate shall be delivered personally or by registered mail forthwith upon its rendition to each of the parties to the controversy and to the Owner. Judgment may be rendered upon the award by the federal court or the highest state court having jurisdiction to render same.

- 10.7 Separate Agreements: The Owner may award other agreements in connection with other portions of the project. The Contractor shall cooperate with other contractors with regard to storage of materials and equipment and the execution of their work. It shall be the Contractor's responsibility to inspect all work by other contractors affecting its Work and to report to the Owner any irregularities which will not permit it to complete its Work in a satisfactory manner. The Contractor shall not be responsible for defects of which Contractor could not have known, which develop in the work of others after the Work is completed.

Should the Contractor cause damage to the work or property of any separate contractor on the project, the Contractor shall, upon due notice, settle with such separate contractor by agreement or arbitration, if Contractor will so settle. If such separate contractor sues the Owner or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings according to Contractor's indemnification obligations. .

10.8 Taxes:

1. Sales and use tax on all purchases of tangible personal property for resale to the Owner pursuant to this Agreement should be made by the Contractor.
2. The Contractor, with respect to its own employees agrees to assume full responsibility for the payment of any federal or state payroll taxes, or contributions, for unemployment insurance, old age pensions, annuities, and the like, in conformity with existing social security laws, and to indemnify the Owner against any liability therefor.

10.9 Delivery of Material and Equipment: When it is the responsibility of the Contractor under the Agreement to unload material and equipment at the Work site such unloading shall be done expeditiously. If, in the opinion of the Owner, failure to so unload will interfere with the progress of the Work, the Owner may unload such material and equipment upon approval of the Contractor, at the Contractor's expense and the Contractor shall reimburse the Owner for the actual cost thereof plus overhead.

All loss or damage to the material or equipment to be furnished by the Contractor, shall be remedied by the Contractor up to the point of passage of risk of loss to Owner except to the extent due to the legal fault (defined as intentional tort or negligence) of the Owner.

10.10 Wages and Hours: Wage rates established at the beginning of the Work will not be changed without the approval of the Owner. The Work will be performed on a 40-hour week basis insofar as possible and no overtime will be worked without prior approval of the Owner. This paragraph shall not be applicable in the event that the Agreement provides for a lump-sum or unit price agreement for the Work.

10.11 Work Records: It is understood and agreed that job accounting, job costs keeping and the scheduling and purchasing of materials entering into the Work or incidental thereto will be carried on in accordance with the Owner's instructions. The Owner may have a field auditor representing it in the work office on the work site for the purpose of facilitating the foregoing and the Contractor will give him such assistance and cooperation as the Owner shall require. All payrolls entering directly into the cost of the Work shall be carried in the name of the Contractor. This paragraph shall not be applicable to lump-sum or unit price portions of the Work.

10.12 Limitation of Liability: The liability of the Owner and the Contractor and their respective owners and employees, with respect to any and all claims arising out of this Agreement, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, shall in no event include consequential or incidental damages, other than with respect to liability arising out of fraud, gross negligence or willful misconduct. Except as otherwise set forth below in this Section 10.12, Contractor's aggregate liability for any and all claims whether in contract, warranty, tort, negligence,

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strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement shall in no case exceed the Agreement Sum. Excluded from this limitation on Contractor's aggregate liability are any liabilities arising out of or in connection with (a) any and all indemnification obligations for third party claims, or (b) fraud, gross negligence, or willful misconduct.

- 10.13 Interference with Operations: Interference with normal operation of the Owner's plant or equipment, and that of all contractors or subcontractors on the work site, shall be avoided wherever possible. The Contractor shall not operate any of the Owner's plant or equipment or control devices, or those of any other contractor or subcontractor on the work site except at the direction of and under the immediate supervision of the Owner.
- 10.14 Setoff: Owner may set off against amounts payable to Contractor under this Agreement any claim or charge it may have against Contractor.
- 10.15 Equal Opportunity: Contractor shall comply, to the extent applicable, with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Rehabilitation Act of 1973, as amended, and any regulations, and reporting requirements implemented thereunder. The equal opportunity and affirmative action clauses contained in Title 41, Chapter 60, Sections 1.4, 250.4, and 741.3 of the Regulations of the U.S. Department of Labor, Office of Federal Contract Compliance, and any section or sections superseding or amending the same, are hereby incorporated by reference and made a part hereof as though fully set forth herein.
- 10.16 Entire Agreement: This Agreement constitutes the entire agreement between the parties for the Work to be performed hereunder, and supersedes any prior communications, whether written or oral, between the parties as to such services.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

- 10.17 Waiver: No waiver, alteration, consent or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the party to be bound.
- 10.18 Rights, Privileges, Remedies: Unless otherwise provided, all rights, privileges and remedies afforded each of the parties hereto by this Agreement shall be deemed cumulative and the exercise of any one or more of such rights or remedies shall not be deemed a waiver of any other right, privilege or remedy provided for herein or available at law or in equity.
- 10.19 Failure to Complain: Unless otherwise provided in this Agreement, the failure of any party hereto to complain of any act or omission on the part of the other party hereto, no matter how long the same may continue, shall not be deemed a waiver by said party of

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any of its rights hereunder. No waiver by any party hereto at any time, express or implied, of any default or of any breach or modification of any provision of the Agreement shall be deemed a waiver of default, breach or modification of any other provision of this Agreement or a consent to any subsequent default, breach or modification.

- 10.20 Severability: In the event any provision hereof shall be declared invalid, that provision shall be deemed severable from the remaining provisions of this Agreement, which shall remain in full force and effect.
- 10.21 Third Party Benefits: Except as may be specifically provided for herein, no provision of this Agreement is intended or is to be construed to be for the benefit of any third party.
- 10.22 Force Majeure; Impracticability; Excuse: Contractor shall not be charged with any liability for failure to perform when such failure is due to any cause beyond the control and without the fault or negligence of Contractor, except that adverse weather shall not be deemed a cause beyond the control of Contractor for purposes of this Agreement unless the adverse weather is unusually severe; and provided that the Contractor shall have used its reasonable best efforts, and rendered to Owner prompt notice in writing when it appears that such cause will result in non-performance under this Agreement. If any such non-performance shall threaten to impair Owner's ability to operate, Owner shall have the right at its option and without being under any liability to Contractor to cancel by notice in writing to Contractor the portion or portions of the Work so affected and to take such compensatory action as may be necessary. Correspondingly, except for the obligation to make payments owed for Work performed, Owner shall be excused for failure of performance herein due to any cause beyond its control and without its fault or negligence.
- 10.23 Employee Solicitation: Except as otherwise set forth herein, during the term of this Agreement and for a period of [REDACTED] thereafter, Iberdrola USA Management Corporation shall not and Contractor shall not, except with the prior written consent of the other, offer employment to, or employ, any employee of the other party nor induce or attempt to induce, directly or through an agent or third party, any such employee to leave the employ of the other party; provided, however, that a party's use of general advertisements for employment or use of employment agencies (not targeting an individual employee of the other party) shall not be considered to be a breach of the restrictions contained in this Section. .
- 10.24 Iberdrola USA Code of Conduct Contractor is to comply with Iberdrola USA Code of Conduct in their performance of its Work under this Agreement. The Iberdrola USA Code of Conduct can be found at the Iberdrola USA website (www.iberdrolausa.com) under Corporate Governance on the Financial Information header.
- 10.25 Performance Monitoring Company will evaluate Contractors performance by utilizing Contractor corrective action reports and Contractor performance evaluation reports. The Contractor must provide upon request the OSHA incident rate and Experience

modification rate for Company's review. The Company's project manager will evaluate the Contractor's performance upon the conclusion of every project by completing the specified report. The Company will continuously monitor the Contractor's performance. Performance by a Contractor that is less than desirable may potentially eliminate this Contractor from bidding on future projects and/or lump sum projects.

- 10.26 Continuous Improvement Continuous improvement is the foundation of this Agreement. Contractor warrants that it will pass on to Company in the form of price reductions in material costs and the like. Contractor likewise will use its best efforts to improve continuously its performance in all areas. In particular, Contractor will evaluate opportunities for cost/price reductions on items and services ordered and to be ordered and communicate them promptly to Company. Contractor has specifically identified target cost reductions of [REDACTED] beyond the prices shown in [REDACTED] for the initial Term, and agrees to work diligently with Company personnel toward attainment of this objective. Contractor is expected to advance its economies of production, service, service delivery, material handling and technical prowess at least as fast as other competitors in its industry, and to offer the price and performance benefits of those improvements to Company, as soon as they become available."
- 10.27 No Dispute Contractor covenants that it is not aware of any pending billing dispute or other contractual dispute (pursuant to current contracts or contracts no longer in effect) or any pending or threatened litigation between Contractor and Company.
- 10.28 Contractor Security Requirements Contractor is to comply with Company's Contractor Security Requirements in its performance of its Work for Company under this agreement.

Company Information:

(1) The term "Company Information" means all information, in any form: (i) furnished or made available directly or indirectly to Contractor by Company or its Affiliates, or otherwise obtained by Contractor from Company or its Affiliates, or (ii) obtained from Company or Company's Affiliates in connection with the performance of the Services.

(2) Company Information shall be and remain the property of Company or its Affiliate(s), as appropriate. Contractor shall not possess or assert any lien or other right against or to Company Information. No Company Information, or any part thereof, shall be sold, assigned, leased, or otherwise disposed of or to third parties by the Contractor or commercially exploited by or on behalf of Contractor, its employees, or agents.

(3) Upon Company's request, the termination or expiration of this Agreement for any reason (including termination for cause) or, with respect to any particular Company Information, on such earlier date that the same shall be no longer required by Contractor in order to render the Services, Contractor shall promptly return to Company such Company Information (including copies thereof) in a form reasonably requested by Company or, if Company so elects, shall destroy such Company Information.

PUBLIC VERSION

(4) Contractor shall not use Company Information for any purpose other than to render the Services.

(5) Contractor shall establish and maintain safeguards against the destruction, loss, alteration, or unauthorized use of Company Information which are equivalent to those “best practices” employed within the Contractor’s industry.

(6) Contractor shall be familiar with and comply with the requirements of the NERC CIP- 004 for projects at NYSEG and RGE bulk electric substations (>230Kv). The specific CIP Standard follows:

CIP-004 Excerpt:

R3. Personnel Risk Assessment --The Contractor shall have a documented personnel risk assessment program, in accordance with federal, state, provincial, and local laws, and subject to existing collective bargaining unit agreements, for personnel having authorized cyber or authorized unescorted physical access. A personnel risk assessment shall be conducted pursuant to that program prior to such personnel being granted such access except in specified circumstances such as an emergency. The personnel risk assessment program shall at a minimum include:

- i. R3.1. The Contractor shall ensure that each assessment conducted include, at least, identity verification (e.g., Social Security Number verification in the U.S.) and seven-year criminal check. The Contractor may conduct more detailed reviews, as permitted by law and subject to existing collective bargaining unit agreements, depending upon the criticality of the position.
- ii. R3.2. The Contractor shall update each personnel risk assessment at least every seven years after the initial personnel risk assessment or for cause.
- iii. R3.3. The Contractor shall document the results of personnel risk assessments of its personnel having authorized cyber or authorized unescorted physical access to critical cyber assets, and that personnel risk assessments of contractor and service vendor personnel with such access are conducted pursuant to Standard CIP-004.

10.29 Utilization of Small Business Concerns Contractor and Subcontractors of all tiers must comply with section 52.219-8 of the Federal Acquisition Regulation. This policy requires that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in the performance of Work.

PUBLIC VERSION

10.30 Small Business Subcontracting Plan In accordance with section 19.702(a) (1) and (2) of the Federal Acquisition Regulation, each Contractor (except small business concerns) whose contract is expected to exceed \$550,000 (\$1,000,000 for construction) and has subcontracting possibilities is required to submit an acceptable subcontracting plan to the Company. Plan shall include spending goals with businesses that are defined by the U.S. Small Business Administration as small, women-owned small, veteran-owned small, service-disabled veteran-owned small, HUBZone, small disadvantaged (SDB), and minority-owned; as defined by the National Minority Contractor Development Council. If the Contractor fails to submit a plan within the time limit prescribed by the Company, the Contractor may be ineligible for award.

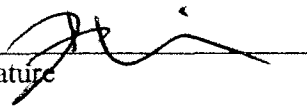
The Contractor assures that the clause entitled “Small Business Subcontracting Plan” will be included in all subcontracts, that offer further subcontracting opportunities, and all subcontractors (except small business concerns) who receive subcontracts in excess of 550,000 (\$1,000,000 for construction) will be required to adopt a plan similar to this plan.

[Signature page follows]

ARTICLE 11 - ACCEPTANCE


This Agreement is accepted by the authorized representatives of the Owner and Contractor:

OWNER



Signature

Daniel Alcain
Print


CFO
Title


Date

CONTRACTOR

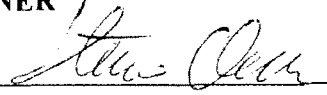

Signature


Print


Title


Date

OWNER


Signature

Steven Claves
Print

Director
Title


Date









ARTICLE 11 - ACCEPTANCE

This Agreement is accepted by the authorized representatives of the Owner and Contractor:

OWNER

CONTRACTOR

Signature

Signature

Print

Print

Title

Title

Date

Date

OWNER

Steve Oakes

Signature

Steven Oakes

Print

Director

Title

Date

PUBLIC VERSION

APPENDIX A

Scope of Work

Contractor shall perform the Work in accordance with the following:

1) RFP 10487 Specifications and Drawings

RFP 10487, Addendum #2 dated [REDACTED]

RFP 10487, Addendum #1 dated [REDACTED]

RFP 10487, Attachment B, Specification SP-1817, Revision [REDACTED]

- Appendix A – Reference Drawings for SP-1817
- Appendix B - Specifications for SP-1817
- Appendix C – Systems Study for SP-1817
- Appendix D – Standards for SP-1817

RFP 10487, Attachment D - Contractor Safety Program

RFP 10487, Attachment E, Contractor Security

2) The technical data displayed below:

DATE [REDACTED] PROPOSAL DATA [REDACTED]

		Sound	-10dbA
		Transformer	2x3-phase
SVC Electrical Losses (kW)			[REDACTED]
Point 1 at 200 MVAR Capacitive:			[REDACTED]
Point 2 at 75 MVAR Capacitive:			[REDACTED]
Point 3 at 0 MVAR:			[REDACTED]
Point 4 at -50 MVAR Inductive:			[REDACTED]
Point 5 at -100 MVAR Inductive:			[REDACTED]
			[REDACTED]
SVC Rating			[REDACTED]
Undervoltage (PU)			[REDACTED]
Clearing Time (ms)			[REDACTED]
Overvoltage (PU)			[REDACTED]
Number of TSC Branches			[REDACTED]
Number of TCR Branches			[REDACTED]
Number of Filter Branches			[REDACTED]
	***) To be clarified. However, the SVC manages 50ms specified in 4.4 Under voltage of SP-1817."		[REDACTED]
Main Step-down Transformer			GE Prolec
Core and Coil			[REDACTED]
Tank and Fittings			[REDACTED]
Oil			[REDACTED]
Total Weight			[REDACTED]
Total Shipping Weight			[REDACTED]
Weight of Largest Shipping Piece			[REDACTED]
			[REDACTED]
Oil Capacity			[REDACTED]
Total Oil		gal	[REDACTED]
Oil to Cover Core/Coils			[REDACTED]
Oil Type			[REDACTED]
Oil Supplier			[REDACTED]
Oil Market Name			[REDACTED]

PUBLIC VERSION

Dimensions		
Installed (Inches)		
	Height	inch
	Width	
	Depth	
	Height Over Cover	
	Height to Live Part-HV	
	Height to Live Part-LV	
Control Cabinet (Inches)		
	Base to Bottom Cab.	
	Base to Top Cab.	
Winding Rating		
High Side		
	Voltage (kV)	
	Capacity @55 (MVA)	
	Capacity @65 (MVA)	
	BIL (kV)	
	Symmetrical Short Circuit Current Withstand (2 sec.) (A)	
Low Side		
	Voltage (kV)	
	Capacity @55 (MVA)	
	Capacity @65 (MVA)	
	BIL (kV)	
	Symmetrical Short Circuit Current Withstand (2 sec.) (A)	
Tertiary		
	Voltage (kV)	
	Capacity @55 (MVA)	
	Capacity @65 (MVA)	
	BIL (kV)	
	Symmetrical Short Circuit Current Withstand (2 sec.) (A)	
Neutral		
	BIL (kV)	

PUBLIC VERSION

Bushings			
High Side			
	Manufacturer		
	Type		
	Catalog #		
	BIL (kV)		
	Voltage Class (kV)		
	Current Rating (A)		
Low Side			
	Manufacturer		
	Type		
	Catalog #		
	BIL (kV)		
	Voltage Class (kV)		
	Current Rating (A)		
Tertiary			
	Manufacturer		
	Type		
	Catalog #		
	BIL (kV)		
	Voltage Class (kV)		
	Current Rating (A)		
Neutral			
	Manufacturer		
	Type		
	Catalog #		
	BIL (kV)		
	Voltage Class (kV)		
	Current Rating (A)		
Relay Accuracy CTs			
High Side			
	Manufacturer		
	Type		
	Qty/Bushing		
	Ratio		
	Accuracy		
	TRF		
	Provisions Provided for Future CTs		

PUBLIC VERSION

Low Side		
	Manufacturer	
	Type	
	Qty/Bushing	
	Ratio	
	Accuracy	
	TRF	
	Provisions Provided for Future CTs	
Tertiary		
	Manufacturer	
	Type	
	Qty/Bushing	
	Ratio	
	Accuracy	
	TRF	
	Provisions Provided for Future CTs	
Neutral		
	Manufacturer	
	Type	
	Qty/Bushing	
	Ratio	
	Accuracy	
	TRF	
	Provisions Provided for Future CTs	
Metering CTs		
High Side		
	Manufacturer	
	Type	
	Qty/Bushing	
	Ratio	
	Accuracy	
	TRF	
	Provisions Provided for Future CTs	
Low Side		
	Manufacturer	
	Type	
	Qty/Bushing	
	Ratio	
	Accuracy	
	TRF	
	Provisions Provided for Future CTs	

PUBLIC VERSION

Tertiary			
	Manufacturer		
	Type		
	Qty/Bushing		
	Ratio		
	Accuracy		
	TRF		
	Provisions Provided for Future CTs		
Neutral			
	Manufacturer		
	Type		
	Qty/Bushing		
	Ratio		
	Accuracy		
	TRF		
	Provisions Provided for Future CTs		
Cooling Equipment			
Fans			
	Manufacturer		
	Type		
	Quantity		
	Voltage Rating (V)		
	Horsepower (hp)		
	Single Phase?		
Pumps			
	Manufacturer		
	Type		
	Quantity		
	Voltage Rating (V)		
	Horsepower (hp)		
	Single Phase?		
Load Tap Changer			
Manufacturer			
Style #			
Type (Resistive vs. Reactive)			
Percent Regulation (%)			
Number of Tap Positions			
% Voltage per Tap (5/8%, etc.)			
Position Indicator Alternate Provided			
LTC Remote Indicating Device			
The LTC Compartment requires vacuum filling during maintenance procedure (Yes or No)			

PUBLIC VERSION

Impedance			
H-X on the OA, ___ deg C rating			
	% Resistance		
	% Reactance		
	% Impedance		
	Zero Seq. Impedance		
H-Y on the OA, ___ deg C rating			
	% Resistance		
	% Reactance		
	% Impedance		
	Zero Seq. Impedance		
X-Y on the OA, ___ deg C rating			
	% Resistance		
	% Reactance		
	% Impedance		
	Zero Seq. Impedance		
Sound			
Sound Level (dB)			
Auxiliary Power			
First Stage (A)	1ph		
Second Stage (A)	1ph		
LTC Motor (A)	1ph		
Cabinet Heaters (A)			
Total Aux. Power Requirement At Max. Load (kW)			
Oil Preservation System			
Type of System			
Personnel Fall Protection			
Type Proposed			
Thyristor Valves			
	Continuous Current Rating (A)		
	Short Time Current Rating		
	Continuous Voltage Rating (Kv)		
	Short Time Voltage Rating		
	Number of thyristors in series		
	Number of redundant thyristors		
	Insulation level		
	Firing and Monitoring Systems		
	Protection Scheme		

Dimensions		
Height		
Width		
Depth		
Weight		

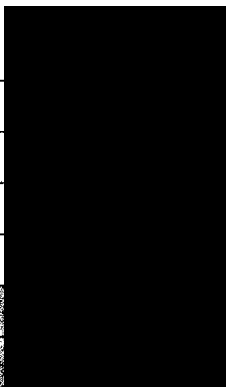
Reactor Data FC5			
Manufacturer, Model, Catalog Number			
Inductance Rating (μH)			
Continuous Current Rating (A)			
Insulation level (kV)			
Dimensions			
Height			
Width			
Depth			
Weight			




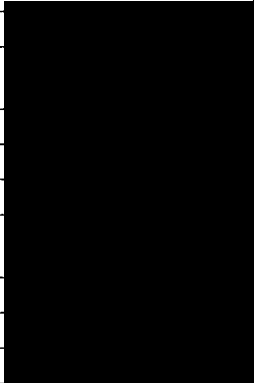
PUBLIC VERSION

APPENDIX B

Agreement Sum

Net Price: SVC Complete System and Installation (includes spare parts and (2) three-phase step-down transformers)	\$	
Net Price: 10dB Noise Mitigation	\$	
Net Price: Final Stoning	\$	
Total Award (FOB Destination)	\$	
Optional Addition (RGE's Discretion)		
Net Price: 7 th Harmonic Filter	\$	

*Agreement Sum does not include sales or use tax.
Reference Rochester Gas and Electric Corporation Direct Pay Permit, Appendix Q*

Payment (% of Contract Price)	Milestone	Approximate Milestone Date
	Advance Payment	
	Release for Manufacturing (Purchase Orders Submitted to Sub-suppliers)	
	Submittal of Main Component Description	
	Mobilization at Site	
	Main Components Ready for Shipment (FOB Destination)	
	Main Components Arrival at Site	
	Power Transformers Arrival at Site	
	Installation substantially completed	
	Substantial Completion	

PUBLIC VERSION

APPENDIX C

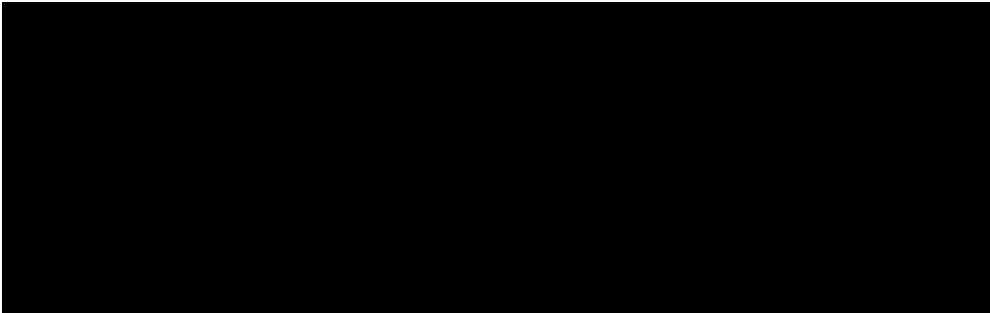
Contractor's Key Personnel



APPENDIX D

Contractor's Key Subcontractors

Potential Site Works Sub-Contractors:



APPENDIX E

Form of Invoice



Application and Certificate for Payment Construction Manager-Adviser Edition

TO OWNER:	PROJECT:	APPLICATION NO:	Distribution to:
		PERIOD TO:	OWNER <input type="checkbox"/>
			CONSTRUCTION MANAGER <input type="checkbox"/>
FROM CONTRACTOR:	VIA CONSTRUCTION MANAGER:	CONTRACT DATE:	ARCHITECT <input type="checkbox"/>
	VIA ARCHITECT:	PROJECT NO.:	CONTRACTOR <input type="checkbox"/>
			FIELD <input type="checkbox"/>

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in accordance with the Contract. Continuation Sheet AIA Document G702 is attached.

1. ORIGINAL CONTRACT SUM
2. Net change by Change Orders
3. CONTRACT SUM TO DATE (Line 1 + 2)
4. TOTAL COMPLETED & STORED TO DATE (Change Log Q702)
5. RETAINAGE:
 - a. % of Completed Work (AIA Form B-1 or Form G704)
 - b. % of Stored Material (Change Log G702)
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 Less past Certificates)
8. CURRENT PAYMENT DUE
9. BALANCE TO FRESH, INCLUDING RETAINAGE (Line 8 Less Line 6)

The undersigned Contractor certifies that in the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents that all amounts here shown paid by the Owner for the Work for which previous Certificates for Payment were issued and payments received from the Owner and that correct payments shown herein have been made.

CONTRACTOR: _____ Date _____
 By: _____
 State of: _____
 I hereby certify:
 I am duly licensed and sworn to perform the duties of a Contractor.
 My Commission expires _____

CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on a review of the information and data supporting this application the Construction Manager and Architect certify in the absence of the best of their knowledge, information and belief the Work has progressed as indicated and the quality of the Work is in accordance with the Contract Documents and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: _____
 (This is a payment of amount certified to be due from the amount applied. Payment of amount certified is not a payment of the Contract sum.)

CONSTRUCTION MANAGER: _____ Date _____
 By: _____

ARCHITECT: _____ Date _____
 By: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under the Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
1. Total changes approved at previous meetings (AIA Form C-1)	\$	\$
2. Total changes approved at this meeting	\$	\$
3. Total approved this month	\$	\$
NET CHANGE BY CHANGE ORDER	TOTALS	

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Continuation Sheet

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT containing Exhibit B, signed certification is attached. Calculations below, amounts are stated to the nearest dollar. For Continuation Contracts where variable storage fee items may apply.

APPLICATION NO: _____
APPLICATION DATE: _____
PERIOD TO: _____
ARCHITECT'S PROJECT NO.: _____

ITEM NO.	DESCRIPTION OF WORK	WORK COMPLETED			MATERIALS INSTALLED (SQ FT)	TOTAL COMPLETED AND STORED TO DATE (SQ FT)	BALANCE TO FRESH (SQ FT)	RETAINAGE (SQ FT)
		QUANTITY	PERCENTAGE	DATE				

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APPENDIX F

Change Order Pricing

1. General

Contractor's requests for Change Orders and proposals submitted by Contractor in response to a request for a proposal from Owner or Program Manager, including components thereof that involve Subcontractors (including any and all other lower tier sub-Subcontractors) shall be priced in accordance with this Appendix F, Pricing of Changes, unless otherwise directed by Owner. Owner has the right to select which of the methods of pricing changes in this Appendix is to apply to each Change Order or prospective Change Order. The options are:

- fixed price lump sum
- fixed unit price
- time and material

2. Fixed Price Lump Sum

Proposals for work to be undertaken on a fixed price lump sum basis shall follow the requirements set out herein for changes undertaken on either unit price basis or time and material basis, or a combination of both (Contractor to select the method), except that quantities of time, work and materials, and applicable rates and prices shall be estimated or chosen by Contractor prior to execution of the work. As part of its proposal for each change, Contractor shall submit details similar to those required by Sections 3 and 4, of this Appendix, as applicable.

3. Fixed Unit Price

3.1 The following **Table of Unit Prices for Defined Scopes of Work** shall be used for determining the price of all Change Orders where the fixed unit price method is selected by Owner and the scope of the changed work is described in the Table.

The unit prices set forth in the **Table of Unit Prices for Defined Scopes of Work** include all direct and indirect costs to Contractor of furnishing and installing the item, including all associated engineering and design costs, maintenance, fuel, delivery and installation charges, premiums for shift or night work, Site and off-site time-related costs, transport costs, taxes, overhead and markups (including for Work performed by Subcontractors, any handling or other administrative charge or mark-up of Contractor), and profits. Unit prices are firm through Final Completion.

Table of Unit Prices for Defined Scopes of Work

<i>To be Developed from RFP 10487 Proposal Form</i>			
--	--	--	--

3.2. Labor. If any change using unit prices, in whole or in part, involves labor not associated with work addressed in the **Table of Unit Prices for Defined Scopes of Work** in Section 3.1, the following hourly labor rates shall be used as the unit pricing of labor. Overtime and holiday rates apply only upon direction of Owner or Program Manager that the applicable work shall be undertaken at times that attract such rates. Holiday rates shall only apply to holidays for employees of the Contractor as demonstrated by submittal by Contractor of documentation

acceptable to Program Manager and approved. Overtime and holiday rates apply only to hours actually worked on the changed work. Unit prices are firm through Final Completion.

Table of Labor Rates for Changes Undertaken on Unit Price Basis Where Change Involves Labor Not Associated With Work Addressed in Unit Pricing for Defined Scopes Of Work.

To be Developed from RFP 10487 Proposal Form			
---	--	--	--

Any unit prices for labor not identified on the above Table shall be established consistent with the methodology used for pricing time and materials change orders in Section 4.

3.3. Equipment. If any change using unit prices, in whole or in part, involves equipment not associated with work addressed in the **Table of Unit Prices for Defined Scopes of Work** in Section 3.1, the equipment rates below shall be used as the unit pricing of equipment. Unit costs for labor associated with the operation of such equipment are not included in such equipment rates, and shall be determined in accordance with the table for labor in Section 3.2 above. Rates in the Table include for fuel and maintenance, including inspections and tests and ready-for-work start-up procedures. Standby rates shall be used only if Contractor mobilizes equipment to the Site pursuant to a Change Order, such equipment is maintained in operating condition, and Program Manager directs Contractor in writing not to use such equipment. Unit prices are firm through Final Completion.

To be Developed from RFP 10487 Proposal Form			
---	--	--	--

Any unit prices for equipment not identified on the above Table shall be established consistent with the methodology used for pricing time and materials change orders in Section 4 of this Appendix.

3.4. Materials. If any change using unit prices, in whole or in part, involves materials not associated with work addressed in the **Table of Unit Prices for Defined Scopes of Work** in Section 3.1, the Material costs shall reflect Contractor's net, verifiable, anticipated cost for the purchase of the material needed for the extra Work, including delivery charges.

4. Time and Material

Where the time and material price method is selected by Owner, Contractor shall perform such authorized extra Work for the sum of:

- (i) the actual cost of direct labor (working foremen, journeymen, apprentices, helpers) that undertook the extra work;
- (ii) the actual cost of labor burden associated with (i);
- (iii) the actual cost of material used in performing the extra Work;
- (iv) the computed cost or actual cost of rental of major equipment;
- (v) actual costs of additional general liability insurance and performance bond
- (vi) the Markup Percentage Fee applied to items (i), (ii), (iii) and (iv)

without any charge for administration and supervision including management, superintendents and general foremen, and the cost of or rental cost of small tools and minor equipment (defined as having a purchase price of less than \$1,000).

PUBLIC VERSION

Owner and Contractor may agree in advance in a Change Order on a maximum price for Work priced on such basis, and Owner shall not be liable for amounts in excess of that maximum.

(i) Direct Labor

Labor costs included for self-performed work shall be based on the actual cost (excluding bonuses or other discretionary compensation) per hour paid by Contractor for those workers undertaking the extra Work.

(ii) Labor Burden

Allowable labor burden shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits (excluding bonuses or other discretionary compensation) if the employees are not union employees); and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs and net cost reductions due to policies with deductibles for self-insured losses and assigned risk rebates. Contractor shall reduce its standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

(iii) Materials

Material costs shall reflect Contractor's net actual, verifiable, cost for the purchase and delivery of the material needed for the extra Work and shall include for any discounts, preferential pricing and rebates available to Contractor.

(iv) Equipment

Contractor-owned or Subcontractor-owned. Allowable "bare" equipment rental rates shall be the monthly rate listed in the most current publication of The DataQuest Blue Book divided by 176 to arrive at a maximum hourly rate to be applied to the actual hours of equipment usage, to which shall be added operating costs needed to undertake the extra Work

Contractor-rented or Subcontractor-rented. Allowable costs are the appropriate, verifiable, market rental rates for rental of major equipment needed to undertake the extra Work.

(v) General Liability Insurance and Performance Bond

Time and materials computations shall account for Contractor's net increase in comprehensive general liability insurance costs and costs for performance bond furnished by Contractor to Owner as a result of the extra Work. No Markup Percentage Fee is to be applied to increases in such insurance costs or performance bond costs.

(vi) Markup Percentage Fee

For any Work performed directly by Contractor and/or any Subcontractor (regardless of tier), the maximum Markup Percentage Fee shall be a single markup percentage not-to-exceed [REDACTED] of the net direct cost (excluding taxes) of (i) direct labor; (ii) allowable labor burden costs; (iii) the net cost of material; (iv) computed cost or actual rental cost of equipment including operating costs

and

for Work performed by lower tier contractors, the maximum, aggregate Markup Percentage Fee allowable to Contractor and/or Subcontractor(s) directly supervising the lower tier

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contractor's work shall not exceed [REDACTED] of the net cost (excluding taxes) of all approved Work performed by all Subcontractors combined. (For the avoidance of doubt, this is a single markup and not separate markups for Contractor and supervising Subcontractor.).

The Markup Percentage Fee compensates Contractor for all costs and expenses incurred by Contractor and Subcontractors of all tiers in undertaking the extra work other than the amounts and/or costs identified and directly accounted for in (i), (ii), (iii), and (iv) above and provides for Contractor's profit and Subcontractors' (of all tiers) profit. Such costs and expenses include but are not limited to:

- Site field overhead and time-related costs and expenses;
- Site office overhead and time-related costs and expenses;
- local or branch office overhead costs and expenses;
- home office overhead costs and expenses;
- cost and expenses including those for Change Orders of management, superintendents, general foremen, estimating, shop drawings, permits, engineering, submittals, coordinating with others, purchasing, expediting, legal, finance and accounting, management information systems, computers and software, consultants not identified as subcontractors, administrative functions;
- record keeping and verification methods for time and materials;
- insurances except as specifically permitted;
- transport costs for management, superintendents, general foremen or others;
- warranty expenses and costs;
- cost of payment and performance bonds furnished by subcontractors to Contractor;
- the cost for the use of small tools (tools and equipment (power or non-power) with an individual purchase cost of less than [REDACTED])

Record keeping forms and verification methods for time and materials Work shall be subject to approval of the Program Manager.

If requested by Program Manager, Contractor shall provide, and shall cause each Subcontractor at any tier to provide, evidence of its labor costs and a breakdown of its labor burden costs or estimates.

5. Equipment

The aggregate equipment charges for any single piece of Contractor-owned or Subcontractor-owned equipment used in all Work under Change Orders priced on fixed unit price or time and material basis shall be limited to the fair market value of the piece of equipment when the first Change Order is priced using fixed unit price or time and material involving usage of that piece of equipment.

APPENDIX G

Change Order Request Form
(Sample)

NYSEG <small>Public Utility Service Corporation</small>		CHANGE ORDER REQUEST	
		P.O. Number:	29999
		Contract Title:	Transmission Lines
		Contract No.:	CON-MPPP-SS-0000
		COR No.:	00001
		COR Title:	Design COR
		Date:	September 01, 2009
From: Contractor: XYZ Contracting 123 Main St Anytown, MA 04001 Phone: (207) 555-9842		To: Central Electric Power Company 63 Edison Place Augusta, ME 04333 Phone: (207) 555-4000	
Change Mgt Number: 00001		Reason Code:	
Description of Change:			
SUMMARY			
BREAKDOWN OF WORK			
Item	Description of Work	Quantity	Unit Price
0001	Labor Expense \$ 1000.00	1	\$1,000.00
		TOTAL:	\$1,000.00

APPENDIX H

Permits

1. General

Contractor is responsible for verifying that all Permits, whether provided by Contractor or Owner, have been issued and are in force prior to initiation of any Work covered by such Permits and that Contractor and all its employees are familiar with the requirements and restrictions of all permits, regardless of whether or not such information is specifically called out by the Owner.

2. Contractor Permits

Contractor shall secure and maintain, at Contractor's sole cost and expense (including costs of preparation, any filing fees and/or charges, and any bonds or other performance assurance), all Permits (other than Owner Permits) for the Work, including, but not limited to, permits required for over-the-road delivery of materials as applicable.

Responsibilities of any other permits that arise shall be mutually agreed upon by the project team in accordance with responsibilities of the Work.

3. Owner Permits

Owner shall secure and maintain, at Owner's sole cost and expense (including costs of preparation, any filing fees and/or charges, and any bonds or other performance assurance), Permits listed in 3.1.

3.1 Listing of Permits

- NYSDEC Wetlands Construction
- USACoE Wetlands Construction
- Town of Penfield Building Permit

APPENDIX I

Insurance Requirements

(Separate document at this time, the redlines did not transfer)

██████ HAS DUPLICATED THE TEXT IN THE SEPARATE ATTACHMENT BELOW:

Before commencing work on the Company site, the Contractor shall procure and maintain at its own expense during performance of its Work under the Agreement, the insurance types, limits, terms, and conditions listed in section one below. In addition, for any work that is authorized to be subcontracted, the Contractor shall require each subcontractor performing work on Company site to procure and maintain insurance as determined by Contractor.

IF YOU DO NOT HAVE A CURRENT CERTIFICATE ON FILE WITH OWNER prior to commencement of work on site, Certificates of Insurance evidencing Contractor's and/or subcontractor's possession of insurance as outlined in Section one shall be filed with Owner for its review.

Certificates of Insurance should be mailed to the Supply Chain Department at the following address:

**Iberdrola USA Management Corporation
Procurement Department/Insurance Cert.
89 East Avenue
Rochester, NY 14649-0001**

1. **Required Insurance Coverage Amounts**

Each insurance policy shall be placed with an insurance company licensed to write insurance in the State Connecticut and shall have an A.M. Best's Rating of not less than ██████ and a policyholder surplus of at least ██████

Each insurance policy, except Workers' Compensation and Employers' Liability, shall add Owner as an additional insured to the extent necessary to fulfill Contractor's obligations as set forth in the indemnification provision of this Agreement. All insurance where Owner is an additional insured must contain provisions which state that the policy will respond to claims or suits by Owner against the Contractor, to the extent of Owner's additional insured status thereunder. .

Each policy shall provide a minimum of ██████ prior written notice of cancellation, intent not to renew, or material change in coverage.

In the event Contractor has a policy(ies) written on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the commencement of work

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under this agreement. In addition, the Contractor will maintain, for claims arising out of events occurring during the performance of Contractor's work under this agreement, a Discovery Period or "tail" for a period equal to the earlier of [REDACTED] following completion date of Contractor's work hereunder or until the expiration of the warranty period set forth in this agreement.

All of the insurance required hereunder will be primary to any or all other insurance coverage in effect for Owner, to the extent of Owner's additional insured status thereunder.

- 1.1 Workers' Compensation and Employers' Liability Insurance in accordance with the statutory requirements of the State of New York. For work that is conducted outside of New York State, the limit for Employers' Liability Insurance should be [REDACTED] each accident, [REDACTED] disease-policy limit, [REDACTED] disease-each employee.
- 1.2 Automobile Liability insuring any auto, all owned autos, hired autos, and non-owned autos with a bodily injury and property damage combined single limit of \$ [REDACTED] per occurrence and in the aggregate.
- 1.3 General Liability (Comprehensive or Commercial Form), including coverage for Premises/Operations, Underground/ Explosion & Collapse Hazard, Products/Completed Operations, Contractual Liability specifically insuring the attached Indemnity Agreement, Independent Contractors, Broad Form Property Damage, and Personal Injury, in the amount of \$ [REDACTED] per occurrence and [REDACTED] aggregate.

The amount of insurance may be satisfied by using primary coverage in the amounts specified or by using a separate excess Umbrella Liability policy together with lower limit primary coverage.

Each General and/or Umbrella Liability Insurance policy shall include a Cross Liability clause

None of the requirements contained herein as to types, limits and approval of insurance coverage to be maintained by Contractor or Subcontractors are intended to, nor shall they in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor or Subcontractor under this agreement

APPENDIX J-1

Lien and Waiver Release

**TO ACCOMPANY EACH INVOICE
[LETTERHEAD OF CONTRACTOR]**

DATE: [_____]

TO:

[INSERT ADDRESS]

1. Rochester Gas and Electric Corporation ("RGE") and [_____]
("Contractor") have entered into an Agreement, dated [_____], (the
"Agreement"), pursuant to which Contractor is to provide services in connection
with Station 124 Static VAR Compensator Project (the "Project").
2. Section 8.2 of the Agreement provides, among other things, that, each invoice
shall be accompanied by (i) the Contractor's waiver and release, subject to
payment of the invoice by the Owner, of liens and claims relating to Work for
which the Invoice or any prior invoice have been submitted, and (ii) a certificate
that the Site, Work, materials and equipment described in the invoice and in all
previous invoices are free and clear of all liens other than any liens extinguished
upon receipt of payment by Contractor of such invoice. Contractor provides this
instrument in order to satisfy the requirements of the aforesaid Section 8.2 in
relation to Contractor's invoice no. **[to be inserted]** dated **[to be inserted]** (the
"Invoice").

NOW THEREFOR:

1. Capitalized terms used and not defined herein shall have the meaning assigned
to them in the Agreement.
2. Subject to payment by RGE to Contractor of the sum of [_____], which
sum represents the full amount due to Contractor under the Invoice less
Retainage and less Punchlist withholding, if any, Contractor irrevocably waives
its right to file, releases and relinquishes any lien, claim or security interest
relating to Work for which the Invoice is submitted or any prior invoice has been
submitted; provided, however, that no such waiver shall apply to unresolved
claims submitted in writing to RGE prior to the date of this Waiver and Release.
Contractor hereby authorizes RGE to file an amendment for any financing
statement on file with respect to RGE, the Work, the Project or the Site if
(a) Contractor is the secured party of record with respect to such financing
statement and (b) the amendment releases from the collateral under such

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financing statement any collateral released by this instrument from any lien, security interest or claim in favor of Contractor, or with respect to which Contractor waived its right to file any lien, security interest or claim.

3. Contractor certifies that:

- 3.1 All amounts that were due and payable in connection with the Work or the Project under invoices issued prior to the Invoice have been paid by RGE save in relation to Retainage and Punchlist Withholding, if any, which Contractor acknowledges that REG is withholding in accordance with Sections 3.9 and Section 4.4 of the Agreement and (b) [] under Invoices Nos. [], which are subject to dispute with RGE].
- 3.2 Contractor has not directly or indirectly created any Contractor Lien relating to the Work, the Project, the Site or any part thereof or interest therein;
- 3.3 Contractor has promptly paid and discharged any Contractor Liens which, it suffered to be created by any Subcontractor, employee, laborer, mechanic, materialman or other supplier of goods or services relating to the Work, the Project, the Site or any part thereof or interest therein, except to the extent Lien Security has been provided by Contractor in connection therewith; and
- 3.4 Title to all Work is free and clear of any and all liens, claims, charges, security interests, encumbrances and rights of Persons other than RGE arising as a result of any actions or failure to act of Contractor, its Subcontractors, or their employees or representatives, except to the extent Lien Security has been provided by Contractor in connection therewith.
- 3.5 THIS WAIVER OF LIENS AND CLAIMS SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

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IN WITNESS WHEREOF, Contractor has duly executed this instrument on the day and year first written above.

[Contractor's Name]

By: _____

Name: _____

Title: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

APPENDIX J-2

**FINAL FORM OF WAIVER AND RELEASE
[LETTERHEAD OF CONTRACTOR]**

DATE: [_____]

TO: [INSERT ADDRESS]

WHEREAS:

1 Rochester Gas and Electric Corporation ("RGE") and [_____] ("Contractor") have entered into an Agreement, dated as of [_____], (the "Agreement"), pursuant to which Contractor is/ was to provide construction services in connection with Station 124 Static VAR Compensator Project (as more fully described in the Agreement, the "Project").

2. Section 8.5 of the Agreement provides, among other things, that, the Retainage shall not be paid to Contractor until Contractor submits an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the Work have been paid or otherwise satisfied, and provides releases and waivers of liens arising out of the Agreement from itself and all Subcontractors with subcontract value in excess of

NOW THEREFORE:

1. Capitalized terms used and not defined herein shall have the meaning assigned to them in the Agreement.

2. Contractor hereby irrevocably waives its right to file, releases, and relinquishes any lien, security interest, or claim for payment (whether in tort, for breach of contract, pursuant to Law, in equity or otherwise) relating to RGE, the Work, or the Project. Contractor hereby authorizes RGE to file a termination statement for any financing statement on file with respect to RGE, the Work, or the Project if Contractor is the secured party of record with respect to such financing statement.

3. Subject to RGE's payment of the Retainage in the amount of \$ _____, Contractor certifies that:

3.1 All amounts that were due and payable by RGE in connection with the Work and the Project have been paid.

3.2 Contractor has not directly or indirectly created, incurred, assumed or suffered to be created by it or any Subcontractor, employee, laborer, mechanic, materialman, or other supplier of goods or services any Contractor Lien relating to the Work, the Project, or any part thereof or interest therein, except to the extent Lien Security has been provided by Contractor in connection therewith;

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3.3 Contractor has promptly paid and discharged any Contractor Liens which, notwithstanding paragraph 3.2 hereof, it has directly or indirectly created or suffered to be created by it or any Subcontractor, employee, laborer, mechanic, materialman, or other supplier of goods or services relating to the Work, the Project, or any part thereof or interest therein, except to the extent Lien Security has been provided by Contractor in connection therewith; and

3.4 Title to all Work is free and clear of any and all liens, claims, charges, security interests, encumbrances and rights of persons for payment other than RGE arising as a result of any actions or failure to act of Contractor, its Subcontractors, or their employees or representatives, except to the extent Lien Security has been provided by Contractor in connection therewith.

3.5 THIS WAIVER OF LIENS AND CLAIMS SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

4. all Subcontractors and Persons that have provided labor, services, materials, supplies, Contractor's Equipment, Equipment, systems or machinery used in the performance of the Work have been paid all amounts which are due and owing them, with the exception of those amounts which are being disputed by Contractor in good faith, and Contractor has no knowledge of the existence of any other claim, actual or threatened by any Subcontractor or such Person, against Owner, Owner's property or all or any portion of the Equipment, Project, the Site or the existing facilities, other than claims for which Contractor has provided Lien Security.

IN WITNESS WHEREOF, the undersigned has duly executed this instrument on the day and year first written above

[Contractor's Name]

By: _____

Name: _____

Title: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

APPENDIX K

Certificate of Substantial Completion

Date: _____

To: [Insert Address]

Ref: Certificate of Substantial Completion – Station 124 Static VAR Compensator Project (“Agreement”) by and between Rochester Gas and Electric Corporation (“Owner”) and _____.

Contractor, by and through the undersigned officer, duly authorized to represent Contractor and execute and deliver this certificate (“Certificate”) to Owner, provides this Certificate to Owner under the Agreement. Capitalized terms used herein not otherwise defined shall have the meaning given such terms under the Agreement. Contractor hereby certifies to Owner as of the date hereof that the following are true and correct:

- (1) Substantial Completion of the Project was achieved on [date];
- (2) the Project is substantially complete in accordance with the Scope of Work, the Project Documents, and all required Governmental Authorizations and Permits, and is capable of commercial operation and safe operation for its intended purpose;
- (3) all Work required to be furnished by Contractor for the Project is substantially complete and all Equipment has been delivered to the Site and properly incorporated into the Project, except for Punchlist Items;
- (4) the Performance Tests and any other requirements necessary to demonstrate that the Project meets the Project Documents have been successfully completed and a certificate of the results, together with a copy of the reports of such test results have been provided to Owner;
- (5) the Punchlist Items, the schedule for competing the same and the estimated cost for completing the Punchlist, have been agreed to by Owner and Contractor;
- (8) all Subcontractors and Persons that have provided labor, services, materials, supplies, equipment, systems or machinery used in the performance of the Work have been paid all amounts which are due and owing them for the Project, with the exception of those amounts which are being disputed by Contractor in good faith, and Contractor has no knowledge of the existence of any other claim, actual or threatened by any Subcontractor or such Person, against Owner, Owner’s property or all or any portion of the Project, the Site or the existing facilities, other than claims for which Contractor has provided Lien Security; and

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(9) the Project is capable of operation at expected operating levels in strict compliance with the terms of all operating Permits.

Executed on the day set forth in the first paragraph of this Certificate.

By: _____
Name: _____
Title: _____

CERTIFICATE ACCEPTED:

ROCHESTER GAS AND ELECTRIC CORPORATION

By: _____

Print Name

Title

APPENDIX L

Certificate of Final Completion

Date: _____

To: [Insert Address]

Ref: Certificate of Final Completion – Station 124 Static VAR Compensator Project (“Agreement”) by and between Rochester Gas and Electric Corporation (“Owner”) and _____ (“Contractor”)

Contractor, by and through the undersigned officer, duly authorized to represent Contractor and execute and deliver this certificate (“Certificate”) to Owner, provides this Certificate to Owner under the Agreement. Capitalized terms used herein not otherwise defined shall have the meaning given such terms under the Agreement. Contractor hereby certifies to Owner as of the date hereof that the following are true and correct:

(1) Substantial Completion of the Project was achieved on [date], and all Punchlist Items were completed on [date];

(2) Contractor’ has performed site clean-up and restoration;

(3) Contractor has provided and caused the Subcontractors to provide to Owner all affidavits, statements, waivers, releases and posted any security required under Appendix J-2;

(4) Contractor has obtained all Governmental Authorizations which are the responsibility of Contractor under the Agreement and has provided copies of the same to Owner; and

(5) all Subcontractors and Persons that have provided labor, services, materials, supplies, Contractor’s Equipment, Equipment, systems or machinery used in the performance of the Work have been paid all amounts which are due and owing them, with the exception of those amounts which are being disputed by Contractor in good faith, and Contractor has no knowledge of the existence of any other claim, actual or threatened by any Subcontractor or such Person, against Owner, Owner’s property or all or any portion of the Equipment, Project, the Site or the existing facilities, other than claims for which Contractor has provided Lien Security.

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Executed on the day set forth above.

By: _____
Name: _____
Title: _____

CERTIFICATE ACCEPTED:

ROCHESTER GAS AND ELECTRIC CORPORATION

By: _____

Print Name

Title

APPENDIX M

Contractor Safety Requirements

In addition to the Contractor Safety Requirements in this Appendix M, Contractor will be required to take a site specific training. It will be requested that Contractor acknowledge the safety training when completed.

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CONTRACTOR SAFETY REQUIREMENTS

September 22, 2008

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CONTRACTOR SAFETY REQUIREMENTS FOR SERVICES PROVIDED TO IBERDROLA USA MANAGEMENT CORPORATION AFFILIATE COMPANIES

August 13, 2008

1. PURPOSE

The purpose of this document is to advise Contractors providing services to Iberdrola USA Management Corporation affiliate companies ("Affiliates") of their responsibility to plan and perform their work in conformance with all applicable federal, state, and local laws, rules, regulations and ordinances of any agency having jurisdiction on the premises. These requirements apply to construction type projects where Affiliate employees are not working at the same site, and to Contractors who perform independent work related to electric transmission and distribution operations, and gas operations. Commitment to safe work practices is important at all Affiliate job sites; thus, evidence concerning Contractor safety performance and past safety history are factors that influence contract award decisions.

2. SCOPE AND RESPONSIBILITIES

This document shall be provided to Contractors to aid in the communication of hazards and minimum safety requirements, and to establish Affiliate expectations regarding safe work behavior while on company property. All Contractors must follow the requirements in this document, as well as their own company safety rules, policies and procedures. In the case of conflicting requirements, the most stringent shall prevail.

Each Contractor shall have a current written safety program and employee safety rules that comply with all regulatory requirements. In addition, each Contractor employee shall be familiar with the safety requirements in this document, and is expected to abide by them. All Contractors and Subcontractor employees must be properly equipped and trained.

Contractors shall communicate the required safety rules and regulations to their employees in a documented tailboard meeting prior to the start of the job. The form given in Attachment A may be used for this purpose. Contractors are responsible for interpreting these rules for non-English speaking and reading-impaired employees. Contractors are responsible for informing all Subcontractors of the safety rules and regulations set forth here and in the contract terms and conditions.

Affiliate Project Monitors shall facilitate Contractor compliance with safety requirements by including this document into contract specifications. All questions pertaining to this document shall be directed to the Affiliate Project Monitor or an Affiliate Health and Safety Representative. Neither the Affiliate Project Monitor nor Health and Safety Representatives shall exercise general supervisory authority over contractor worksites.

In particular, the Company shall not conduct worksite safety inspections, identify safety and health hazards, or correct deficiencies and violations. Moreover, the Company shall not provide personal protective equipment to contractor employees, perform employee exposure monitoring, or provide advice concerning safe work practices. Rather, the Contractor is accountable for all aspects of worker protection, as well as for preventing, detecting and promptly correcting all safety and health deficiencies associated with activities covered by the contract scope of work.

3. SAFETY ADMINISTRATION

Pre-Bid Meeting

For certain projects where specific safety issues exist or known site conditions require special precautions, a pre-bid meeting may be held. The purpose of the meeting is to emphasize the key safety requirements that apply to the project, and offer the opportunity for bidders to ask questions regarding job site conditions and worker protection issues. When necessary, an Affiliate Health and Safety Representative will participate to address safety-related issues such as known site hazards and anticipated personal protective equipment (PPE) requirements. Where applicable, announcement of a pre-bid meeting will be issued with the contract Request for Proposal.

Prospective Contractors will be informed that past safety performance is an evaluation factor that may determine contract award and/or disqualification of bidders.

Project Health & Safety Plan

Contractors performing high-hazard work may be required to prepare and submit a Project Health & Safety Plan (e.g., as required under 29 CFR 1910.120 and 29 CFR 1926.65). Projects requiring a Plan will be identified at the pre-bid stage of the contracting process. The Plan must address topics such as:

1. Scope of work and planned activities
2. Potential health and safety hazards
3. Individual job functions and responsibilities
4. Personal protective equipment and hazard mitigation strategies
5. Emergency equipment and incident response procedures
6. Exposure monitoring and control
7. Training and medical surveillance requirements
8. Standard operating procedures

Depending on the nature of the project, the Contractor may be required to have their Plan endorsed by a Certified Industrial Hygienist (CIH), Certified Safety Professional (CSP), and/or a licensed Professional Engineer (P.E.).

Post-Award Contractor Safety Orientation

For certain projects, a pre-construction conference may be required to discuss and agree upon safety procedures and controls at the job site. Contractor management

representatives, key Contractor employees (i.e., designated on-site "Competent Person"), Affiliate Project Monitors, and Affiliate Health and Safety Representatives shall typically participate. The topics for discussion include:

1. Job site housekeeping practices
2. Storage of materials and tools
3. Restricted areas and evacuation plans
4. Safety inspection and exposure monitoring plans
5. Procedures for documented employee safety meetings and job briefs
6. Subcontractor responsibilities
7. Hazardous chemicals and spill response procedures
8. Certification of Contractor employee qualifications
9. Site security and public protection
10. Emergency notification call lists and procedures

The orientation session is not intended to provide Contractor employees with training to meet regulatory compliance requirements.

4. PROCEDURES

A. Prohibited Conduct

Violation of the following conduct rules shall result in immediate dismissal of an employee from the site by the Contractor.

1. The possession or drinking of alcohol on any company property, including parking lots.
2. The suspected use of any substances which alter mental or physical capacity, including but not limited to non-prescription drugs, prescription drugs not prescribed to the user, narcotics, marijuana or other "controlled substance" or "controlled dangerous substance."
3. Possession of firearms, ammunition, explosives or other weapons on company property/private vehicles
4. Engaging in fighting or horseplay
5. Operating switches, valves, or push buttons unless authorized

B. General Rules

The Contractor shall ensure that all personnel comply with the following rules, regardless of the nature of their job.

1. Contractor employees shall not enter any building or area where their work does not require their presence.
2. The Contractor shall maintain current safety warning signs/devices, barricades, handrails, and guardrails, and erect new ones if the hazard changes. The contractor shall also remove signs from the work site when there is no longer a hazard present.
3. Contractor employees shall not use emergency exits other than for

- emergencies, or block emergency exits.
4. The Contractor shall have a program to provide for frequent and regular inspections of the job site, materials, and equipment by designated competent persons.
 5. The Contractor shall instruct each employee in the recognition and avoidance of unsafe conditions and in the regulations applicable to his/her work environment to control or eliminate any hazards or other exposure to illness or injury.
 6. The Contractor shall permit only those employees qualified by training or experience to operate equipment and machinery.
 7. Contractor employees shall not work on equipment or facilities that are not included in the contract scope of work, or where specific permits/clearances may be required prior to performing a task.

C. Incident Reporting

1. After notifying emergency agencies or calling 911, as appropriate, the Affiliate Project Monitor shall be notified immediately, and in writing, of any accidents involving personal injury requiring medical treatment, or property damage. The Contractor is responsible for notifying OSHA, when applicable. Appropriate written reports shall be completed within one working day.
2. All work must be done in a manner which minimizes the possibility of a spill of hazardous or non-hazardous substance to the environment. Placement of fuel, oils, chemicals and sanitary facilities, or fueling, greasing, or oiling of equipment shall be in a location which avoids, to the degree possible, water sources, wells, or other ecologically sensitive sites. Any spill must be immediately reported in writing to the Affiliate Project Monitor and the appropriate authorities. Contractor is responsible for all associated clean-up costs, penalties, etc.

D. Asbestos Containing Materials (ref: 29 CFR 1926.1101 and 1910.1001)

Contractors shall not disturb known or suspected asbestos-containing materials. When these materials are encountered and could potentially be disturbed by the work being performed, work should immediately be stopped and confirmatory analyses performed as necessary. The Contractor shall immediately notify the Affiliate Project Monitor in writing. Examples of presumed asbestos-containing materials include, but are not limited to, the following:

- Cement wallboard and exterior sheeting
- Thermal insulation and high temperature gaskets
- Ceiling tiles and lay-in panels
- Acoustical and decorative plaster
- Vinyl or asphalt floor tile and sheeting, and mastic
- Electrical cloth, electrical panel partitions, underground conduit, and fabric-type wire insulation
- Roofing shingles, felt, base flashing, and caulking

- Boiler, breeching, duct, and pipe insulation
- Wallboard and spackling/taping/joint compounds

E. Compressed Air/Air tools (ref: 29 CFR 1926.302 and 1910.243)

1. The contractor will comply with the standards for compressed air equipment used in providing compressed air for performing operations such as cleaning, drilling, hoisting and chipping.
2. Pneumatic power tools shall be secured to the hose in a positive manner to prevent accidental disconnection.
3. Safety clips or retainers shall be securely installed and maintained on pneumatic impact tools to prevent attachments from accidentally being expelled.
4. The manufacture's safe operating pressure for all fittings shall not be exceeded.
5. All hoses exceeding ½ -inch inside diameter shall have a safety device at the source of supply or branch line to reduce pressure in case of failure.

F. Confined and Enclosed Spaces (ref: 29 CFR 1926.21; 1910.269(e) and 1910.146)

The Contractor is responsible for developing their own program and complying with all applicable confined-space and enclosed space work practices and standards. Contractor employees working in confined/enclosed space conditions must have demonstrated competency in proper work practices and rescue techniques (achieved by training and experience). The Contractor shall have a means of emergency rescue arranged prior to start of work and must check with the local fire department or agency expected to provide rescue assistance as to their availability prior to entering space.

G. Cranes (ref: 29 CFR 1926.550; 1910.179 and 1910.180)

The Contractor shall not use Affiliate cranes. Specific exceptions to this rule shall be written and made part of the contract. Qualified employees, with licenses when required, will operate cranes. If a license is required, the operator will have the license with them when operating subject cranes. Lift plans may be necessary before work begins. Documentation will be submitted to the Affiliate Project Monitor upon request. The Contractor must maintain a physical barrier around all equipment and machinery in the hoisting area. In areas exposed to vehicular traffic, the Contractor must conform with OSHA paragraph 1926.651(d) and also make appropriate arrangements with local authorities for traffic control/detour. All crane sites and equipment must be secured during off work hours to prevent unauthorized access.

H. Drugs and Alcohol (ref: 49 CFR 382; DOT Part 199)

1. Possession or use of controlled substances or alcohol is strictly prohibited on Affiliate premises or while working for the Company. Reporting to work on

PUBLIC VERSION

Affiliate property under the influence of unauthorized drugs or alcohol is strictly prohibited; any person under the influence of unauthorized drugs or alcohol shall not be permitted on the premises of an Affiliate project.

2. When applicable, Contractors must comply with U.S. Department of Transportation Part 199 regulations. The Contractor's written program and documented random sampling program for Drugs and/or Alcohol shall be made available upon request.

I. Electrical Safety (ref: 29 CFR 1926.402-408, 416, 417; 29 CFR 1926, subpart V, and 1910.269)

1. Only authorized and qualified personnel shall work on installation and maintenance of electrical equipment.
2. All equipment used, including extension cords, shall have required approvals and be free from known defects.
3. Electrical equipment or tools (unless specially designed) shall not be operated in wet areas, or where potentially flammable dusts, vapors, or liquids are present.
4. When working on Affiliate-owned equipment and facilities, the Contractor will utilize a lockout/tagout procedure or recognized isolation/tagging procedure, as specified by the Affiliate. GFCI's (ground fault circuit interrupters) shall be used for all electrical tools and equipment when used outdoors or in wet locations.
5. If a circuit breaker or other protective device operates ("trips") to open a circuit, a qualified electrician must determine the cause of the problem before the device is reset.
6. Equipment, boxes, switchgear, cabinets, or electrical rooms with exposed energized parts shall be attended or secured at all times.
7. All non-qualified Contractor employees and equipment shall stay a minimum of 10 feet away from overhead, energized lines. Non-qualified Contractor employees are not permitted to enter an energized substation unless qualified personnel accompany them.
8. Mobile radio antennas shall be lowered prior to taking any vehicles inside a substation.
9. No metal measuring tapes or tapes containing a metal wrap shall be used near energized circuits, equipment, poles or substation structures.
10. Metal tools utilizing cable slings, winch cable, chains, loose sections and ends of conductors, or other similar objects, shall be kept under control by the worker to prevent contact with energized conductors or equipment and the worker's body.

J. Excavations (ref: 29 CFR 1926.650-652, 1926.800, and 1926.956)

The general requirements of the OSHA Excavation Standard , 29 CFR 1926 Subpart P, including the provision for a competent person, shall be understood and followed by all

Contractor employees. All excavations that workers may enter that are 5 feet or more in depth, or a depth where there is danger of cave-in shall be protected by a shoring or shielding system, or by an appropriate benching or sloping system. Materials shall not be stored closer than two (2) feet from the edge of a trench or excavation, and mobile equipment shall not be operated in close proximity to the edge unless extra precautions are taken to shore or slope the walls back to a stable slope. Additional requirements include but are not limited to the following items:

- Contractor must submit excavation plans to the Affiliate Project Monitor prior to any excavation work.
- Provide adequate barriers/barricades around excavations and machinery, including special considerations for securing excavations left overnight.
- In areas exposed to vehicular traffic, the Contractor must conform with OSHA paragraph 1926.651(d) and also make appropriate arrangements with local authorities for traffic control/detour.
- Perform air monitoring where there is a potential for a hazardous atmosphere.
- Make advance notification to Underground Facilities Protective Organization (e.g. Dig Safe).
- Provide adequate access and egress, and signage necessary to direct vehicular and pedestrian traffic safely around the work area.
- Perform routine inspections of all excavation equipment, including lights and safety features such as back-up warning devices.
- Hand dig when within two feet of any underground facility until the facility is exposed; then hand dig within four inches of the underground facility
- Notify Affiliate Project Monitor to obtain environmental assistance if it becomes necessary to perform dewatering.
- The Contractor shall promptly notify appropriate utilities of any damage done, prior to backfilling the trench.

K. Fire Regulations (ref: 29 CFR 1926.150, 152, 1910.38, 1910.39, 1910.157)

1. Contractors shall provide fire extinguishers, sealed, fire service ready, inspected and in good working order and properly maintained at all times when live gas work is being done. At least one 20-pound dry chemical fire extinguisher shall be on the ground near the edge of the excavation.
2. Contractors shall provide a trained fire watch as dictated by the job hazard assessment.
3. When required, hot work permits shall be obtained from the Affiliate Project Monitor for such activities as welding, cutting, burning, anything that causes a spark, uses an open flame, or involves temperatures high enough to ignite combustible materials.
4. All acetylene and oxygen cylinders shall be stored and used in accordance with OSHA regulations (ref: 29 CFR 1926.350), and transported per DOT specifications. Flashback arresters shall be installed at the welding tip and at the regulator.

5. Open flames, sparks or smoking shall be prohibited in areas so marked or designated, and where a recognized combustible/flammable hazard exists.
6. Fire detection and/or suppression systems shall not be disabled or blocked without notifying the Affiliate Project Monitor and obtaining his/her consent.
7. Flammable/combustible material shall be stored in approved containers and locations. Quantities in excess of one day's use shall be reported to the Affiliate Project Monitor.

L. Hazard Communication (ref: 29 CFR 1926.59 and 1910.1200)

1. The Contractor must have a written program that complies with OSHA's Hazard Communication standard.
2. Before commencing work, all affected Contractor employees must be trained in accordance with the requirements of the standard.
3. Contractors shall provide to the Affiliate Project Monitor a list of chemicals and Material Safety Data Sheets (MSDS) for each chemical that they will bring on Affiliate property or use on an Affiliate project.
4. Contractor chemical containers shall be properly labeled and stored.
5. All unused chemicals, which Contractors bring onto Affiliate property or use for a project, shall be the responsibility of the Contractor to properly dispose of and/or remove.
6. The Affiliate Project Monitor shall make Contractors aware of the Affiliate's Hazard Communication Program, notify them of any chemicals that they may be exposed to while working on Affiliate property, and provide access to the applicable MSDS.
7. The use of any hazardous material by a Contractor in occupied buildings must be approved by the Affiliate Project Monitor.

M. PCB fluids (Polychlorinated Biphenyl Fluids) (40 CFR 761)

PCB fluids were formerly used as an electrical insulating fluid (transformers, regulators, capacitors, PTs, CTs), and also can occasionally be found in the gas distribution system in gas pipe, distribution equipment, (filters, separators, drips, meters, and regulators) and gas condensate/pipeline liquids. All liquids recovered from gas pipelines must be assumed to contain PCBs until proven otherwise by approved testing methods. When these materials are encountered and could potentially be disturbed by the work being performed, work shall immediately be stopped. The Contractor shall immediately notify the Affiliate Project Monitor in writing.

N. Hazardous Waste (ref: 40 CFR 260)

Requirements of the U.S. DOT and U.S. EPA must be observed for all aspects of hazardous waste handling, storage and transportation. Contractor is responsible for the

removal and proper disposal of all hazardous waste they generate, including completion of documentation such as waste profiles, waste analytical samples, and hazardous waste manifests. As a minimum, the Contractor shall perform proper labeling, adequate secondary containment, segregation of incompatible materials, and routine inspection of storage areas as required by all U.S. EPA, state and local regulations. In addition, all hazardous waste containers must be properly constructed and in sound condition, and shall be kept securely closed. Contractor employees must be properly trained in hazardous waste procedures in accordance with regulatory requirements. The Contractor shall notify the Affiliate Project Monitor in writing before making any arrangements for shipping and disposal of hazardous waste.

O. Housekeeping (ref: 29 CFR 1926.25)

1. Good housekeeping practices shall be strictly adhered to daily. The work site shall be kept clean and orderly.
2. Trash shall be promptly removed from the work site and from the customer's property.
3. Boards with protruding nails shall not be left lying around. All nails shall be withdrawn or hammered down.
4. Contractors shall not block means of access or egress, or safety equipment.

P. Ladders and Scaffolding (ref: 29 CFR 1926.451, 1050-1053, 1060, 1910.27)

1. Contractors shall not use Affiliate ladders without permission from the Affiliate Project Monitor, or where an exception is included in contract documents.
2. Contractors are required to furnish their own ladders and equipment free of defects.
3. All straight and extension ladders shall be properly maintained and equipped with approved safety feet.
4. No work shall be performed until the ladder is properly secured.
5. Barricades should be placed to direct pedestrian traffic away from ladders.
6. Ladders must be inspected for defects on a regular basis, and immediately removed from service when deemed unsafe
7. The areas at the top and bottom of a ladder shall be kept clear of debris and equipment.
8. Ladders made of conductive materials shall not be used while working in proximity to energized electrical facilities.
9. All ladders shall be removed at the end of the work shift to prevent unauthorized use, or access to elevated surfaces.
10. All scaffolding erection and use shall be in compliance with OSHA standards. A licensed Professional Engineer's approval of scaffolding plan(s) shall be submitted as required.

Q. Lead (ref: 29 CFR 1926.62 and 1910.1025)

Contractors shall not disturb known or suspected lead-based paint and other lead-containing materials. When these materials are encountered and could potentially be disturbed by the work being performed, work shall be stopped immediately. The Contractor shall immediately notify the Affiliate Project Monitor in writing.

R. Medical Services (ref: 29 CFR 1926.50)

1. When a medical facility is not reasonably accessible (i.e., within 15 minutes) for the treatment of injured employees, personnel trained to render first aid and CPR shall be available at the worksite. The personnel designated to provide CPR and first aid must have current certifications and must carry evidence of their training while on site.
2. First aid supplies approved by a consulting physician shall be readily available at the worksite.

S. Motor Vehicles (ref: 29 CFR 1926.600-02)

1. Contractors shall not use Affiliate vehicles without permission. Contractors shall transport employees in a safe manner (e.g., riding in the back of a pick-up and in places other than the operator's seat, (i.e., a backhoe bucket or fender) is prohibited).
2. Contractor employees shall possess the necessary license classification for vehicle(s) being driven.

T. Overhead Work (ref: 29 CFR 1926.500-503)

1. Personnel shall be protected from falling tools, equipment and material.
2. All girders, beams and overhead surfaces shall be kept free of loose material.

U. Personal Safety Equipment (ref: 29 CFR 1926.28, 52, 95, 100-103, 353, 500-503; 1910 Subpart I)

1. Eye and Face Protection - Approved and appropriate eye and/or face protection shall be worn at the worksite. Personnel involved in welding operations shall wear eye protection with filter lenses or plates of the proper shade number. The eye and face protection must meet the requirements of ANSI Z87.1-2003.
2. Head Protection – OSHA approved hard hats meeting the requirements of ANSI Z89.1-2003 shall be worn at work sites where there is potential for head injury. Bump caps, metal hard hats, and metal hard caps are prohibited.
3. Clothing – Contractors employees shall be properly clothed at all times. Appropriate flame retardant clothing is required while working on energized gas pipelines, energized electrical equipment and whenever a flame hazard exists.
4. Gloves – Suitable gloves will be worn when there is a potential for hand injury.

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5. Foot Protection – Safety shoes and boots that meet the guidelines of ANSI Z41-1991 must be worn whenever exposed to crushing hazards.
6. Hearing Protection – All personnel subjected to sound exceeding the OSHA permissible 90 decibel level shall have available and wear appropriate hearing protection. Hearing protection training and medical monitoring are required by OSHA for contractor employees working in areas exceeding the OSHA 85 decibel action level.
7. Respirators - The contractor shall provide respirators based on the hazard encountered. Contractor respirator use will be in compliance with OSHA requirements.
8. Fall protection - Whenever work site conditions involve a potential for a fall hazard of 4 feet or more, the contractor shall use appropriate fall protection meeting the requirements of OSHA 29 CFR Subpart M – Fall Protection.

V. Radiation (ref: 29 CFR 1926.53, 1910.96, 1910.97, 1910.1096, 10 CFR 19,20,32-36,39)

1. The Contractor may utilize equipment containing an ionizing radiation source only when appropriately licensed to do so. A copy of their license must be available on-site.
2. The Affiliate Project Monitor will inform the Contractor when work is necessary near an Affiliate ionizing radiation source.
3. If work is required in the proximity of an ionizing radiation source, the Contractor shall comply with all applicable regulations.

W. Tools (ref: 29 CFR 1926.300-305, 1910.242)

1. Contractors shall not use Affiliate tools without permission.
2. Tools shall be kept defect free and if defects are found, immediately taken out of service.
3. Tools shall be maintained as per manufacturer's specifications and governing regulations.
4. Tools shall not be retrofitted or modified.

X. Water Safety (ref: 29 CFR 1926.106)

When Contractors work over or near water and where the danger of drowning exists, the contractor must comply with all provisions of OSHA (i.e., training, Coast Guard approved life jackets, ring buoys, skiffs, fall protection etc.).

Y. Work Zone Protection (1926.201)

1. Contractors shall use adequate work area protection. All work area protection shall be in accordance with the Federal/State Manual of Uniform Traffic Control Devices.
2. All contractors working in the road right-of-way:
 - a. Shall wear ANSI 107 Class 2 or 3 compliant clothing.
 - b. Shall wear ANSI 107 Class 2 or 3 compliant traffic vests for flagging and night work.
 - c. Must comply with the provisions of any state permits issued to the Affiliate.

5. SPECIFIC REQUIREMENTS FOR ELECTRIC AND GAS WORK

Electric Power Generation, Transmission and Distribution Work (ref: 29 CFR 1910.269)

Contractor shall comply with all OSHA requirements for operation and maintenance of electric power generation, transmission and distribution lines and equipment including:

- Job briefing requirements
- Line clearance tree- trimming operations including brush chippers and chain saw use.
- Specific training including skills and techniques necessary to perform this work
- Hazardous energy control (lockout/ tag out) procedures
- Enclosed spaces
- Fall protection
- Tools and equipment including live-line tools
- Working on or near exposed energized parts
- Minimum approach distance

- Grounding for the protection of employees
- Work involving overhead lines including installing and removing lines
- Substation work activities including entry and job briefings

Tree contractors working for Affiliates will be required to work in accordance with the latest American National Standard Institute (ANSI) safety requirements for tree care operations involving pruning, trimming, repairing, maintaining and removing trees and cutting brush.

Helicopter Regulations (ref: 29 CFR 1926.551, 1910.183)

Contracted helicopters shall comply with any applicable regulations of the Federal Aviation Administration.

- Briefing: Prior to each day's operation a briefing shall be conducted. This briefing shall set forth the plan of operation for the pilot and ground personnel.
- Personal protective equipment for employees shall consist of complete eye protection and hard hats secured by chinstraps.
- Loose fitting clothing likely to flap in the downwash, shall not be worn.
- Every practical precaution shall be taken to provide for the protection of the employees from flying objects in the rotor downwash. All loose material within 100 feet shall be secured or removed.
- No unauthorized person shall be allowed to approach within 50 feet of the helicopter when the rotor blades are turning.
- Whenever approaching or leaving a helicopter with blades rotating, all personnel shall remain in full view of the pilot and keep in a crouched position. Personnel shall avoid the area from the cockpit or cabin rearward unless authorized by the helicopter operator to work there.
- There shall be constant reliable communication between the pilot, and a designated person of the ground crew who acts as a signalman. This signalman shall be distinctly recognizable from other ground personnel.

Gas Distribution Operations and Personal Protective Equipment in Potentially Hazardous Atmospheres

All gas Contractors must comply with applicable OSHA requirements, as well as the requirements of the U.S. Department of Transportation (DOT), including drug and alcohol misuse testing. Worker protection is a key requirement on all gas projects. A copy of the Affiliate's procedures will be provided if the work involves encountering a potentially hazardous atmosphere requiring the use of personal protective equipment. This will include a copy of the Affiliate's task-specific Personal Protective Equipment Matrix. This procedure describes specific requirements for working in an atmosphere which may be hazardous due to the presence of natural gas or oxygen deficiency (asphyxiation hazard). This procedure is applicable to all phases of operation, maintenance and construction of the gas system.

7. PERSONAL PROTECTIVE EQUIPMENT MATRIX

(AFFILIATE COMPANY NAME)

(INCLUDE WHERE APPLICABLE)



PARENT COMPANY GUARANTEE

GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (this "Guarantee"), dated as of [REDACTED] is made and entered into by [REDACTED], a Delaware corporation, with its principal office located at [REDACTED] (the "Guarantor"), in favor of Rochester Gas & Electric Corporation, its successors and assigns (the "Customer"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Project Contract.

RECITALS

WHEREAS, [REDACTED] ("Obligor"), a wholly-owned subsidiary of the Guarantor, has entered into a General Construction Agreement, dated as of even date herewith, with Customer for the construction and other work relating to the Station 124 Static VAR Compensator Project at Penfield Center Rd & Harris Rd, Penfield, NY 14526 (the "Project Contract");

WHEREAS, in order to induce Customer to enter into the Project Contract, Obligor has asked Guarantor to provide this Guarantee to Customer; and

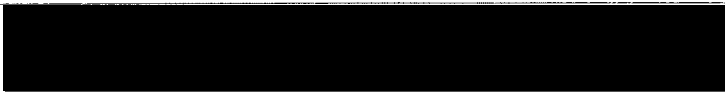
WHEREAS, Guarantor will directly or indirectly benefit from the Project Contract.

NOW THEREFORE, in consideration of the Customer agreeing to enter into the Project Contract and conduct business with Obligor as contemplated thereby, Guarantor hereby covenants and agrees as follows:

1. GUARANTEE. Subject to the provisions hereof, Guarantor hereby for itself, its successors and assigns, irrevocably and unconditionally guarantees to Customer the performance when due by Obligor of the obligations, (of payment and performance) responsibilities, and undertakings to be carried out, performed or observed by Obligor (collectively, the "Obligations") to the extent and under the terms and conditions and subject to the limitations set forth in the Project Contract, it being the intent that the Obligations of the Guarantor under this Guarantee shall not be any greater than the obligations of Obligor under the Project Contract.

This Guarantee shall constitute a continuing guarantee of payment and performance and not of collection. Guarantor shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Obligations of Obligor to the Customer are satisfied in full..

Guarantor shall be required to pay the reasonable out-of-pocket attorneys' fees and costs incurred by the Customer in the enforcement of this Guarantee.





2. DEMANDS AND NOTICE. If Obligor fails or refuses to perform or pay any Obligations, the Customer may make a demand upon Guarantor (hereinafter referred to as a "Demand"). A Demand shall be in writing and shall reasonably and briefly specify what Obligation Obligor has failed to satisfy in accordance with the terms and conditions of the Project Contract, and shall include specific statement that the Customer is calling upon Guarantor to pay or perform (as the case may be) such Obligation under this Guarantee. A Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay or perform (as the case may be) the Obligations. A single written Demand shall be effective as to any specific default during the continuance of such default, until Obligor or Guarantor has cured such default, and additional Demands concerning such default shall not be required until such default is cured.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of Delaware and has the corporate power and authority to execute, deliver and perform this Guarantee;

(b) the execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of law or of Guarantor's constitutional documents or any contractual restriction binding on Guarantor or its assets;

(c) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery, and performance of this Guarantee; and

(d) this Guarantee constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. EFFECT OF BANKRUPTCY BY OBLIGOR. The Guarantor's obligation to pay or perform (as the case may be) under this Guarantee shall not be affected in any way by the institution with respect to Obligor of a bankruptcy, reorganization, moratorium or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition for Obligor's winding-up or liquidation. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any Obligation is rescinded or must otherwise be returned by the Customer upon the insolvency, bankruptcy or reorganization of Obligor or otherwise, all as though the payment had not been made to the Customer.





5. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and the Customer.

6. WAIVERS. Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b) presentment, demand, promptness, diligence and notice concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that the Customer seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of the Customer in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights, or a release of Guarantor from any obligations hereunder.

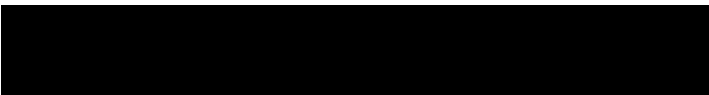
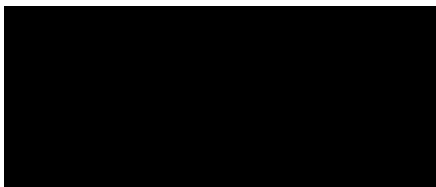
Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment or performance of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Project Contract to the extent such changes are expressly made in a written agreement executed by Obligor and Customer.

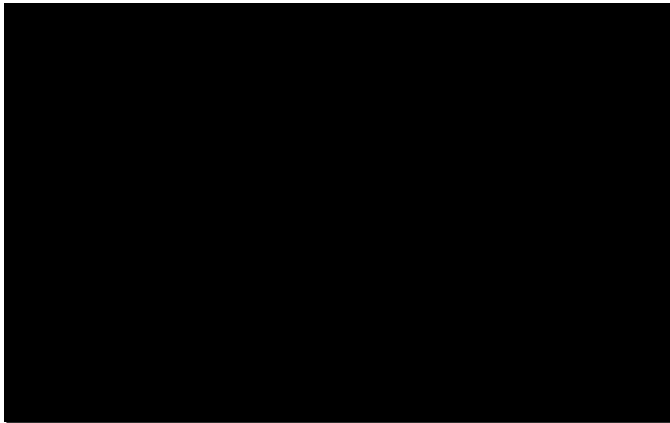
Guarantor's obligations hereunder shall be irrevocable, absolute, and unconditional, irrespective of, and the Guarantor hereby irrevocably waives, any defenses related to (a) any lack of validity or enforceability of the Project Contract as against Obligor; (b) any taking, exchange, release, non-perfection, realization, or application of any collateral held by Customer to secure Obligor's performance; (c) any early termination of any Obligation or the Project Contract; (d) any change, restructuring, or termination in or of the corporate structure or existence of Obligor; or (e) any other circumstance that might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

7. ASSIGNMENT. Neither the Guarantor nor the Customer shall assign its rights or obligations under this Guarantee without the express written consent of the other party, which consent shall not be unreasonably withheld. The Guarantor shall remain liable under this Guarantee, notwithstanding assumption of this Guarantee by a successor or assign, unless and until released in writing from its obligations hereunder by the Customer.

8. NOTICE. Any Demand to the Guarantor, and any notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice"), shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by facsimile, as follows:

To Guarantor:





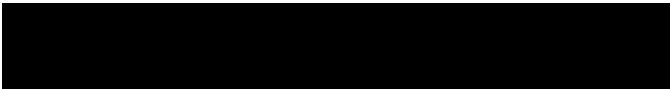
With a copy
to Obligor:

To Customer: Rochester Gas & Electric Corporation
c/o Iberdrola USA Management Corporation
Contract Administration
89 East Avenue
Rochester, NY 14649
Phone: 585-724-8028
Fax: 585-771-2820

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

9. MISCELLANEOUS. THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, OR PROCEEDING RELATING TO THIS GUARANTEE. This Guarantee shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by the Customer, its successors and assigns. The Guarantee embodies the entire agreement and understanding between Guarantor and the Customer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof. This Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[Signature page follows]





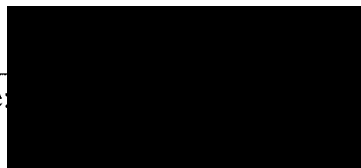
EXECUTED as of the day and year first written above.



By:
Name:
Title:



By: _____
Name:
Title:



PUBLIC VERSION

APPENDIX O

SOFTWARE LICENSE TERMS AND CONDITIONS

Licensor: [REDACTED] _____

Licensee : Rochester Gas and Electric Corporation _____

PUBLIC VERSION

1 For the purposes of this document, the word "**Software**" shall mean all software and related information provided by the Licensor under the General Construction Agreement for Rochester Gas and Electric Corporation (RGE) Station 124 Static VAR Compensator Project .

The following terms and conditions shall automatically apply to all Software provided by the Licensor to the Licensee under this Contract.

The Software must not be used before the Contract has come into force.

Should these terms and conditions conflict with any agreement between the parties, or any provision at law, or any other statutory regulations, these terms and conditions shall prevail, unless and to the extent the Licensor have expressly waived them in writing or they should be unenforceable at law.

2 The Licensee is hereby granted a perpetual, non-exclusive and royalty free (except for any one-time fee payable under the agreement referred to above) license to use the Software for operation as specified in the Contract.

The Licensee shall not use the Software on any other equipment than the Designated Computer Configuration specified in the Software License Certificate attached hereto or on any other location than the Site specified in the Software License Certificate.

2.1 The Licensee shall not disclose to any third party the Software or any other information of commercial or technical nature provided by the Licensor; nor shall the Licensee publish any benchmark test run results to any third party, except as may be otherwise permitted under the Contract.

The Licensee is not allowed to disassemble, decompile or do any reverse engineering on the Software.

2.2 The Licensee is permitted to reproduce the Software for backup or archival purposes only. All copies must carry the same copyright warning as the original from which the copy was made.

2.3 Except as expressly set forth in this Section 2, the Licensee acquires no title to or copyright or other intellectual property in any of the Software.

2.4 For third party software, i.e. Software provided under the agreement, referred to above, which is owned by a third party, the license conditions stipulated by such third party shall apply, but only if such licensee conditions are reviewed and approved by Licensee in writing before the In-Service date.

3 Licensee may transfer its rights under Section 2 only together with the Designated Computer Configuration, which it has acquired from Licensor, and only provided that the buyer is subjected in writing for the same provisions as herein contained. The Licensee shall comply

with any applicable export regulations in force at the time, when the Designated Computer Configuration is sold.

4 Supply of deliveries for planning, construction, maintenance, operation or use, directly or indirectly, in Nuclear Power Plants, missile technology, chemical or biological weapons applications or flight, navigation or communication of aircraft or ground support equipment is subject to explicit approval by the Licensor in writing in each and every case. Such approval shall be granted only if the Licensor's liability for damage to property, personal injury and death, damage to plant as well as property located there or in its vicinity, and all consequential and incidental costs and losses connected with any of the aforesaid is excluded by law and by contract to the satisfaction of the Licensor .

The Licensor shall - at the Licensee's request - inform the Licensee on the Licensor's policies for the deliveries to nuclear power plants.

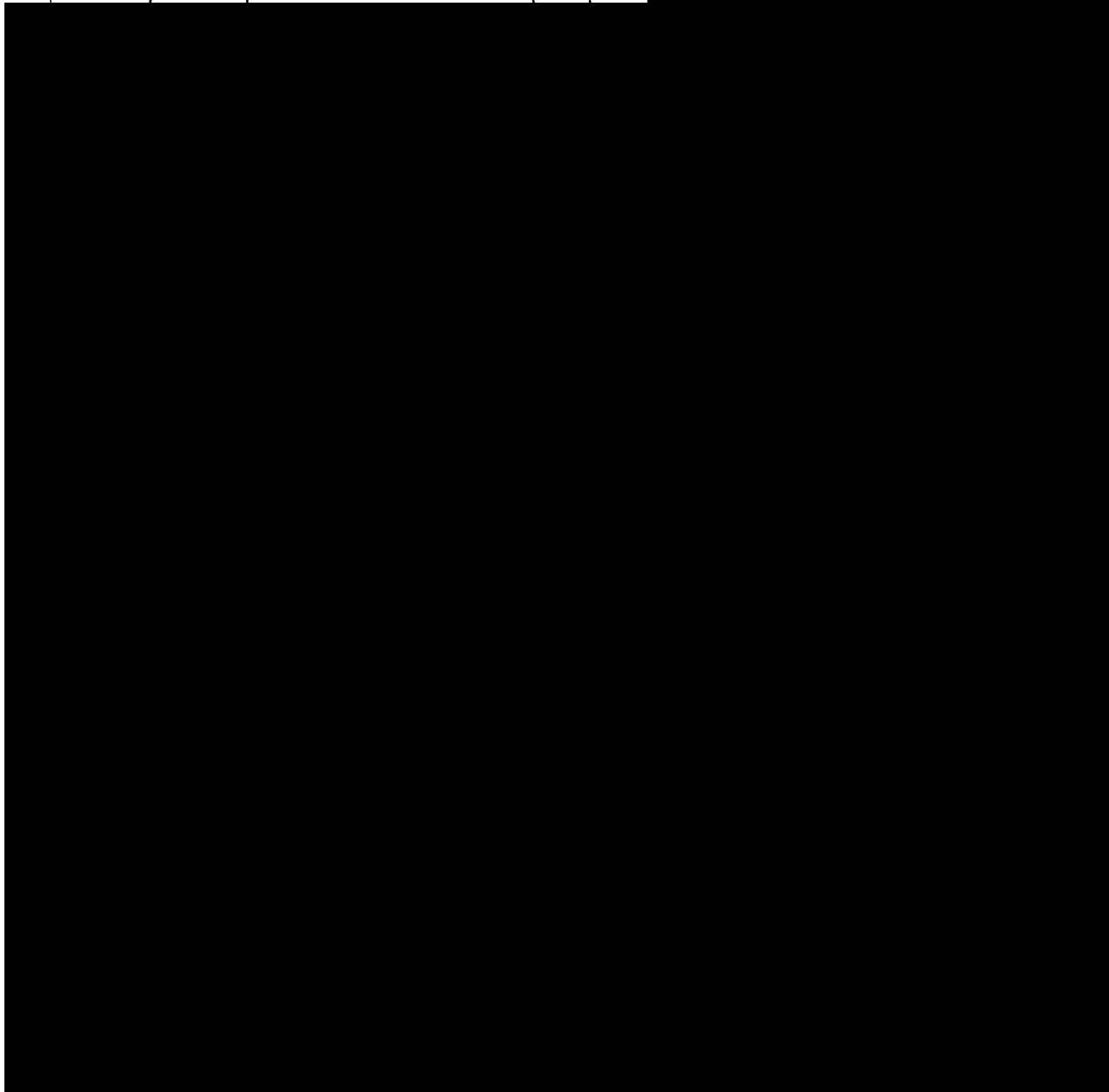
For the purposes of this document the expression "Nuclear Power Plant" shall include any nuclear facility, such as - but not limited to - nuclear fuel manufacturing plants, uranium enrichment plants, uranium conversion plants, spent nuclear fuel storage and research reactors.

5 Should the Licensee default in fulfilling any of its material obligations as per above, the default shall be considered a fundamental breach of contract. As a result the Licensor may immediately revoke the licenses granted under Section 2 by giving the Licensee notice in writing. In such case the Licensee is obliged immediately to stop using the Software and any of the other Software provided by the Licensor. The Licensee shall return to the Licensor or destroy all copies of the Software.

6 Notwithstanding anything to the contrary in this document, nothing contained herein shall be construed as restricting any rights to use Software which are conferred on the Licensee by law, and which cannot - according to law - be restricted by agreement between the parties.

APPENDIX P

Clause by Clause

#	Standard/doc	Clause/ Section no.	Description/Title/ Paragraph	Comply	Non Compl.	Comment/Clarification
						

APPENDIX Q

Direct Pay Permit



State of New York - Department of Taxation and Finance - Sales Tax Bureau
New York State and Local Sales and Use Tax

DIRECT PAYMENT PERMIT

This permit constitutes authority to make direct payment of sales and use tax to the Sales Tax Bureau in lieu of payment to the vendor.

This permit may be revoked for failure to comply with conditions under which it is issued or for other reasons constituting misuse of the authority granted under the permit.

Rochester Gas & Electric Corporation
89 East Avenue
Rochester, New York 14649

Identification Number	[REDACTED]
Permit Number	[REDACTED]
Effective Date	[REDACTED]

J. W. Perney

Authorizing signature

ST-123 (7/70)

NOT TRANSFERABLE