

# EXHIBIT A

## EASEMENT AGREEMENT

EASEMENT GRANT (this "Grant"), made this 24th day of July, 2012, by **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**, a New York corporation, having a place of business at 4 Irving Place, New York, New York 10003, as grantor ("Grantor"), to the **MILLWOOD FIRE DISTRICT**, a fire district organized and existing under the laws of the State of New York, having offices at P.O. Box 140, Millwood, New York 10546, as grantee ("Grantee");

### WITNESSETH:

**WHEREAS**, Grantor owns a certain parcel of real property identified on the Westchester County Tax Map as Section 81.09, Block 3, Lot 1 ("**Grantor's Land**"); and

**WHEREAS**, Grantee owns a certain parcel of real property commonly known as the New Millwood Fire Station No. 1 site, identified on the Westchester County Tax Map as Section 81.17, Block 3, Lots 3, 4 and 13, and as more particularly described on Exhibit A attached hereto and made a part hereof ("**Grantee's Land**"); and

**WHEREAS**, Grantee has requested a twenty (20) foot wide by approximately five hundred and twenty-eight (528) foot long easement in, under or through a portion of Grantor's Land, as more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter called the "**Easement Area**"), for the installation, operation and maintenance of a Closed Stormwater Conveyance Pipe (the "**Stormwater Conveyance Pipe**") that will convey overflow stormwater from a stormwater retention pond to be constructed on the Grantee's Land, under and through the Grantor's Land, for eventual discharge on a parcel owned by the New York State Department of Transportation; and

**WHEREAS**, Grantee has also requested a thirty (30) foot wide by approximately five hundred and twenty-eight (528) foot long temporary easement centered upon and overlaying the Easement Area, as more particularly described in Exhibit C attached hereto and made a part hereof (hereinafter called the "**Temporary Easement Area**") for construction and lay-down purposes during the Initial Construction (as hereinafter defined) and if included in Plans (as

hereinafter defined) approved by Grantor, any Subsequent Construction (as hereinafter defined), of the Stormwater Conveyance Pipe; and

**WHEREAS**, Grantee has also requested the right and easement to use, in common with others, the walkways, roads and access ways on Grantor's Land for the purpose of entering and exiting, including without limitation, pedestrian and vehicular access, ingress and egress to and from, the Easement Area and the Temporary Easement Area, subject to Grantor's rules, policies, procedures, guidelines and protocols in effect from time to time with respect to Grantor's Land, to the extent required for the exercise of the Easement (as hereinafter defined) granted to Grantee by this Grant (collectively, the "**Access Areas**" and together with the Easement Area and the Temporary Easement Area, collectively, the "**Grant Areas**"); and

**WHEREAS**, Grantor is willing to satisfy Grantee's requests on the terms and subject to the conditions of this Grant.

**NOW, THEREFORE**, in consideration of the following terms and conditions, and for other good and valuable consideration, receipt whereof is hereby acknowledged, Grantor and Grantee (collectively referred to herein as the "**Parties**" and each individually, as a "**Party**") agree as follows:

1.     **Definitions.**   As used in this Grant, the following terms shall have the following meanings.

**"Environmental Laws"** mean all former, current and future federal, state, and local laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), Environmental Permits and New York State Department of Environmental Conservation ("**NYSDEC**") Technical Administrative Guidance Memoranda and other Guidance Memoranda and other guidance documents issued or published by any Governmental Authority, in each case, relating to pollution, protection of the environment, natural resources or human health and safety, including laws relating to the presence, Release of, or exposure to, Hazardous Substances, or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or arrangement for such activities with respect to, Hazardous Substances.

**“Environmental Permits”** mean the permits, licenses, consents, approvals and other governmental authorizations with respect to Environmental Laws relating primarily to the operations and activities of Grantee contemplated by this Grant.

**“Force Majeure Event”** means any occurrence or event beyond the reasonable control of a Party which renders impossible such Party’s performance of an obligation or duty under this Grant, provided, however, that such failure to perform or impossibility of performance is not attributable to such Party’s fault or negligence and does not involve any obligation to pay money, obtain financing or procure and maintain insurance policies as required hereunder. A Force Majeure Event shall include, but not be limited to, any act of God, worker strike or related labor disturbance, act of public enemy, war, insurrection, or terrorism, riot, any other civil disturbance, fire, storm, lightning, flood, earthquake, any other natural disaster, explosion, or materials shortage, breakage or accident involving facilities, equipment or systems, and any order or regulation or restriction imposed by Government Authority, and unexpected transportation delays or stoppages.

**“Governmental Authority”** means any federal, state, or local government or any court, administrative or regulatory agency, board, committee or commission or other governmental entity or instrumentality, or any department thereof, having jurisdiction over Grantor’s Facilities, Grantor’s Land, including without limitation the Grant Areas, or the installation, construction, operation or maintenance of the Stormwater Conveyance Pipe.

**“Grantee’s Agents”** means any and all contractors, subcontractors, employees, agents, representatives, licensees, servants or any other person or entity working for, or acting on behalf of, Grantee in connection with the Easement granted hereunder.

**“Hazardous Substances”** mean (i) any petroleum, petroleum products or byproducts and all other hydrocarbons, petrochemicals, crude oil or any fraction thereof, coal ash, radon gas, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, chlorofluorocarbons and other ozone-depleting substances; and (ii) any chemical, material, substance or waste (including thermal discharges) that is prohibited, limited or regulated by, or pursuant to, any Environmental Law.

**“Permits”** mean the permits, licenses, consents, approvals and other governmental authorizations relating primarily to the operations and activities of Grantee contemplated by this Grant, including without limitation, the Environmental Permits.

**“Release”** means any actual or threatened release, spill, emission, emptying, escape, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment or within any building, structure, facility or fixture.

**“Remediation”** means the investigation, cleanup, removal, transportation, disposal, treatment (including *in-situ* treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances which are at, on, under, and/or migrating from the Easement Area or the Temporary Easement Area, and/or which are Released on any of the Grant Areas due to or associated with any act or omission of Grantee or Grantee’s Agents in connection with Grantee’s exercise of the Easement granted hereunder, and including, without limitation, any monitoring, operations and maintenance activities that may be required by any Governmental Authority after the completion of any such investigation, study, cleanup, removal, transportation, disposal, treatment, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Authority in connection with the investigation, cleanup, removal, transportation, disposal, treatment (including *in situ* treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances which are at, on, under, and/or migrating from the Easement Area or the Temporary Easement Area and/or which are Released on any of the Grant Areas due to or associated with any act or omission of Grantee or Grantee’s Agents in connection with Grantee’s exercise of the Easement granted hereunder.

2. **Nature of Grant.** Grantor grants to Grantee the non-exclusive right and authority to (i) use the Easement Area and the Temporary Easement Area to the extent such areas are located on Grantor’s Land for the construction and installation of the Stormwater Conveyance Pipe pursuant to the Plans (as defined in Section 7 hereof), and for the operation, maintenance, repair and replacement of the Stormwater Conveyance Pipe after installation is completed as provided herein and (ii) to enter upon Grantor’s Land via the Access Areas to the extent required to perform the foregoing activities (the rights herein granted are collectively called the

“Easement”). Grantee’s Agents may enter the Grant Areas on behalf of Grantee to exercise the rights granted to Grantee herein.

3. **Reserved Rights.** Without in any way intending to limit the rights of Grantor as the fee owner of Grantor’s Land by specifying the following, the Easement is subject to Grantor’s rights to construct, erect, repair, expand, alter, replace, install, operate, maintain or remove its improvements, facilities and equipment, including but not limited to, the existing service center, garages and other buildings located on Grantor’s Land, parking areas, electric, gas and/or steam transmission or distribution lines, communication lines and/or facilities, service connections, facilities and appurtenances, including but not limited to pipes, fixtures, conduits, counter poises, manholes and duct lines, together with the wires, cables and terminal boxes presently located in, on, over, through, across or adjacent to the Grant Areas and those constructed or installed by Grantor after the date of this Grant (all of which are herein referred to as “Grantor’s Facilities”).

4. **Duration of Easement.** (a) Subject to the conditions, limitations and requirements set forth in this Grant, the term of this Grant shall commence upon the date (the “Commencement Date”) which is the earlier of: (i) the date the New York State Public Service Commission (“PSC”) approves this Grant or is deemed to have approved this Grant pursuant to Section 70 of the Public Service Law, within the time period provided by Section 12(d) hereof, with no conditions; or (ii) the date the PSC approves this Grant pursuant to Section 70 of the Public Service Law with conditions, within the time period provided by Section 12(d) hereof, and neither Party shall have sent a written notice to the other Party stating that any such condition is not acceptable to it within the time frame provided for such notices in Section 12(d) hereof, and, shall continue for the period of time the Stormwater Conveyance Pipe is required for Grantee’s purposes.

(b) Upon the occurrence of any of the following events, the Easement and this Grant shall terminate, without any notice required to be given to Grantee: (x) should Grantee not construct and commence the operation of the Stormwater Conveyance Pipe within three (3) years of the Commencement Date, unless this time period is extended by Con Ed, in its sole discretion, for good cause shown; (y) if the Stormwater Conveyance Pipe becomes inoperative or unused for

any reason whatsoever for a continuous period of one (1) year, unless (A) prior to the expiration of such one (1) year period, Grantee notifies Grantor that it intends to commence use of the Stormwater Conveyance Pipe and (B) such use is expeditiously commenced; or (z) if the Easement Area shall be taken by any Governmental Authority in the exercise of the power of eminent domain as provided in Section 20 hereof. In the event that the Easement shall terminate in accordance with this Section, this Grant shall be of no further force and effect, Grantor will possess all of the rights to the Grant Areas it enjoyed prior to the delivery of this Grant, and neither of the Parties shall have any further obligations under this Grant except that Grantee shall remain fully liable for those obligations under this Grant that expressly survive termination, including without limitation those set forth in Environmental Liability (Section 17), Insurance (Section 18), Indemnity (Section 19) and Non-Disclosure (Section 36) and for those obligations incurred prior to termination of this Grant that remain unfulfilled by Grantee at the time of termination. Upon the request of Grantor, Grantee will sign and deliver an appropriate instrument, in recordable form, releasing the rights given to it by this Grant and substantially in the form of Exhibit D attached hereto and made a part hereof (a “**Termination Agreement**”).

(c) Notwithstanding anything contained herein to the contrary and without limiting any provisions regarding termination of the Easement contained herein, Grantee’s rights in and to the Temporary Easement Area shall terminate upon completion of the Initial Construction; provided however (i) in the event use of the Temporary Easement Area is required for any Subsequent Construction, (ii) Grantee specifies the need for such use in its Plans for any such Subsequent Construction and (iii) Grantor approves such use in connection with the Plans for such Subsequent Construction, Grantee’s rights and obligations hereunder with respect to the Temporary Easement Area shall be reinstated, until such time as such Subsequent Construction is completed. Each such termination of Grantee’s rights with respect to the Temporary Easement Area shall terminate in accordance with this subsection, without any notice required to be given to Grantee.

5. **Easement Fees.** (a) Grantee shall pay to Grantor the sum of Fifty Thousand Dollars (\$50,000) (the “**Easement Price**”) upon execution of this Grant as consideration for the granting of this Grant, which shall be non-refundable, except that if this Grant terminates

pursuant to the provisions of Section 12(d) hereof, Grantor shall refund the Easement Price to Grantee.

(b) Grantee shall promptly pay to Grantor, within thirty (30) days of receipt of any bills rendered by Grantor: (i) the full amount of all reasonable costs and expenses which may be incurred by Grantor in supporting, protecting or examining Grantor's Facilities during the initial construction and installation of the Stormwater Conveyance Pipe (the "**Initial Construction**") or during any operation, repair, maintenance, replacement (not expansion), relocation or removal of the Stormwater Conveyance Pipe ("**Subsequent Construction**") pursuant to the terms of this Grant; and (ii) the full amount of any other costs and expenses Grantee is required to pay or reimburse to Grantor pursuant to the terms of this Grant. Notwithstanding the foregoing, Grantees may reasonably contest a bill. If Grantees contest a bill, Grantees shall pay Grantor under protest subject to refund based on the outcome of the contest. The provisions and obligations of Grantee in this Section 5(b) shall survive the expiration, revocation and/or termination of this Grant.

6. **Boundaries of the Easement Area.** (a) The boundaries of the Easement Area shall not exceed twenty (20) feet in width and approximately five hundred and twenty-eight (528) feet in length. The Grantee shall install the Stormwater Conveyance Pipe through or as close to the center of the Easement Area, as physically practicable. Grantee shall install and maintain, at Grantor's request, above-ground markers at such locations as may be designated by Grantor, plainly indicating the location and ownership of the underground portions of the Stormwater Conveyance Pipe.

(b) Grantee and Grantee's Agents shall maintain clearances from Grantor's Facilities at all times in accordance with the provisions of the National Electric Safety Code and OSHA and any other rules and regulations applied by Grantor to the Easement Area or Grantor's Facilities.

7. **Plans and Specifications.** (a) Prior to the Initial Construction, or any Subsequent Construction in or on the Easement Area pursuant to the terms of this Grant, Grantee will submit to Grantor not less than ninety (90) days prior to the scheduled entry onto the Easement Area, four (4) copies of detailed final plans and specifications (herein the "**Plans**")

describing the Initial Construction, and all phases of Subsequent Construction, as applicable, for Grantor's examination and Grantor's prior written approval. If Grantor approves of the Plans, Grantee shall be notified in writing and on or after the date specified in such notice, Grantee shall be permitted to enter upon the Easement Area to commence and complete, as applicable, the Initial Construction or the Subsequent Construction, pursuant to the approved Plans. If Grantor disapproves of the Plans within ninety (90) days of receipt and notifies Grantee of its objections or concerns, then Grantor and Grantee shall use good faith efforts to resolve their differences for a period of thirty (30) days following Grantee's receipt of Grantor's objection notice. Notwithstanding anything to the contrary contained herein, no work shall be permitted under this Grant unless the Plans, and any modification(s) thereto, are approved in advance and in writing by Grantor.

(b) Within thirty (30) days after the completion of the Initial Construction (and, as applicable, of any Subsequent Construction) pursuant to this Grant, Grantee will deliver to Grantor a complete detailed set of "as-built" drawings and a survey, certified as being accurate by a professional engineer and licensed surveyor, as applicable, which shall indicate, among other things, the alignment and grades of the Stormwater Conveyance Pipe, as well as AutoCad versions of such drawings and survey. Failure of Grantee to satisfy this requirement shall be cause for Grantor to preclude the operation of the Stormwater Conveyance Pipe, by court order on notice to Grantee.

(c) Grantor and Grantee hereby acknowledge and agree that any review, approval or disapproval by Grantor, or any other action by Grantor with respect thereto, of any of the Plans, specifications, drawings, surveys or any other materials furnished by Grantee to Grantor is solely for Grantor's benefit, and does not constitute any representation, warranty, or assumption of liability by Grantor with respect to any aspect thereof whatsoever.

8. **Grantee's Responsibilities.** (a) During the Initial Construction or any Subsequent Construction in or on the Easement Area, Grantee and Grantee's Agents shall not (i) remove any unnecessary soil or earth from the Grant Areas, (ii) pile or store excavated material or any other materials within the bounds of any parking areas or any roads used to access, service, maintain or repair Grantor's Facilities, (iii) transport, use, or store any Hazardous



Substances on, in, at or near the Grant Areas, (iv) violate any requirements of applicable laws, including without limitation, the National Electric Safety Code and OSHA or any other requirements for proper clearance from any overhead transmission lines, nor (v) perform such work in a manner that adversely affects or interferes with Grantor's Facilities or the use and enjoyment of the Grant Areas or Grantor's Land by Grantor or any other parties with rights thereto. Furthermore, during construction, all equipment shall be grounded to limit electrostatic induced current. The use of explosives or blasting material to perform any part of the work in the Easement Area is strictly prohibited except with Grantor's prior written approval, which approval may be withheld for any reason. In the event such written consent is extended, a representative will be assigned by Grantor to monitor blasting and protect Grantor's interests, and Grantee shall reimburse Grantor for the entire cost and/or expense of furnishing said representative. Grantor or Grantor's representative may withdraw Grantor's approval at any time, either orally or in writing, in Grantor's sole discretion.

(b) If damage is sustained by, or occurs to, Grantor's Facilities or its other property during the Initial Construction or any Subsequent Construction, Grantee shall notify [the Supervisor of Transmission Line Maintenance], at telephone number [(914) 789-6867] immediately upon the occurrence of such mishap and confirm notification in writing within twenty-four (24) hours thereafter. Alternatively, if the Supervisor is not reachable, Grantee shall notify Grantor's 24-hour [Central Information Group (CIG) at (212) 580-6763]. If the [CIG] number is not accessible, Grantee shall use its best efforts to locate an alternate number to provide the immediate notification to Grantor. All damages and repairs caused in whole or in part by Grantee and/or Grantee's Agents shall be paid by, and be the sole liability of, Grantee.

(c) Grantee, at its sole cost and expense, will restore the portions of the Grant Areas disturbed by Grantee or Grantee's Agents to substantially the same condition and grade that existed prior to such disturbance. In the event that it should become necessary to bring additional soil onto the Grantor's Land in order to restore same, Grantor must demonstrate to Grantor that such fill materials are "clean fill" and such fill shall be subject to the approval of Grantor. At the request of Grantor, Grantee will seed the Easement Area after completion of the Initial Construction or any Subsequent Construction to the reasonable satisfaction of Grantor.

(d) Grantor shall have the right to enter upon the Grant Areas at all reasonable times to inspect the progress of any work permitted by this Grant and to determine that the provisions of this Grant are being complied with; provided that Grantor shall not be obligated to make any such inspection and Grantee agrees that any review, inspection and/or approval by Grantor of any work is solely for Grantor's benefit, and does not constitute any representation, warranty or assumption of liability by Grantor with respect to any aspect thereof whatsoever.

9. **Compliance with Laws and Regulations.** Grantee shall, and shall cause Grantee's Agents to, comply with all laws, ordinances and regulations of any Governmental Authority and any and all rules and regulations applied by Grantor to the Easement Area or Grantor's Facilities. Without limiting the foregoing, Grantee shall, and shall cause Grantee's Agents to, comply with all Environmental Laws, and take such action or, omit to take such action, so as not to violate any Environmental Laws. Grantee shall be solely responsible to obtain and procure all Permits and any other items needed for the Initial Construction or any Subsequent Construction, and the use, operation and maintenance of the Grant Areas as required herein.

10. **Repairs and Maintenance.** Grantee shall take good care of the Stormwater Conveyance Pipe and the Grant Areas and the appurtenances thereto, make all repairs, ordinary and extraordinary, foreseen and unforeseen, to the Stormwater Conveyance Pipe and, as may be affected by Grantee's or Grantee's Agents use thereof, the Grant Areas, and shall maintain, keep and operate the Stormwater Conveyance Pipe and, as may be affected by Grantee's or Grantee's Agents use thereof, the Grant Areas, in first class order, repair and condition. Grantor shall not be responsible in any manner for loss of, or damage to, the Stormwater Conveyance Pipe, or any of Grantee's facilities, fixtures or property from any cause whatsoever, and Grantee assumes all risk(s) therefor. Additionally, Grantee shall keep the Grant Areas free and clear of rubbish, debris, and refuse, and shall not encumber or obstruct the same or allow the Grant Areas to be encumbered or obstructed in any manner. In addition, Grantee shall remove snow and ice as is necessary for the construction and installation of the Stormwater Conveyance Pipe and for the operation and maintenance of the Stormwater Conveyance Pipe after installation is completed. All maintenance and repair of the Stormwater Conveyance Pipe and, as may be necessary or

convenient to Grantee's or Grantee's Agents use thereof, the Grant Areas, including maintaining barriers and removing snow and debris, are to be performed by Grantee at Grantee's sole cost and expense. Any maintenance and repair required to the Access Areas due to the use by Grantee or Grantee's Agents pursuant to this Grant, shall be performed by Grantor, at Grantee's sole cost and expense.

11. **Restrictions of Easement.** Grantee shall not, and shall cause Grantee's Agents to not, construct, erect or place on any portion of the Grant Areas any trees, buildings, structures, machinery or vehicles that will interfere with Grantor's use of its properties, including the Grant Areas, or the conduct of Grantor's businesses. Subject to Section 3 hereof, at all times during the term of this Grant, Grantor shall have priority to use the Grant Areas for the conduct of its business if a conflict for the use of such areas arises between Grantor and Grantee. In the event of such a conflict, the parties shall cooperate in an effort to relocate the affected Grant Areas to the extent possible, with the understanding that any such relocation shall not interfere with Grantor's current or future use of its properties, including the Grant Areas, or the conduct of Grantor's businesses.

12. **Default and Termination.** (a) Without limiting any other provision contained in this Grant, upon the occurrence of an Event of Default (as defined below), Grantor shall have the right to terminate this Grant upon notice to Grantee and this Grant will terminate on the date specified in said notice. In addition, and notwithstanding anything to the contrary contained herein, this Grant shall terminate pursuant to the provisions outlined in Section 4, Section 7, Section 12(d), Section 16 and Section 20 hereof. Upon termination of this Grant pursuant to its provisions, this Grant shall be of no further force and effect, Grantor will possess all of the rights to the Grant Areas it enjoyed prior to the delivery of this Grant, and neither of the Parties shall have any further obligations under this Grant except that Grantee shall remain fully liable for those obligations under this Grant that expressly survive termination, including but not limited to those set forth in Environmental Liability (Section 17), Insurance (Section 18), Indemnity (Section 19) and Non-Disclosure (Section 36), and for those obligations incurred prior to termination of this Grant that remain unfulfilled by Grantee at the time of termination. Upon the request of Grantor, Grantee will promptly execute and deliver a Termination Agreement.

(b) Event of Default: To the extent not otherwise provided, each of the following events shall constitute an "Event of Default":

(i) Non-payment: If Grantee fails to timely pay any amount when due hereunder and such failure continues for fifteen (15) days or more after written notice from Grantor that such payment is overdue; or

(ii) Breach/Failure to Perform: If Grantee or Grantee's Agent fails to perform or comply with any of the terms or provisions of this Grant (except for payment obligations which are covered by clause 12(b)(i)), and Grantee fails to cure such failure within thirty (30) days after notice from Grantor of such failure, or if the failure to perform is of a nature that it cannot reasonably be cured within said thirty (30) day period, if Grantee fails to commence curing such failure within such thirty (30) day period or fails at any time thereafter to diligently and in good faith proceed to cure such failure; or

(iii) Prohibited Uses: If any Grant Area or any portion thereof shall be used for any purpose other than the purposes provided for herein; or

(iv) Liens/Encumbrances: If Grantee causes or permits any lien, encumbrance, chattel mortgage or any security interest to be created, filed or otherwise apply with respect to the Grantor's Land, including without limitation the Easement Area, the Temporary Easement Area or the Access Areas, or any portion thereof, and fails to discharge, at Grantee's expense, by bonding or otherwise, the same within thirty (30) days thereafter. Grantee shall defend, indemnify and hold harmless Grantor and Grantor's Indemnitees (as hereinafter defined) from all such liens, encumbrances, chattel mortgages or security interests; or

(v) Mortgages: If Grantee causes or permits any mortgage or deed of trust to be created encumbering Grantor's Land, including without limitation the Easement Area, the Temporary Easement Area or the Access Areas, or any portion thereof.

(c) In addition to all other rights and remedies available to Grantor, upon a default, breach or other failure of any obligations to be performed by, or on behalf of, Grantee pursuant to this Grant, Grantor may perform such obligations and take any and all other actions as it determines are necessary to cure such failure provided that (i) if no emergency exists, Grantor shall have provided Grantee with thirty (30) days prior notice of its intent to take such action, and such failure shall be continuing upon the expiration of such thirty (30) day period (or if such failure is not curable within said period, within such longer period as is reasonably necessary to cure such failure, provided Grantee begins to cure such failure within such thirty (30) day period and thereafter diligently prosecutes the same to completion) or (ii) in any situation which is an emergency or in which the integrity, operation, reliability, or security of Grantor's Land or Grantor's Facilities is endangered, as determined by Grantor in its sole discretion, Grantor shall have provided written or (notwithstanding any other provisions of this Grant) oral notice, if practicable, or, if such notice is not practicable, then without giving prior notice to Grantee, but with notice given as soon thereafter as practicable. Grantee shall immediately reimburse Grantor for the entire cost and/or expense of such cure and any other actions by Grantor in connection therewith.

(d) Without limiting any other provision contained in this Grant, this Grant shall terminate if the PSC declines to approve this Grant or is deemed not to have approved this Grant, pursuant to Section 70 of the New York Public Service Law or approves it with any one or more conditions that are not acceptable to either Party in its sole discretion; provided, however, in order to give rise to a termination of this Grant due to an unacceptable condition, a Party must send a written notice to the other Party stating that such condition is not acceptable within ten (10) business days after it has received notice of such condition. Notwithstanding anything contained herein to the contrary, this Grant shall terminate if the PSC fails to either approve this Grant with conditions acceptable to both Parties or to reject this Grant within one (1) year from the date hereof.

13. **Relocation.** In the event of a conflict for the use of one or more Grant Areas, and if Grantor decides to change the course or lay-out of any of Grantor's Facilities or the Access Areas, or to construct, install, maintain or operate new facilities in, on, over or across any of the Grant Areas, requiring relocation or altering of the Easement Area, the Temporary Easement

Area and/or the Access Areas, Grantor will give Grantee not less than thirty (30) days notice in which notice Grantor shall reasonably describe the action or activity intended to be taken by Grantor. After receipt of such notice, Grantee shall cooperate with Grantor by promptly doing all things necessary to relocate or alter the Stormwater Conveyance Pipe or the affected portion of the Grant Areas so as not to interfere with Grantor's work, provided that any such relocation of the Easement Area is not inconsistent with, and does not materially interfere with, its use by Grantee as contemplated by this Grant. The expenses incurred by Grantee in relocating or altering Grantee's facilities shall be the sole responsibility of Grantee.

14. **Grant Limited.** No other or greater estate, right or interest than that specifically herein set forth shall be deemed to be granted to Grantee or created hereby; nor shall any other use or occupancy, for whatever length of time continued, be deemed to create any greater estate, right or interest than that which is specifically given by this Grant.

15. **Interference.** Subject to Section 3 hereof, Grantee will exercise the rights hereby granted so as not to interfere with or endanger the proper and safe operation, use and enjoyment of Grantor's Facilities or Grantor's use of the Grant Areas, or use of its other remaining property.

16. **Taxes, Assessments and Other Charges.** Grantee agrees to pay any and all taxes, assessments and other impositions assessed or imposed on, or which arise out of, or are attributable to, use of the Grant Areas or the Stormwater Conveyance Pipe and/or the recording of this Grant. Grantee shall have the right to employ and to exhaust all available remedies to contest the amount of, and the liability for, such taxes, assessments and other impositions, provided, however, that if a lien shall at any time be filed against Grantor's Land, including without limitation, any of the Grant Areas, Grantor's Facilities, or other property of Grantor, or any interest therein because of such taxes, assessments or impositions, Grantee shall cause the same to be discharged of record by either payment, deposit or bond within twenty (20) days after receiving notice of said lien. If Grantee shall fail to discharge such lien within such period, then, in addition to any other rights or remedies of Grantor and notwithstanding any other provision herein to the contrary, Grantor may terminate this Grant by giving Grantee notice of its election to do so, and five (5) days after the forwarding of said notice, this Grant shall be deemed terminated. Upon request of Grantor, Grantee will execute and deliver a Termination

Agreement. In addition, if Grantee shall fail to timely pay any such taxes, assessments and other impositions, Grantor may (but shall not be obligated to) make such payment on behalf of Grantee and, notwithstanding Section 12(b)(ii) hereof, such payment may be made prior to any notice or the expiration of any cure period in the event necessary to avoid any penalty, interest, late charge, lien or foreclosure. Grantee shall promptly reimburse Grantor for any such payment made, as well as any costs and expenses incurred by Grantor in connection therewith. The foregoing reimbursement obligations of Grantee shall survive the expiration, revocation and/or termination of this Grant.

17. **Environmental Liability.** (a) As a condition of this Grant, Grantee shall be solely responsible and liable for, and shall defend, indemnify and hold Grantor and Grantor's affiliates and their respective directors, trustees, officers, employees, agents, representatives, successors and assigns (collectively "**Grantor's Indemnitees**") harmless from and against any and all claims and liabilities under any Environmental Laws, including any Remediation costs, relating to any of the Grant Areas or this Grant provided the same arise out of or in connection with: (i) the existence of Hazardous Substances in, on or under any of the Grant Areas that are discovered as a result of Grantee's or Grantee's Agent's use of, or work, operations, or activities in, on, at or near the Grant Areas or any portion(s) thereof, provided that the Grantee's liability and obligations under this Section 17(a)(i) shall be limited to claims and costs arising solely from conditions existing within the Grant Areas, and not from any Hazardous Substances that may exist on any other portion of the Grantor's Land, (ii) any Release of any Hazardous Substances in, on, under, over or migrating to, from or through the Grant Areas or other lands owned by Grantor, caused by or associated with any act or omission of Grantee or Grantee's Agents, Agents, (iii) on-site management, transportation and disposal of all wastes generated by the Grantee, or (iv) any violation of Environmental Laws by Grantee or Grantee's Agents in connection with this Grant.

(b) The Remediation required hereunder, shall be performed by Grantee promptly, at Grantee's sole cost and expense, and shall include the preparation by Grantee of any and all required filings, reports, notifications, and all other submissions to comply with all requirements of all Environmental Laws and each and every Governmental Authority. Should any Governmental Authority deem that a cleanup or Remediation plan be prepared and that a cleanup

or Remediation be undertaken, then Grantee shall, at Grantee's sole cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans under Grantee's own EPA identification number. Grantee shall promptly provide Grantor with a copy of any notices, correspondence, filings, reports, and submissions made by, or on behalf of, Grantee to, or received by Grantee from, any Governmental Authority. Grantee hereby indemnifies and shall defend and save Grantor and Grantor's Indemnitees harmless from all costs, penalties, fines, suits, procedures, claims and actions of any kind, including reasonable attorney's fees, arising out of Grantee's failure to provide all information, make all submissions and take all actions required in connection with such Remediation or by any and all Environmental Laws or any Governmental Authority.

(c) The Parties further agree to cooperate with each other concerning matters that affect Grantor's Land, including without limitation the Grant Areas, including plans to prevent or respond to spills of oil or Hazardous Substances required by any Governmental Authority and the selection of a response measure or remedial action and any follow-up or other reports required under Environmental Laws in connection with any Release in relation to this Grant or the Easement.

(d) Grantee shall contractually require Grantee's Agents to comply with all applicable legal requirements, Environmental Laws and with any Governmental Authority's environmental directives, including those pertaining to wetlands management, as a condition of this Grant.

(e) The provisions and obligations of this Section 17 shall survive the expiration, revocation and/or termination of this Grant.

18. **Insurance.** (a) During the term of this Grant, Grantee shall, at its sole cost and expense, procure and keep in force, and during all times that Grantees' Agents perform work of any nature pursuant to this Grant, Grantee shall cause such Grantee's Agents (including contractors of every tier) to secure and keep in force, at its or their sole cost and expense, policies of: (i) comprehensive public liability insurance protecting and insuring Grantee and naming Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc., as additional insureds with respect to any and all claims for damages to property or injuries to persons, (including loss of life) occurring upon, in or about the Easement Area, the Temporary Easement



Area, the Access Areas or the adjoining property of Grantor, in an amount not less than \$7,500,000.00 (such insurance to have an "occurrence" determinant of coverage and not a "claims made" determinant of coverage); (ii) statutory workers' compensation insurance as required by law and employer's liability insurance, including in respect of accidents, with a limit of at least \$1,000,000 per accident and for each occupational disease (with a limit of at least \$1,000,000 per employee); and (iii) commercial automobile liability insurance that covers all owned, non-owned and hired vehicles used in connection with this Grant with limits not less than \$1,000,000.00 per accident for bodily injury and property damage, and naming Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc., as additional insureds.

(b) Grantor shall have the right to require Grantee, and to cause Grantee to require Grantee's Agents (including contractors of every tier), to provide reasonable increases to the policy limits of all insurance required under this Grant.

(c) Grantee shall furnish other insurance covering the Easement Area and/or the Temporary Easement Area (in such amounts as may from time to time be reasonably required by Grantor) against other insurable hazards which at the time are commonly insured against in the case of stormwater conveyance pipes similarly situated, due regard being given to the size of the Easement Area and the Temporary Easement Area, its construction, location, frequency of use and method of operation.

(d) All insurance required by this Section 18 shall be effected under standard form policies, issued by stock or mutual company insurers of recognized responsibility, authorized to do business in the State of New York and having a rating of not less than "A-" (excellent) by A.M. Best, or a company otherwise acceptable to Grantor. The insurance policies required by this Section 18 shall not be cancelled, amended or changed, except upon thirty (30) days prior written notice to Grantor or its designated representatives. If any insurance coverage should lapse for any reason, Grantor shall have the right to pay the premium due and collect the same, from time to time, from Grantee as additional payment for this Grant.

(e) Grantee shall deliver to Grantor certified copies of the policies, or Certificates of Insurance, evidencing the insurance coverage required by this Grant and, thereafter, not later

than ten (10) days prior to the expiration of any policy, a certified copy of the policy, or Certificate of Insurance, evidencing that such insurance has been renewed or substituted.

(f) Grantee shall cause all insurance required of Grantee and Grantee's Agents hereunder to include waivers of subrogation in favor of Grantor with regard to claims, damages, recoveries, payments, liabilities, actions, causes of actions, proceedings, demands, obligations, attachments, fines, costs and expenses, arising out of this Grant, or the construction, use or operation of the Stormwater Conveyance Pipe, or the use and occupancy of any of the Grant Areas by Grantee or Grantee's Agents.

(g) The insurance provided for in this Section 18 shall be primary and non-contributory with any insurance carried by Grantor and shall not require that Grantor pay any premium thereunder.

(h) Neither the maintenance of the insurance specified in this Section 18 nor the limits of liability applicable to such insurance shall define or limit the liability of Grantee or Grantee's Agents under this Grant.

(i) Grantor's failure to require strict compliance or exercise its rights with regard to this Section 18 shall not constitute a waiver on Grantor's part. The provisions of this Section 18 shall survive expiration, revocation and/or termination of this Grant.

19. **Indemnity.** (a) To the fullest extent permitted by law, Grantee shall defend, indemnify and save free and harmless Grantor and Grantor's Indemnitees from and against any and all claims, liabilities, actions, proceedings, causes of action, demands, obligations, damages, suits, liens, attachments, fines, costs and expenses (including reasonable attorney's fees), recoveries or payments, whether based in contract, tort (including negligence, gross negligence or strict liability) or otherwise, which are asserted, suffered, incurred, by any person or entity (including the Parties hereto) which arise from, relate to or are connected with, in whole or in part, (i) any act, omission or negligence of Grantee, or Grantee's Agents, or (ii) any default or failure of Grantee to perform its obligations contained in this Grant, or (iii) the construction, use or operation of the Stormwater Conveyance Pipe or any of the Grant Areas. The foregoing claims, liabilities, actions, proceedings, causes of action, demands, obligations, damages, suits,

liens, fines, attachments, costs and expenses (including reasonable attorney's fees), recoveries or payments, are hereinafter referred to collectively as the "Covered Claims". To the fullest extent permitted by law, Grantee hereby irrevocably and unconditionally releases and forever discharges Grantor and Grantor's Indemnitees from any and all liability for any of the Covered Claims, and waives any and all rights to assert any of the Covered Claims against Grantor or Grantor's Indemnitees or any of them.

(b) Grantor and Grantee agree, to the fullest extent permitted by law, that under no circumstances shall Grantor or Grantor's Indemnitees or any of them be liable to Grantee, whether in contract, tort (including negligence, gross negligence and strict liability), or otherwise, for any special, indirect, incidental, or consequential damages (including but not limited to damage, loss, liability, costs and expenses resulting from loss of use, loss of business, business interruption, loss of profits or revenue, costs of capital, loss of goodwill, claims of customers, and like items of special, indirect, incidental, or consequential loss or damage, but specifically excluding any amounts due and payable pursuant to the terms of this Grant, including without limitation, any claims of third parties to which Grantor is indemnified against pursuant to the terms hereof, which may be categorized as a consequential damage) which arise from, relate to, or are connected with this Grant, the Easement Area, the Stormwater Conveyance Pipe or any act or omission of any person or entity concerning this Grant, whether or not such damages, loss, liability, costs and expenses are caused in whole or in part by the acts or omissions (including negligence or gross negligence) of the Grantor or Grantor's Indemnitees or any of them. The foregoing damages are hereinafter referred to collectively as "Consequential Losses". To the fullest extent permitted by law, Grantee hereby irrevocably and unconditionally agrees to release and forever discharge Grantor from any and all liability for any Consequential Losses and to waive any rights to recover any Consequential Losses from Grantor. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally agrees to release and forever discharge Grantee from any and all liability for any Consequential Losses and to waive any rights to recover any Consequential Losses from Grantee. If a court of competent jurisdiction determines that any provision of this Section 19 is unenforceable, the total liability of Grantor for all matters which otherwise would have been covered by such provisions shall not exceed \$100,000.00. If a court of court of competent jurisdiction determines that any provision

of the preceding sentence is enforceable, such court shall limit the operation of such provision so as to give it the effect intended to the fullest extent permitted by law.

(c) The provisions of this Section 19 shall survive expiration, revocation and/or termination of this Grant.

20. **Condemnation.** (a) In the event that the Easement Area, the Temporary Easement Area or Access Area, or any portion thereof shall be taken by any Governmental Authority in the exercise of the power of eminent domain (a "**Taking**"), this Grant shall continue in full force and effect except that the Easements granted hereunder shall terminate as to such area affected by such Taking, as of the date Grantor or Grantee is divested of its title, right or interest thereto. The control of the condemnation proceeding shall at all times be vested in Grantor as the owner in fee of Grantor's Land.

(b) Notwithstanding the foregoing Subsection (a), in the event that any of the Grant Areas are affected by a partial Taking such that they no longer serve Grantee's purposes as contemplated hereunder, and provided that the affected Grant Area cannot be relocated in accordance with Section 13 to another portion of the Grantor's Land not affected by the Taking, this Grant shall terminate as of the date Grantor or Grantee is divested of its title, right or interest thereto, in accordance with Section 12(a) hereof. Notwithstanding anything contained herein to the contrary, Grantee acknowledges that any potential relocation shall be conditioned on the requirement that such relocation not interfere with Grantor's current or future use of its properties, including the Grant Areas, or the conduct of Grantor's businesses.

(c) Any award attributable to a Taking of the Easement Area shall, if not separately awarded to the Parties with respect to their separate interests by the condemning authority, be equitably allocated among the Parties, as their respective interests may appear. Any award attributable to a Taking of the Temporary Easement Area or an Access Area shall belong to Grantor.

(d) Nothing herein shall preclude Grantee from pursuing any claims against the condemning authority with respect to any facilities, personal property, equipment or fixtures

taken or the costs of relocation, and all awards with respect to such claims shall be the exclusive property of Grantee.

21. **Notices**. Any notice, consent, approval, certificate, permission or other communication required or permitted to be given or made by either Party to the other, pursuant to this Grant shall be in writing and shall be deemed given, if delivered personally, by nationally recognized overnight courier or by certified mail, return receipt requested, as of the date of receipt or the date of refusal to accept receipt by the addressee (whichever is the earlier to occur). No other method of delivery shall satisfy the Notice requirements hereunder. Notices, consents, approvals, certificates, permissions and other communications shall be addressed to:

**If to Grantor, sent to:**

Consolidated Edison Company of New York, Inc.  
4 Irving Place, Suite 206-S  
New York, NY 10003  
Attention: Director, Real Estate Department;

with a copy to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place, Room 1810  
New York, NY 10003  
Attention: Associate General Counsel – Commercial Transactions

**If to Grantee, sent to:**

Millwood Fire District  
P.O. Box 140  
Millwood, New York 10546  
Attention: District Secretary

with a copy to:

Farrell Fritz, P.C.  
1320 RXR Plaza  
Uniondale, New York 11556  
Attention: Anthony S. Guardino, Esq.

Any Party may designate a different address from the one described above for the purpose of this Section 21 by sending written notice to the other Party in the manner prescribed herein.

22. **Condition of Easement Area – Title.** Grantee accepts the Easement Area “as-is”, in its present condition after a full and complete examination thereof. Grantor makes no representation or warranty as to the suitability of the Easement Area for the Stormwater Conveyance Pipe and related equipment, the Temporary Easement Area, the Access Areas or otherwise. The Grant Areas are hereby granted subject to (i) title, title defects, encumbrances, conditions, covenants, restrictions, agreements, easements, and mortgages, if any, as may exist with respect to the Grant Areas, (ii) any state of facts that an inspection or accurate survey of the Grant Areas would disclose, (iii) all zoning, safety, labor, health, sanitation and other laws, orders, rules and regulations of any Governmental Authority and violations, if any, thereof and (iv) subject to Section 3 hereof, Grantor’s right to grant or convey easements or any other interest in the Grant Areas.

23. **Removal of Facilities.** Upon the expiration or earlier termination of this Grant, Grantee, at its sole cost and expense, shall remove the Stormwater Conveyance Pipe and any other facilities, personal property or fixtures of Grantee from the Easement Area, and upon the expiration of Grantee’s rights to use the Temporary Easement Area, any equipment, materials or personal property from the Temporary Easement Area. Grantee, at its sole cost and expense, shall repair any damage done to any part of the Grant Areas caused by such removal. Any portion of the Stormwater Conveyance Pipe, facilities, equipment, materials, personal property or fixtures not so removed by Grantee or Grantee’s Agents shall be deemed abandoned and Grantor may either appropriate any portion thereof to its own use or dispose of same at Grantee’s cost and expense. Grantee shall have no more than sixty (60) days after the termination of this Grant to remove such items and to repair any damage to the Grant Areas, as the case may be, caused by such removal. The provisions and obligations of Grantee of this Section 23 shall survive the expiration, revocation and/or termination of this Grant.

24. **Entire Agreement; Severability.** All understandings and agreements heretofore had between the Parties relating to the subject matter of this Grant are merged into and superseded by this Grant, which alone fully and completely expresses the Parties’ understandings and agreements, and that the same are entered into after a full investigation, neither Party relying upon any statement or representation not embodied herein. If any provision of this Grant or the application thereof to any person or circumstances shall, for any

reason and to any extent, be invalid or unenforceable, the remainder of this Grant and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.

25. **Construction and Headings.** This Grant shall be construed without regard to any presumption or other rule requiring construction against the Party who prepared this Grant. The headings contained in this Easement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Grant.

26. **No Waiver.** Grantor's failure to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Grant, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment of the performance of one or more obligations of this Grant, or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. Any waiver by Grantor shall be effective only if in writing and signed by Grantor's authorized representative, and then only with respect to the particular event to which it specifically refers.

27. **Estoppel Certificate.** Each Party agrees, within ten (10) days after written request by any other, to execute, acknowledge and deliver to, and in favor of, any present or proposed lender, mortgagee, ground lessor, purchaser, tenant or the like of all or any part of Grantor's Land, an estoppel certificate, in a form reasonably satisfactory to such lender, mortgagee, ground lessor, purchaser, tenant or the like, stating: (i) whether this Grant is in full force and effect; (ii) whether this Grant has been modified or amended and, if so, identifying and describing any such modification or amendment; (iii) whether there are any sums then due and owing under this Grant from Grantee, and if so, specifying the amount thereof and the reason therefore; and (iv) whether such Party knows of any default (or event which, with the passage of time, the giving of notice, or both, would constitute a default) on the part of either Party hereto, or whether there is any outstanding claim against either Party arising under this Grant and, if so, specifying the nature of such default or claim.

28. **Grant Runs With The Land.** (a) The benefits and burdens, rights and obligations, licenses, Easement, provisions and restrictions created by this Grant shall be

indivisible, and appurtenant to and run with the land and burden and be binding upon the Parties and their successors-in-interest. The covenants, agreements, restrictions, terms, provisions and conditions of this Grant shall bind and benefit such successors-in-interest (whether by sale, foreclosure or otherwise) with the same effect as if they were mentioned in each instance when either Party is named or referred to herein, it being understood and agreed that upon any transfer of ownership (whether by sale, foreclosure or otherwise) of all or any part of Grantor's Land or Grantee's Land, as the case may be, each such successor in interest shall thereupon and thereafter assume, and perform and observe, any and all of the obligations of its predecessors in interest under this Grant.

(b) Notwithstanding the foregoing, (i) neither this Grant, nor any of the rights, interests or obligations hereunder, shall be assigned, sublet or otherwise encumbered, transferred or set over by Grantee, including by operation of law, without the prior written consent of Grantor, except (A) to a third party in connection with the conveyance of all of Grantee's right, title and interest in and to Grantee's Land to such third party or (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in Grantee's Land, and (ii) each Party shall use reasonable efforts to cause any such successor or assign to execute an agreement in recordable form pursuant to which such successor or assign shall assume any and all obligations of its predecessors in interest under this Grant; provided, however, that the failure to obtain any such agreement shall not detract from the provisions of Subsection (a) above and provided further that no assignment or transfer of the rights or obligations of Grantee or its successors or assigns shall release any such party from the full liabilities and obligations under this Grant (whether arising before or after any such transfer of ownership), unless and until the successor or assignee shall have agreed in writing to assume such obligations and duties and Grantor has consented in writing to such release and assumption. Notwithstanding anything herein to the contrary, nothing in this Grant is intended to confer upon any other person except the Parties any rights or remedies hereunder or shall create any third-party beneficiary rights in any person or entity.

29. **Force Majeure.** (a) Notwithstanding anything in this Grant to the contrary, neither Party shall have any liability or be otherwise responsible to the other for its failure to carry out its obligations, with the exception of any obligation to pay money or indemnification,



under this Grant if and only to the extent that it becomes impossible for either Party to so perform as a result of any Force Majeure Event.

(b) If either Party shall rely on the occurrence of a Force Majeure Event as a basis for being excused from performance of its obligations under this Grant, then such Party shall (i) provide prompt written notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations hereunder, (ii) exercise its reasonable best efforts to continue to perform its obligations under this Grant, (iii) expeditiously take reasonable action to correct or cure the Force Majeure Event, (iv) exercise its reasonable best efforts to mitigate or limit damages to the other Party and (v) provide prompt notice to the other Party hereto of the cessation of the Force Majeure Event.

30. **Recording.** This Grant shall not be recorded until final PSC approval is obtained in accordance with Section 4 herein.

31. **Governing Law.** This Grant shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

32. **Jurisdiction and Enforcement.** Each Party irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State of New York, New York County and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Grant or any transaction contemplated hereby. Each Party agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Every party further agrees that service of process, summons, notice or document by a method and as otherwise specified in Section 21 hereof shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Grant or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and hereby further irrevocably and

unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

33. **Amendments**. This Grant may be amended, modified or supplemented only by an instrument in writing signed on behalf of each Party hereto, referring to this Grant.

34. **Representations**. Grantee hereby warrants and certifies to Grantor that: (i) Grantee is a fire district duly organized and in good standing under the laws of the State of New York; (ii) Grantee is authorized to do business in the State of New York and to execute and deliver this Grant; and (iii) the person executing this Grant on behalf of Grantee is authorized and empowered to bind the limited liability company to the terms of this Grant by his or her signature hereto. Grantor hereby warrants and certifies to Grantee that: (i) Grantor is a corporation duly organized and in good standing under the laws of the State of New York; (ii) Grantor is authorized to execute and deliver this Grant; and (iii) the person executing this Grant on behalf of Grantor is authorized and empowered to bind the corporation to the terms of this Grant by his or her signature hereto.

35. **Counterparts**. This Grant may be executed in two or more counterparts, each of which will be deemed an original, but all of which shall constitute one and the same instrument. This Grant shall not become effective and binding upon either Grantor or Grantee until this Grant or a counterpart thereof is signed by each Party and delivered to the other Party.

36. **Non-Disclosure**. Grantee agrees that at no time, during the term hereof or at any other time, shall Grantee directly or indirectly make or cause or permit others to make any media disclosure, press release, marketing release, advertisement, or any similar public statement or announcement regarding this Grant, the Easement, Grantee's or Grantor's use of Grantor's Land, including without limitation the Grant Areas, or otherwise using Grantor's name, without obtaining Grantor's prior written consent, which consent may be withheld in Grantor's sole and unfettered discretion. Grantee and Grantor agree that Grantee's violation of this Section will constitute a material violation of this Easement and that the damages that Grantor will suffer will be substantial, but will be impossible or difficult to ascertain with precision. Accordingly, upon each such violation of this Section, Grantee, to the fullest extent permitted by law, shall be required to pay to Grantor, immediately upon demand, the sum of Ten Thousand Dollars

(\$10,000.00) as liquidated damages ("Liquidated Damages") and not as a penalty. Grantee and Grantor hereby expressly agree that the amount of the Liquidated Damages set forth herein is a fair and reasonable estimate of the actual damages that Grantor would suffer upon each violation of this Section by Grantee. In the event a court of competent jurisdiction shall determine that Grantee's obligation to pay the amount of Liquidated Damages set forth herein is unenforceable, Grantee and Grantor agree that the amount of Liquidated Damages that Grantee shall pay to Grantor shall be the maximum amount permitted by law and that the court may determine that maximum amount. Grantee agrees that in addition to Grantor's other remedies pursuant to this Easement and applicable law (including without limitation, receiving the payment of Liquidated Damages), Grantor is entitled to injunctive relief to enforce this Section and to enjoin any violations or threatened violations of this Section. Grantee hereby agrees to reimburse Grantor for any and all court and/or reasonable attorney fees, costs and expenses incurred by Grantor in connection with a violation or threatened violation of this Section by Grantee. The provisions of this Section shall survive the expiration and any earlier termination of this Grant.

37. **Waste Management.** Grantee shall be solely responsible at its expense for the appropriate handling, storage and disposal, pursuant to all applicable laws, rules, regulations, and ordinances (including, but not limited to, Environmental Laws), of all waste materials generated by or from this Grant including, but not limited to, excavated paving materials, excavated soil and soil cuttings, groundwater monitoring well development and purge water, any spill cleanup wastes and other spoils and wastes. To the extent permitted by applicable laws, rules, regulations, and ordinances (including, but not limited to, Environmental Laws), Grantee shall be listed as the waste "generator" on all applicable manifests and filings for the transportation of such waste materials from the Grant Areas. Grantee shall arrange for expedited testing of all waste materials and shall promptly remove from the Grantor's Land all waste materials after they have been characterized. Grantee shall provide Grantor with copies of all manifests and filings documenting that the waste has been received at its final destination for destruction and/or disposal. To the extent that any waste materials need to be temporarily stored at the Grantor's Land for the purposes of testing or characterization, such waste materials shall be stored at a location and in a manner dictated by Grantor. Notwithstanding anything to the contrary in this Grant, any and all waste materials generated hereunder shall be handled, transported, stored, treated and disposed of at Grantee's sole

risk and expense, and Grantor shall have no liability arising from the handling, transportation, storage, treatment, or disposal of such waste materials.

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IN WITNESS WHEREOF, Grantor and Grantee have caused this Grant to be signed as of the day and year first above written.

**GRANTOR:**

**CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.,** a New York corporation

By: Candl Conny  
Name: Candida Conny  
Title: Director, Real Estate

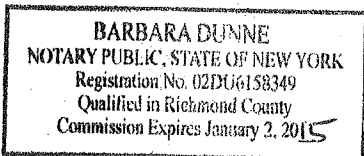
**GRANTEE:**

**MILLWOOD FIRE DISTRICT,**  
a New York fire district

BY: Hala Makowska  
Name: Hala Makowska  
Title: Chairwoman

STATE OF NEW YORK     )  
  ) SS.:  
COUNTY OF NEW YORK    )

On the 16<sup>th</sup> day of July, in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Candida Cannio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Barbara Dunne  
Notary Public

STATE OF NEW YORK     )  
  ) SS.:  
COUNTY OF Queens     )

On the 24<sup>th</sup> day of July, in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared **Hala Makowska**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Christina A. Boone  
Notary Public

CHRISTINA L. BOONE  
Notary Public, State of New York  
No. 01BO5017510  
Qualified in Queens County  
Commission Expires December 30, 20 13

**EXHIBIT A**

**Grantee's Land**

Section 81.17, Block 3, Lots 3, 4 and 13

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of New Castle, Westchester County, New York, being more particularly shown and designated as Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27 and a portion of Lot 16 as shown on a certain map entitled "The Plantation" a Subdivision of Property Belonging to George F. Allen at Millwood, New York, Town of New Castle, Westchester Co.," dated October 10, 1930, which said map was filed in the office of the Clerk of the County of Westchester, Division of Land Records, on the 18<sup>th</sup> day of November, 1931, as Map No. 3827.

As to Section 81.17, Block 3, Lot 3, being the same premises conveyed by Diana Cortez to the Millwood Fire District, by deed dated May 3, 2011, and recorded in the Office of the Westchester County Clerk, Division of Land Records, on May 13, 2010, by Control No. 501233213.

As to Section 81.17, Block 3, Lot 4 and 13, being the same premises conveyed by Realis Development, LLC, to the Millwood Fire District, by deed dated June 1, 2007, and recorded in the Office of the Westchester County Clerk, Division of Land Records, on June 19, 2007, by Control No. 471640084.

## **EXHIBIT B**

### **Easement Area**

Commencing at a point along the easterly line of New York State Route 133 (Millwood Road) where the same is intersected by the northerly line of lands now or formerly of Millwood Fire District.

Thence from said point of commencement on a direct tie bearing and distance of North  $41^{\circ}30'19''$  East a distance of 1015.24 feet to the POINT OF BEGINNING, said point being on the northerly line lands now or formerly of Millwood Fire District.

Thence from said point of beginning through lands now or formerly of Consolidated Edison (Westchester Lighting Company) North  $20^{\circ}31'26''$  East a distance of 384.93 feet, North  $30^{\circ}28'47''$  East a distance of 198.39 feet and North  $02^{\circ}35'43''$  East a distance of 26.59 feet to a point in the lands of The People of the State of New York.

Thence along lands of The People of the State of New York on a non-tangent curve to the left with a railroad radius of 1482.50 feet, an arc length of 37.13 feet and a chord bearing of North  $35^{\circ}11'27''$  East.

Thence again through said lands of Consolidated Edison (Westchester Lighting Company) South  $02^{\circ}35'43''$  West a distance of 62.83 feet, South  $30^{\circ}28'47''$  West a distance of 201.61 feet and South  $20^{\circ}31'26''$  West a distance of 336.43 feet to a point on northerly line lands now or formerly of Millwood Fire District.

Thence South  $43^{\circ}40'46''$  West a distance of 50.86 feet to the POINT OF BEGINNING.

Containing 12,105 square feet of land.



## EXHIBIT C

### Temporary Easement Area

Commencing at a point along the easterly line of New York State Route 133 (Millwood Road) where the same is intersected by the northerly line of lands now or formerly of Millwood Fire District.

Thence from said point of commencement on a direct tie bearing and distance of North  $41^{\circ}28'40''$  East a distance of 1002.53 feet to the POINT OF BEGINNING, said point being on the northerly line lands now or formerly of Millwood Fire District.

Thence from said point of beginning through lands now or formerly of Consolidated Edison (Westchester Lighting Company) North  $20^{\circ}31'26''$  East a distance of 397.06 feet, North  $30^{\circ}28'47''$  East a distance of 197.58 feet and North  $02^{\circ}35'43''$  East a distance of 17.79 feet to a point in the lands of The People of the State of New York.

Thence along lands of The People of the State of New York on a non-tangent curve to the left with a railroad radius of 1482.50 feet, an arc length of 55.71 feet and a chord bearing of North  $35^{\circ}10'55''$  East.

Thence again through said lands of Consolidated Edison (Westchester Lighting Company) South  $02^{\circ}35'43''$  West a distance of 72.17 feet, South  $30^{\circ}28'47''$  West a distance of 202.42 feet and South  $20^{\circ}31'26''$  West a distance of 324.31 feet to a point on northerly line lands now or formerly of Millwood Fire District.

Thence South  $43^{\circ}40'46''$  West a distance of 76.29 feet to the POINT OF BEGINNING.

Containing 18,160 square feet of land.

## EXHIBIT D

### TERMINATION OF EASEMENT

THIS TERMINATION OF EASEMENT (this "**Termination**") dated as of \_\_\_\_\_, 20\_\_\_\_, made by the MILLWOOD FIRE DISTRICT, a fire district organized and existing under the laws of the State of New York, having a principal place of business located P.O. Box 140, Millwood, New York 10546 (**Original Grantee**).

#### **W-I-T-N-E-S-S-E-T-H:**

WHEREAS, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, having a place of business at 4 Irving Place, New York, New York 10003 (the "**Original Grantor**") granted Original Grantee, by a certain Easement Grant dated as of \_\_\_\_\_, 2012 (the "**Grant**"), the right and authority to (i) enter upon a twenty (20) foot wide by approximately five hundred and twenty-eight (528) foot long portion of Original Grantor's property described on Exhibit A attached hereto and made a part hereof (the "**Easement Area**"), for the installation, operation and maintenance of a Closed Stormwater Conveyance Pipe ("**Stormwater Conveyance Pipe**"), as more particularly described in the Grant, (ii) to enter upon a ten (10) foot wide by approximately five hundred and twenty-eight (528) foot long portion of Original Grantor's property described on Exhibit B attached hereto and made a part hereof (the "**Temporary Easement Area**") adjoining the Easement Area, for construction and lay-down purposes during construction work for the Stormwater Conveyance Pipe, and (iii) use, in common with others, of the walkways, roads and access ways on Grantor's Land for the purpose of entering and exiting the Easement Area and the Temporary Easement Area (the "**Access Areas**"), each as more particularly described in the Grant; and

WHEREAS, the Grant provided that it would terminate upon the happening of certain events described in the Grant; and

WHEREAS, the event described in Section 4(b) of the Grant has occurred,

NOW, THEREFORE, Original Grantee agrees that effective as of \_\_\_\_\_, 20\_\_\_\_, the Grant is terminated and of no further force and effect, and Original Grantee hereby surrenders to Original Grantor, its successors and assigns, all of its right, title, interest and estate in and to the Easement Area, the Temporary Easement Area and the Access Areas.

IN WITNESS WHEREOF, Original Grantee has duly signed and delivered this Termination as of the date first above written.

**ORIGINAL GRANTEE:**

**MILLWOOD FIRE DISTRICT,**  
a New York fire district

BY: \_\_\_\_\_

Name: Hala Makowska

Title: Chairwoman

STATE OF NEW YORK     )  
                                      ) SS.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

## EXHIBIT A

### Easement Area

Commencing at a point along the easterly line of New York State Route 133 (Millwood Road) where the same is intersected by the northerly line of lands now or formerly of Millwood Fire District.

Thence from said point of commencement on a direct tie bearing and distance of North  $41^{\circ}30'19''$  East a distance of 1015.24 feet to the POINT OF BEGINNING, said point being on the northerly line lands now or formerly of Millwood Fire District.

Thence from said point of beginning through lands now or formerly of Consolidated Edison (Westchester Lighting Company) North  $20^{\circ}31'26''$  East a distance of 384.93 feet, North  $30^{\circ}28'47''$  East a distance of 198.39 feet and North  $02^{\circ}35'43''$  East a distance of 26.59 feet to a point in the lands of The People of the State of New York.

Thence along lands of The People of the State of New York on a non-tangent curve to the left with a railroad radius of 1482.50 feet, an arc length of 37.13 feet and a chord bearing of North  $35^{\circ}11'27''$  East.

Thence again through said lands of Consolidated Edison (Westchester Lighting Company) South  $02^{\circ}35'43''$  West a distance of 62.83 feet, South  $30^{\circ}28'47''$  West a distance of 201.61 feet and South  $20^{\circ}31'26''$  West a distance of 336.43 feet to a point on northerly line lands now or formerly of Millwood Fire District.

Thence South  $43^{\circ}40'46''$  West a distance of 50.86 feet to the POINT OF BEGINNING.

Containing 12,105 square feet of land.

**EXHIBIT B**

Temporary Easement Area

(See Attached Legal Description)